

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

29 MARCH 2021

DAY 370



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 29 MARCH 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

MR SELEKA SC: Good morning Chairperson.

CHAIRPERSON: Are you ready?

MR SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Good.

MR SELEKA SC: Today is Mr Koko.

CHAIRPERSON: Yes. Hopefully his last appearance.

10 **MR KOKO:** Please Chair.

CHAIRPERSON: Good morning Mr Koko.

MR KOKO: Good morning Mr Chair.

CHAIRPERSON: Thank you. Okay Registrar please administer the oath or affirmation again.

REGISTRAR: Please state your full names for the record.

MR KOKO: Matshela Moses Koko.

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

MR KOKO: No.

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

MR KOKO: Yes.

REGISTRAR: Do you solemnly swear 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, so

help me God.

MR KOKO: So help me God.

CHAIRPERSON: Thank you. He is represented as before I assume?

MR SELEKA SC: Yes.

MR KOKO: Yes.

CHAIRPERSON: Yes. Thank you. Okay continue.

MR KOKO: Chair I have a question of clarity if I can?

CHAIRPERSON: Yes.

10 **MR KOKO**: Ask before we go into the detail.

CHAIRPERSON: Ja.

MR KOKO: I read in the website that the President of the Republic will be coming.

CHAIRPERSON: Yes.

MR KOKO: I made statement in December 2020 and I put it – and I said that Mr Ramaphosa interfered and instructed the board of Eskom that was yet to meet to dismiss me.

CHAIRPERSON: Yes.

20 **MR KOKO**: And I have mentioned the names of the former Deputy Minister and former acting DG and I – I just want to find out if Mr Ramaphosa has been served with a 3.3 Notice like all of us who has been served because I really want to know why did Mr Ramaphosa interfere in the affairs of Eskom by instructing the board of Eskom that was yet to meet to dismiss me and the instruction that the Labour

Court found to be unlawful.

And the consequences of that was in the CSIR Report that just after I left for – between 2018 and 2020 R266 billion was lost as a result of load shedding that occurred after I left. So I really want to know and if the public do not – are not interested in knowing I really want to know.

I will not rest peacefully until I know why did the Deputy President of the Republic interfere in the affairs of Eskom to instruct the board that was yet to meet to dismiss me. I now know based on the affidavit and the testimony of Mr – of Ms Brown that three of those board members were not even vetted as they should be vetted.

So I look forward to Mr Ramaphosa coming here. I hope you have served him with 3.3 Notices. I looked at the documents that were sent to me last night and they were voluminous.

I did not see a statement from the former Deputy Minister that I have mentioned. I am not sure if he has been served with 3.3 Notice as yet. I have not seen the statement of –

CHAIRPERSON: You said Deputy Minister you meant Deputy President of Deputy Minister?

MR KOKO: I have seen the statement of a Deputy Minister who phoned me and told me that the President.

CHAIRPERSON: Oh.

MR KOKO: Will be – I thought that will be of interest to the commission.

CHAIRPERSON: Yes.

MR KOKO: I also thought that it will be of interest to the commission that the DG who called me and told me that the President will be dismissing me. I did not see that statement. I did not see the statement of the Deputy President and I thought I humbly seek clarity from you on
10 what is going to happen.

CHAIRPERSON: Ja. No I can tell you – I cannot tell you for sure whether your statement implicating or to the effect that the current President issued an instruction whether it was served but Mr Seleka will be able to say that but I can assure you that I too am interested in what the President has to say about your evidence in that regard.

And he certainly should be questioned on that. The legal team is preparing on – on such matters but Mr Seleka should be able to respond to whether or not a Rule 3.3
20 Notice was issued and the issue of a statement from the Deputy Minister as well as from the DG you are right those would be important.

Of course if the President were to admit that he made the statement or issued or made the statement that you attribute to him based on what you were told then the

need for their statements would fall away. But there is no reason why attempts should not be made to obtain affidavits from the Deputy Minister and from the DG or acting DG.

MR KOKO: Thank you very much Sir.

CHAIRPERSON: Ja thank you. Mr Seleka do you want to say something?

MR SELEKA SC: Yes. Part of the transcript of Mr Koko was given to the – to the President when we provided him
10 with the equivalent of a Rule 3.3 which is the request for information and we gave him documentation from Mr Molefe's testimony and from Mr Koko. Because I think in the case of Mr Koko that averment was made orally but not in the affidavit as I recall that he had instructed somebody to – to have you suspended.

MR KOKO: Chair my – my statement its very detail in it all what I did not do in the statement was to mention his name.

MR SELEKA SC: Yes.

20 **CHAIRPERSON:** Yes but you – you had mentioned his name in your Labour Court application papers is it not?

MR KOKO: We have mentioned the Presidency.

CHAIRPERSON: Oh you did not mention it you just said Presidency.

MR KOKO: We just said the Presidency.

CHAIRPERSON: Oh okay alright.

MR KOKO: Ja.

MR SELEKA SC: But we have provided the transcript and the President or the Presidency is preparing an affidavit Mr Koko. They – they have undertaken to provide the commission with it.

CHAIRPERSON: Ja.

MR SELEKA SC: On the Deputy Minister and the DG I do not have recollection so I think you will have to help me
10 with the names.

MR KOKO: Deputy Minister Martins and the DGG is Mokgokolo – Mokgokolo..

CHAIRPERSON: You want to just give the spelling for the purposes of transcript for the DGG?

MR KOKO: Chair I will do it – I cannot spell it now I will do it during break time.

CHAIRPERSON: Okay alright.

MR KOKO: Otherwise I am going to make errors.

CHAIRPERSON: Okay alright, okay.

20 **MR SELEKA SC:** Is it ...

CHAIRPERSON: And do ever say Deputy Minister Martins is that the one who was Minister of Transport at some stage?

MR KOKO: Correct DG I think it is either Martin Dikobe – Dikobe..

CHAIRPERSON: Oh no, no that would be somebody.

MR KOKO: It is either...

CHAIRPERSON: Okay but they can check ja.

MR KOKO: Dikobe Martins I think.

CHAIRPERSON: Okay.

MR KOKO: Yes but he was the Minister of Transport.

CHAIRPERSON: At some stage okay.

MR KOKO: He was a Minister of Transport.

CHAIRPERSON: Okay alright.

10 **MR SELEKA SC:** Okay the spelling for the DG if it is Mokgokolo I have it as M-o-k-g-o-k-o-l-o.

MR KOKO: That sounds right Mr Seleka – that sounds right yes.

CHAIRPERSON: Okay alright.

MR KOKO: I – I always confuse them with Martins that is why I do not what to ..

MR SELEKA SC: No Chair.

CHAIRPERSON: Ja okay alright.

MR SELEKA SC: Yes.

20 **CHAIRPERSON:** Alright let us continue then.

MR SELEKA SC: We can start.

CHAIRPERSON: Ja okay.

MR SELEKA SC: Mr Koko let us start where we ended so that we can close that part and that is the part regarding the emails to infoportal which you find in Eskom Bundle 18.

Eskom Bundle 18(b). So we hope to cover or to finalise on that.

MR KOKO: Which is

MR SELEKA SC: So Chairperson just by way of introduction we hope to...

CHAIRPERSON: Ja.

MR SELEKA SC: To finalise on this very aspect and then we go into the transactions which involved McKinsey Trillian. I think we will start there before we go to Tegeta
10 transactions if we – if we manage to get that far.

CHAIRPERSON: Ja okay well.

MR KOKO: I have got it Sir.

MR SELEKA SC: Yes thank you. Page 1018.

MR KOKO: 10?

MR SELEKA SC: 1018. So it there is those emails you sent to infoportal on the 20th July 2015 on page 1018.

MR KOKO: I have got it Chair.

MR SELEKA SC: Yes. Then page 1088. Remember your explanation to the Chairperson was that every time you
20 sent these emails you would have a meeting with Dr Ngubane and Ms Daniels to talk about what – talk about the document attached to the email.

Now Ms Daniels has denied orally in – during her testimony having given you this email address as the email address of Dr Ngubane and also denied in her last

appearance further that she had meetings with you and Dr Ngubane after the exchange of – or in relation to the documentation exchanged in these emails.

And you had also indicated that you will have – you would like to have an opportunity to explain to the Chairperson each of these documents.

My question to you is can you explain to the Chairperson insofar as you refer to meetings with Dr Ngubane.

10 Let us start with the first email which is internal consulting directive and the documentation follows thereafter. What meeting would you have had with Dr Ngubane and what is it that you would have discussed with him in regard to the document attached here?

MR KOKO: Excellent. So Chair the document and the first document is on page 1019. Am I – is that correct?

CHAIRPERSON: Yes ja.

MR KOKO: Right.

MR SELEKA SC: Yes it is.

20 **CHAIRPERSON:** 1019 ja.

MR KOKO: So – so Chair this is quite an interesting part and I am glad we are going through it. The National Treasury has got a directive on the use of consultants. Not only does it have a directive on the use and how you appoint the consultants but it also prescribes the fees for

the consultants.

The document you see on 1019 gives effect to the National Treasury directive an internal Eskom document. The – what Eskom wanted to do in my absence while I was on leave was to contract with McKinsey on the risk based – on a risk basis that was wrong.

National director – National Treasury does not allow that and the document you see there that gives effect clearly says so. And the only way that the board of Eskom
10 could do that on the basis of a resolution they took while I was on suspension on the 6th of July 2015 was to go to National Treasury and to ask National Treasury for a deviation. But it could not proceed as if there was not National Energy – National Treasury directive and as if there no internal Eskom procedure that gives effect to that.

And that discussion I had with both Ms Daniels and both Dr Ngubane. I have read the supplementary affidavit of Dr Ngubane on that and I have a lot to say about it and if I am allowed I will do that.

20 But that is the basis of this discussion. The board of Eskom could not on the 26th of – on the 6th of July have approved a sole source motivation that is not consistent with the National Treasury Regulations that is not giving – that is – that has a document internally to Eskom that gives effect to it.

CHAIRPERSON: Well this may be quite an important part of your explanation about these discussions with Dr Ngubane and Ms Daniels about these emails. So I just want you to take it step by step.

First you say in the document at page 1019 is what? Is a directive?

MR KOKO: No it is not a ...

CHAIRPERSON: From Eskom?

MR KOKO: Yes.

10 **CHAIRPERSON:** On – a directive for the implementation of the National Treasury cost containment instruction and government gazette.

Now on page 1019 we have got the document identifier alternative reference, area of responsibility Eskom – oh area of applicability Eskom Group, functional area finance division 1, total of pages 13. Next review date July 2016 disclosure classification.

And then there is compiler and functional risk responsibility and authorised by at the end.

20 Now the actual directive is it the document that starts at page 1020?

MR KOKO: Yes that is correct Chair.

CHAIRPERSON: Okay does it have 13 pages? I just want to see whether...

MR KOKO: It has got 13 pages.

CHAIRPERSON: 13? 13?

MR KOKO: 13.

CHAIRPERSON: Okay, okay so that is – that is in line with what is reflected at page 1019.

MR KOKO: That is correct.

CHAIRPERSON: It is to say the – so – and this particular document is an Eskom document?

MR KOKO: Correct Chair.

CHAIRPERSON: But it is an Eskom document that seeks
10 to give effect to a National Treasury instruction, is that right?

MR KOKO: That is correct Chair.

CHAIRPERSON: Yes and the National Treasury instruction was to what effect?

MR KOKO: That National Treasury instruction – first National Treasury had the view which had the – that the state owned enterprises should not unnecessarily rely on consultants when they can do the work.

CHAIRPERSON: Yes.

20 **MR KOKO:** And you will see if we go into the detail at that point Eskom was spending close to a R1 billion.

CHAIRPERSON: On consultants.

MR KOKO: On consultants.

CHAIRPERSON: That is quite a high amount.

MR KOKO: Right so the National Treasury scheme

framework was make it a bit difficult for state owned companies to arbitrarily appoint ...

CHAIRPERSON: There had to be good reasons.

MR KOKO: There had to be good reasons that is one. But not - 2 is that whenever you appoint consultants for good reasons there has to be...

CHAIRPERSON: A process.

MR KOKO: A – first a process and that process must include internal capacitation.

10 **CHAIRPERSON:** Yes. For future?

MR KOKO: For future.

CHAIRPERSON: Yes.

MR KOKO: For future work.

CHAIRPERSON: Yes.

MR KOKO: But thirdly it was very prescriptive on how you...

CHAIRPERSON: Go about.

MR KOKO: How to compensate on the fees that these consultants must be paid. That is pretty much.

20 **CHAIRPERSON:** Okay now do we have that National instruction – the National Treasury instruction in the bundle or do we not have?

MR KOKO: We – I have not seen it I do not think we have it.

CHAIRPERSON: You have not seen it yet. Do we have it

Mr Seleka?

MR SELEKA SC: I do not think we have that specific one Chair.

CHAIRPERSON: Okay alright.

MR KOKO: Chair I do not think you have it.

CHAIRPERSON: Ja.

MR KOKO: I do not think.

CHAIRPERSON: Ja it would be good to have it. I assume if it is a big document we can extract just the relevant
10 pages.

MR SELEKA SC: Yes the relevant portions.

CHAIRPERSON: Ja.

MR SELEKA SC: Ja.

CHAIRPERSON: If arrangements can be made for us to find that. So I guess part of the point you are making is that the type of issue that this related to because the – the email at page 1018 suggests that if your evidence is correct suggests that you sent this document to Dr Ngubane.

20 **MR KOKO:** Correct.

CHAIRPERSON: So the point you are making is the type of issue that you wanted to raise would be the type of issue that is legitimate to raise with the Chairperson of the board?

MR KOKO: Most certainly.

CHAIRPERSON: Yes.

MR KOKO: And it – and there is a step forward to it and if there is a third party who stands to get a competitive advantage this document will not send serve that purpose. Because this document will say to the third party you stand no chance.

CHAIRPERSON: Ja okay. But you – I do not know whether you had completed your explanation.

MR KOKO: But I – I have completed my explanation.

10 **CHAIRPERSON:** Ja.

MR KOKO: On this document.

CHAIRPERSON: Okay. Mr Seleka.

MR SELEKA SC: Yes thank you Chair. Mr Koko you also mentioned...

CHAIRPERSON: I guess that – I guess that you have completed your explanation up to a certain point what one – what would remain is to say tell us about the content of the discussion at the meeting where this document was discussed involved in the discussion involving you, Dr
20 Ngubane and Ms Daniels.

MR KOKO: Most certainly. There is two explanations I still need to add to this yes.

CHAIRPERSON: Yes.

MR KOKO: Yes two explanations and – I still need to give.

CHAIRPERSON: Ja.

MR KOKO: One is exactly that. I – I made averments previously that Dr Ngubane when it comes to processes was at the diversion of Dr – of Zola – Mr Tsotsi. Most often than not Mr Ngubane would act out of ignorance but once you put the facts on the table.

CHAIRPERSON: You advised him.

MR KOKO: Whilst you advise him and you put the facts on the table I can tell you he even becomes stubborn because he now knows. That is the – that is the Dr Ngubane I
10 know. Dr – Zola Tsotsi is different. When you tell him the facts he put a trip – he wants to kill you. So that is the difference. So Mr Ngubane had a posture he sits and he does not talk too much in the meeting and once he sees it and ...

CHAIRPERSON: What – once he sees the point you making?

MR KOKO: Once he sees the point you making he in a very curious fashion.

CHAIRPERSON: Ja.

20 **MR KOKO:** Says okay I understand that is what we are doing.

CHAIRPERSON: Ja. No further discussion.

MR KOKO: No further discussion. That is how he – he does not (talking over one another).

CHAIRPERSON: But he listened – he would listed to hear

what somebody else who might think differently has to say.

MR KOKO: Yes.

CHAIRPERSON: Yes okay.

MR KOKO: And he can talk very quickly and Mr Ngubane – and those who know Dr Ngubane both at the board meetings and one on one all his meetings are virtual. So he understood my point. He took my point and I remember in – Dr Ngubane telling me – Ms Daniels and this is what I want to go back to this statement saying you must never
10 make a mistake of going ahead without National Treasury deviation or we do not do this. That was his last words. I remember them very clearly.

I was very happy because this was going to break – this transaction was going to break the relationship between me and him and the board.

CHAIRPERSON: Okay alright.

MR SELEKA SC: Ja.

CHAIRPERSON: Mr Seleka.

MR SELEKA SC: Thank you Chair. Mr Koko what is it that
20 you were talking about with Mr Ngubane in regard to this document? What did you say you were talking about?

MR KOKO: The board took a resolution in my absence for a rates – for a risk based decision. That decision ...

CHAIRPERSON: In relation to McKinsey.

MR KOKO: In relation to McKinsey we called it Top

Engineers Program. That decision was not only inconsistent with the National Treasury's practice note but was also against the Eskom directive. So – so this directive.

CHAIRPERSON: His directive.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: So – so ordinarily if properly advised the board would said go sort this matter first with the National
10 Treasury before you come to us.

The board would not say we give you a mandate to negotiate without having assurance that indeed National Treasury will indulge and that is the discussion that I had with the Chairman.

CHAIRPERSON: Yes. So you raised this issue what was his response and what was Ms Daniels' response at the meeting where you had this document before all the three of you?

MR KOKO: Like I said Mr Ngubane talks very little, he
20 listens a lot and he got the message – he got it quickly and his response was okay this is what we doing. Ms Daniels just make sure that we either take a deviation or we do not do this at all.

CHAIRPERSON: So at the time that you – you sent him this document they had not approached – Eskom had not

approached National Treasury for a deviation or they had already done so but the outcome had not been communicated to them?

MR KOKO: They had not done it.

CHAIRPERSON: Oh they had not done it.

MR KOKO: Correct.

CHAIRPERSON: But had they – had they – had the Eskom board said to the management negotiate with McKinsey or what had they – what had been said before you raised this
10 issue?

MR KOKO: Well there was a resolution that was taken and – in my absence when I was on suspension. The suspension that I conveniently arranged so that McKinsey – they can make this decision. Now that is how ridiculous it is. The narrative is – the narrative is that my suspension was a sham so that certain transactions can happen.

So McKinsey is one of them so I participated in the conspiracy and a sham suspension so that the board of Eskom can take a resolution to negotiate with McKinsey on
20 a risk basis – on a risk basis and they did not – they did that without having been to National Treasury. And the intention was that while you negotiating with McKinsey go and talk to the National Treasury – go and talk to National Treasury.

CHAIRPERSON: Let us – let us take it step by step. Do

you by any chance recall what date the resolution was?

MR KOKO: 6 July 2015.

CHAIRPERSON: 6 July 2015.

MR KOKO: I cannot forget it Chair because the High Court erroneously concluded ...

CHAIRPERSON: That you were at work.

MR KOKO: That I was in charge of this.

CHAIRPERSON: Ja okay. And you returned on the 20th of July is that right?

10 **MR KOKO:** I returned on the 20th.

CHAIRPERSON: Yes. So – so you – so you – so what you are saying is on the 6th of July while you were on suspension you later found that the board had made a resolution to the effect that the executives should negotiate with McKinsey with a view to – or in regard to the Top Engineers Program. Is that right?

MR KOKO: That is correct.

CHAIRPERSON: Yes and when you came back you realised that this was in breach of not only the National
20 Treasury instruction note but also of this directive of Eskom and you decided to bring this to the attention of the Dr Ngubane?

MR KOKO: That is correct.

CHAIRPERSON: And you had a meeting and in that meeting where this issue was discussed Dr Ngubane saw

your point and instructed Ms Daniels that she should make sure that National Treasury was approached for a deviation or otherwise if National Treasury did not provide deviation the program should not be pursued, is that right?

MR KOKO: That is correct Chair.

CHAIRPERSON: Okay alright. Mr Seleka.

MR SELEKA SC: Thank you Chair. Mr Koko you would recall the evidence...

10 **MR KOKO:** Chair let me – before you go there. You will see and we will come back to it you will see there this transaction comes back again on the 6th of October and that is a document that I signed to the board which again makes a reference to National Treasury Compliance.

CHAIRPERSON: Okay.

MR SELEKA SC: Is that the feedback report?

MR KOKO: Yes the feedback report.

MR SELEKA SC: Okay. So while we are here we should – we should make a distinction between the Corporate Plan and the Master Service Agreement.

20 **MR KOKO:** That is a very good point Chair. So – so again I guess Mr Seleka will take – will lead evidence on the Master Service – on the business plan. And the business plan is often confused with a services level agreement and my name gets dragged into that and I get corrupted in between and I think that is what the judges of the High

Court did as well. So – so when the need arose 00:29:31
 went to a NERSA decision of the 29th of June – mark that
 date Chair we are going to come back to it. On the 29th of
 June and we needed a financial plan and the business plan
 that is based on what we call a cost – a design to cost as
 opposed to a cost reflective business plan. I listened to
 the testimony of Mr Singh and I do not know why he did not
 explain this simple concept to you. All along, the business
 plan of Eskom was based on a cost reflective tariff. So we
 10 had a wishful list. That wishful list leads to a cost and we
 then take that cost, we put in a business plan and then we
 go to the consumer, we have covered the cost.

The decision of NERSA on the.... what we call
 Multi Year Price Determination 3. We call it – in short we
 call it MYPD3. We applied for one – just over a trillion
 revenue for five years and they gave us R 883 billion. We
 were short R 225 billion. So the business plan that was
 there on the table that the very competent Eskom's
 Executive allegedly put together was R 225 billion short.

20 So we needed to restructure our operations and
 have a business plan that is based on the cost that we
 have, so designed cost. And Mr Singh and I agreed that
 we must approach McKinsey to put a business plan that
 will be – that was based on the cost that we have, not on
 the wishful idea that one day NERSA would change their

minds and give us R 225 billion that we do not have.

So we approached McKinsey. McKinsey had been historically working on a design-to-cost model. The reason why I took a decision and trust my decision not to use the MSA was because the...

And you will see that a lot of emails when I sent it to the teams what is the feedback on the negotiations with McKinsey, and one thing came – that continuously clam out, even though they did not even say it expressly
10 because I think they realised, in my view in hindsight, there was trouble brewing, is that National Treasury is not going to give them a leeway to contract on a risk based approached.

So I took a decision that the scope for the business plan that I authorised from the 29th of September 2015 will not be based on risk base. It will be based on the fee that is approved by National Treasury. So that is the difference. And it is quite a simple concept and I do not understand why both Mr Singh
20 and Mr Seleka struggled to explain this to you.

ADV SELEKA SC: I... Ja. Chair, I do not want to be personal.

CHAIRPERSON: Ja.

ADV SELEKA SC: But I do not have to explain anything to the Chairperson. You, as witnesses, have to give

evidence to the Chairperson.

MR KOKO: I am here to do that Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: So your explanation relates to the Corporate Plan. Is that right? The explanation you have just given to the Chairperson?

MR KOKO: Correct.

ADV SELEKA SC: So you and Mr Singh, you say, agreed to approach McKinsey in order for McKinsey to provide
10 services in respect of what you say is the Business Plan?

MR KOKO: Correct. And the Business Plan... just complete the sentence, sir. The Business Plan and the... Financial Plan, that will be based on the design-to-cost, not a cost – a cost reflective.

ADV SELEKA SC: So, and you are referring to the date of the 29th of September 2015? I think that is the date when you signed, what, the letter of acceptance?

MR KOKO: That is the date that I signed... And Chair, while we are on this. That is the date that I did not only
20 sign the letter of notification for the Business Plan but I put the contract into effect. Now one of the things that I am struggling with is that... Or let me put it this way. Chair, Eskom operates within a framework and that framework is the Constitution of the Republic.

It is the PFMA, the Public Finance Management

Act that gives effect to the Constitution. It is the Delegations of Authority and it is a document which we refer to as 1032, the Procurement and Finance Authority Procedure. I am going to spend a lot of time on it today.

CHAIRPERSON: Is that a document different from the one that Mr Singh was telling us about?

MR KOKO: It is the same document ...[intervenes]

CHAIRPERSON: Namely, ten... But I think he was saying 1034.

10 **ADV SELEKA SC**: Correct Chair.

MR KOKO: 1034.

CHAIRPERSON: He is right, you are wrong?

MR KOKO: I am wrong.

CHAIRPERSON: Okay.

MR KOKO: 32-1034. And then what we call a Materiality Framework. So it is a PFMA, Delegation of Authority, 1032 materially from work. There are procedures. In my case, I will mention another one on Information Security because we are dealing with emails.

20 Chairman, if you do not like the taste of that framework, do not *criticise(?)* me. I have listened to many submissions and I get a feeling that you may not like that framework. So ...[intervenes]

CHAIRPERSON: You must use this opportunity to make it me like it. [laughs]

MR KOKO: Yes. So all what I am saying is, there is a framework in Eskom.

CHAIRPERSON: Ja. H'm.

MR KOKO: And I am consistently going to tell you.

CHAIRPERSON: H'm?

MR KOKO: That I operated within that framework in Eskom.

CHAIRPERSON: H'm, h'm.

MR KOKO: And I made prudent decisions that are in the
10 interest of Eskom.

CHAIRPERSON: H'm.

MR KOKO: And you can ...[intervenes]

CHAIRPERSON: Based on that framework?

MR KOKO: Based on that framework.

CHAIRPERSON: Ja, ja.

MR KOKO: And if you construed that there was state capture at Eskom. The difficulty you will have is that since 2002, I was told this before and I will tell you again.

CHAIRPERSON: H'm?

20 **MR KOKO:** The results in my time were the best.

CHAIRPERSON: H'm, h'm.

MR KOKO: So...so ...[intervenes]

CHAIRPERSON: Well, I just want to say that even though I am saying to you, you must use the opportunity to make me like it, but I am actually not meaning that in a serious

way. Whatever framework was there, one has got to look at it and it is not a question of whether I like it or not. I am just see what it means, understand how it works.

I am not running Eskom and I was not running Eskom. Those who put it together, rightly or wrongly, may have thought that it was appropriate to put in place. So, obviously, if there are issues that I think arise or questions that I have about it, obviously, I would raise those. But just on a serious note. It is neither here nor there whether

10 I like it not.

MR KOKO: Chair ...[intervenes]

CHAIRPERSON: But you must make sure that you feel free to put your case properly.

MR KOKO: Chair, thank you very much. And after I have done that, you may still not like it but it is within your scope to make a recommendation to the President to say that.

CHAIRPERSON: Ja. But I would not just whether I like it or not. [laughs]

20 **MR KOKO**: Yes, that is fine Chair. What I am saying, my signature of the letter of notification and acceptance by McKinsey on the 29th of September 2015, put the contract in place whether the contract was signed or not. That is the framework of Eskom. And while we are there, Chair, I would like to take you to that document.

CHAIRPERSON: Let us see what Mr Seleka's plan is because he may have intended that you – to deal with it later. I do not want us to upset his plans. Is it fine that he goes to it now or...?

ADV SELEKA SC: I think it is still fine.

CHAIRPERSON: Okay ...[intervenes]

ADV SELEKA SC: It will help us ...[intervenes]

CHAIRPERSON: [Indistinct]

ADV SELEKA SC: Maybe it will help us expedite
10 ...[intervenes]

CHAIRPERSON: Ja, okay, alright.

[Parties intervening each other – unclear]

MR KOKO: Let us go to MK-49.

ADV SELEKA SC: Ja.

CHAIRPERSON: I am sorry. I see Mr Barrie, your
...[intervenes]

ADV BARRIE: ...reference to you, sir.

CHAIRPERSON: Yes, okay, sure.

MR KOKO: It has got ...[intervenes]

20 **ADV BARRIE:** It is Eskom Bundle 15.

CHAIRPERSON: Yes?

ADV BARRIE: At page 594.

CHAIRPERSON: Thank you. I think you can then switch off that mic, Mr Barrie.

ADV BARRIE: [No audible reply]

CHAIRPERSON: Thank you. You can then switch off that mic.

ADV BARRIE: [No audible reply]

MR KOKO: Chairman, I am going to take you to – and we will come – we will come back more often to this document, 678.

CHAIRPERSON: Okay I am at 594. Should I go to another place?

MR KOKO: Yes. Please go to Bundle 15, 678.

10 **CHAIRPERSON**: Yes.

MR KOKO: Chairman, there is a – it talks – there is a chapter that talks about Administration of Awarded Contracts.

CHAIRPERSON: Hang on one second. I just want to make sure if we are on the same page. Now when we come to this document, what are we – what is the topic that you are talking – dealing with? Mr Seleka? Mr Koko?

ADV SELEKA SC: No, because I thought Mr Koko ...[intervenes]

20 **MR KOKO**: Can I explain to you?

CHAIRPERSON: Ja, ja.

MR KOKO: I signed the contract, the Letter of Award to McKinsey. The case(?) went to a full board and Chair in my statement I say Board Tender Committee. I have read the statement of Mr Anoj Singh and he corrects me that it

was actually not the Board Tender Committee, it was a full board and I accept that. I think he is right. I was mistaken. So the board approved the award for the fixed fee basis for R 102 million to McKinsey for the Business Plan.

In terms of the Eskom framework, 32-1034, you have to notify the supplier who has been – whose contract has been approved by the authority. And that notification is binding on Eskom. This is why I ...[intervenes]

10 **CHAIRPERSON**: This is now notifying them of the fact that the fee will be fixed?

MR KOKO: No, that is the... No, that is notifying them that a board tender committee in Eskom has approved the award of the contract to you ...[intervenes]

CHAIRPERSON: Okay. Obviously.

MR KOKO: ...under these terms and conditions.

CHAIRPERSON: Which includes the fixed ...[intervenes]

MR KOKO: Which include the fixed fee.

CHAIRPERSON: Okay, okay, yes.

20 **MR KOKO**: And once you notify and they accept it, it is binding on Eskom.

CHAIRPERSON: Ja, okay.

MR KOKO: It is a contract.

CHAIRPERSON: Yes.

MR KOKO: But remember, at that point, the contract is

not signed.

CHAIRPERSON: Yes, yes. Oh, that is the point that you said you thought I did not like?

MR KOKO: Yes.

CHAIRPERSON: Okay. [laughs] Alright. Okay.

MR KOKO: Now Chair, there is a point that you had which I will mention. But Eskom was going to stop functioning if that is not the case.

CHAIRPERSON: H'm?

10 **MR KOKO**: There are many contract today at Eskom that I know of whose contracts have not been signed but the Letter of Award has been awarded.

CHAIRPERSON: H'm.

MR KOKO: What you cannot do. That is the point that I thought... was making. You cannot pay the supplier without a signed contract.

CHAIRPERSON: H'm. Yes ...[intervenes]

MR KOKO: That is ...[intervenes]

20 **ADV BARRIE**: Chair, I think part of the exercise was to get the passage in the procedure and that is at page 678, 15-678, Clause 3.4.8.5.

MR KOKO: Yes.

CHAIRPERSON: Oh, to – you wanted to read that into the record?

MR KOKO: Can I read it Chair?

CHAIRPERSON: Ja.

MR KOKO: Yes.

CHAIRPERSON: Do that, do that.

MR KOKO: Yes.

“Once approval has been given to the award of the contract to the successful supplier, the procurement practitioner notifies the successful supplier of the acceptance of his tender.

10 The procurement practitioner must ensure that this notification is received by the successful supplier because notification of acceptance will become legally binding upon Eskom...”

CHAIRPERSON: H’m.

MR KOKO: And that is the point I am making.

CHAIRPERSON: Yes. Just complete the clause and then we can talk about it.

MR KOKO: Email Notification were the subject to Electronic Communication and Transactions Act.

20 **CHAIRPERSON:** Ja, okay. Let us – I think it is important that you read – it was important that you referred to this... clause. But let us talk about the issue that you say I did not like. One, not that I did not like it but, two, you may have – you may recall that in the context of Mr Singh’s evidence. What he was saying was, in effect. Look, even

though there might not be – there might not have been a formal contract or agreement that had been signed by both parties, there had been an offer and acceptance.

And he was saying based on his recollection of Commercial Law that he did many years ago, that should be enough. Okay? So what I was saying to him. Well, one, his recollection of the law might be based on many years that have lapsed but in principle, he is correct that if there is an offer and an acceptance, there is an agreement.

10 Okay? That is a general principle.

But what I was raising with him was whether the position is not that in the context of SOE's there has to be a formal written contract in addition to whatever correspondence may have been exchanged which indicates that the parties agree. That is the point I was making. Because I have been made to believe that in the – in regard to various SOE's, you know, you might get notification that you have been awarded the tender but until there is a proper formal agreement, they would not
20 regard, the two parties, as already having an agreement.

Now if you say to me that was not the position at Eskom, that might be different. So I was simple raising something based on what my understanding is of the attitude of SOE's. So I just wanted you to – I want to make sure that you understand the context in which I raised the

issue. So it was not whether I like it or not.

MR KOKO: Chair, I accept that.

CHAIRPERSON: Ja.

MR KOKO: But can I also assist you on that part?

CHAIRPERSON: Ja.

MR KOKO: Because I think this is very, very important.

CHAIRPERSON: H'm?

MR KOKO: On the same page, it is a direct – it is an instruction that talks to signing of contracts.

10 **CHAIRPERSON**: H'm. Sorry?

MR KOKO: On the same page ...[intervenes]

CHAIRPERSON: Ja?

MR KOKO: ...paragraph 3.4.8.3 ...[intervenes]

CHAIRPERSON: Signing the contracts. Yes.

MR KOKO: It deals with signing of contracts.

CHAIRPERSON: Yes, yes.

MR KOKO: But it does more than that.

CHAIRPERSON: Yes.

MR KOKO: It tells you when you can assume. You can –
20 it tells you when you can resume work ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...or not.

CHAIRPERSON: Yes.

MR KOKO: I would like to read into the record too.

CHAIRPERSON: Yes. No, no. That is fine. But I must

say to you that you are right to point out Clause 3.4.8.1 because as you said, it specifically says:

“...the procurement... numbers ensure that this notification... by the successful supplier because notification of acceptance will become binding upon Eskom...”

MR KOKO: Yes.

CHAIRPERSON: So, in other words, it has got legal consequences.

10 **MR KOKO**: Yes.

CHAIRPERSON: Yes. So did you say that you want to deal with 3.4.8.3 as well?

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: And that notwithstanding, Eskom ...[intervenes]

CHAIRPERSON: Still expects that there would be a contract?

20 **MR KOKO**: Eskom still expects that there will be a contract and that contract must happen, preferable, before the work starts.

CHAIRPERSON: Yes, okay.

MR KOKO: That is...

CHAIRPERSON: Okay. Is the position, as you understand it, that preferable the formal contract must be concluded

before the work starts but if, for whatever reason, work were to start without the formal contract being concluded, as far as you know, Eskom would regard the parties as contractually bound in a contract?

MR KOKO: Exactly, Chair.

CHAIRPERSON: Yes, that is the point you make. Ja.

MR KOKO: Yes, exactly. And what we will do. What we will do in that case.

CHAIRPERSON: Yes, yes.

10 **MR KOKO:** We will discipline the procurement practitioner.

CHAIRPERSON: Yes. But as far as the third party, the supplier ...[intervenes]

MR KOKO: We will not interfere with third parties.

CHAIRPERSON: Yes, yes. No, no. That is important to – that explanation is important. As I say, my understanding in terms of evidence that I have heard in regards to other – some SOE's, I should not – it might not be all of them, is different. But maybe that is different but what you are
20 telling me here about is what happened in Eskom, what the document say and what the practise was.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: And this procedure goes a step further Chair.

CHAIRPERSON: H'm?

MR KOKO: It says once you have notified the successful supplier of the award and he has accepted it and there is a binding contract. It is binding but there is no contract as yet. And you want to start working now because ...[intervenes]

CHAIRPERSON: Or urgency.

MR KOKO: ...or urgency. The general manager procurement must authorise it.

CHAIRPERSON: Ja, ja, ja. I assume that in a case where
10 you have complied with Clause 3.4.8.1 and you comply with Clause 3.4.8.3, the conclusion of a formal contract ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...the terms of conditions that find their way into the formal contract would be contained already in the exchanges that have happened before.

MR KOKO: Most certainly, Chair.

CHAIRPERSON: And that in other words, from the time you are sending notification, contemplated in Clause
20 3.4.8.1 to the time of the conclusion of the formal contract, there are not going to be negotiations of terms because when you accept it, the terms were settled.

MR KOKO: Chairman, once I give you the Letter of Award ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...and the terms and conditions that comes with it, your wishes are complete.

CHAIRPERSON: Ja, ja, ja.

MR KOKO: So. And Eskom use – and this is another term that – this is another part that I thought you have got a misunderstanding about Eskom.

CHAIRPERSON: H'm, h'm.

MR KOKO: Eskom uses standard conditions of contracts. In other words, it is allowed to deviate. If you want a best
10 spoke contract, you have to be specific, contract difficult process that has go through commercial. And we will also go through the delegation of authority. So the Letter of Award will say standard contracts, standard terms ...[intervenes]

CHAIRPERSON: Apply.

MR KOKO: ...apply. And it will also add additional conditions that were not approved.

CHAIRPERSON: H'm, h'm.

MR KOKO: That is it. No more negotiations.

20 **CHAIRPERSON:** Would it be correct to say? This procedure at Eskom which you are telling me about, which includes Clause 3.4.8.1 and Clause 3.4.8.3, actually means that the conclusion of the formal contract is really for convenience so that you have all the terms in one document?

MR KOKO: Exactly, Chair.

CHAIRPERSON: Otherwise, the contract, the terms and conditions have already been agreed and settled when the notice of acceptance is send to the supplier?

MR KOKO: Of course, Chair. And it will be a disaster if that is not the case.

CHAIRPERSON: Ja.

MR KOKO: Because then the board does not know what they are approving.

10 **CHAIRPERSON**: Yes, yes.

MR KOKO: Then the cost is not fixed.

CHAIRPERSON: Yes, okay, no, no. I understand.

MR KOKO: H'm.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Okay. I think it was not particularly a good idea to concede to take this route but...

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

20 **CHAIRPERSON**: Well, if you are saying mister... If you are saying Mr Koko that – if you are saying that you did not know why Mr Seleka did not explain this, he is not Eskom. [laughs] So you need somebody from Eskom to know what the practise was. But Mr Singh, I would have thought, you know, would have explained it but maybe he was still going

to explain it.

MR KOKO: There is another part, Chair, that we will come to you and I will let Mr Seleke(sic) deal with it ...[intervenes]

CHAIRPERSON: Seleka.

MR KOKO: Mr Seleka. I sincerely apologise. Deal with it at the right time when he is ready.

CHAIRPERSON: Ja.

MR KOKO: Because the issue that the contract was not
10 signed by my but I was the delegated person.

CHAIRPERSON: Yes, yes.

MR KOKO: That is another part that I really ...[intervenes]

CHAIRPERSON: Want to explain.

MR KOKO: ...explain. And I said to my counsel, if I get under pressure and forget it, he must ...[intervenes]

CHAIRPERSON: Remind you.

MR KOKO: ...he must remind me.

CHAIRPERSON: No, that is fine. That is fine.

20 **ADV SELEKA SC**: Okay. Mr Koko, let us jus finalise on this very aspect where you referred us to page 678 in your – in Eskom Bundle 15.

MR KOKO: Do you want me to go back there?

ADV SELEKA SC: Yes. Let us just finalise on that.

MR KOKO: 678?

ADV SELEKA SC: Yes. We are dealing with – and I want us to be clear. We are dealing here with the Corporate Plan. Is that right?

MR KOKO: It is correct.

ADV SELEKA SC: With the letter that you – this is the Letter of Acceptance on the 29th of September 2015.

MR KOKO: That is correct Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: Now just to make ...[intervenes]

10 **ADV SELEKA SC:** Now ...[intervenes]

CHAIRPERSON: I am sorry Mr Seleka. You spoke about the Business Plan.

MR KOKO: Yes.

CHAIRPERSON: Was the Business Plan part of the Corporate Plan?

MR KOKO: So the Corporate Plan, Business Plan ...[intervenes]

CHAIRPERSON: Is one and the same thing.

MR KOKO: ...is one and the same thing.

20 **CHAIRPERSON:** Okay, alright. I just wanted to make sure because if we use different terms ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Whoever reads my papers, may think it is different matters.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright.

MR KOKO: Mr Seleka, I am there.

ADV SELEKA SC: You are there, yes.

MR KOKO: Yes.

ADV SELEKA SC: So I did not quite get your explanation but I thought the paragraphs 3.4.8.2, you could also have drawn it to the Chairperson's attention because the second paragraph after the first one who says:

10 “Procurement practitioner is responsible for
 compilation and administration and finalisation
 of the contract / or...

The next one says:

 “If a contract, NEC, has been used the
 procurement practitioner together with the
 cross-functional team ensures that the
 contract documents are correct and complete
 with all drawings and specifications and
 included as part of the contract...”

20 Now I thought you would also explain that part to
 the Chairperson. And it goes on. The last sentence in that
 paragraph says:

 “The procurement practitioner arranges for the
 printing of the contract for purposes of
 signature...”

Let me go on to the next item, 3.4.8.3 which is

signing the contract. It says:

“Once the contract is printed, the procurement practitioner takes the contract to the official and authorise Eskom signatory as nominated by the delegated approval authority to sign the contract on Eskom’s behalf.

The nomination is done in terms of Eskom’s delegation of signing authority as set out in Appendix B.

10 It is the responsibility of the procurement practitioner to ensure that the contract is signed by the duly authorised delegates of Eskom and the supplier before order placement against the contract.

In other words, orders cannot be executed against a contract where the contract has not been signed by the parties and any orders placed against the contract in the absence of contract signature, may place Eskom at legal risk in the even of breach of contract.

20 A claim against the contract or dispute with the supplier to the extent that orders may have to be placed before contract signature consent must be obtained in writing from the relevant GM... [break in audio recording]... or his or her

nominated representative or the DE Primary Energy or his or her nominated representative...”

Now until thereto ...[intervenes]

CHAIRPERSON: Are you making point different from the point he made? Because my understanding – I am not understanding this to be ...[intervenes]

MR KOKO: Ja, Chair, I think ...[intervenes]

CHAIRPERSON: I think he has read from what he says
10 ...[intervenes]

MR KOKO: Yes, it is the same point I made earlier.

CHAIRPERSON: Yes.

MR KOKO: It is exactly – it is exact the same
...[intervenes]

ADV SELEKA SC: Is it exactly the same?

MR KOKO: ...the point I made.

ADV SELEKA SC: ...which is: There must be a signing of a contract.

MR KOKO: No, I said to you ...[intervenes]

20 **CHAIRPERSON**: I am sorry. I am sorry.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us make sure so that we only spend time on it if there is confusion.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Are you suggesting that your

understanding is that the notification must happen after the contract has been signed, Mr Seleka?

ADV SELEKA SC: No, Chair.

CHAIRPERSON: No. Ja, because his evidence is.

ADV SELEKA SC: Yes.

CHAIRPERSON: There comes a time in the process ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...where notification has to be done

10 ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...under Clause 3.4.8.1. And he says that notification happens at a time when there is no formal contract yet. But he says when that notification happens, then in law, I know he did not say law but it amounts to saying that, in law there is a contract between Eskom and the supplier and all the terms and conditions have been sorted out, otherwise, there will be no approval and no notification.

20 But he says, nevertheless, there must still be a formal contract and that formal contract – the conclusion of that formal contract and its signing comes later. And he says, in response to my question, the terms and conditions that will be in that formal contract are the terms and conditions that had already be placed and agreed at the

time of notification of – in terms of that.

And he says no work is supposed to be done by the supplier until the formal contract has been concluded.

ADV SELEKA SC: Okay.

CHAIRPERSON: But if there are reasons of urgency that make it necessary that work be done before the formal contract is concluded, there is a process to be followed and authorisation to be obtained. That is the sum total of his evidence.

10 **MR KOKO:** I ...[intervenes]

CHAIRPERSON: You agree?

MR KOKO: I agree fully, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. Which must be in writing as the paragraph says there, Chairperson.

CHAIRPERSON: H'm.

ADV SELEKA SC: “To the extent that the orders may have to be placed before contract signature, consent must be obtained in writing”. And they specify... Okay. So,

20 Mr Koko, I know you are dealing with the Corporate Plan as you had watched ...[intervenes]

CHAIRPERSON: Are we done for now with this Bundle 15 or will we need it later or I must still have this?

ADV BARRIE: Chairman ...[intervenes]

ADV SELEKA SC: I think ...[intervenes]

ADV BARRIE: ...but maybe it is relevant in this context to record where that acceptance document is. The acceptance document of 29 September because my recollection and I... cannot find it right now is that it was accompanied by a contract...

[Speaker is not clear.]

CHAIRPERSON: Ja.

ADV BARRIE: It was signed on behalf of McKinsey.

CHAIRPERSON: Ja.

10 **ADV BARRIE:** It was only much later signed, I think by Mabelane on behalf of...

CHAIRPERSON: No, that is quite ...[intervenes]

ADV BARRIE: The contract had, in fact, been finalised.

CHAIRPERSON: No, that is fine. Let us leave it to Mr Seleka as to when he wants to deal with that.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think the most important part was for Mr Koko to explain what he has explained and ...[intervenes]

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: ...so what I am asking now is whether ...[intervenes]

MR KOKO: I am done with this document.

CHAIRPERSON: You are done with this?

MR KOKO: I will come back to it later.

CHAIRPERSON: Yes.

MR KOKO: For now, we can remove it.

CHAIRPERSON: Okay alright. Mr Seleka, you agree?

MR KOKO: Unless Mr Seleka wants to...

CHAIRPERSON: Okay alright. Thank you.

ADV SELEKA SC: Yes, thank you Chair. What Mr Koko
...[intervenes]

CHAIRPERSON: I see we are at quarter past eleven.
Maybe, let us take the tea adjournment. And then when we
10 come back we can then continue.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn. We will resume at half-past
eleven.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chair. Mr Koko, we were
busy dealing then with the corporate plan, let us see
whether we can finish that so that we can go back to the
20 emails to Infoportal. I would like us to go to Eskom bundle
14(c), page 877.82.1.

ADV BARRIE SC: Mr Chairman, we received a bundle
electronically on Saturday, or yesterday, but that only goes
to page 678, not to 817. It appears that there are
annexures to this affidavit that we were not supplied with.

Possibly before my learned friend goes in that direction, seek to have that supplied.

CHAIRPERSON: It might be something you want to deal with now or later, Mr Seleka.

ADV SELEKA SC: Ja, if my learned friend could indicate which affidavit is he referring to?

CHAIRPERSON: Switch on your mic, Mr Barrie.

ADV BARRIE SC: There is an affidavit of Mr Singh, I think it is a supplementary affidavit at page 768, that is the
10 last page in our bundle.

ADV SELEKA SC: That is not the bundle I am referring to.

ADV BARRIE SC: You said bundle 14?

ADV SELEKA SC: Yes (c).

CHAIRPERSON: Okay, alright, just before you proceed, Mr Seleka. Mr Koko, I just want to have some confirmation from you of something that I believe you said about the clauses in that document that we were looking at earlier. Do you remember which clauses I am talking about?

20 **MR KOKO**: Yes.

CHAIRPERSON: Ja. Did you say that what Eskom would not be permitted to do in the absence of a formal contract is payment but the actual work can be done provided the relevant authorisations have been obtained and the notification has been given?

MR KOKO: Correct, Chair. So – and this is very important, Chair, because I think we are going to come back to the invoicing and the payment and we – I grew up in Eskom, I keep on saying Eskom is – my blood is blue, my association with Eskom is over 33 years. I may look young. There is a course we did and we do everywhere, it is called Managing Contracts in SAP.. It tells you exactly what to do to make a payment.

So the contract manager will sign off what we call a
10 completion certificate and the completion certificate will either say goods have been received or work has been done, services has been done and I, the contracts manager, authorises that the job is done.

Then there is an invoice. The invoice goes to the contracts manager. The only people who pay supplies in Eskom is not Mr Singh, it is not contracts manager, it is shared services. So the invoice will – the shared services will receive the invoice. The first thing the finance person does, firstly what he does is that he checks if there is an
20 order number. So if there is an invoice that is not accompanied by an order and we loosely call it in colloquial term at Eskom a 45 number, so a contract. If you see the contract we discussed, is 460052909, I think, a 46 number. You do not pay on a 46 number, you have to create a 45 number. So the invoice come, the financial

person checks if there is a 45 number.

In a loose language in Eskom when I say where is the 45 number I am asking you the question is the order placed, is the order signed, so there is a 45 number. One, there is a 45 number, so there is an invoice with a 45 number, then there must be what we call a goods received or services received in SAP and services received is done by the contract manager. We call it three way matching. So you cannot do a payment without a three way matching, 10 you are matching the invoice, you are matching the order and whether the job has been done and one of the frustrations that I have with this when I am sitting at home is to see the focus on Koko, the focus for Mr Singh, I call it Koko Hunt because the focus must be on the process. The process says there must be an order number. Was the order placed? And if the order is not placed, who did not place the order? Was the work done? Who signed the goods received, Chair? Somebody, somebody signs a completion certificate, somebody put his neck on the block 20 that the work was done.

CHAIRPERSON: Yes.

MR KOKO: Who is that guy? That is a process.

CHAIRPERSON: Ja.

MR KOKO: And then somebody paid. We call that three matching.

CHAIRPERSON: No, no, no, I think that must be ...[intervenes]

MR KOKO: That must be – unless the person who did a completion certificate, the person who did goods received, the person who did payments comes to you and say actually I was given an instruction by the orders above.

CHAIRPERSON: To go against the normal...

MR KOKO: To go against the normal process.

CHAIRPERSON: Ja.

10 **MR KOKO:** Then it will make sense.

CHAIRPERSON: That is a different thing.

MR KOKO: That is a different thing.

CHAIRPERSON: But I do not see affidavits or statements of the people in the process that says I was given instructions to do this unlawful thing.

CHAIRPERSON: No, no, no – no, what you say is important. You see, Mr Singh is still going to come back, he has not finished but what I was hoping he was still going to do and I do not know if I said he should do it, is
20 not to just speak in general terms to say at Eskom there are processes and procedures but to say here are the documents that outline who has the responsibility to do what in regard to payments. Here is a document that says this is the journey that leads to the actual payment and during this journey the following people have got the

following roles. He has not done that but he has mentioned in general but I certainly will be interested in a document that indicates that – and it may well be that Mr Seleka knows that document is in one of these big bundles but I am interested in whether at Eskom, as I would expect, there was a document that says before payment is done, so and so should do this, so and so should do that, so and so should do that and if one of these things have not been done, payment should not be made and who the person is
 10 who must see to it that they have been done, I assume that the person who authorises payment must satisfy himself or herself that all of that has been done. So that kind of document I am interested in.

MR KOKO: Chairman, that will help a great deal.

CHAIRPERSON: Ja.

MR KOKO: It help you get to the truth.

CHAIRPERSON: Yes.

MR KOKO: And stop the gossip. Can I summarise? In Eskom you do not pay an invoice without an order, without
 20 an order, can only come from a 45 number. Somebody has to do good received and somebody – shared services do the payment. I had to ask him too many questions, that the CFO may pay, must authorise a billion rand payment, it is not there at Eskom. But, Chair, please. Please, Chair, the document you are looking for is called managing

contracts in SAP.

CHAIRPERSON: Ja.

MR KOKO: That is the document you are looking for. It has got all the details of who must do what and when.

CHAIRPERSON: Yes.

MR KOKO: And if that has not happened, that is a misconduct. If somebody comes to you and say it was a misconduct because the order above said I must override this, then you can hunt me or you can hunt somebody else.

10 **CHAIRPERSON:** Ja, ja. No, that is important. If we do not have that document, we should have, but it may well be that Mr Singh was still to get it and give it to us because certainly for his version, it is quite important and it may well be that it is important for your version as well, I am sure, but certainly for is. Okay, alright. Let us continue.

ADV SELEKA SC: Yes, Mr Koko, I have referred to this bundle but I am reminded that you say – I am sorry, I just need to get this out of the way because otherwise I forget it. You say you and Mr Singh agreed to approach
20 McKinsey in regard to the business plan. When Mr Singh was here he testified that when he did not – when he was not satisfied with the funding plan that was prepared by Mr Andre Pillay, he approached Eric Wood, Mr Eric Wood or Dr Eric Wood to assist with that funding plan. Were you aware of that?

MR KOKO: No. No, Chair, again, I am terribly sorry I have to do this, the document that we took to the board was signed by Mr Anoj Singh. There is a reason why he signs it, that reason is not arbitrary, he signs it because he is the user. The user in Eskom is a defined term and he is defining Eskom procedures. To answer Mr Seleka's answer, can I take you to the user, why does he sign and pay for it, once again.

CHAIRPERSON: Okay, the same bundle that we have in
10 front of us?

MR KOKO: Bundle 15.

CHAIRPERSON: Bundle 15.

ADV SELEKA SC: Mr Koko's bundle.

CHAIRPERSON: Okay.

MR KOKO: Chairman, I am sorry, I am going to frustrate you with documents and references but a lot of noise ...[intervenes]

CHAIRPERSON: No, no, no, then ...[intervenes]

MR KOKO: ...is going to disappear because ...[intervenes]

20 **CHAIRPERSON:** No, no, that is important subject to simply saying that Mr Seleka must indicate where to do that at a particular time might disorganise his plans but at some stage those things must be done particularly when people who were affected feel that they are important in order to put into the right perspective the points they want

to make. What page did you say, Mr...?

MR KOKO: Bundle 15, page 677.

CHAIRPERSON: Okay, just one second. So, Mr Seleka, you will indicate if you would like a particular point to be deal with later.

ADV SELEKA SC: Okay, Chair.

CHAIRPERSON: But otherwise, if Mr Koko wishes to deal with a certain point at a certain time that seems to be important I would let him do it.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Otherwise we can always arrange that it be dealt with at a later stage.

ADV SELEKA SC: Okay, thank you, Chair.

MR KOKO: Except that he has asked me a question so I am just answering it.

CHAIRPERSON: No, no, no, I am now talking in general, for the future, I am just simply saying when you wish to make a certain point and refer to certain documents, I would allow you unless he indicates that he would like that
20 to be dealt with later. Okay, I am there, Mr Koko.

MR KOKO: Paragraph 3.4.7.

CHAIRPERSON: Yes.

MR KOKO: I will read into the record:

“Since the transactions are based on an end user’s
...[intervenes]

CHAIRPERSON: I am sorry, sorry, did you say 3.4.7?

MR KOKO: Certainly, 3.4.7.

CHAIRPERSON: Oh, okay, you did not say you are skipping the first sentence so I was – you were saying “since and I was looking at “once”.

MR KOKO: My apologies, Chair.

CHAIRPERSON: Ja, okay alright Second paragraph, so to speak.

MR KOKO: Second paragraph yes.

10 ““Since the transactions are based on an end user’s request and are page 4 by the end user’s cost centre or project, the end user has the responsibility and authority to determine that Eskom’s needs will be met before the recommendation is made to a delegated authority or before an order/contract is placed by providing his written consent through sign-off of the recommendations being presented to the procurement practitioner prior presented to the

20 delegated authority.”

Now the delegated authority this time was the board. The user is Mr Singh, is a finance director.

CHAIRPERSON: Would the user or the term user refer to the head under whom the project falls, for example, this one?

MR KOKO: Yes, so the user refers to – Eskom has got cost centres.

CHAIRPERSON: H'm.

MR KOKO: And cost centre is delegated a budget and a scope. He needs the work done but he cannot procure because procurement is a delegated function of procurement so he then goes to commercial and say I have these need, the need is a business plan, the need is a corporate plan that must comply to the design to cost
10 strategy and later on I will take you to the board minutes of the 22nd of 2015, my counsel has that document and you will see where the need arose. In implementing that need, we then approached McKinsey but the scope can only be signed off by the person who is going to pay because that person authorises that I have the money, the money is budgeted for, the delegation of authority enjoins that you do not do any project that is not budgeted for, it is a requirement of the PFMA. But also, the scope, only the user knows that and this procedure says the user consents
20 by signing the documents that goes to the delegated authority.

CHAIRPERSON: Is the user the head of the relevant cost centre?

MR KOKO: Correct, Chair.

CHAIRPERSON: So Mr Singh would have been the head

of the relevant cost centre in this case?

MR KOKO: Correct, Sir.

CHAIRPERSON: Okay, alright.

MR KOKO: So the cost centre that was used for the business plan would be Mr Singh's cost centre.

CHAIRPERSON: Okay, okay.

MR KOKO: So he is the user.

CHAIRPERSON: Yes.

MR KOKO: He decides the scope. He decides which
10 professional he uses, who he approaches. I do not know that.

CHAIRPERSON: Now when – we are talking here about the corporate plan which led to all – or will lead to the MSA, is that right?

MR KOKO: No, Chair.

CHAIRPERSON: No.

MR KOKO: And this is where the problem I had.

CHAIRPERSON: Yes, yes.

MR KOKO: There is a very concerted approach to want
20 to link the two.

CHAIRPERSON: Ja, ja.

MR KOKO: And the two are completely ...[intervenes]

CHAIRPERSON: Are separate.

MR KOKO: Yes, are completely ...[intervenes]

CHAIRPERSON: Okay, he is the head of the cost centre

insofar as the corporate plan relates to his centre.

MR KOKO: Correct.

CHAIRPERSON: Ja. Okay, alright. Mr Seleka, I just to make sure.

ADV SELEKA SC: No, that is fine, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: No, that is absolutely fine because it has been clear in our minds even with Mr Singh that the two are different.

10 **CHAIRPERSON:** Yes, okay.

ADV SELEKA SC: But, okay, I think your answer to my question, Mr Koko, because the question was Mr Singh, when he was here, he said he approach Dr Eric Wood to assist with the funding plan but you are saying you and him agreed to approach McKinsey. So I am just drawing to you the distinction between your version and his version but your answer is you do not know – in regard to his version you do not know.

MR KOKO: I do not know who he approached.

20 **ADV SELEKA SC:** Yes.

MR KOKO: I do not know who he approached, I just know that – and I can tell you, Chair, that Mr Singh and I – and I think Mr Mabelane, I am not sure, but I think he was there, we briefed – we had a meeting with McKinsey and we briefed them on our request.

CHAIRPERSON: About the corporate plan.

MR KOKO: About the corporate plan.

CHAIRPERSON: And is your understanding that that was the first entity that was approached about the corporate plan? And when I say entity, somebody outside of Eskom.

MR KOKO: In my view it was the only entity that ...[intervenes]

CHAIRPERSON: It was the only entity.

MR KOKO: That I approached.

10 **CHAIRPERSON:** Yes.

MR KOKO: That me and him approached. The rest, I...

CHAIRPERSON: It is his story.

MR KOKO: I have no...

CHAIRPERSON: You do not anything about it, the other things. Okay, alright.

MR KOKO: Yes.

CHAIRPERSON: Alright, okay.

ADV SELEKA SC: Is it not that when you – sorry, because these issues ...[intervenes]

20 **CHAIRPERSON:** Well, Mr Seleka, I am sorry, it might be important to establish when it was, if it is possible, that that approach in which Mr Koko was present when they briefed McKinsey, when it was, because then one can check when it was that Mr Singh talks about approaching Trillian or Regiments.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then we can see which one happened first.

MR KOKO: Chair, I can assist.

CHAIRPERSON: Ja.

MR KOKO: Mr Barrie, do you want to give the Chair the board minutes of the 22 July?

ADV SELEKA SC: Which year?

CHAIRPERSON: Well, what we can do ...[intervenes]

10 **MR KOKO:** So can get that date ...[intervenes]

CHAIRPERSON: You can mention them and then I can get them later if necessary.

MR KOKO: The date must have been between the 22nd of – after the 22 July to the 1 August.

CHAIRPERSON: Okay, somewhere during that time.

MR KOKO: During that time and the reason for that is because the need was triggered – for the business plan was triggered in the meeting of the board of the 22 July 2015.

20 **CHAIRPERSON:** Okay.

MR KOKO: But the first proposal I got from McKinsey is dated the 1 August 2015.

CHAIRPERSON: Okay.

ADV BARRIE SC: I have those board minutes available, supplied by my client. I have four copies of it.

CHAIRPERSON: Okay, I do not need to see them now but arrangements can be made for them to be ...[intervenes]

ADV BARRIE SC: Yes, I just do not know whether Mr Koko wants to refer to documents.

CHAIRPERSON: Or wanted – ja.

MR KOKO: Yes, I ...[intervenes]

CHAIRPERSON: For my purposes what he has told me is enough for now.

MR KOKO: So it is just for – I wanted – I wanted – they
10 help me with the dates.

CHAIRPERSON: Ja, okay.

MR KOKO: We will come back to them.

CHAIRPERSON: Ja.

MR KOKO: At one point you will have to see them because one of the things that pains me is people coming to you to lie to you to make me look bad and I will show you in those minutes how that happens.

CHAIRPERSON: Ja.

MR KOKO: But the date you are looking for, Chair, is
20 between the 22 July.

CHAIRPERSON: And the 1 August.

MR KOKO: And the 1 August.

CHAIRPERSON: Ja. Okay, alright. Mr Seleka?

ADV BARRIE SC: Yes, we will return to that later then, ja.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: I think I will – let me just follow my sequence.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Koko, please turn to Eskom bundle 14(c), the one I sought to refer to just before the tea adjustment.

MR KOKO: Yes, 877.

ADV SELEKA SC: Yes.

10 **MR KOKO:** I did not get 877 point?

ADV SELEKA SC: Point 82.1.

CHAIRPERSON: What is the page number?

ADV SELEKA SC: 877.

MR KOKO: Yes, I am there, Chair.

ADV SELEKA SC: You are there. I am sure you will recognise the document.

MR KOKO: I do recognise the document, Sir.

ADV SELEKA SC: 877, Chair, point 82.1.

CHAIRPERSON: Yes. 877.2?

20 **ADV SELEKA SC:** 82.1.

CHAIRPERSON: Well, I have 877 but I do not have point something. Is it bundle 15?

ADV SELEKA SC: 14, Chair, sorry. Bundle 14(c).

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: So we are moving another bundle, I

beg your pardon, Chair.

CHAIRPERSON: 877.82?

ADV SELEKA SC: Point 82.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Point 1. Acceptance letter on Eskom...

CHAIRPERSON: Oh, ja.

ADV SELEKA SC: Yes. Yes, so Mr Koko let us – this is the letter I think signed by you, that is the letter you were referring to earlier.

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

ADV SELEKA SC: Acceptance letter in respect of the Koko plan, it is dated 29 September 2015 and it is addressed Dr Alexander Weiss, Vikas Sagar:

“Notification of acceptance for the provision of consulting services. We accept your proposal for the provision of consulting services on a fixed basis in accordance with the terms and conditions specified.”

20 **CHAIRPERSON:** I am sorry, Mr Seleka. Mr Barrie, I want to try and regularise properly what happens when you wish to say something so that you do not just stand and start talking. Now one way in which it could be done is that if you switch on your mic, I realise that it is red, I would know you would like to say something and then I would let you say so.

ADV BARRIE SC: Are you able to see that it is...?

CHAIRPERSON: Well, that is the point I am raising because where you are I will not see it easily, I wonder whether it is possible for you to sit where I will see it easily.

ADV BARRIE SC: Mr Chairman, it is the question of the acoustics in this place. I have to sit here to be able to hear you.

CHAIRPERSON: Okay, alright. Okay, so if you are going
10 to remain there – well, I am trying to see whether if you were to be ...[intervenes]

ADV BARRIE SC: Because I missed - for instance, when my learned friend refers to bundle 16, I heard bundle 14.

CHAIRPERSON: Ja. Okay, I think maybe what we do is ...[intervenes]

ADV BARRIE SC: But I will do whatever you want me to do.

CHAIRPERSON: Ja. No, no, that is fine. Let us say you will stand up but wait for me to say you can speak.

20 **ADV BARRIE SC:** Very well.

CHAIRPERSON: Okay, alright. Thank you, Mr Seleka?

ADV SELEKA SC: Thank you, Chair. And then the scope of work. Then you have a paragraph called Contract, the heading Contract, below that is the terms and conditions of the NEC:

“Professional services contract will apply. Contract conditions, additional SD and L requirement. Subcontracting of 30% of the contract value to a black owned supplier will apply.

Then you have the fees. Turn the page please? There is a table to rates and under that there is documentation and it reads:

10 “The contract documents will be available for your signature and acceptance within one week of receiving the notification of acceptance or within any longer period agreed between Eskom and McKinsey and Company.”

Then there is confirmation:

“We confirm that a contract will exist between Eskom and McKinsey and Company on the above basis. Please indicate your acknowledgment thereof by signing below and deliver to the undersigned.”

20 Now those I would like you to explain to the Chairperson how should one understand this. On the first page, which refers to the terms and conditions of NEC. It says:

“Contract. Terms and conditions of NEC, professional services will apply.”

And on the next page it says:

“The contract documents will be available for your

signature and acceptance within one week of receiving the notification of acceptance or within any longer period agreed.”

Could you explain to the Chairperson what should – how should this be understood in the light of the conclusion of the contract and the provisions that you referred to in that.

MR KOKO: Excellent, Chair, and it ties back to the discussions that we had.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Yes and I see that that last paragraph on confirmation speaks to what you were saying.

MR KOKO: Yes.

CHAIRPERSON: Namely the contracts exists once there has been that acceptance.

MR KOKO: Yes but ...[intervenes]

CHAIRPERSON: And formal contract comes later.

MR KOKO: Correct.

CHAIRPERSON: Ja.

20 **MR KOKO:** But the issue here, Chair, is that this point there cannot be uncertainty about the terms and conditions of the contract, there cannot be. So at this point, the terms and conditions of the contract are done and in this case we are using NEC contract, standard contract, no deviations from the standard contract. So everybody in Eskom, it is like a militarised environment. NEC

conditions, you are not allowed to charge, cut and paste, that is what is going to work.

Then the next question will be are there any additional conditions that are authorised by the board? And the answer is yes, additional conditions authorised by the board is a 30% - if you read it, subcontracting 30% of the contract value to a black owned supplier will apply. That is authorised by the board. That is additional on ...[intervenes]

10 **CHAIRPERSON:** It is not in the normal issues.

MR KOKO: That is not in the normal issues, that is why it is written specifically. Then the next one is the fees. Now you see – and this is the difference between MSA and this one. The fees are National Treasury's fees, fixed, not risk-based.

Now – except the understanding in Eskom, Chair, is that once this letter is signed by those parties, it is binding and soon thereafter the contract will be signed. Now – yes, that is – so Eskom procedure is that if you want to do
20 work before the contract is signed, the GM commercial advise you in writing. So I have no doubt ...[intervenes]

CHAIRPERSON: Ja, no, no, I think that you have explained sufficiently, I think Mr Seleka must just be more specific in terms of what it is that he would like you to ...[intervenes]

MR KOKO: And these letters are standard Chair and the fact that it says contract will, it is neither here nor there.

CHAIRPERSON: Ja, ja. Mr Seleka, do you want to be more specific as to what you wanted him to explain.

ADV SELEKA SC: Yes, yes, correct Chair. The – that procurement and supply management procedure Mr Koko was saying – it was saying if a contract NEC has been used then the obligations of the procurement practitioner to ensure that the contract is completed is correct and
10 complete with all the drawings, there they use drawings.

And here the letter specifically says contract and it says the terms and conditions of the NEC professional's services contract will apply but that is one. And if you turn the page, it says the contract documents will be available for your signature and acceptance and it tells them within one week or within such longer period as the parties may agree.

So, I wanted you to explain to the Chairperson in the light of what is stated in this matter. When does the
20 contract become concluded, when you look at those provisions? And I want to read just before you answer, that last sentence which the Chairperson raised. The last sentence confirmation says:

“We confirm that a contract will exist between Eskom and McKinsey on the above basis.”

Now, Chair it does not say upon your acceptance, but it says on the above basis, which basis includes the documentation to be provided for signature and that the NEC professional services contract will apply.

CHAIRPERSON: Ja, but let me maybe ask this question that maybe they will, the answers will automatically answer that or we will see if there is a need. Some of these questions

your counsel will be thinking this is law but we just want
10 your understanding, because you obviously have been at Eskom for many years you were up there.

So, you know how things were, is your understanding that when you send the notification of acceptance, the contracts is concluded when the supplier receives that or when the contract, when the supplier receives that and signs, signs it and sends it back to Eskom. Are you are able to assist there in terms of, at what point Eskom would regard the contract as having been concluded?

20 **MR KOKO:** Chair, I can assist.

CHAIRPERSON: Yes.

MR KOKO: I have seen many of these things.

CHAIRPERSON: Yes.

MR KOKO: And part of what you will have to make to determine this is the practice and in what you can do with

the document. In Eskom terms once a letter of award is signed it is a contract.

CHAIRPERSON: That is signed by Eskom or by Eskom and the supplier?

MR KOKO: Eskom and the supplier.

CHAIRPERSON: Okay, alright.

MR KOKO: Once the letter of award is signed by both Eskom and supplier it is a contract.

CHAIRPERSON: Ja, okay.

10 **MR KOKO:** What Eskom does not want Chair, is that you start doing the work before the actual contract is signed. Eskom frowns at that it discourages that but you can do that under emergency, if you have...[intervene]

CHAIRPERSON: If you have good reasons.

MR KOKO: Ja, good reasons to do that and the GM of procurement must authorise that.

CHAIRPERSON: Ja, I hope that helps but if it does not help you can - as I understand it, to the extent that the letter of acceptance or maybe speaking about documents
20 that on the face of it the supplier, maybe it is still to receive, obviously the supplier must see those documents before it signs because once it has signed, it will be taking have to have been accepted, that would be my understanding.

ADV SELEKA SC: Yes to – you mean once it signs the

acceptance letter Chair?

CHAIRPERSON: The acceptance letter.

ADV SELEKA SC: Yeah, Chair I do not think it is the case here.

CHAIRPERSON: Yes, okay I mean you can take it – I am just sharing with you my understanding of Mr Koko's evidence.

ADV SELEKA SC: No, correct.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** Because Mr Koko, you see on that understanding your letter, you signed it on the 29th of September 2015. It was counter signed also on the same date 29 September 2015 and, on the face of it, I am saying on the face of it, it envisages that a contract must be signed as the procurement policy contemplates.

Which is if you use a NEC contract, then the procurement practitioner must ensure that the documents are correct and complete and there should be a signature of the agreement of the contract before services are
20 rendered. But did you understand what I am saying, I am saying on the face of it, it envisages the signing of the agreement.

MR KOKO: Chair, Eskom procurement manual is very clear. The letter of award is binding and the contract is always signed later. All Eskom letter of award...[intervene]

CHAIRPERSON: Yes, but before you answer, Mr Koko, just for me to understand the basis of Mr Seleka's question, or what is the basis for that suggestion Mr Seleka?

ADV SELEKA SC: That the letter envisages the conclusion of an agreement, Chair?

CHAIRPERSON: Well the letter may well envisage the conclusion of a contract because the contract will be a formal contract would always, according to Mr Koko would always come later.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: But I understand you to be making a different point namely, the contract must be signed before this acceptance is signed.

ADV SELEKA SC: No.

CHAIRPERSON: Okay, what is the point?

ADV SELEKA SC: Before the work is done.

CHAIRPERSON: Ja, but that is the point he has made to that before the work is done the formal contract must be there.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: But there are circumstances where work can be done before the formal contract is concluded.

ADV SELEKA SC: Yes.

CHAIRPERSON: But in that case, you need special authorisation from somebody.

ADV SELEKA SC: From the GM.

CHAIRPERSON: Ja, and process it, that is his evidence.

ADV SELEKA SC: Yes, so Chair but then, if we take it further than Mr Koko if we take it further, because this paper, let me take it further Mr Koko.

The NEC was then exchanged between the parties, which is the next, it is on the next pages. Yes, and two things because you will have to explain to the Chairperson here we understand that work was done, work was done
10 prior to the NEC being signed.

And you will have to explain to the Chairperson, if that was so whether there was a permission in writing, for work to be done prior to the NEC being concluded. But then, if you go to the NEC, which is you go further to the NEC, you see there that the documentation is not fully completed, on the face of which a conclusion could be made, that the NEC, if not fully completed, did not come into existence.

So just explain the first one to the Chairperson. If
20 work was done, without the contract being signed, was there written permission to do so?

MR KOKO: Ja, so Chair I think we have levelled it up on the process, now it is about application. So there would be nothing untoward if the work is done without the contract signing for as long as it is authorised. There is

nothing...[intervene]

CHAIRPERSON: At the right person?

MR KOKO: By the right person, there is absolutely nothing wrong with that and this is where my frustration is. If you follow the Eskom processes, then you will get to this point that says, work was done, we needed a general manager sourcing to authorise it, and the general manager sourcing in this case happens to have been the project manager of this contract Mr Govender.

10 So then your line of investigation is targeting the right people, then you going to go back and say Mr General Manager, procurement, who happens to be the procurement manager there is evidence before us, the NEC contract was not concluded in fact, the evidence before the Commission said it was signed much later - I want to deal with it too, because it affects me.

 Did you authorise that the work gets done in writing and where is it? Then you are talking to the right person. I am not in a position to assist you with that but if you
20 follow the Eskom process, you then would be able to hold the right person accountable.

CHAIRPERSON: But Mr Seleka, where does it say – oh this is the terms and conditions of the NEC professional service contract.

ADV SELEKA SC: Yes.

CHAIRPERSON: You see I take that to mean - I do not take that to necessarily mean those, the supplier must sign those terms. I take it to mean as long as the supplier knows that those are the terms as long - if he has signed, or if he has signed the acceptance letter, that is in order.

But it may well be that somewhere, there is a document that says the NEC professional service contract must be signed, because this letter notification of acceptance does not say that the NEC professional service
10 contract must be signed, it simply say its terms and conditions will apply.

So for me, if the supplier is aware what those terms are, even if they have not signed, that is enough but obviously, if there is a requirement somewhere that knowledge thereof is not enough, but you must sign then that is a different thing.

ADV SELEKA SC: Chair, you must read with - read it with the – go to the next page Chairperson.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Under documentation, because that to must be read with the policy Mr Koko has referred us to.

CHAIRPERSON: “The contract documents will be available for a signature and acceptance within one week of receiving the notification of acceptance or within any longer period.”

Ja, well I – the contract documents, I guess would include the NEC professional services contract.

ADV SELEKA SC: For signing and acceptance, yes.

CHAIRPERSON: I do not know whether - I do not know how much point you want to make of it, but you must make whatever point you would like to make, let us hear what Mr Barrie has to say?

ADV BARRIE SC: It is regard to the basic principle of understanding contracts or documents being that one reads
10 the documents within a context of the document as a whole, as well as the context of what would have been a dependent on the party's intention at the time.

What is relevant here is, Mr Chairman, is that indeed as my learned friend pointed out, and the documentation and the contract documents will be available for your signature and acceptance within a week of receiving the notification of acceptance. That acceptance, of course, is right at the very outset of this document.

20 But what then further occurs is that on page 877.82.3 there is the following:

“We acknowledge receipt of your notification of acceptance dated 29.”

This is now filled in now by Dr Weiss here.:

“Confirming that the contract will exist between

Eskom and McKinsey and company from 1 October 2015, or soon thereafter.”

So, that is now the acceptance of the contract. You will find that on page 877.82.3 and then furthermore...[intervene]

CHAIRPERSON: Yes, no but Mr Barrie, you might be addressing a different point. I think my issue was simply whether it is necessary to sign the NEC professional services contract but if Mr Seleka says it is and wants to
10 pursue that, that is fine.

I just wanted to say, I was not sure that if the NEC professional services contract is not signed but the letter of acceptance is signed, I was not sure that, that there would be no contracts, in that case, ja.

ADV BARRIE SC: Okay, that is the issue that I am addressing, because that is confirmation of what we talking about and in that regard, further, you will find in other words, that that documents contract will exist in from a certain date and signed and then in fact...[intervene]

20 **CHAIRPERSON:** Do you want to say where you were reading from so that...[intervene]

ADV BARRIE SC: I referred you to two pages further on than where you we were page 877.82.3.

CHAIRPERSON: Yes.

ADV BARRIE SC: You will find there an acknowledgement

by Mr Weiss, I think it is Dr Weiss on behalf of McKinsey completed in his handwriting on the same day 29 September 2015, his signature as there, are you their sir?

CHAIRPERSON: Ja, I am there, ja.

ADV BARRIE SC: So that is then the concluding of the contract and the documents that would be available for signature within a week they are also here and that you will find from the next page, page 877.82.4 and in fact these documents were also signed on the same day by
10 McKinsey and that you will find on page 877.82.6 where Dr Weiss's signature again appear dated the 29th of September 2015.

CHAIRPERSON: Okay, alright Mr Seleka.

ADV SELEKA SC: Thank you Chair, that NEC contract to extent that the letter refers to it Chair. You will see the policy under paragraph 3.4. 8 this is two paragraphs. One is that acceptance of the award or notification of award and then you have a step dealing with the contract.

And there the step dealing with the contract
20 specifically says:

“If a contract [NEC] is used then the procurement practitioner has the steps to do.”

But let us do this Chair. Let me ask Mr Koko this question, because in the second paragraph signing of the contract is explicitly required in that policy. Let me ask then Mr Koko

this, Mr Koko if you saying the letter of acceptance creates a contract between the parties because the policy only says it is legally binding on Eskom it does not say it creates the contract because the contract is dealt with in the next paragraph. If that letter creates a contract, what is the need to send the NEC which you say should be signed?

MR KOKO: Chair, we are dealing with practice here and I cannot undo the practice. It is how Eskom worked all
10 along.

CHAIRPERSON: Ja.

MR KOKO: It is how it worked. You signed the letter for work, the contract with without fail get signed later. In many cases, in a lot of cases, contracts do not get signed for years actually...[intervene]

CHAIRPERSON: Which is wrong.

MR KOKO: And Eskom gets embarrassed afterwards, after Eskom gets embarrassed afterwards, but that is why the contract, the third paragraph I read it is very clear, it says
20 first the letter is binding and it creates a contract Chair and if you reach a different conclusion, you will create a revolution in Eskom, it is okay.

CHAIRPERSON: But no, I do want to ask Mr Seleka what it can mean if it says legally binding, if it does not mean a contract comes into being, so that I can understand his

thinking.

MR KOKO: Eskom is 90 years old Chair, binding in Eskom terms for Eskom practitioners we have always understood it to be creating a contract.

CHAIRPERSON: Ja, okay alright. You hear my question Mr Seleka?

ADV SELEKA SC: Yes, no I heard your question.

CHAIRPERSON: So that I can follow if - because, for me, coming from the general principle of that an offer an
10 acceptance creates a contracts and then you have a situation where now an acceptance is contemplated and the documents says it is a legally binding, I cannot think of any legal consequences other than contract for legal consequences.

ADV SELEKA SC: Yes, Chair when you read it in the context of the policy, where they say:

“Notification of an acceptance of the award will be legally binding on Eskom.”

So that means you have accepted as Eskom the offer made
20 by the supplier. But the policy goes further Chair, it does not stop there. It says:

“If an NEC agreement or contract is used, then ensure that it is signed.”

And it tells the procurement practitioner what to do all the documentation must be in place. And if I may say the law,

the law says:

“If the parties envisage a written contract to be in place, the contract does not come into place until it is signed.”

And that is the reason why I was asking Mr Koko. If they contemplated the NEC terms will apply. The next page is saying:

“The contract documentation will be given to you for signing and acceptance.”

- 10 Why did they send the NEC to the supplier if it is sufficient to simply have a letter of acceptance, which created a – but he has answered that.

CHAIRPERSON: Yes, because the letter of acceptance says depends in the NEC will apply therefore, before the supplier signs, the supplier must satisfy itself that it is happy with the terms and conditions of the NEC will apply.

- But if the supplier chooses not to wait for the terms and conditions of the NEC before it signs, the acceptance letter, it seems to me that once they have signed they are
20 deemed to know those terms, and they cannot complain - on the face of it that is what seems to be the position, as I see it.

But what I am saying is, if you have a different understanding, I am not saying do not pursue it but I want you to have the benefit of what I make of it.

ADV SELEKA SC: Yeah, I think Chair and I are slightly on different points.

CHAIRPERSON: Yes, is your point - is your understanding, just articulate your understanding in terms of the substance of what all of this means?

ADV SELEKA SC: Yes, Chair because my - what is it? What I am putting to Mr Koko arises from even from the policy itself. One, and then from their own practice, which is what Mr Koko is referring to, one is they have done the
10 first step in terms of the policy, they exchange the letter of awards or the letter of acceptance.

CHAIRPERSON: Ja.

ADV SELEKA SC: Number two, is the next step in the policy which they also do, which is to exchange the NEC for signing and acceptance. Now, my question to him is, if the letter of acceptance creates a binding agreement, what is the need for the second state, which the policy contemplates and which is also executed by them, by him in this case.

20 **CHAIRPERSON:** But is there something that says the NEC document must be sent to the supplier after the supplier has signed the acceptance letter?

ADV SELEKA SC: Yes, and that is where I think Chair are, ja.

CHAIRPERSON: Yes, on your understanding?

ADV SELEKA SC: No, no.

CHAIRPERSON: It does not, because if it does not - if your understanding, if it is not your understanding that the NEC documents must be sent to the supplier after they have signed the letter of acceptance and if your understanding is that is to be sent or at the same time as the acceptance letter, I do not see a problem. But I will see a problem - I will see your problem, if you say the policy and the documents contemplates that the sending of
10 the NEC document should happen after the supplier has signed the acceptance letter.

ADV SELEKA SC: Well, when you read the policy Chair, and when you look at the steps taken, because this I think Mr Koko's letter is in accordance with that policy. So the acceptance between the offer...[intervene]

CHAIRPERSON: Let us read the policy, just read the relevant policy so that we do not speculate about what it says.

ADV SELEKA SC: Yes, it says first is:
20 "Notification of award."

So once approval has been given to the award of the contract with to the successful supplier.

"The procurement practitioner notifies the supplier of the acceptance of his tender. The procurement practitioner must ensure that this notification is

received by the successful supplier because notification of acceptance will become legally binding upon Eskom. Emailed notification will be subject to electronic, the Act, the Electronic Communications and Transitions Act.”

That is point 1. So they do the acceptance, here is we accept your awards, and they would sign – of my understanding is they would then sign that acceptance letter both Eskom and the supplier. Then you have point

10 2...[intervene]

CHAIRPERSON: Well why do - obviously Eskom would have signed the letter of acceptance before it sends it to the supplier.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: But why do you say that before there is step 2, the supplier would have signed was the basis for saying that?

ADV SELEKA SC: Well, I am not necessarily saying that...[intervene]

20 **CHAIRPERSON:** Step 1, might consist of only Eskom sending the notification without necessarily the supplier signing this, isn't it?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes, that is one scenario we accept that okay, then what is supposed to come after that?

ADV SELEKA SC: Then 2, is compiling the order/contract.

It says:

“The procurement officer responsible for the compilation administration and finalisation of the contract/order. If a contract [NEC/FIDIC] has been used the procurement practitioner together with the cross functional team ensures that the contract documents are correct and complete with all drawings and specifications and included as part of the contract, and the procurement practitioner arranges for the printing of the contract for purposes of signature.”

And then you have Step 3, which is signing the contract.

CHAIRPERSON: Let us talk about step 2.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: On my understanding. There is nothing inconsistent with Mr Koko’s evidence about step 2.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay let us go to step 3.

20 **ADV SELEKA SC:** But you will see the point I am trying for Mr Koko to explain is, if step 1 creates a contract Chair, what is the need for step 2?

CHAIRPERSON: Hang on.

ADV SELEKA SC: Yes.

CHAIRPERSON: If - remember that, on your approach,

step 1 consists of the sending of the notification.

ADV SELEKA SC: Yes.

CHAIRPERSON: Now, Mr Koko as I understand his evidence, did not say that upon the sending of the notification a contract is created he said the supplier must sign.

MR SELEKA SC: He was reading that legally binding Chair from step 1.

CHAIRPERSON: Well I – it was clarified you remember I
10 asked him a question later on.

MR SELEKA SC: Yes.

CHAIRPERSON: And he said it has got to be signed by – by the supplier. Mr Koko am I putting words in your mouth?

MR KOKO: That is correct Chair.

CHAIRPERSON: Yes.

MR SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes. So - so his evidence is the contract will come into being after the – will not come into being before the supplier signs.

20 **MR SELEKA SC:** Yes.

CHAIRPERSON: I mean I did not take it a step further with might be legal whether after the supplier has signed the fact of the signature that they have signed must come to the attention of Eskom. You know that is – I thought it is enough for him – for his purposes that he has said the contract will

come – will come into being after the supplier has signed. So – so and that part the signature of the supplier need not be on the same day as when the – when Eskom signs the acceptance letters. But it could be

MR SELEKA SC: Yes.

CHAIRPERSON: But it could be a day later, it could be a week later or whatever.

MR SELEKA SC: Yes.

CHAIRPERSON: Ja.

- 10 **MR SELEKA SC:** Yes. If – ja let us accept that Chair – let us accept that. The question is the signing of the contract is envisaged in the policy not only in the policy – well in the policy and hence I think they may have done so in this letter Mr Koko is saying we will send the documentation to you for signing and acceptance.

- And I think that is where my question lies which is if then we accept the notification is out and it has been accepted and it has been accepted because that three year is signing the contract in terms of the policy which is also
20 what is envisaged in the letter.

Why do we need that if the acceptance...

CHAIRPERSON: Why do you need what?

MR SELEKA SC: Why do we need the signing of the contract when the letter one signed by the supplier creates the contract?

CHAIRPERSON: Well you remember I think I said to him it may well be that for purposes of having all – all terms and conditions in one document that might be necessary – convenience that is what I said. Mr Koko you may have dealt with this but do you want to respond to that?

The question is, if there is already a contract after the supplier has signed the letter of acceptance why is there a need for a contract to be 00:02:50 to get later?

MR KOKO: Chairman I – I have got two answers to that.
10 Besides saying – besides telling you that it is – it is precedent and it is a culture we found it working that way but in my day to day life I find – I found a signed contract that clarifies a lot of issues.

So – so we – I have always been better off ...

CHAIRPERSON: Yes with a contract.

MR KOKO: With a contract than with a letter of award.

CHAIRPERSON: Ja. Than different pieces of documents.

MR KOKO: Than different pieces – it takes away grey areas. But Chair I need to say the second thing that the –
20 the 32 10 34 contemplates any form of contract. I has got its – no – I think we are overemphasising NEC whether it is Fedic or NEC or Bespoke the – the design of the 1032 document is that one is viewed as a letter of award. The procurement practitioner must put together contract documents and it is his or her responsibility to make sure

that it is signed by a person who is duly delegated by the Board and Tender Committee.

So whether it is NEC or not it is irrelevant. Whether it is Fedic it is irrelevant. Whether it is Bespoke it is irrelevant. But all put together they must be 00:04:27 and be signed by a person who is duly authorised by the Board Tender Committee and it is the responsibility of the procurement practitioner that he or she does that (inaudible).

CHAIRPERSON: Mr Seleka.

- 10 **MR SELEKA SC:** Ja thank you Chair. So if it is the offer and acceptance stage creates a legal and binding agreement on the face of that very letter with minimal details can you imagine SOE's contracting on millions like they did there R101 million on the basis of that letter?

- CHAIRPERSON:** Well you see Mr Seleka as far as the law is concerned we all know the general principle that if there is an offer and an acceptance as a general principle that is a contract. Okay. Obviously the offer and acceptance must include all the necessary terms and conditions if they are not
20 included and it is not valid contract.

MR KOKO: And in this case they were included.

CHAIRPERSON: So that is the general principle of law. Now of course it is possible that in a certain sector or scenario there could be legislation or there could be a policy of an entity that says until there is a formal contract signed

nothing is binding that the parties may have exchanged. You know.

But if you do not have anything either by way of legislation or by way of the regulations and rules or policies of an entity that deviate from that general principle one would expect that that general principle would apply as long as all those terms and conditions are there. But if Eskom has maybe there is legislation that says well when you deal with Eskom you will not have that contract just because of
10 exchanges of emails and whatever and discussions there must be a formal contract then that is different.

So as I understand it in this case nobody has said to me that there was such legislation or rules or regulations but you have made a certain point with regard to the policies but I do not know whether to go that far.

MR SELEKA SC: Yes Chair can I say this because the – maybe that will close it and that.

CHAIRPERSON: Ja.

MR SELEKA SC: The offer and acceptance principle does
20 not stop there Chair. If the parties envisage that they should sign a contract which is what is contemplated here – contemplated in that letter. Then the contract comes into existence as contemplated by the parties upon them signing.

CHAIRPERSON: No, no that is...

MR SELEKA SC: And that is to the extent I am taking it.

CHAIRPERSON: I think that – that is in order as a principle to say.

MR SELEKA SC: Yes.

CHAIRPERSON: If the parties say for a certain period we will negotiating.

MR SELEKA SC: Yes.

CHAIRPERSON: And during the negotiations certain things might be said to each other but we do not want to argue about whether why we were – while the one party thought we
10 were still negotiating the other one thought we have already had a contract.

MR SELEKA SC: Ja.

CHAIRPERSON: Therefore there will be no contract until there is a formal contract that is – that position can apply. So if you say this is – this what you believe here is the position here. Then it is a question of going to the basis for that and that to happen.

MR SELEKA SC: Hm. Yes I think I – Mr Koko I think I have traversed it with you because from the policy I see the policy
20 being staggered in terms of process. One of notification of award, the next is what the practitioner should do in terms of preparing the documentation for the contract and the third step is the signing of the contract itself. And I see you letter being consistent with that process.

MR KOKO: Chairman I have – I have said my say I cannot

take this further.

MR SELEKA SC: Yes.

CHAIRPERSON: Yes.

MR KOKO: A letter – a letter of award and acceptance.

CHAIRPERSON: Ja.

MR KOKO: To Eskom terms is legally binding put a contract with 00:09:21.

MR SELEKA SC: Yes.

MR KOKO: That is different parties but...

10 **CHAIRPERSON:** Yes.

MR KOKO: Let me – let me say it another issue Chair. I appreciate the risk that is raised by Mr Seleka that ...

CHAIRPERSON: About SMNE's?

MR KOKO: Not about SMNE's about doing the work without a contract with a letter of award.

MR SELEKA SC: Ja.

MR KOKO: And the policy is very clear as well. If you read it is very clear.

MR SELEKA SC: Yes.

20 **MR KOKO:** It says it does not – it does not take kindly to work starting without a signed contract. It is very clear.

MR SELEKA SC: Yes.

MR KOKO: But it does say also there are circumstances that may ...

CHAIRPERSON: Would equate to may render it acceptable.

MR KOKO: That may render it acceptable – except that it be done.

CHAIRPERSON: Ja.

MR KOKO: And what I am trying to put it to you is that – and I am not saying so I am saying there may well have been but if the...

CHAIRPERSON: Such a case.

MR KOKO: But if the – there may have been such a case.

CHAIRPERSON: Ja.

10 **MR KOKO:** And if you are not targeting – if you are not a – if you are not a Koko hunt you may get to a decent answer to that. And if there is no decent answer to that then you are zooming into the right person. I am simply asking you Chair stop the Koko hunt.

CHAIRPERSON: I am not doing a Koko hunt Mr Koko.

MR KOKO: But they – if they...

CHAIRPERSON: Mr Koko you – you

MR KOKO: If they follow the procedures.

CHAIRPERSON: You did say you cannot help with the
20 question of whether work was or was not done before the contract was concluded.

MR KOKO: Correct.

CHAIRPERSON: Yes and you did say the person who would know about that I think it is Mr 00:11:00.

MR KOKO: Correct.

MR SELEKA SC: And whether or not if work was done before the contract was concluded whether the requirement of the policy for that to happen were met.

MR KOKO: Correct.

CHAIRPERSON: Would be him.

MR KOKO: Correct. What I need to help you with Chair and here it is again following the process. The – when Mr Singh was here previously it was put to him that the contract – this contract we are looking at was actually signed by Mr
10 Mabelane and not by Mr Koko who was delegating.

This question arise again in the High Court. Eskom makes a case that says we cannot find a delegation of authority that Mr Mabelane relied on to sign this contract because the delegation was to Mr Koko.

I have a duty to assist you there.

MR SELEKA SC: And may I assist Chair.

MR KOKO: And if I can I will do that now.

MR SELEKA SC: Ja. Yes may I assist because ...

CHAIRPERSON: Ja.

20 **MR SELEKA SC:** I did not ask the question why Mr Mabelane signed. That was a piggy back from Mr Singh's answer that he does not why Mr Mabelane signed because the delegation was given to Mr Koko. And then I said to him oh but does it mean Mr Mabelane then did not have authority to sign in which event even if he had signed properly the

contract would not have come into – into existence.

Then he said no, no, no he cannot recall whether the delegation was given to the person or to the position.

CHAIRPERSON: Or the position.

MR SELEKA SC: Yes. So I did not put – Mr Koko is burning to deal with that question.

CHAIRPERSON: ja.

MR SELEKA SC: But it is – I have seen that point.

MR KOKO: And I have to Chair because the following day
10 the headlines were Mr Singh throws Mr Koko under the bus
because Mr Koko did not sign as authorised.

CHAIRPERSON: Ja.

MR KOKO: So – so my name has been dragged in the mud I have to correct it Chair.

CHAIRPERSON: No, no that is fine.

MR KOKO: It is personal issue because that is five year old – my five year old comes to me with a newspaper clip, Daddy what is going on here? So I have to correct that.

CHAIRPERSON: No that is fine.

20 **MR SELEKA SC:** Yes.

CHAIRPERSON: Mr Seleka.

MR SELEKA SC: No that is fine. And you know then Mr Koko just to close off on this that we have to put to Mr Singh something that we can also put to you that the NEC contract that was contemplated to be signed was in fact not signed

properly by Mr Mabelane. You aware of that?

MR KOKO: Chair I – and this is what I want – I want to be allowed to deal with Chair. So I am going to give you a set of documents – a document that answers that I have to. I have to do it now.

CHAIRPERSON: Ja I am sorry I did not hear the question – what is the question?

MR SELEKA SC: What I am putting to him Chair is that the NEC contract that was envisaged to be signed it is in the
10 bundles also in Mr Singh's bundle is not signed properly or completely by Mr Mabelane.

CHAIRPERSON: Okay. Yes.

MR SELEKA SC: Yes.

CHAIRPERSON: So were you asking him whether he was aware of that or not?

MR SELEKA SC: Whether he was aware of that yes.

CHAIRPERSON: And he would like to deal with that?

MR KOKO: Yes I want to deal with that.

CHAIRPERSON: Okay alright.

20 **MR KOKO:** And my straight with – my straight answer to you.

CHAIRPERSON: Ja.

MR KOKO: And I will answer you straight and I will show you the documents.

MR SELEKA SC: Yes.

MR KOKO: I did – I do not know, I did not know, I could not have known. I was not in a position to know.

CHAIRPERSON: Okay alright.

MR SELEKA SC: Yes. Then that is fine.

MR KOKO: No but I want to show you the documents because this question it is going to come back again when you deal with Mr – with Ms Mothepu's argument.

CHAIRPERSON: Let us – let us see this document.

MR KOKO: I want to deal with it now Chair.

10 **CHAIRPERSON:** Let him to refer to the documents Mr Seleka.

MR SELEKA SC: Do you want to go the documents?

MR KOKO: Yes I want to do that.

MR SELEKA SC: The NEC

MR KOKO: No, no, no.

MR SELEKA SC: The NEC

CHAIRPERSON: No, no I – last night ...

CHAIRPERSON: The document signed by Mr Mabelane.

MR KOKO: Yes.

20 **CHAIRPERSON:** That is the one you are looking for.

MR SELEKA SC: No, no I have it

CHAIRPERSON: Okay.

MR KOKO: I am just 00:15:06 I am just having this file here.

CHAIRPERSON: Okay tell us once you know which bundle we must look at.

MR KOKO: Ja it is not in the bundle. It is not in the bundle.

CHAIRPERSON: Ja.

MR KOKO: But after Mr Singh's statement.

CHAIRPERSON: Ja.

MR KOKO: I went to dig but I have got the documents here.

CHAIRPERSON: Oh they are not part of the bundle.

MR KOKO: Yes.

CHAIRPERSON: Okay why – why do we not do it this way because we are close to lunch time? Why do we you not
10 share the documents with Mr Seleka and I can be given those and then when we come back you can deal with them?

MR KOKO: Thank you Chair.

CHAIRPERSON: Ja let us do it that way.

ADV BARRIE SC: Chair maybe the witness must first just specify what document he is referring to because I believe that it might be in there.

CHAIRPERSON: Yes.

MR KOKO: No Mr Barrie you do not – do not have it because I picked it up last night it is not in our bundle. So I
20 have that now.

CHAIRPERSON: Okay. Okay alright. Alright let us – let us

MR SELEKA SC: Adjourn 00:15:55.

CHAIRPERSON: Well we are to – but when he deals with them it is better that I have a copy and you have a copy. We can do one of two things because there is still ten minutes.

Mr Koko you can deal with this issue when we come back.

MR SELEKA SC: Yes.

CHAIRPERSON: But if Mr Seleka can use the last ten minutes – next ten minutes to ask other questions let us do that?

MR SELEKA SC: Yes. Can I read it? Thanks. Chair I want us – Mr Koko I want us to go back to those emails – Bundle 18 – Eskom Bundle 18. And – ja. Eskom Bundle 18 page 1018.

10 **MR KOKO:** My apologies Mr Seleka.

MR SELEKA SC: (b). That is the one we were using – we started off with this morning.

MR KOKO: Yes I must find it.

MR SELEKA SC: Ja.

MR KOKO: I have got it Chair.

MR SELEKA SC: You have got it thanks. And – and Mr Koko I want to expedite the issue of the emails. You mentioned – yes because we gave you Dr Ngubane's affidavit you mentioned that affidavit. Before I get to the
20 affidavit you have said every time you exchanged these emails with infoportal you would have a meeting with Dr Ngubane and Ms Daniels. Correct?

MR KOKO: That is correct Chair.

MR SELEKA SC: Ja. The email regarding the visas.

CHAIRPERSON: I am sorry can I just check this? When you

received an email from infoportal would you have meeting – a meeting with the two or would you only have a meeting with them if or when you had sent something to infoportal or both?

MR KOKO: Chairman what I would normally do or I will have a discussion if it is Tuesday with Ms Daniels and I will tell her what is coming. And then I will send the documents. Then she will arrange a meeting. And then she will print the documents and then we will have a discussion with Dr
10 Ngubane.

CHAIRPERSON: Yes but what I am asking is whether you are saying irrespective of whether you would have sent a document to infoportal or whether you would have received a document from infoportal from an email there would be such a meeting or whether you are saying there would only be such a meeting if you were – you had sent or were about to send?

MR KOKO: Chairman I have – I have received one or two emails from infoportal address.

20 **CHAIRPERSON:** Yes, yes. And most of the time you sent.

MR KOKO: Most of the time I sent

CHAIRPERSON: Yes.

MR KOKO: And the first one – the first one that I received I was in Indonesia and I was not even aware that it came from infoportal – ja that was the visa one. The second one is the

one I sent – I forwarded to Ms Daniels on the 10th of December 2015.

CHAIRPERSON: Okay.

MR KOKO: Which I also followed.

CHAIRPERSON: Yes.

MR KOKO: Up with her to say do we need a meeting and he says no we do not a meeting we have it – she has got it in – under control.

CHAIRPERSON: Okay.

10 **MR KOKO:** So – so most of the time...

CHAIRPERSON: So most of the time it was when you were...

MR KOKO: Most of the time it is when I sent.

CHAIRPERSON: Ja.

MR KOKO: When I have a consistent to the briefing that I got when I first came back that when you have an issue that you think you are not seeing eye to eye with the chair or with the board make it available to the chair and let us discuss it before the board really meets and deals with it and you clear
20 the air on that.

CHAIRPERSON: Okay.

MR SELEKA SC: Hm. Please turn to page 1078. 1078.

MR KOKO: Ja. I am there.

MR SELEKA SC: Yes. So this is again an email from you Wednesday 30 September 2015 to infoportal and it says: Re

attached to this is this letter on the next page which is Dr Ngubane's letter to Minister Brown.

MR KOKO: Yes.

MR SELEKA SC: So why on – on your version of this being Dr Ngubane's email address why would you send his letter to himself?

MR KOKO: Ja so – so Chair this – this is the most – what is the right – I must choose – I must choose the right word. This was the most horrendous letter that was ...

10 **CHAIRPERSON:** You choose a very strong word.

MR KOKO: I am – I could have chosen the worst word.

CHAIRPERSON: Okay.

MR KOKO: That Ms Daniels made available to me to implement. I was at that point the Chief Procurement Officer for Eskom. The board of Eskom regularly and unlawfully takes a decision to boycott Mail and Guardian, City Press and Sunday Times for whatever reason. And then it comes to me to implement. It is an unlawful instruction Chair. I cannot implement it. And it was never implemented.

20 And again we – we discussed it with Dr Ngubane, we discussed it with Ms Daniels. It was never implemented and I was never in trouble. If I decided not to send it back to Mr Ngubane for discussion and I did not implement it I would have ended up same work ended up with 00:22:53.

CHAIRPERSON: Now just for the sake of completeness the

attachment to the email that Mr Seleka is asking you about is a letter signed by Dr Ngubane on the 30th September 2015 and it is addressed to the Minister of Public Enterprises and Ms Lynne Brown and says:

“Dear Minister Brown. And the subject is Suspension of Contacts in any form whatsoever and or commercial relationship with the Mail and Guardian, City Press and Sunday Times and the letter reads:

10 The above matter has reference and Minister’s correspondence of 28 September 2015. The board has deliberated on the issues and found that Eskom is experiencing a similar trend as the Transnet for example. Accordingly the board has resolved that Eskom “Eskom shall suspend any dealings be it the placement of the advertising or any other commercial relationship with the Mail and Guardian, Sunday Times and City Press

20 pending the resolution of the complaints that the state owned entities have against the three newspapers “. Mr Anoj Singh has abstained due to a conflict of interest as he was the subject of one of their articles published. This decision has been

communicated to the Group Chief Executive to implement with immediate effect. I trust that the Minister will find this in accordance.”

Yes that is it – so that is the – are you therefore saying that this letter which was – seems to have been sent to the Minister was given to you for purposes of implementing the resolution?

MR KOKO: Correct Chair.

CHAIRPERSON: The resolution.

10 **MR KOKO:** Correct.

CHAIRPERSON: And you believe that the instruction was unlawful and you then wanted to discuss it with Dr Ngubane.

MR KOKO: Chairman I do not believe it is an unlawful instruction.

CHAIRPERSON: Yes. Yes. But you then wanted to discuss it with Dr Ngubane.

MR KOKO: Correct.

CHAIRPERSON: Yes. You say that is your explanation for your email at page 1078?

20 **MR KOKO:** Correct.

CHAIRPERSON: Yes Mr Seleka.

MR SELEKA SC: Thank you Chair. Well that paragraph Mr Koko says the decision has been communicated to the Group Chief Executive. Were you the Group Chief Executive since September 2015?

MR KOKO: No.

MR SELEKA SC: So why you placing yourself in the Koko hunt?

MR KOKO: Because I am the Group Commercial Officer. I am the Chief Procurement Officer. The Chief Executive does not execute a procurement decision. It – the delegations for procurement is with the – with me since my office.

CHAIRPERSON: So to the extent that the letter or the resolution of the board according to this letter said that the
10 Group – or not the resolution but the letter to the extent that it said the decision had been communicated to the Group Chief Executive to implement with immediate effect. The point you are making is that the GCEO would actually in order to ensure that the decision was implemented would require you to implement that decision.

MR KOKO: Exactly.

CHAIRPERSON: And you were raising the issue because in the end you were going to be the implementer.

MR KOKO: Exactly.

20 **CHAIRPERSON:** Okay alright. Mr Seleka it is one o'clock. Let us take the lunch break we will resume at 2. We adjourn.

MR SELEKA SC: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV SELEKA SC: Yes, Chairperson, we were in Eskom Bundle 18 on that page 1079, dealing with the letter from Dr Ngubane to Minister Lynne Brown, which Mr Koko attaches to that email. If I may, I would like to expedite this by referring Mr Koko to the affidavit of Dr Ngubane. Mr Koko, you will have a bundle with that affidavit. Eskom Bundle 9. Chairperson ...[intervenes]

CHAIRPERSON: Well, maybe before you proceed with
10 your questioning Mr Seleka ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...with reference to Dr Ngubane's supplementary affidavit ...[intervenes]

ADV SELEKA SC: Yes?

CHAIRPERSON: ...let me raise something with Mr Koko. I think one of the points you made about this letter, Mr Koko, at page 1079(?) is in effect that it would have made no sense for you to send it to a supplier, I think. Is that correct? It would have been no use to them or
20 something. You made a point along those lines. And I understood that to be saying.

To the extent that anybody suggests that I was communicating with Mr Salim Essa and that I was knowingly – I knowingly sent this letter to Mr Salim Essa the infoportal email address, it was his or was being used

by him. That would not make sense but it would make sense if I was sending it to Dr Ngubane in order to raise the issue that I wanted to raise. Did I understand you correctly?

MR KOKO: Most certainly. Or any other third party.

CHAIRPERSON: Yes, yes, yes. What I want to raise with you is that. If, of course, the position were that indeed the infoportal address was Mr Salim Essa's address or that whatever came from that email address came from him and
10 whatever was sent to it was being sent to him, whether intentionally or not, but it would end with him.

The position would be that, if I recall correctly, the documents or there is a letter, there are documents or emails that came from the infoportal address which were raising the same subject, namely, which were, if I recall correctly, to the effect that the board should take a decision that Eskom should not have any interactions or should terminate whatever relationship they might have with these three newspapers, the Mail & Guardian, The
20 City Press and, I think, the Sunday Times.

Now when Dr Ngubane was giving evidence, reference was made to such a document and that it was given to him and he said he took it to the board and the board made a resolution that was in line with what was being requested in the documents or emails that came from

the infoportal address.

So if that is the true and if it was to be said that you were sending this to Mr Salim Essa or to whoever had sent those documents. Then what it would – what it could mean is that you were sending this letter to show that the board had taken the decision that they had wanted. So I am saying that that is a possible line of looking at the matter, if your evidence is not true.

If the other evidence is that – if the evidence is
10 or if the suggestion is made that you knew you were sending – you knew you were not sending it to Dr Ngubane. You knew you were sending it to Mr Salim Essa, for example. What do you say to that?

MR KOKO: Chair, there is – if my memory serves me well because I listened to the evidence of Dr Ngubane. That attachment was in one of the infoportal email addresses that went to Mr Ngubane. I do not think I am mistaken.

CHAIRPERSON: Yes-no, I think you are right there.

MR KOKO: Secondly. It is one of the documents whose
20 properties showed that it was originated by Mr Dan Mantsha and Eddy by Mr Salim Essa.

CHAIRPERSON: H'm?

MR KOKO: I also do not think I am mistaken there.

CHAIRPERSON: Ja. Well, I do not remember any reference to Mr Mantsha or also about the ...[intervenes]

MR KOKO: I can tell you know that is what Mr Seleka put to one of the witnesses.

CHAIRPERSON: Okay. H'm?

MR KOKO: And let us just carry on, on that line because that suggests that we are doing the bidding for Mr Essa or his associate. When it comes to me and I am part of the club, I am part of the scheme, I would not stop it. I would religiously instruct my teams and create reasons why my teams' work were executed but I did the opposite. I
10 stopped it.

CHAIRPERSON: So your answer to what I – what I was putting to you is. Well, I hears what might be said.

MR KOKO: Yes.

CHAIRPERSON: But at a practical level, I stopped this.

MR KOKO: Exactly.

CHAIRPERSON: And stopping it is not consistent with me doing Mr Salim Essa's bidding and so on?

MR KOKO: Exactly.

CHAIRPERSON: Ja.

20 **MR KOKO:** And you will find, and we are going to go into this more often. All these transactions that I am accused of doing the bidding for Mr Essa. Guess who stopped them? Me.

CHAIRPERSON: H'm, h'm.

MR KOKO: It is the opposite. If I was doing the bidding

for Mr Essa, I would have found the reason to pay the R 30 million invoice that Ms Goodson came to talk about. If I was doing the bidding for Mr Essa, when Ms Daniels came to me with a motivation for the payment of the R 460 million to McKinsey, part of it ended up with Trillian, I would have found a reason to sign it but I stopped it. That cannot be the characteristic consistent with a person who is doing the bidding for Mr Essa. That cannot be.

CHAIRPERSON: Ja. No, no. I just wanted you to get a
10 chance to deal with that possible line of thinking.

MR KOKO: Thank you, Chair.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Yes, thank you, Chair. But you... Well, you would have seen from Dr Ngubane's affidavit that he denies that the email address, firstly is his. Secondly, which is more important for your purposes, that he had meetings with you pursuant to the documentation here attached to this email you sent to infoportal. Your comment on that?

20 **MR KOKO:** Chair, I – Dr Ngubane makes sense to me when he says – when he suggested that he does not know the infoportal or not. It does not make sense. No, he does not make sense. It does not make sense.

ADV SELEKA SC: He does not – he says it is not his email address.

MR KOKO: Ja-no, he says it is not his. So I may find that reasonable. But let me tell you the difficulty that Dr Ngubane is faced with and it is a similar difficulty, we will deal with in more detail when we get into Ms Daniels. Dr Ngubane came here and told you that the only time he came – he interacted or he came across the infoportal address was August 2016, okay? That is what he told you. It is in his affidavit. And he says at that point he was told that it belongs to Mr Seleke.

10 **CHAIRPERSON**: Mr Richard Seleke.

MR KOKO: Mr Richard.

CHAIRPERSON: H'm?

MR KOKO: When you and Mr Seleka did the probing and you put the affidavit of Ms Matsietsi to him. What actually Ms Matsietsi says, she was the one acting as the DG at that point. Mr Seleke was not in the employ of the department. And this email that you said you came across it, could not belong to Mr Seleke. So you cannot be right. As a matter of fact, you used this email address in

20 September 2016.

It is – you are not being truthful. That is not what you told him you are more decent than that. You cannot be truth – it cannot be truthful that you only knew about it in September 2016. You have actually used it in August 2016. You have actually used in September 2017 –

in September 2016.

And in September 2016, Ms Matsietsi was the acting Chair ...[indistinct] was not in the department. So your version is not right. I remember his... Oh, well. Oh, well. That is all what he said. He said nothing further than that. He has a difficulty, Chair.

He is intended in this infoportal address and he is trying to distance himself. He has been dishonest with you on this email address. I am shocked that he denies
10 the meeting that he had the meeting with me and Ms Daniels. Ms Daniels denies that. It can only be the characteristics of people who have come to you, lied to you to save their skin.

I cannot phantom the reason why he denied it. I cannot explain to you... I mean, my counsel takes me task on many occasions: But Mr Koko, why would these people lie about you? Why? And I said: Mr Barrie, but I do not know. Here is Dr Ngubane who came to lie to you about the August 2016 email. Why did he lie? I do not know.
20 We do not know.

That is common cause that he was not truthful. It is common cause. Why? I do not know. He is trying to distance himself from the entanglement he finds himself in. That is the only explanation I can give. And it is disappointing. Dr Ngubane's interactions with me has been

– the interaction with a father and son interaction.

And I would never have thought that on – at one stage, on a single day, he will deny the type of interactions that he had with me, which is in those meetings, he made the right decisions. Ja.

CHAIRPERSON: What do you say about the fact that Ms Daniels also denies those interactions?

MR KOKO: Chair, Ms Daniels is worse. You have got a worse problem there.

10 **CHAIRPERSON**: H'm.

MR KOKO: So. And to answer you there. And please, Chair, I want to take – I want you to go to Bundle 8.

CHAIRPERSON: H'm?

MR KOKO: No, no. First, let us go to her last affidavit. The latest affidavit that you sent me last night. Have you got it? Ms Daniels' affidavit?

CHAIRPERSON: Well, if you are able to say what you need to say without us going back, do that.

MR KOKO: No... I will do that.

20 **CHAIRPERSON**: But if it is important, then we can ...[intervenes]

MR KOKO: I will do it Chair. But my experience now with the Commission is that I have to show you the documents, otherwise you forget.

CHAIRPERSON: [laughs]

MR KOKO: And let me tell you, please.

CHAIRPERSON: Ja.

MR KOKO: Let me go and say this.

CHAIRPERSON: Yes.

MR KOKO: Ms Daniels says to me. To distance herself from the infoportal address, she says to you that actually Mr Koko was my supervisor on the 20th of July 2015. He had no reason to take an email from me and say it is for Ms Daniels. It is for the chairman. It could not have been
10 a reason for that because he was my supervisor. I was not in the chairman's office.

That is what she said. I told you then that she is lying to you but when I left it worried me and I went to dig up documents to show you that she is lying. For a start. The bundle that I want to take you to, it is her affidavit.

CHAIRPERSON: Ja, we can go there.

MR KOKO: It is her affidavit. Can you go to her ...[intervenes]

CHAIRPERSON: Let us go there.

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

MR KOKO: You can go to Ms Daniels' latest affidavit.

CHAIRPERSON: H'm.

MR KOKO: And you... Chair, I cannot tell you why would Ms Daniels come and lie to you.

CHAIRPERSON: H'm.

MR KOKO: I cannot just come and tell you that but she is doing it. And the only reasons she is doing it is to make me look bad and hopefully she thinks I would not have the documentary evidence to show you that she is indeed lying. That is the only reason.

CHAIRPERSON: H'm.

MR KOKO: Mr Seleka, if you can guide me to ...[intervenes]

CHAIRPERSON: You did state what bundle it is, hey?

10 **MR KOKO:** I think is Bundle 8.

CHAIRPERSON: Bundle 8.

MR KOKO: Am I right?

ADV SELEKA SC: Ja. That is right, Chair. I think it is in 8(b). Is that right?

CHAIRPERSON: Bundle 8(b)?

ADV SELEKA SC: Let us see. At page 1079 ...[intervenes]

CHAIRPERSON: Is it Bundle 8(b).

ADV SELEKA SC: I am guessing Chair now but I wanted
20 to see whether ...[intervenes]

CHAIRPERSON: Well, find out where it is first.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or is it not – has it not been ...[indistinct]

MR KOKO: No, you sent it to me last night.

CHAIRPERSON: ...put in the same place?

MR KOKO: It is the bundle that you have sent me last night.

CHAIRPERSON: Oh, has it not been put into the bundle?

MR KOKO: No, it is in the bundle.

ADV SELEKA SC: Ja, it is in the bundle Chair. Just help Mr Koko there.

JUNIOR COUNSEL: [No audible reply]

CHAIRPERSON: Well, your junior will remember,
10 Mr Seleka, exactly where it is.

ADV SELEKA SC: Ja, page 1079.

MR KOKO: I do not have ...[intervenes]

ADV SELEKA SC: I have it in Eskom Bundle 8(b). That is the very last affidavit. Ja, that is the one, Chair, you have.

CHAIRPERSON: Ja, I have got Bundle 8(b) and page 1079 is the certificate of authentication and page 108 is the beginning of the affidavit.

ADV SELEKA SC: That is the one Chair.

MR KOKO: Somewhere in here, Mr Seleka, you will find.
20 She says: Mr Koko was my supervisor in 2015.

ADV SELEKA SC: Oh, you want that first?

MR KOKO: Yes.

ADV SELEKA SC: [No audible reply]

MR KOKO: Paragraph 11, Chair, page 1082. I am going to read into the record.

CHAIRPERSON: I have got it. Ja, do that.

ADV SELEKA SC: Yes.

“I met with Mr Koko shortly after his meeting with Mr Bester.

At this time, I still held the position of Senior Manager in the Office of the Group Executive Technology.

Thus Mr Koko was my direct supervisor...”

Chair ...[intervenes]

10 **CHAIRPERSON:** There, in that paragraph, is she talking about what followed after, what she refers to in paragraph 10, which seems to be the morning of the 20th of July 2015?

MR KOKO: Yes.

CHAIRPERSON: So when she says shortly after his meeting, is she talking about the meeting on the 20th?

MR KOKO: The meeting on the 20th, yes.

CHAIRPERSON: Okay alright. Yes, continue.

20 **MR KOKO:** Now, Chair... Mr Barrie, what is the bundle on the 11th of April 2015?

ADV BARRIE: Oh, what the witness refers to is earlier in this very same bundle.

CHAIRPERSON: Yes.

ADV BARRIE: I will just find it. I think it is page 6.

MR KOKO: It is Bundle 8, page 6.

ADV BARRIE: [Indistinct] [Speaker is not clear – not close to microphone.] Ja, even ...[indistinct], paragraph 8 on page 6. I am just trying to... Eskom 08-0006.

CHAIRPERSON: I guess it must be Bundle 8(a), not 8(b).

ADV SELEKA SC: Most probably.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja. If it is page 6, it would be Bundle 8(a). Yes, that is Bundle 8(a). I see that paragraph 9 of
10 page 6 of Bundle 8(a), she says:

“I was appointed by Group Company Secretary
on 1 October ...[intervenes]

ADV BARRIE: Chair, that is actually paragraph 8.

CHAIRPERSON: Paragraph 8?

ADV BARRIE: [No audible reply]

CHAIRPERSON: Okay.

“Subsequently, I was transferred to the Office
of the Chairman on 11 April 2015...”

And then paragraph 9:

20 “I was appointed Group Company Secretary on
1 October 2015 and held this position until
27 July 2017 when the current Interim Board of
Eskom accepted my resignation as Company
Secretary.

The duties of the Company Secretary are set

out in Section 8(8)(?) of the Companies Act...”

MR KOKO: Yes.

CHAIRPERSON: Yes?

MR KOKO: Chair, I also have brought in the minutes
...[intervenes]

CHAIRPERSON: H’m?

MR KOKO: ...of the board ...[intervenes]

CHAIRPERSON: H’m?

MR KOKO: ...of the 22nd of July 2015, two days after I
10 came back. You have to look at them.

CHAIRPERSON: Yes. But let...

MR KOKO: So ...[intervenes]

CHAIRPERSON: Do you want to make whatever point you
want to make with regard these two?

MR KOKO: Yes. That minute – those minutes adds up to
that lie.

CHAIRPERSON: Yes.

MR KOKO: Yes.

CHAIRPERSON: And I guess your point must be that she
20 did not hold the position that she says she held at that
time?

MR KOKO: She... The only reason she comes to you and
say: Mr Koko was my supervisor on... is because she tried
to create a distance. She is trying to say that I was not in
the chairman’s office. I could not have given Mr Koko an

email address of Dr Ngubane and I could not have had access to it.

CHAIRPERSON: H'm, h'm.

MR KOKO: That is all what she is trying to do.

CHAIRPERSON: And you say she was still in the Office of the Chair ...[intervenes]

MR KOKO: Chair, I want you to look at the minutes.

CHAIRPERSON: Yes.

MR KOKO: Mr Barrie, can you give the Chair the minutes,
10 please?

ADV BARRIE: I have three, four copies here, Mr Chairman, of the minutes of the Special Eskom Board Meeting held on 22nd July 2015.

CHAIRPERSON: Okay. The registrar will take those. We do not have them in the bundles?

ADV BARRIE: Not as far as I am aware, Chair.

CHAIRPERSON: H'm. Okay. Give us - another copy too to Mr Seleka.

REGISTRAR: [No audible reply]

20 **MR KOKO:** Chair, what you have in front of you is the minutes of the board two days after I returned to Eskom after my suspension.

CHAIRPERSON: H'm?

MR KOKO: Dated 22nd July 2015. And the first page is people who attended the meeting. At the top is the board

members, in the middle is the officials. You will see at that point Mr Phukubje was the Company Secretary and at the bottom are the people in attendance.

CHAIRPERSON: H'm?

MR KOKO: You will see Ms Daniels' name is there as the Office of the Chairman.

CHAIRPERSON: H'm, h'm.

MR KOKO: So she has come to you to lie to you. Why did she come to you to lie? I do not know.

10 **CHAIRPERSON**: H'm.

MR KOKO: I cannot explain why she came to lie to you. And so ...[intervenes]

CHAIRPERSON: So you are saying when you go to Bundle 8(a), page 6, paragraph 8, she says she was transferred to the Office of the Chairman on 11 April 2015.

MR KOKO: That is correct.

CHAIRPERSON: And then on paragraph 9, she says she was appointed as Company Secretary on 1 October 2015, which suggests an acceptance that in July 2015, she was
20 still in the Office of the Chairperson.

MR KOKO: Correct.

CHAIRPERSON: And you are saying the minutes of the meeting of the board of the 22nd of July 2015, reflects her as her having been in attendance as somebody from the Chairperson's Office.

MR KOKO: Correct.

CHAIRPERSON: Therefore, to the extent that she says in July 2015, you were her direct supervisor. You say that cannot be true?

MR KOKO: I am saying it is false.

CHAIRPERSON: Ja, okay.

MR KOKO: Now the question is why? Why? I do not know. The only reason she does, I can – I – you – the last(?)... proposition... The only proposition I can think
10 that she wants to make – to come across as a star witness to you and present it to me in a bad light. And the only way, Chairman, the only way Ms Susanne Daniels has been caught with this lie is when I present documentary evidence. That is the only time.

If I did not have the documentary evidence, I would be the one looking like a lie. The very existence of the infoportal address, I was the first one to link her to it. I said to my lawyers: You know, what Mr Barrie? This is – this I got it from Ms Daniels. She denied it until Eskom
20 went to check its computers. So she lied. Why, I do not know. She...

So I am saying to you, she is also lying when she says she did not print the document to have meetings with Dr Ngubane. She is lying. Why is she lying? She is just intended in trying to get rid of it and create an

impression that I am a bad person and she is a good person. And she did not know at the time.

CHAIRPERSON: And you say, as long as she was in the Office of the Chairperson, then it is clearly understandable why she would perform the duty of printing those documents and giving them to Dr Ngubane?

MR KOKO: Most certainly. Yes.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Koko, I might
10 come back to Ms Susanne Daniels in due course but let me try to exhaust the issue of Dr Ngubane. Dr Ngubane has denied your version. You have commented on his version but you have commented, not in relation to his version, you have commented in relation to him saying the emails – the email, infoportal was of Richard Seleke. But you have not said anything about his denial that that email is his because even the version that it is an email of Richard Seleke, shows that it is not his email. So what is ...[intervenes]

20 **CHAIRPERSON:** Can I ask you not to forget your question?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Please, do not forget it.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I want to say. Was Dr Ngubane

asked the question? If he accepted, when he was on the witness stand, that in August or September, when he used that infoportal address, because that is my understanding. If Mr Richard Seleke was not the DG of the Department of Public Enterprises at that time, who would he have been intending to communicate with? Because on his version, it could not have been Mr Seleke as DG.

ADV SELEKA SC: Yes.

CHAIRPERSON: And it may well be that it may have been
10 Mr Seleke in another capacity but it could not have been him as DG. But the only connection he made with Mr Seleka was that he believed he was DG and that was shown not to be true.

ADV SELEKA SC: Yes.

CHAIRPERSON: Was that canvassed? And if so, what was his understanding, his response?

ADV SELEKA SC: Chair, we did put to him what the disciplinary – what was found at the disciplinary hearing, that most probably the email belongs to – the email
20 address ...[intervenes]

INQUIRY RESUMES

ADV SELEKA SC: Yes, Chairperson, we were in Eskom Bundle 18 on that page 1079, dealing with the letter from Dr Ngubane to Minister Lynne Brown, which Mr Koko attaches to that email. If I may, I would like to expedite

this by referring Mr Koko to the affidavit of Dr Ngubane. Mr Koko, you will have a bundle with that affidavit. Eskom Bundle 9. Chairperson ...[intervenes]

CHAIRPERSON: Well, maybe before you proceed with your questioning Mr Seleka ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...with reference to Dr Ngubane's supplementary affidavit ...[intervenes]

ADV SELEKA SC: Yes?

10 **CHAIRPERSON:** ...let me raise something with Mr Koko. I think one of the points you made about this letter, Mr Koko, at page 1079(?) is in effect that it would have made no sense for you to send it to a supplier, I think. Is that correct? It would have been no use to them or something. You made a point along those lines. And I understood that to be saying.

To the extent that anybody suggests that I was communicating with Mr Salim Essa and that I was knowingly – I knowingly sent this letter to Mr Salim Essa
20 the infoportal email address, it was his or was being used by him. That would not make sense but it would make sense if I was sending it to Dr Ngubane in order to raise the issue that I wanted to raise. Did I understand you correctly?

MR KOKO: Most certainly. Or any other third party.

CHAIRPERSON: Yes, yes, yes. What I want to raise with you is that. If, of course, the position were that indeed the infoportal address was Mr Salim Essa's address or that whatever came from that email address came from him and whatever was sent to it was being sent to him, whether intentionally or not, but it would end with him.

The position would be that, if I recall correctly, the documents or there is a letter, there are documents or emails that came from the infoportal address which were
10 raising the same subject, namely, which were, if I recall correctly, to the effect that the board should take a decision that Eskom should not have any interactions or should terminate whatever relationship they might have with these three newspapers, the Mail & Guardian, The City Press and, I think, the Sunday Times.

Now when Dr Ngubane was giving evidence, reference was made to such a document and that it was given to him and he said he took it to the board and the board made a resolution that was in line with what was
20 being requested in the documents or emails that came from the infoportal address.

So if that is the true and if it was to be said that you were sending this to Mr Salim Essa or to whoever had sent those documents. Then what it would – what it could mean is that you were sending this letter to show that the

board had taken the decision that they had wanted. So I am saying that that is a possible line of looking at the matter, if your evidence is not true.

If the other evidence is that – if the evidence is or if the suggestion is made that you knew you were sending – you knew you were not sending it to Dr Ngubane. You knew you were sending it to Mr Salim Essa, for example. What do you say to that?

MR KOKO: Chair, there is – if my memory serves me well
10 because I listened to the evidence of Dr Ngubane. That attachment was in one of the infoportal email addresses that went to Mr Ngubane. I do not think I am mistaken.

CHAIRPERSON: Yes-no, I think you are right there.

MR KOKO: Secondly. It is one of the documents whose properties showed that it was originated by Mr Dan Mantsha and Eddy by Mr Salim Essa.

CHAIRPERSON: H'm?

MR KOKO: I also do not think I am mistaken there.

CHAIRPERSON: Ja. Well, I do not remember any
20 reference to Mr Mantsha or also about the ...[intervenes]

MR KOKO: I can tell you know that is what Mr Seleka put to one of the witnesses.

CHAIRPERSON: Okay. H'm?

MR KOKO: And let us just carry on, on that line because that suggests that we are doing the bidding for Mr Essa or

his associate. When it comes to me and I am part of the club, I am part of the scheme, I would not stop it. I would religiously instruct my teams and create reasons why my teams' work were executed but I did the opposite. I stopped it.

CHAIRPERSON: So your answer to what I – what I was putting to you is. Well, I hears what might be said.

MR KOKO: Yes.

CHAIRPERSON: But at a practical level, I stopped this.

10 **MR KOKO**: Exactly.

CHAIRPERSON: And stopping it is not consistent with me doing Mr Salim Essa's bidding and so on?

MR KOKO: Exactly.

CHAIRPERSON: Ja.

MR KOKO: And you will find, and we are going to go into this more often. All these transactions that I am accused of doing the bidding for Mr Essa. Guess who stopped them? Me.

CHAIRPERSON: H'm, h'm.

20 **MR KOKO**: It is the opposite. If I was doing the bidding for Mr Essa, I would have found the reason to pay the R 30 million invoice that Ms Goodson came to talk about. If I was doing the bidding for Mr Essa, when Ms Daniels came to me with a motivation for the payment of the R 460 million to McKinsey, part of it ended up with Trillian,

I would have found a reason to sign it but I stopped it. That cannot be the characteristic consistent with a person who is doing the bidding for Mr Essa. That cannot be.

CHAIRPERSON: Ja. No, no. I just wanted you to get a chance to deal with that possible line of thinking.

MR KOKO: Thank you, Chair.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Yes, thank you, Chair. But you... Well, you would have seen from Dr Ngubane's affidavit that
10 he denies that the email address, firstly is his. Secondly, which is more important for your purposes, that he had meetings with you pursuant to the documentation here attached to this email you sent to infoportal. Your comment on that?

MR KOKO: Chair, I – Dr Ngubane makes sense to me when he says – when he suggested that he does not know the infoportal or not. It does not make sense. No, he does not make sense. It does not make sense.

ADV SELEKA SC: He does not – he says it is not his
20 email address.

MR KOKO: Ja-no, he says it is not his. So I may find that reasonable. But let me tell you the difficulty that Dr Ngubane is faced with and it is a similar difficulty, we will deal with in more detail when we get into Ms Daniels. Dr Ngubane came here and told you that the only time he

came – he interacted or he came across the infoportal address was August 2016, okay? That is what he told you. It is in his affidavit. And he says at that point he was told that it belongs to Mr Seleke.

CHAIRPERSON: Mr Richard Seleke.

MR KOKO: Mr Richard.

CHAIRPERSON: H'm?

MR KOKO: When you and Mr Seleka did the probing and you put the affidavit of Ms Matsietsi to him. What actually
10 Ms Matsietsi says, she was the one acting as the DG at that point. Mr Seleke was not in the employ of the department. And this email that you said you came across it, could not belong to Mr Seleke. So you cannot be right. As a matter of fact, you used this email address in September 2016.

It is – you are not being truthful. That is not what you told him you are more decent than that. You cannot be truth – it cannot be truthful that you only knew about it in September 2016. You have actually used it in
20 August 2016. You have actually used in September 2017 – in September 2016.

And in September 2016, Ms Matsietsi was the acting Chair ...[indistinct] was not in the department. So your version is not right. I remember his... Oh, well. Oh, well. That is all what he said. He said nothing further than

that. He has a difficulty, Chair.

He is intended in this infoportal address and he is trying to distance himself. He has been dishonest with you on this email address. I am shocked that he denies the meeting that he had the meeting with me and Ms Daniels. Ms Daniels denies that. It can only be the characteristics of people who have come to you, lied to you to save their skin.

I cannot phantom the reason why he denied it. I
10 cannot explain to you... I mean, my counsel takes me task on many occasions: But Mr Koko, why would these people lie about you? Why? And I said: Mr Barrie, but I do not know. Here is Dr Ngubane who came to lie to you about the August 2016 email. Why did he lie? I do not know. We do not know.

That is common cause that he was not truthful. It is common cause. Why? I do not know. He is trying to distance himself from the entanglement he finds himself in. That is the only explanation I can give. And it is
20 disappointing. Dr Ngubane's interactions with me has been – the interaction with a father and son interaction.

And I would never have thought that on – at one stage, on a single day, he will deny the type of interactions that he had with me, which is in those meetings, he made the right decisions. Ja.

CHAIRPERSON: What do you say about the fact that Ms Daniels also denies those interactions?

MR KOKO: Chair, Ms Daniels is worse. You have got a worse problem there.

CHAIRPERSON: H'm.

MR KOKO: So. And to answer you there. And please, Chair, I want to take – I want you to go to Bundle 8.

CHAIRPERSON: H'm?

MR KOKO: No, no. First, let us go to her last affidavit.
10 The latest affidavit that you sent me last night. Have you got it? Ms Daniels' affidavit?

CHAIRPERSON: Well, if you are able to say what you need to say without us going back, do that.

MR KOKO: No... I will do that.

CHAIRPERSON: But if it is important, then we can ...[intervenes]

MR KOKO: I will do it Chair. But my experience now with the Commission is that I have to show you the documents, otherwise you forget.

20 **CHAIRPERSON:** [laughs]

MR KOKO: And let me tell you, please.

CHAIRPERSON: Ja.

MR KOKO: Let me go and say this.

CHAIRPERSON: Yes.

MR KOKO: Ms Daniels says to me. To distance herself

from the infoportal address, she says to you that actually Mr Koko was my supervisor on the 20th of July 2015. He had no reason to take an email from me and say it is for Ms Daniels. It is for the chairman. It could not have been a reason for that because he was my supervisor. I was not in the chairman's office.

That is what she said. I told you then that she is lying to you but when I left it worried me and I went to dig up documents to show you that she is lying. For a start.

10 The bundle that I want to take you to, it is her affidavit.

CHAIRPERSON: Ja, we can go there.

MR KOKO: It is her affidavit. Can you go to her ...[intervenes]

CHAIRPERSON: Let us go there.

ADV SELEKA SC: H'm.

MR KOKO: You can go to Ms Daniels' latest affidavit.

CHAIRPERSON: H'm.

MR KOKO: And you... Chair, I cannot tell you why would Ms Daniels come and lie to you.

20 **CHAIRPERSON**: H'm.

MR KOKO: I cannot just come and tell you that but she is doing it. And the only reasons she is doing it is to make me look bad and hopefully she thinks I would not have the documentary evidence to show you that she is indeed lying. That is the only reason.

CHAIRPERSON: H'm.

MR KOKO: Mr Seleka, if you can guide me to
...[intervenes]

CHAIRPERSON: You did state what bundle it is, hey?

MR KOKO: I think is Bundle 8.

CHAIRPERSON: Bundle 8.

MR KOKO: Am I right?

ADV SELEKA SC: Ja. That is right, Chair. I think it is in
8(b). Is that right?

10 **CHAIRPERSON:** Bundle 8(b)?

ADV SELEKA SC: Let us see. At page 1079
...[intervenes]

CHAIRPERSON: Is it Bundle 8(b).

ADV SELEKA SC: I am guessing Chair now but I wanted
to see whether ...[intervenes]

CHAIRPERSON: Well, find out where it is first.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or is it not – has it not been
...[indistinct]

20 **MR KOKO:** No, you sent it to me last night.

CHAIRPERSON: ...put in the same place?

MR KOKO: It is the bundle that you have sent me last
night.

CHAIRPERSON: Oh, has it not been put into the bundle?

MR KOKO: No, it is in the bundle.

ADV SELEKA SC: Ja, it is in the bundle Chair. Just help Mr Koko there.

JUNIOR COUNSEL: [No audible reply]

CHAIRPERSON: Well, your junior will remember, Mr Seleka, exactly where it is.

ADV SELEKA SC: Ja, page 1079.

MR KOKO: I do not have ...[intervenes]

ADV SELEKA SC: I have it in Eskom Bundle 8(b). That is the very last affidavit. Ja, that is the one, Chair, you have.

10 **CHAIRPERSON:** Ja, I have got Bundle 8(b) and page 1079 is the certificate of authentication and page 108 is the beginning of the affidavit.

ADV SELEKA SC: That is the one Chair.

MR KOKO: Somewhere in here, Mr Seleka, you will find. She says: Mr Koko was my supervisor in 2015.

ADV SELEKA SC: Oh, you want that first?

MR KOKO: Yes.

ADV SELEKA SC: [No audible reply]

20 **MR KOKO:** Paragraph 11, Chair, page 1082. I am going to read into the record.

CHAIRPERSON: I have got it. Ja, do that.

ADV SELEKA SC: Yes.

“I met with Mr Koko shortly after his meeting with Mr Bester.

At this time, I still held the position of Senior

Manager in the Office of the Group Executive Technology.

Thus Mr Koko was my direct supervisor...”

Chair ...[intervenes]

CHAIRPERSON: There, in that paragraph, is she talking about what followed after, what she refers to in paragraph 10, which seems to be the morning of the 20th of July 2015?

MR KOKO: Yes.

10 **CHAIRPERSON**: So when she says shortly after his meeting, is she talking about the meeting on the 20th?

MR KOKO: The meeting on the 20th, yes.

CHAIRPERSON: Okay alright. Yes, continue.

MR KOKO: Now, Chair... Mr Barrie, what is the bundle on the 11th of April 2015?

ADV BARRIE: Oh, what the witness refers to is earlier in this very same bundle.

CHAIRPERSON: Yes.

ADV BARRIE: I will just find it. I think it is page 6.

20 **MR KOKO**: It is Bundle 8, page 6.

ADV BARRIE: [Indistinct] [Speaker is not clear – not close to microphone.] Ja, even ...[indistinct], paragraph 8 on page 6. I am just trying to... Eskom 08-0006.

CHAIRPERSON: I guess it must be Bundle 8(a), not 8(b).

ADV SELEKA SC: Most probably.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja. If it is page 6, it would be Bundle 8(a). Yes, that is Bundle 8(a). I see that paragraph 9 of page 6 of Bundle 8(a), she says:

“I was appointed by Group Company Secretary
on 1 October ...[intervenes]

ADV BARRIE: Chair, that is actually paragraph 8.

CHAIRPERSON: Paragraph 8?

10 **ADV BARRIE:** [No audible reply]

CHAIRPERSON: Okay.

“Subsequently, I was transferred to the Office
of the Chairman on 11 April 2015...”

And then paragraph 9:

“I was appointed Group Company Secretary on
1 October 2015 and held this position until
27 July 2017 when the current Interim Board of
Eskom accepted my resignation as Company
Secretary.

20 The duties of the Company Secretary are set
out in Section 8(8)(?) of the Companies Act...”

MR KOKO: Yes.

CHAIRPERSON: Yes?

MR KOKO: Chair, I also have brought in the minutes
...[intervenes]

CHAIRPERSON: H'm?

MR KOKO: ...of the board ...[intervenes]

CHAIRPERSON: H'm?

MR KOKO: ...of the 22nd of July 2015, two days after I came back. You have to look at them.

CHAIRPERSON: Yes. But let...

MR KOKO: So ...[intervenes]

CHAIRPERSON: Do you want to make whatever point you want to make with regard these two?

10 **MR KOKO:** Yes. That minute – those minutes adds up to that lie.

CHAIRPERSON: Yes.

MR KOKO: Yes.

CHAIRPERSON: And I guess your point must be that she did not hold the position that she says she held at that time?

MR KOKO: She... The only reason she comes to you and say: Mr Koko was my supervisor on... is because she tried to create a distance. She is trying to say that I was not in
20 the chairman's office. I could not have given Mr Koko an email address of Dr Ngubane and I could not have had access to it.

CHAIRPERSON: H'm, h'm.

MR KOKO: That is all what she is trying to do.

CHAIRPERSON: And you say she was still in the Office of

the Chair ...[intervenes]

MR KOKO: Chair, I want you to look at the minutes.

CHAIRPERSON: Yes.

MR KOKO: Mr Barrie, can you give the Chair the minutes, please?

ADV BARRIE: I have three, four copies here, Mr Chairman, of the minutes of the Special Eskom Board Meeting held on 22nd July 2015.

CHAIRPERSON: Okay. The registrar will take those. We
10 do not have them in the bundles?

ADV BARRIE: Not as far as I am aware, Chair.

CHAIRPERSON: H'm. Okay. Give us - another copy too to Mr Seleka.

REGISTRAR: [No audible reply]

MR KOKO: Chair, what you have in front of you is the minutes of the board two days after I returned to Eskom after my suspension.

CHAIRPERSON: H'm?

MR KOKO: Dated 22nd July 2015. And the first page is
20 people who attended the meeting. At the top is the board members, in the middle is the officials. You will see at that point Mr Phukubje was the Company Secretary and at the bottom are the people in attendance.

CHAIRPERSON: H'm?

MR KOKO: You will see Ms Daniels' name is there as the

Office of the Chairman.

CHAIRPERSON: H'm, h'm.

MR KOKO: So she has come to you to lie to you. Why did she come to you to lie? I do not know.

CHAIRPERSON: H'm.

MR KOKO: I cannot explain why she came to lie to you. And so ...[intervenes]

CHAIRPERSON: So you are saying when you go to Bundle 8(a), page 6, paragraph 8, she says she was
10 transferred to the Office of the Chairman on 11 April 2015.

MR KOKO: That is correct.

CHAIRPERSON: And then on paragraph 9, she says she was appointed as Company Secretary on 1 October 2015, which suggests an acceptance that in July 2015, she was still in the Office of the Chairperson.

MR KOKO: Correct.

CHAIRPERSON: And you are saying the minutes of the meeting of the board of the 22nd of July 2015, reflects her as her having been in attendance as somebody from the
20 Chairperson's Office.

MR KOKO: Correct.

CHAIRPERSON: Therefore, to the extent that she says in July 2015, you were her direct supervisor. You say that cannot be true?

MR KOKO: I am saying it is false.

CHAIRPERSON: Ja, okay.

MR KOKO: Now the question is why? Why? I do not know. The only reason she does, I can – I – you – the last(?)... proposition... The only proposition I can think that she wants to make – to come across as a star witness to you and present it to me in a bad light. And the only way, Chairman, the only way Ms Susanne Daniels has been caught with this lie is when I present documentary evidence. That is the only time.

10 If I did not have the documentary evidence, I would be the one looking like a lie. The very existence of the infoportal address, I was the first one to link her to it. I said to my lawyers: You know, what Mr Barrie? This is – this I got it from Ms Daniels. She denied it until Eskom went to check its computers. So she lied. Why, I do not know. She...

 So I am saying to you, she is also lying when she says she did not print the document to have meetings with Dr Ngubane. She is lying. Why is she lying? She is
20 just intended in trying to get rid of it and create an impression that I am a bad person and she is a good person. And she did not know at the time.

CHAIRPERSON: And you say, as long as she was in the Office of the Chairperson, then it is clearly understandable why she would perform the duty of printing those

documents and giving them to Dr Ngubane?

MR KOKO: Most certainly. Yes.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Koko, I might come back to Ms Susanne Daniels in due course but let me try to exhaust the issue of Dr Ngubane. Dr Ngubane has denied your version. You have commented on his version but you have commented, not in relation to his version, you have commented in relation to him saying the emails – the
10 email, infoportal was of Richard Seleke. But you have not said anything about his denial that that email is his because even the version that it is an email of Richard Seleke, shows that it is not his email. So what is ...[intervenes]

CHAIRPERSON: Can I ask you not to forget your question?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Please, do not forget it.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But I want to say. Was Dr Ngubane asked the question? If he accepted, when he was on the witness stand, that in August or September, when he used that infoportal address, because that is my understanding. If Mr Richard Seleke was not the DG of the Department of Public Enterprises at that time, who would he have been

intending to communicate with? Because on his version, it could not have been Mr Seleke as DG.

ADV SELEKA SC: Yes.

CHAIRPERSON: And it may well be that it may have been Mr Seleke in another capacity but it could not have been him as DG. But the only connection he made with Mr Seleka was that he believed he was DG and that was shown not to be true.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Was that canvassed? And if so, what was his understanding, his response?

ADV SELEKA SC: Chair, we did put to him what the disciplinary – what was found at the disciplinary hearing, that most probably the email belongs to – the email address belongs to ...[intervenes]

CHAIRPERSON: H'm.

ADV SELEKA SC: And he said he did not do what, inquiry or research, so he just accepted...

MR KOKO: That is all what he did.

20 **ADV SELEKA SC:** He just left it like that.

MR KOKO: I watched it.

CHAIRPERSON: Hang on, Mr Koko.

ADV SELEKA SC: Ja, so ...[intervenes]

CHAIRPERSON: Because there must have been somebody intended to communicate with him.

ADV SELEKA SC: Yes.

CHAIRPERSON: And it could not have been Mr Seleka as DG and if he had intended to communicate with Mr Seleka as an individual he would have told me so then. So the question would still remain, who were you intending to communicate with because it could not be Mr Seleka as the first DG. So it may well be that he needs to be asked further questions around that.

ADV SELEKA SC: Ja, we could do that, Chair, but if you
10 pull the transcript you will see we actually canvassed quite extensively.

CHAIRPERSON: Well, if it was canvassed, it is fine, you must just draw my attention to exactly...

ADV SELEKA SC: Okay.

CHAIRPERSON: Because I am interested in finding out what his final answer was.

ADV SELEKA SC: Yes.

CHAIRPERSON: You know, if he says I was
communicating with DG, Mr Seleka and show that at that
20 time Mr Seleka was not DG.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then he needs to say who was he really talking to.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Okay.

MR KOKO: Chair, just another point that I have to mention with relation to Ms Daniels. I gave your legal team emails last time where Ms Daniels talks to me in emails and blind copies Infoportal address. Now under what conditions do you blind copy somebody? You blind copy somebody because you do not want the primary recipient to know that you are talking to him but you also blind copy the primary recipient because you know who they are talking to.

10 **CHAIRPERSON:** Do we have those in the bundle?

MR KOKO: I gave it to your team.

CHAIRPERSON: I am just asking Mr Seleka.

ADV SELEKA SC: No. Chair, I am asking – well, I personally did not receive the emails so I am asking my junior whether he received such emails. She does not have a recollection, Mr Koko.

CHAIRPERSON: Okay, will she check and then later this afternoon let us get an answer because ...[intervenes]

MR KOKO: I can tell you my ...[intervenes]

20 **CHAIRPERSON:** ...I am very interested in those emails.

MR KOKO: I can tell you my counsel has it, it is his prerogative.

CHAIRPERSON: Ja. Okay, if those – that those can be made available later on.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But I think it is important for your junior to check if you have got them.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because the point that Mr Koko makes with regard to Ms Daniels could be very important.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Okay, alright, let us continue.

MR KOKO: And here deny on both Dr Ngubane and ...[intervenes]

10 **CHAIRPERSON:** Ms Daniels' part.

MR KOKO: Do not cut it. They are just being dishonest. I made a point to you the last time that every time we go into Dr Ngubane's office the documents would have been printed and placed there and all what I would say to him, that I sent these documents, they are my documents, Ms Daniels has printed them. At no stage do they confront with Dr Ngubane that is this your email address? I have never done that, I took Ms Daniels at her word and I had no reason to doubt her. So to the extent that Dr Ngubane
20 says it is not her address, it makes sense, I cannot quibble with that, because I have not confronted ...[intervenes]

ADV SELEKA SC: You mean it is not his address?

MR KOKO: It is not his address, ja.

CHAIRPERSON: Yes, yes.

MR KOKO: But the stuff that I take strong exceptions to

is the denial that we had the meetings.

CHAIRPERSON: Those meetings.

MR KOKO: Those meetings. That part I think if there is any form of dishonesty on both – two of them, it is exactly that.

CHAIRPERSON: Okay, alright. Sorry?

ADV BARRIE SC: Mr Chairman, so speaking on recollection only, so my learned friend is satisfied, is this is contained in the disciplinary proceedings of Ms Daniels
10 before Eskom in the bundles that we received from the Commission, but I cannot give you the page number right now.

CHAIRPERSON: You mean the emails that Mr Koko is talking about?

ADV BARRIE SC: The emails that Mr Koko is talking about.

CHAIRPERSON: Okay, alright.

ADV BARRIE SC: That is as far I covered, we received it from the Commission but that is my recollection.

20 **MR KOKO:** Chair, that is correct, they are in a bundle, a disciplinary bundle that I have got from Bowman Gilfillan for my hearing.

CHAIRPERSON: Yes.

MR KOKO: And if they are not available I can tell you before you go to bed tonight your lawyers will have it. I

will make you get them.

CHAIRPERSON: Okay, alright. Please, if we do not have them ready in the bundles, ask Mr Koko to make sure they are sent to you because they may be very important. Okay, alright.

ADV SELEKA SC: Yes. No, correct, Chair.

ADV BARRIE SC: It is SM6 to an affidavit of a Mr Shaun Michael Morrow which was filed in the proceedings of Ms Daniels and that we received from the – and it is described
10 as being an email date 28 August 2016, 17.09 and emailed from Suzanne Daniels to Matshela Koko and Ayanda Mthetha and Marumo Lekoto:

“Re: Fourth addendum to the coal supply agreement between Eskom Holdings SOC Limited and Koornfontein Mines (Pty) Ltd.”

Sorry, I missed the most important part which says:

“And blind copying Infoportal@zoho.com.”

So...

CHAIRPERSON: Okay, alright. You have got the
20 references.

ADV BARRIE SC: 28 August 2016.

ADV SELEKA SC: Yes. I think that will be in Mr Mabuza's file who testified in phase one, Chair.

CHAIRPERSON: Okay, will somebody check?

ADV SELEKA SC: I will – we will, Chair.

CHAIRPERSON: Of course everything that happened in phase one is relevant.

ADV SELEKA SC: Yes.

CHAIRPERSON: It is important that what is being dealt with now gets connected with what may have been testified about in phase one. Okay, alright.

ADV SELEKA SC: So – ja, thank you. So Mr ...[intervenes]

CHAIRPERSON: Well, it might – to the extent that it
10 might be convenient if, Mr Koko, you sent them sometime this evening, I think do so, just in case it might be convenient.

MR KOKO: Certainly, Chair.

CHAIRPERSON: Ja. Okay, alright.

ADV SELEKA SC: So the email explicitly says blind copying Infoportal.

MR KOKO: Exactly.

ADV SELEKA SC: Did you – well, ask her who is this Infoportal?

20 **MR KOKO:** No, Chair, I got them as part of my disciplinary bundle.

ADV SELEKA SC: Oh.

MR KOKO: And to be honest with you, Chair, I did not look into those in detail then. The only time we had a – in fact it was not even me, it was my counsel who looked at

them, was when we were preparing to come here.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: So to the extent that Dr Ngubane says this is not my email address, you say you cannot quibble with him but you say you quibble with him insofar as he says you did not have meetings after you had sent the email to Infoportal.

MR KOKO: That is correct, Chair.

ADV SELEKA SC: Ja. Okay, so we bear in mind that we
10 have established that Infoportal will be an email address of somebody outside of Eskom.

MR KOKO: Chairman, I dealt with this topic the last time.

ADV SELEKA SC: Yes.

MR KOKO: And I said given what I know now, I think it is beyond ...[intervenes]

CHAIRPERSON: Doubt.

MR KOKO: Doubt that it is not an internal Eskom address.

CHAIRPERSON: Ja, ja.

20 **ADV SELEKA SC:** Yes, because ...[intervenes]

CHAIRPERSON: Mr Seleka, just remind me and Mr Koko may also assist because he listens to some of the witnesses testifying in regard to Eskom. Do we have a situation with reference to this Infoportal address that Ms Daniels said she got it from Dr Ngubane and when Dr

Ngubane was asked he said no, it was given to – he was told about it by Ms Daniels.

ADV SELEKA SC: Yes.

CHAIRPERSON: And now Mr Koko also used it. He says it was given to him by Ms Daniels as Dr Ngubane's email – personal email address and Dr Ngubane denies it.

ADV SELEKA SC: Yes.

CHAIRPERSON: is that what we have?

ADV SELEKA SC: We have exactly that, Chair.

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: That is correct, Dr Ngubane says no, given to me by Suzanne Daniels.

CHAIRPERSON: Ja.

ADV SELEKA SC: Suzanne Daniels says given to me by Dr Ngubane.

CHAIRPERSON: Yes.

ADV SELEKA SC: And they both say the one told the other that is Mr Richard Seleka's email address.

20 **CHAIRPERSON:** Yes, ja. And Richard Seleka was not DG.

ADV SELEKA SC: He was not DG.

CHAIRPERSON: Until much – until December in 2015.

ADV SELEKA SC: 2015, yes.

CHAIRPERSON: Ja, okay. No, I just wanted to try and understand where we are with who says what.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay, thank you. You can continue.

ADV SELEKA SC: Yes so insofar as the meetings are concerned that is where you say you part ways with him.

MR KOKO: Correct.

ADV SELEKA SC: Correct. Now to the extent – now there is a big question mark, because if now we know the email address belongs to somebody else and they deny having meetings with you, it leaves a big question mark as
10 to whether you were in fact having meetings with them after exchanging these documents with Infoportal.

MR KOKO: Well, there is no question mark, Chair, I had meetings with Dr Ngubane and I had meetings in the presence of Ms Daniels and to the extent that they deny it, they have just been, for the umpteenth time, misleading you once again.

ADV SELEKA SC: And then lastly because you will see again that question mark I am talking about. If you go to page 1087 – well, we did traverse this but I want to just
20 finalise this and move on. Eskom bundle 18, Chairperson, (b) back to the emails, page 1087, Mr Koko.

CHAIRPERSON: Page 10..?

ADV SELEKA SC: 1087.

CHAIRPERSON: Okay.

ADV SELEKA SC: We might have touched on this, but

quickly on it again. So ...[intervenes]

CHAIRPERSON: Ja, I think we dealt with it.

ADV SELEKA SC: Ja, ja. So here again, which seems to give credence – and I say seems to give credence so that I give you the opportunity to deal with it, their denial. It is an email from Businessman to yourself of a two pager ...[intervenes]

CHAIRPERSON: Well, we definitely dealt with it I think quite at length, Mr Seleka, I do not know if you want to
10 repeat. He dealt with it, I remember, and you must tell me, Mr Koko, if my recollection is correct. My recollection is that this is the email in respect of which in response to one of my questions you said when one looks at the topics or the issues that are being dealt with ...[intervenes]

MR KOKO: Cannot come from the Chair.

CHAIRPERSON: It is not the – it could not come from the Chairperson.

MR KOKO: Cannot come from the Chairperson.

ADV SELEKA SC: Yes. Yes, no ...[intervenes]

20 **CHAIRPERSON:** Ja, Unless there is something else you want to – but we dealt with it.

ADV SELEKA SC: Insofar – that is fine, Mr Koko, but just in terms of their denials that you forwarded it to Ms Daniels. So you did not send it back to Infoportal, you sent it to Ms Daniels which seems to suggest that you

understand the distinction between Infoportal and Ms Suzanne Daniels.

MR KOKO: Not at all, I think Mr Seleka is mistaken.
Chair ...[intervenes]

ADV SELEKA SC: Do not be personal, Sir, because I do not want to be personal with you.

CHAIRPERSON: Okay, I am sorry, what did you say, Mr Koko?

MR KOKO: I think it is a mistaken view.

10 **ADV SELEKA SC:** He says Mr Seleka is mistaken, Chair.

CHAIRPERSON: Oh, ja. No, but if he says you are mistaken, it cannot be personal.

MR KOKO: I am surprised, Chair.

CHAIRPERSON: Yes.

MR KOKO: But it is surprising.

ADV SELEKA SC: Chair, I do not do that with him.

CHAIRPERSON: H'm?

ADV SELEKA SC: I do not do that with him.

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

20 **MR KOKO:** I apologise, Mr Seleka.

CHAIRPERSON: But hang on, I want to understand because if there is something he said which he should not say I would like to know and if you say something that he has a problem with I would like to know. So he said you are mistaken.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And you did not think that was the right thing to say.

ADV SELEKA SC: No, Chair, because all I am saying to him is he does not reply to Infoportal, he forwards the email to Ms Daniels. That is on the face of the email exchange.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes, so he can comment on it without
10 saying I am mistaken. What is my mistake?

CHAIRPERSON: Well, I do not know but I would think he must be saying that the proposition you are putting to him...

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that is where you are maybe making a mistake in terms of what you say.

MR KOKO: That is what I am saying, Chair.

ADV SELEKA SC: Which is ...[intervenes]

CHAIRPERSON: In other words, you may be suggesting
20 something to him and he is saying you are making a mistake in making that suggestion on the basis that there is not a proper basis for it. That would be my understanding.

ADV SELEKA SC: Fine, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: The proposition I put to him is that it suggests on the face of this that he understands there is a distinction between Infoportal and Ms Daniels. Yes.

CHAIRPERSON: Yes, do you want to say why you say it makes that suggestion?

ADV SELEKA SC: Chairperson?

CHAIRPERSON: Do you want to indicate to him what the basis is for saying that it suggests that he knows the distinction between Ms Daniels and Infoportal?

10 **ADV SELEKA SC:** Yes because ...[intervenes]

CHAIRPERSON: So that when he responds he can deal the basis as well.

ADV SELEKA SC: Yes, I have laid it, Chair, which is, if Ms Daniels is Businessman and is the one sending this email to him then you reply to Ms Daniels. You do not forward it to Ms Daniels, which is a different email address. That is the basis.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Mr Koko?

MR KOKO: So here is why I am saying the proposition is mistaken, I have said at all material times that this email address was given to me by Ms Daniels for the purpose of communicating to the Chairman. So I am communicating to the Chairman. I received this email from the Chairman and

I forwarded it to Ms Daniels.

But secondly – and we will get to this Chair, and I hope we will do so today when we get to the guarantee. Contrary to what people may want to suggest to you, the motivation for the guarantee was put together by the Eskom Treasurer who is the delegated person to do so. It was not done by the third party.

CHAIRPERSON: But let us hold on – oh, it does refer to the guarantee, that is why you refer to the guarantee.

10 **MR KOKO:** It is a guarantee document.

CHAIRPERSON: Ja. Does that answer your question, Mr Seleka?

ADV SELEKA SC: No, Chair, my question is not answered.

CHAIRPERSON: Okay.

ADV SELEKA SC: You have not answered the question, Mr Koko, on the basis that I put to you, that you did not reply to Infoportal or Businessman saying what is this about? You forwarded the email to a different email
20 address, to a different person, Ms Suzanne Daniels, which suggests that you would have known the distinction between Infoportal and Ms Daniels. What do you say about that?

MR KOKO: Chairman, I really do not understand because at no stage did I say in the records of this Commission that

Infoportal address belongs to Ms Daniels. So from day one there has been a distinction between Ms Daniels and Infoportal address. So I do not know what else can I say. I cannot say anything further than that.

CHAIRPERSON: So your version is that Ms Daniels gave you this Infoportal email address and said it is Dr Ngubane's personal email address.

MR KOKO: That is correct.

CHAIRPERSON: You may communicate with him.

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

CHAIRPERSON: And you say that on the face of that version whatever document or email you received from Infoportal, as far as you were concerned you thought it came from Dr Ngubane.

MR KOKO: That is correct, Chair.

CHAIRPERSON: Okay. And your version is that you would send the documents to Dr Ngubane for discussion afterwards.

MR KOKO: That is correct.

20 **CHAIRPERSON:** Is that right?

MR KOKO: Yes.

CHAIRPERSON: Now the question that may arise is whether you would send the documents directly to Dr Ngubane or whether you would send them to Ms Daniels to pass on to Dr Ngubane.

MR KOKO: Yes, Chair, so the testimony of Ms Daniels in this Commission is that she had access to private emails address of Dr Ngubane and not the official Eskom email address of Dr Ngubane, so I knew. That is why when you see my emails I say pin this, give this to the boss because I know who is printing them, who is having access to it.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes, Chairperson, this is exactly where I am going with this.

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Because Mr Koko's version has been very elastic on this and very hard to comprehend. So you have said to us, Mr Koko, firstly – at 7.02 you said Businessman is Ms Daniels, that is what you said.

Number two, you have said Ms Daniels have access to these emails and she will print out the documents before meetings with the Chairperson. Now I am asking you, if that is the version you have put, why not reply to Businessman because Businessman, Ms Suzanne Daniels
20 or Dr Ngubane will get the document. Why forward it to Suzanne Daniels?

MR KOKO: Because I knew there was a difference with Ms Daniels and the owner of the Infoportal address whom I identified as the Chair. So that is the only reason. I knew who is Infoportal and I knew who is Ms Daniels.

CHAIRPERSON: Of course on your version you did not know who Infoportal was or who was behind the email address but you believed what you had been told.

MR KOKO: Oh, yes, I...

CHAIRPERSON: You believed, which you now accept was not true.

MR KOKO: You are correct, Chair.

CHAIRPERSON: Ja. But still would the question arise, Mr Koko, that to the extent that at any one time where you
10 could be dealing with a document which you had received from Businessman from the Infoportal address, you would not sent it back to Infoportal address, you would, if you wanted to discuss it, you would just send an email to say let us discuss that document. You would send only documents which come from you or documents that you believed Dr Ngubane did not have.

MR KOKO: That is correct and that is not what I did.

CHAIRPERSON: That is not correct, ja.

MR KOKO: And that is not what I did.

20 **CHAIRPERSON:** Okay, Mr Seleka?

ADV SELEKA SC: Chair, I think I have asked the question, I want to move on.

CHAIRPERSON: Ja, well ...[intervenes]

ADV SELEKA SC: To a different...

CHAIRPERSON: Yes, that is fine, you can move on. Your

demeanour is that of somebody who is not ...[intervenes]

ADV SELEKA SC: Hundred percent...

CHAIRPERSON: If you want to – it is up to you, you can deal with it later if you want to but if there is still something you want to explore you can explore.

ADV SELEKA SC: Ja, well...

CHAIRPERSON: Or you can move on and if need be, come back.

ADV SELEKA SC: Yes. Mr Koko, I would like us to – I
10 will move on because I know we will not take a lot of time.
Let us look at the McKinsey ...[intervenes]

CHAIRPERSON: Well, I am sorry, Mr Seleka.

ADV SELEKA SC: Yes. Chair.

CHAIRPERSON: You are moving away I think from the emails, is that right.

ADV SELEKA SC: It will be exactly that, Chair.

CHAIRPERSON: Ja. Of course, Mr Koko, if you look at the email or emails on page 1088, in the page after the one we were dealing with, you have there on 3 January 2016 an
20 email from you to reception@benstonebarley.com and then you have an email below that one from Businessman, the Infoportal address, on the 3 January 2016 and the subject is Visa for Travel. I would imagine – and maybe we did ask you this before and maybe I have forgotten, I would imagine that Dr Ngubane would have nothing to do with

these arrangements for your visas and your family's visas?

MR KOKO: Chairman, it was very strange later when I realised about this. Then I just looked at the visa and I printed it. I did testify here the last time, if you check my transcript, that when I came back I discussed it with Ms Daniels, I said but it is strange that my visas came from Dr Ngubane and all what she said – and maybe it was my fault at that time I did not dig deeper, but it was for convenient, that is what she told me. That I remember. I did not ask
10 her further, maybe it is my fault that I did not ask her further.

CHAIRPERSON: Okay, Mr Seleka? I just thought I would raise that.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think we did discuss it last time.

ADV SELEKA SC: Ja. Chair, I should point out we have shared the affidavit of the travel agent which we received recently with Mr Koko. I think I have in mind the intention to give him the opportunity to have a look at that and he
20 can tell me if he is willing to answer questions relevant to that travel agent's affidavit which is now obtained by the Commission as opposed to the one which was given to the Commission by the Hawks.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Alright.

ADV SELEKA SC: It deals with this issue.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Mr Koko, that the Chairperson asking this question, I thought I could complete my question on the email of the 10 December 2015 with the guarantee. On your version you would have had a meeting again with Dr Ngubane.

MR KOKO: Come again?

10 **ADV SELEKA SC:** On your version you would have had a meeting again with Dr Ngubane and Ms Suzanne Daniels after this meeting, after this email, I beg your pardon, 10 December 2015.

CHAIRPERSON: That is the email at page 1087?

ADV SELEKA SC: Yes.

MR KOKO: Chair, I am going to invite Mr Seleka to go back to the transcripts. We have discussed this before.

ADV SELEKA SC: Yes.

20 **MR KOKO:** And we did not have a meeting with Dr Ngubane after this. What I have told you the last time is that I, when I received this in the morning, I phoned Ms Daniels, I said I have – I see there is a document from the Chairman dealing with prepayment, I am going to send it to you shortly and you will see, if you check my telephone records and the time when they correspond, look at it and

tell me if we need to see the Chairman about it. At lunchtime I met Ms Daniels and we discussed this again and she said no, do not worry, we do not need to see the Chairman, it is has been dealt with, it is in hand. That is my testimony. It is not my version that we have met with Dr Ngubane after this.

CHAIRPERSON: Okay, alright.

MR KOKO: We have discussed this in detail the last time.

ADV SELEKA SC: Okay.

10 **CHAIRPERSON**: Okay.

ADV SELEKA SC: Because Dr Ngubane is on record as saying that the board did not even know about a guarantee because it did not come back to the board.

MR KOKO: I accept the version of the board when they say they did not know about the guarantee. It is my version too and it makes sense looking at the documents how the guarantee came about, that the board would not have known.

ADV SELEKA SC: But does this email not indicate
20 knowledge on your part of ...[intervenes]

CHAIRPERSON: Or maybe, Mr Seleka, ask this question.

ADV SELEKA SC: Yes.

CHAIRPERSON: When you say you accept that the board did not know, I seem to think that you exclude Dr Ngubane from there.

MR KOKO: Chair ...[intervenes]

CHAIRPERSON: Or when you say the board do you include him?

MR KOKO: I include Dr Ngubane.

CHAIRPERSON: Oh, okay.

MR KOKO: No, I am including Dr Ngubane.

CHAIRPERSON: Okay, okay. But of course, if this came from him, as far as you were concerned ...[intervenes]

MR KOKO: He should have known.

10 **CHAIRPERSON:** Then he should know.

MR KOKO: He should know, yes.

CHAIRPERSON: Yes.

MR KOKO: Yes.

CHAIRPERSON: But that is why I expected you to say when I say I accept that the board did not know I am excluding Dr Ngubane.

MR KOKO: No, no, no, Chairman, I have the benefit of the evidence that has been led here.

CHAIRPERSON: Yes, yes.

20 **MR KOKO:** I cannot be that stupid.

CHAIRPERSON: Yes, also so okay, alright, so you go back to basically I think what you mean is knowing now that this email address was not Dr Ngubane's one in terms of now you accept that this did not come from him, but at that time you thought it came from him.

MR KOKO: Yes, yes.

CHAIRPERSON: Ja, okay, alright.

MR KOKO: But Chair we have dealt with this and I also said to you the level of detail in this email it's unlikely to have come from Dr Ngubane.

CHAIRPERSON: Ja, you did say that ja, you did say that Mr Seleka?

MR KOKO: Thank you Chair.

ADV SELEKA SC: Doesn't it also indicate that you would
10 have become aware of the steps taken to bring about a guarantee of R1.68billion?

MR KOKO: No, not at all, I did not apply my mind to it, I did not read it, I forwarded it to Ms Daniels and that's all. The prepayment, Chair, once again was done, and if you want me to take you to the document, I will do so, was done by Ms Caroline Henry as a Treasurer, I have never spoken with Ms Caroline Henry of Eskom unless it is a suggestion of people out there that Ms Caroline Henry who was the Eskom Treasurer was also captured but it's not
20 what I'm hearing.

ADV SELEKA SC: But I was asking a different questions, that doesn't this email, upon you receiving it and looking at it, calling Ms Daniels about it because you would call her about something you have read, doesn't it show knowledge on your part, of the genesis of the guarantee of

R1.68billion?

MR KOKO: No, no it doesn't I don't know the genesis of the R1.6billion, the email I forwarded to – I do not even know the content of it Chair, other than to read a pre-payment into it, that's all. When I saw this email, I read a pre-payment into it, that's all, I saw pre-payment. As a matter of fact, and I may sound stupid, I could not even – even today, well today I can because I read the documents, distinguish – see I could not even think that it is clever to
 10 be a guarantee than a pre-payment. If I thought it's clever to do a pre-payment – a guarantee I would have done a guarantee but in hindsight I look back I says – I actually wanted to give the supplier R1.6billion upfront, you know, it does not sound clever I could have just given the man guarantee that Eskom doesn't pre-pay the money, I did not even make that connection, but it makes sense why. Because within Eskom the guarantee is the domain and authority of Treasury and Finance, not on operations and engineering. If you ask me more details about how this –
 20 even now when I read this document, I get lost, I just read and stop looking at it.

ADV SELEKA SC: I'll will tell you, your transcript Mr Koko, my recollection of your evidence in part was that you were wondering why the guarantee because the Board had agreed on a pre-payment...[intervenes].

MR KOKO: That's correct, Chair.

ADV SELEKA SC: Yes – so, but now you want to explain it in such a way that you express surprise and non-knowledge of the guarantee?

MR KOKO: That's correct Chair.

ADV SELEKA SC: There is some distinction there from your previous evidence from the one you now seek to make.

MR KOKO: No, Chair, all I'm saying to you in my affidavit
10 is that – remember now I'm taking you back to the user story. In this case I am the user, in this case I need to lock coal of 12 months supply and I want to enable it with a pre-payment and so I am the user and I go to the Board and I motivate to the Board and the Board see my reasoning, they agree on a pre-payment. At no stage did I talk to the Board about guarantee, I was out of depth there, it's out of my space, I can't even pretend that I know what's going on there. The CFO – the FD delegated to execute, and his team looks at it and says, but Mr Koko is
20 mad, instead of paying the money, let us do a guarantee but at no stage did the Board see a document that I've presented to the Board as a user talking about a guarantee, they did not, and we can't pretend they've done that they did not. The guarantee arose out of Eskom Treasury and FD and the mine to protect Eskom and in

hindsight and reading what I read, I feel stupid that I almost got Eskom to pay R1.6billion upfront but I'm glad that the FD of Eskom and the Eskom Treasurer had the presence of mind to realise that guarantee is far better than R1.6billion and I'm grateful to them and I'm thankful. If I meet them one day, I'll thank them.

ADV SELEKA SC: Ja, we'll come to the reasons why the pre-payment was even a suggestion, but I just want to follow this line. If you may go to – turn to the McKinsey, 10 just turn attention to McKinsey. I have a question arising from – and we'll go to the files, just a question arising from what you said this morning that there was – now I'm talking the Master Service Agreement, service level agreement, that it was wrong to appoint McKinsey on a risk basis.

MR KOKO: That's right.

ADV SELEKA SC: It was wrong to appoint McKinsey on a risk basis.

MR KOKO: Correct.

ADV SELEKA SC: They needed Treasury approval.

20 **MR KOKO:** Correct.

ADV SELEKA SC: And they didn't get it.

MR KOKO: Correct.

ADV SELEKA SC: So, we can park that aside, the MSA, I don't have to go into the details of it?

MR KOKO: Oh, no I for once agree with the evidence

leader.

ADV SELEKA SC: Ja, we're taking away three hours of time Chair.

MR KOKO: For once I – there was no approval from Treasury for the deviations. The only problem, Chair, is that I will not move from this and of course your word is final and accepted, is the evidence of Ms Mothepu.

ADV SELEKA SC: Oh, ja I can ask you about that.

MR KOKO: The evidence of Ms Mothepu we have to deal
10 with it because if left undiscussed, it's not damaging to me and yet it's false.

CHAIRPERSON: No, it will be discussed. It's important that you get the opportunity to deal with all evidence that may be put to you in a light that you say is not correct.

ADV SELEKA SC: Yes, thank you Chair. Ja, Mr Mothepu – well just before I move to Ms Mothepu, so the Executives who took part in the steps towards the conclusion of that MSA, what do you say about their conduct? Well, I'm asking that because you are one of them.

20 **MR KOKO:** What was my conduct about the MSA, Chair?

ADV SELEKA SC: On the 2nd of September 2015, Mr Prish Govender sends an email to you.

MR KOKO: Correct.

ADV SELEKA SC: And he has a draft in which he specifies that the PFMA requirement is required.

MR KOKO: Correct.

ADV SELEKA SC: Ja, but before that you had sent an email asking for an update, what are the – we must get the email.

MR KOKO: “What is the update colleagues”.

ADV SELEKA SC: You were asking...[intervenes].

MR KOKO: “What is the progress colleagues”, I think I used.

ADV SELEKA SC: Ja something like that, and what needs
10 to be tied up. What things needs to be tied up in that email, but you’ll recall that email I’ll get it now.

MR KOKO: Yes, lease get it, but I know that email, I think it was sent on the 3rd of September, Chair.

ADV SELEKA SC: Ja, so the – Mr Koko’s email.

MR KOKO: Yes, the email will probably say -what is the thing there, colleagues, the one-liner?

ADV SELEKA SC: But what it shows, Mr Koko, and I want to take you in due course, when I deal with Ms Mothepu’s evidence to a whole range of emails exchanged with you
20 from McKinsey. So, I just want to know, and you will know the level to which you were involved in this. The question is, what is your view about the conduct of the Executives who were ensuring that this agreement gets to be concluded and it gets to be concluded without a PFMA requirement, when that aspect was drawn to their attention

prior to the conclusion of the agreement?

MR KOKO: Chairman, I will not comment about the conduct of the Executives and there's a simple reason for that, it's because I don't believe that the Commission investigators have done their job and I'm saying this straight in your face, in the investigations in this. I think they've been chasing people where they're chasing people but what I can tell you now is that it was not right for Eskom to contract or even sign a letter of award on the
10 17th of December 2015 without National Treasury's approval, that part, is not right. What is my comment on the conduct of people, I don't have the investigations all that I've seen is the focus on me? I've not seen documents dealing with investigations about who did what and why so I cannot...[intervenes].

CHAIRPERSON: I want you to hold on there because I didn't hear Mr Seleka's question and that's not his fault because my mind is ill with the emails that we have dealt with and I want to go back to them because if I don't, I'm
20 going to forget, Mr Koko, so I'm just going back to the emails then maybe after that, then you can repeat your question, then I can follow. I wanted to say, Mr Koko, with regard to these two emails that we were discussing earlier, the one of 10 December 2015 from Businessman to you and then you forwarded that to Ms Daniels and the one of 3

January 2016 from Businessman to you. This one of 10 December 2015, the one with issues that you would expect the Chairperson to deal with, did you ever raise that issue with the Chairperson to say, why do I receive this email from you, Chairperson, because you will not deal with these types of issues?

MR KOKO: Chairman, you remember I said to you previously, that I did not read the email there.

CHAIRPERSON: Ja I remember that I mean later.

10 **MR KOKO:** So, I did not appreciate the level of detail that went into this email.

CHAIRPERSON: H'm.

MR KOKO: Only now I'm reflecting of the level of detail and I had no other opportunity to meet Dr Ngubane, and this is true, since he left Eskom. I've never met him, I came to know about this email after he left Eskom, so I never knew about it before.

CHAIRPERSON: H'm.

MR KOKO: The one that I knew of – that I came to know
20 of was the ...[intervenes].

CHAIRPERSON: The 3 January...[intervenes].

MR KOKO: The 3 January which I talked to Ms Daniels about and that's when I – that's where I say, maybe I should have asked deeper, probed deeper or even gone and talked to the Chairman.

CHAIRPERSON: H'm.

MR KOKO: And I didn't do.

CHAIRPERSON: H'm, ja because that part is a little concerning to me because at some stage I take it, you would have become aware of these issues that are in this one of the 10th of December even if you didn't look at them closely upon receiving it but I would have thought that, at some stage you would have become aware in which case at that stage, one would expect you to say, no this can't be
10 coming from the Chairperson, let me find out what's going on.

MR KOKO: Actually, no Chair, the only time I became to appreciate the issues that arose out of this email was in February 2018, after Dr Ngubane had left and I've never met him since.

CHAIRPERSON: That would have been about three years later?

MR KOKO: Yes, yes.

CHAIRPERSON: And before that, you would not have had
20 occasion to go back to these issues?

MR KOKO: No, not at all.

CHAIRPERSON: H'm and then the one of 3 January – but you accept that if you had become aware...[intervenes].

MR KOKO: Of course, of course.

CHAIRPERSON: It would be expected of you to approach

him and say...[intervenes].

MR KOKO: Of course, of course.

CHAIRPERSON: Ja, what's going on?

MR KOKO: Of course, and if I was aware and I didn't do it that would be irrational.

CHAIRPERSON: Yes, and the one of 3 January you accept that – I think when you came back from the trip you say you approached, Ms Daniels?

MR KOKO: Correct.

10 **CHAIRPERSON:** Yes, and she just talked about convenience.

MR KOKO: Correct.

CHAIRPERSON: And you left it at that.

MR KOKO: Correct.

CHAIRPERSON: But you accept that you should have gone deeper to say but you told me that this email is that of Dr Ngubane, Dr Ngubane would have nothing to do with my – this was for my family, what is going on?

MR KOKO: Chairman, most certainly.

20 **CHAIRPERSON:** H'm.

MR KOKO: Most certainly, I accept that.

CHAIRPERSON: H'm okay, alright, Mr Seleka what was your question that was causing Mr Koko to say...[intervenes].

ADV SELEKA SC: Yes, I remember it Chair.

CHAIRPERSON: Ja, what was the question?

ADV SELEKA SC: The – it's just that as you ask these questions, Chair, there's questions arising from your questions.

CHAIRPERSON: Oh, so I'm the cause.

ADV SELEKA SC: Which is fine.

CHAIRPERSON: Are we still using – are we still using Bundle 18B?

ADV SELEKA SC: No, if we move away from those emails
10 we will have to go to a different bundle.

CHAIRPERSON: But, I mean, your question that we are talking about, does it arise from this Bundle, 18B?

ADV SELEKA SC: Yes, will relate to that.

CHAIRPERSON: Okay, alright, just repeat the question.

ADV SELEKA SC: And – Mr Koko there is another email here about online vending which we see in that list that you said – that Ms Daniels talks about, on the 20th of July she photocopied from your office. So, yes, by the way...[intervenes].

20 **MR KOKO:** She did not photocopy from my office Chair, it was her document, she took it with her.

CHAIRPERSON: H'm, let's go to the email first, the one about online vending, where it is.

ADV SELEKA SC: Yes, Chair, that's on page 1056, Eskom Bundle 18.

CHAIRPERSON: 1056?

ADV SELEKA SC: 1056.

CHAIRPERSON: Yes, the email is from Matshela Koko, Kokomm@eskom.co.za and it is addressed to infoportal@zoho.com it says,

10 “The subject, online vending and says, we did not finish our discussions about this transaction. We did discuss it last time, I see I made a note here, Mr Koko insisted he had this discussion with Dr Ngubane despite the fact that he accepted the info portal address belonged to an external party”.

MR KOKO: Yes, Chair we, Mr Ngubane and Ms Daniels, before the email I sent, we had a discussion about this and this is the email, this is the transaction that is mostly misunderstood and I hope – and I will follow Mr Seleka’s tune here and I hope that this is an opportunity to deal with it, yes.

CHAIRPERSON: Yes, okay what was your question about it?

20 **ADV SELEKA SC:** Ja, the question is, simply this, one, you don’t deny having a meeting with Ms Daniels in the morning of 20 July 2015, is that correct?

MR KOKO: Chair on the morning of the 2015 I have meetings with almost all my direct reports so I will not deny that I met Ms Daniels on that day, I will not deny, I met – I

made a point that I meet all my direct – and by the way, Ms Daniels was not my direct report on that day, but I will not deny having met her, she was very important to my work, that I will not deny having met her.

ADV SELEKA SC: Yes, you have said you got that list, I'm talking about, with the transactions, McKinsey being one of them, online vending being one of them, Duvha, three with the amounts you say you got it from her?

MR KOKO: Correct.

10 **ADV SELEKA SC:** She said it was your list.

MR KOKO: No, Chair, I got it from her and I can tell you now it was – even if I met Suzanne, and I don't deny meeting her on that day, in fact I'll be very surprised that I did not meet her on that day so for all intents and purposes you can proceed on the basis that I met, it's unlikely that I could not have met her, I just – so let's proceed on that basis, Chair.

CHAIRPERSON: Okay.

MR KOKO: That one pager that we're talking about, never
20 arose on that day, that one pager arose in the second half of October when I was about to leave my job as a Group Procurement Officer.

ADV SELEKA SC: Yes, and you know that she has given evidence by way of a supplementary submission, to the Parliament Portfolio Committee on this very aspect?

MR KOKO: Yes, I do.

ADV SELEKA SC: Ja, and her version was, you said the list is of transactions that your principals say you must focus on.

MR KOKO: She said that at the Parliament, I think she said it here too.

ADV SELEKA SC: And your comment on that?

MR KOKO: It's nonsense Chair, that I can tell you that's blatant nonsense.

10 **ADV SELEKA SC:** But you have admitted that the handwriting on that list is yours?

MR KOKO: That's correct, Chair.

ADV SELEKA SC: When she was here, last time around, she mentioned that....[intervenes].

CHAIRPERSON: Hang on Mr Seleka, you took us to the email at 1056 on online vending.

ADV SELEKA SC: Yes.

CHAIRPERSON: But you're now asking him about another document, is that right?

20 **ADV SELEKA SC:** Yes that's – which relates to that email Chair.

CHAIRPERSON: It relates to this email?

ADV SELEKA SC: Yes.

CHAIRPERSON: Where is that document, I remember from the discussion we had with, both Mr Koko last time

and Ms Daniels.

ADV SELEKA SC: Thank you Chair, sorry I see what Chair is saying, Chair we will have to go back to that Eskom Bundle 8 where we found that affidavit of Ms Daniels, I think it's (B), and go directly to page 1084.

CHAIRPERSON: I've got Bundle 8 page 1084, and that's Bundle 8 (B).

ADV SELEKA SC: That's correct.

CHAIRPERSON: The other one is (A).

10 **ADV SELEKA SC:** Is the Chair on the right page?

CHAIRPERSON: Okay.

ADV SELEKA SC: Page 1084, Chairperson.

CHAIRPERSON: Okay, I was getting – okay page 1084, I've got it.

ADV SELEKA SC: Yes, there is a string short their Chair.

CHAIRPERSON: Yes, I can see it, don't we have that document enlarges as per – I seem to remember we saw it enlarged somewhere.

ADV SELEKA SC: We do have it.

20 **CHAIRPERSON:** That would be – yes okay, continue.

ADV SELEKA SC: Yes, we'll find it, it must be in 8(A), I think. So, online vending, there you find it, I'm counting from the bottom, Comati, Laptop, Desktop, online vending, ...[indistinct] is there. Duvha 3 which is at the top, might also become relevant, so – but this online vending Mr

Koko, appears on this list which on....[intervenes].

CHAIRPERSON: I'm struggling to see it on this screenshot.

ADV SELEKA SC: We'll get there – I was reading from the bottom of the list Chair, first time around, comati replacement, laptop, desktop, and then online vending.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Alright, ja, maybe your junior can find
10 where we have the whole document because this is not
easy to – but you can continue on it if she gets it in the
meantime then we use the bigger one.

ADV SELEKA SC: Yes, so, Mr Koko just to give you the
opportunity to respond to this, one is, there is this list with
these transactions and the amounts. On Mr Daniels'
version, you had the list on her version you said, your
principals had said you should focus on these transactions
and that is 20 July 2015 on 8 August...[intervenes].

MR KOKO: That is, allegedly 20 July.

20 **ADV SELEKA SC:** Ja, on her version, you will respond of
course and then on the 8th of August 2015, we see an
exchange between you and info portal on one of the
transactions on the list, which is online vending PDF and
then you say,

“We did not finish our discussions about this

transaction, this is what is going to Board of 8
August”,

And if you look at the common cause fact now, that
info portal would have been a third party outside of Eskom,
even most probably Mr Salim Essa. A conclusion could be
made from those allegations, one, from the established
fact of info portal being an outside person even, most
probably, Mr Essa that you are communicating with that
external person in regard to one of the transactions which,
10 on Ms Daniels’ version is one of those, your principals said
you should focus on, your comment?

MR KOKO: Chair, you know this is very interesting, and it
is a fact of an example of which I gave you two examples,
three examples, this is a fourth example. So, what was
proposed in a meeting before the 18th of April, what’s this.
Eskom must – and Ms Mothepu said it so you should go
into – for once I agree with her but- I agree with here only
on that. Eskom must appoint a master vendor and the
other 9 vendors must sub-contact to the master vendor, a
20 master vendor must pay Eskom money up front and then go
and collect. That is what the board wanted when I came in
there. And if you then assume according to the narrative of
Mr Seleka it is what Mr Salim Essa wanted then I would have
made sure it happens.

I would have used my influence, my power, my

everything to make sure that Eskom appoints a master vendor. The only reason Eskom did not appoint a master vendor then go to the Eskom they will tell you Mr Koko never wanted master vendor. I objected to it. I did not want – there was simple reason why I objected – simple one reason. Eskom put together in line with 1032 – 1032.

CHAIRPERSON: 1034

MR KOKO: 1034 – yes 1034 I – I – thank you for correcting me.

10 **CHAIRPERSON:** Ja.

MR KOKO: 1034 obliges Eskom to do a market analysis. Once you do a market analysis then you put a procurement strategy. Once you put a – once a procurement strategy is approved by the board then you put a specification then you have a bid specification committee that put a specification in line with the board approval strategy.

Once the bid adjudication – the bid specification committee approves the specification that has been in line with the specification that has approved by the board you
20 then issue it in the market on an open tender. You can no longer change the specifications once in the – once it is out in the market because you level your playing fields there; suppliers come in then you have got a bid adjudication committee that adjudicates the bids based on the specification that went out.

Then the bid adjudication committee appoints successful suppliers and there were ten of them. And all what the board had to do was to approve it. You cannot put the rules and when you put the rules you must accept our consequences of the rules. You cannot put the rules and then when the consequences come and then you are – you are 00:02:32.

This transaction Chair went to the board committee to the EXCO and the board about four/five times and has been
10 kicked out of the board because there was a new strategy to appoint Blue Label as the master vendor. Now only now through the proceeding of the commission I learnt that Mr Mark Pamensky was a director or CEO of Blue Label. I am not suggesting any impropriety that I do not know how it arose that the board wanted to change a strategy to a master – to master vendor. It was wrong. It was wrong I was never going to support it and I made it known to the chairman, I made it known to everybody; it never happened in my time. If I was doing the bidding for Mr Salim Essa I could have
20 pushed that it happened but it is the fourth example that I am mentioning to you. You know we talked about the – the suspending Sunday Times and I objected to it.

We talked about invoices for McKinsey on two occasions I objected to it. If you go to Eskom now they will tell you the person who insisted that the board sticks to its

rules and what is approved Mr Koko. Mr Koko objected to the change of 00:04:11 of appointing Blue label as a master vendor. It never happened in my time.

I heard Mothepu saying it happened two years later after I had left. I do not know what happens after I have left. I do not know what happens after I have left. But it was never going to happen in my time. So this story of Blue Label is being thrown around wrongfully so measure me on what I have done. I have objected to the strategy that the
10 board wanted. I insisted to the board you have set the rules. You have set the strategy it has been to the market; you have got winners here; appoint them. You cannot – and by the way I was not even part of the adjudication committee.

It was not even my space I was just a procurement person; there was a user. They have done their job with your approval; they acted according to your mandate. You cannot change. You cannot – the rules are there.

MR SELEKA SC: Ja. Mr Koko I just need to say also for the benefit of the Chairperson that obviously your version on
20 that letter Dr Ngubane had written to the Minister and why you would have emailed it to him is – is new to us in the sense that we did not have it before.

So the letter specifically says a decision is given to the Chief Executive Officer to implement and not to you. So we will have to go and find out with Dr Ngubane whether

your version is correct.

MR KOKO: By all means. By all means. I did take...

CHAIRPERSON: But I guess that Dr Ngubane may or may not know whether Mr Koko was the person to implement it – that faxed the implementation. The one person who would definitely know is the person who was Group Executive at the time that is apart from any documents within Eskom that would say the person to implement such and such a decision would be the person occupying this position. So – so – so I
10 am saying you can check with Dr Ngubane but you might find that with – if you check with the person who was Group CEO at the time that person ought to know but apart from that documents within Eskom.

MR SELEKA SC: Yes.

CHAIRPERSON: Would say who implements what.

MR SELEKA SC: Yes.

CHAIRPERSON: Would also be able to indicate.

MR SELEKA SC: Yes.

CHAIRPERSON: But I am not sure that there is – that
20 should be easier to establish.

MR SELEKA SC: Yes, no correct Chair. Because in addition is what Mr Koko is saying that he stopped the implementation of that decision. So the board would have had to be made aware that their decision had...

CHAIRPERSON: Ja ...

MR SELEKA SC: Been stopped.

CHAIRPERSON: Ja, no that is fine.

MR SELEKA SC: Yes.

CHAIRPERSON: Ja so – so the board – I mean you certainly can check with Dr Ngubane as much as you can but certainly the question of – as far as the board is concerned who does it – who did it know to be the person to stop – that would be fine ja.

MR SELEKA SC: Correct.

10 **CHAIRPERSON:** Ja.

MR KOKO: Chair all what I am saying to you. Judge me on what I have done and the evidence of what I have done is that.

CHAIRPERSON: Ja.

MR KOKO: The transactions that I am accused of evidence will show you that it is me who insisted on compliance and on doing the right – on doing the right thing. And the people who accused me do not show 00:05:12. The people who accused you – accused me do not tell you that actually this
20 letter from the Minister on quoting Sunday Times never actually was implemented.

CHAIRPERSON: Yes.

MR KOKO: They do not tell you that.

CHAIRPERSON: Actually you now remind me I saw when we were looking at that letter from Dr Ngubane to the Minister.

MR KOKO: Yes.

CHAIRPERSON: That we were talking about that he referred to a letter from the Minister and I did not remember having seeing such a letter and I would be interested in seeing that letter.

MR KOKO: Yes. All what I am saying is the people who say – who will show you that Sunday Times letter will not tell you that actually it was Mr Koko who stopped it. Actually it never happened. The people who accused me of paying Trillian do
10 not actually tell you – in fact with all due respect Ms Goodson said so.

CHAIRPERSON: Mr who – Goodson?

MR KOKO: Ms Goodson.

CHAIRPERSON: Ja.

MR KOKO: Said so.

CHAIRPERSON: Ja.

MR KOKO: But none of these people accusing you.

CHAIRPERSON: Ja.

MR KOKO: Do not tell you that Mr Koko is the one who
20 objected to the R460 million.

CHAIRPERSON: Ja.

MR KOKO: None of them told you that. And this is all what I am saying and now it is online vending. You are not being told that the person who objected to the online vending and the appointment of a master vendor of Blue Label it is me.

CHAIRPERSON: Yes you know ...

MR KOKO: You are told too many people.

CHAIRPERSON: Mr Koko it is – it shows how important it is to hear from everybody because assume that you did not come to testify and participate maybe nobody would have highlighted the things that you consider important to be highlighted and they are legitimate things to be highlighted. So it is good that you are here; you are participating; you are highlighting what should be highlighted; you are putting your
10 version. It is important. Yes – that letter do have it Mr Seleka from the Minister?

MR SELEKA SC: Not – ja I have seen it – I have reference to it we do not have the letter Chair.

CHAIRPERSON: Okay.

MR SELEKA SC: We will have to get the letter (talking over one another).

CHAIRPERSON: It is just that I wonder what it was saying.

MR SELEKA SC: Ja.

CHAIRPERSON: Because from the fact that the – that Dr
20 Ngubane refers to it suggest – that fact suggest that the Minister may have written to the board about the same subject matter of those newspapers.

MR KOKO: Chairman let me tell you.

CHAIRPERSON: Yes.

MR KOKO: How damaging that letter is and it is in this

context that I need you to see the evidence of Dr Ngubane when he denies that I have met with him.

CHAIRPERSON: Yes.

MR KOKO: It is extremely damaging letter.

CHAIRPERSON: Yes. And you have got a copy by any chance?

MR KOKO: No I read – I read the transcripts.

CHAIRPERSON: Yes.

MR KOKO: That letter was never produced. So this letter
10 says.

CHAIRPERSON: Yes.

MR KOKO: On this email from infoportal address attached to it was a letter from the Minister. So Dr Ngubane suggesting to you that he received an e – a letter from the infoportal – an email from the infoportal address with an attachment of a letter signed by the Minister. You realise how damaging that is.

CHAIRPERSON: Ja you see it becomes all the more important because I heard evidence well certainly the
20 Minister Ms Brown who was – who gave evidence last week said if I recall correctly she had never met – she has never met Mr Salim Essa. If I recall correctly.

Or she might have met once or whatever I am not sure but I thought she said he had not met him and certainly not in her house or official residence. She said the person

that she had dealt with was Mr Ajay Gupta.

But of course there is Mr Tsotsi's evidence suggesting that had there may have been some interactions between the Minister and Mr Salim Essa because she said he had been called to the Minister's residence and he found the Minister in the company of Mr Salim Essa. And Mr 00:12:49 if I am not mistaken.

MR SELEKA SC: Yes.

CHAIRPERSON: So – so that letter may well be important to
10 look at for more than one reason.

MR SELEKA SC: Yes.

CHAIRPERSON: Hm.

MR KOKO: Well Chair after the denial by Dr Ngubane I think that letter is even more important to show the kind of person you are dealing with.

CHAIRPERSON: Hm. Yes so if we do not have it attempts must be made for us to obtain a copy and I take it that the Ministry might still have it. I do not know if Eskom might have it but let attempts be made.

20 **MR SELEKA SC:** Yes Chair.

CHAIRPERSON: Okay alright.

MR SELEKA SC: We will. Mr Koko that online vending in the email on the list...

CHAIRPERSON: Your junior has not found the page which has got that...

MR SELEKA SC: I have it Chair.

CHAIRPERSON: Because I will find that much more easier to look at than the screenshot.

MR SELEKA SC: Yes. Is the – Eskom Bundle 8(a) page 87.88.

CHAIRPERSON: Mr Koko you were accusing the investigators of the commission of not having done their job in certain respects. If you do not mind I would like a document in which you specify what it is that you think was
10 important for them to have looked at which you believe they have not looked at. If I could get that via your – your lawyers who would send it to the legal team and give it to me. I would like to have a look at that.

MR KOKO: But Chair we have done that. We have sent you a letter. My counsel sent you a letter on issues that the investigating team ought to have looked at.

CHAIRPERSON: Is that the document you are talking about?

MR KOKO: I have sent it to – we have sent it to you.

20 **CHAIRPERSON:** Yes, no, no what I am asking..

MR KOKO: You can – we can augment it.

CHAIRPERSON: No, no, no what I am asking is, is your answer that the issues on which you rely make that accusation are issues contained in correspondence that has been sent already?

MR KOKO: No Chair the question Mr Seleka asked me is that I must comment on the people that effected the master service agreement. And my response to him is that I cannot do that because your investigative – investigators said not to investigate it. The players in what they should be doing have not done that.

CHAIRPERSON: Yes but you see Mr Koko if you are making that accusation in good faith I am saying I am interested in looking at that.

10 **MR KOKO:** I am happy to do that.

CHAIRPERSON: Ja if you say that information is already in correspondence that has been given I am happy to go back and look at that. I am just – I just want to make sure that I satisfy myself what is going on with regard to those issues.

MR KOKO: Chair – Chair I am satisfied.

CHAIRPERSON: Ja.

MR KOKO: That you have before you.

CHAIRPERSON: Yes.

MR KOKO: From my lawyers.

20 **CHAIRPERSON:** Ja.

MR KOKO: Why I say the investigators have not applied themselves in a manner that they should have.

CHAIRPERSON: Yes. Mr Seleka I would like to see the correspondence that I – I guess that that might be correspondence that your counsel handed up here on one of

the days when you were appearing.

MR KOKO: That is correct, that is correct Chair.

CHAIRPERSON: Okay and my Registrar is hearing. I would like to look at that but I would be – I would like to look at that.

MR SELEKA SC: Yes Chair.

CHAIRPERSON: And if – if I think I understand it then I will take it from there but if there is something that I do not understand I will – we – I will raise it.

10 But I am interested because there should not be any matter that should be investigated that has not been investigated. Except for situations where the time constraints have made it impossible.

 But if somebody make it – makes an accusation such as that we should be able to look at the accusation on its merits and if indeed there are matters that have not been investigated should be – should have been investigated we should be able to say yes it is so and this is the estimation. Or no this is the position and this so and so. So my interest
20 is just in making sure that the accusation is not brushed aside.

MR SELEKA SC: Yes Chair.

CHAIRPERSON: But it can be looked at properly.

MR SELEKA SC: Yes Chair.

MR KOKO: You do have a document that you get from my

lawyers.

CHAIRPERSON: Okay alright.

MR SELEKA SC: Yes.

ADV BARRIE SC: Chair if I may just – if I may just refer to that.

CHAIRPERSON: Mr Barrie – Mr Barrie if you can tell me if possible what date the letter is in particular.

ADV BARRIE SC: We provided the letter on the 3rd of December.

10 **CHAIRPERSON:** Sorry Mr Barrie hang on. Wait for me to finish and then you can speak because otherwise I do not hear you and you will not hear me.

So my question is – my – what I am saying is I would very much like you to give me the date of the letter that has got the information that he is talking about then we look at it – I will look at it. If you are able to tell me now that is fine; if you would only be able to tell me later that would be fine.

ADV BARRIE SC: I - we handed the letter up to you I believe it was the 3rd of December but I am under correction.

20 Your response to that was that the – put that on affidavit and the letter was then addressed in a supplementary affidavit of Mr Koko. I believe what you have put to Mr Koko now goes wider than that insofar as – as you say that is there anything else that Mr Koko says should have been 00:19:28.

CHAIRPERSON: No – ja.

ADV BARRIE SC: But those have been substantiated and have been dealt with in supplementary.

CHAIRPERSON: Ja.

ADV BARRIE SC: But if there is anything else we will address that as well.

CHAIRPERSON: No, no that is fine. Yes it is so. If there is anything else other than what is in the correspondence already that can be added but I will have a look at it. Let me say that my understanding – my understanding was that that
10 correspondence related largely to information that you were looking for and I was under the impression that the reason why there has been no complaints afterwards is because the information was provided and I know Mr Seleka did tell me at a certain that the – he had either responded or asked the secretary to respond and furnish certain information. So

1. We were going to meet – we are going to have a – I was going to have a meeting on a certain Saturday and the Friday before the Saturday somebody working closely to me was tested – tested positive for Covid-19
20 which made it necessary for me to go on self-isolation. As a result of that no such meeting could take place that week and subsequently I did I think ask Mr Seleka to address the issue of the information that was being sought and he indicated to me that at some stage that the – he sent correspondence dealing with – with those

matters.

So I just want to place on record my understanding in regard to that.

MR SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka is there something that I misunderstood?

MR SELEKA SC: No your – your understanding is correct Chair. We just need to make a distinction between that information the last part you talking about where there is a
10 request for information relative to telephone records that was made available to Mr Koko and his team. The first part you talked about with Mr Koko which is areas which he thought the commission should pursue an investigation on that letter is there but it was also responded to. So we did in one hearing deal with that aspect to some extent and you will see Chairperson when you read the correspondence it should – it should refresh your memory.

CHAIRPERSON: Hm.

MR SELEKA SC: I can recall from the – I can recall off the
20 cuff that there were two aspects that Mr Koko thought we should investigate. One was how Glencore was treated I think it was about the unfair – un – not the fair treatment or special treatment given to Glencore and then the Simotomo issue. There might have been another one.

CHAIRPERSON: Ms Daniels – Ms Daniels.

MR KOKO: We do corruption at Medupi and Kusile.

MR SELEKA SC: Oh yes.

CHAIRPERSON: Yes.

MR SELEKA SC: So we did respond to that.

CHAIRPERSON: Yes.

MR SELEKA SC: Fully.

CHAIRPERSON: Yes.

MR SELEKA SC: But we will make that available to the Chairperson.

10 **CHAIRPERSON:** Ja make that available.

MR SELEKA SC: Ja. What – what then Mr Koko I think was trying to draw to your attention Chair is his response to my question about commenting on the role players. So I do not know whether...

CHAIRPERSON: Well ...

MR SELEKA SC: Your question was in relation to that.

CHAIRPERSON: Well let me say two things. With regard to allegations of corruption at Medupi – Medupi that I can tell you Mr Koko was the subject of deliberation as to whether
20 we should embark on that and the legal team and the investigators – or I was approached at a certain stage last year I cannot remember when it was but when it – when I was approached I made the decision that we would not. And the reason was simply that that – by that time I had taken the decision that if we – if the commission was going to

complete its work within the time given by the High Court we had to try and focus.

There would not be enough time to start and finish something that appeared to be quite big. So as far – that is as far as that part is concerned. But I certainly am going to look at the correspondence so that at least if there is anything that I think the investigators should have done that they did not do and if I do not get a proper explanation I can see what needs to be done.

10 So I just wanted to make sure that no impression is created that you have brought to the attention of the commission certain matters of concern with regard to the investigation by the investigators and that is being swept under the carpet.

MR KOKO: Chairman let me tell you what I have done.

CHAIRPERSON: Ja.

MR KOKO: I have done engaging with the commission in particular with Glencore and we will deal with the issues of Glencore. I went to the Public Protector and opened a case
20 with the Public Protector. I went to the police station and opened a case with Glencore. I do not think I should have done that.

I think this is a matter that this commission should be dealing with because Glencore has contrary to many beliefs and I will spend today showing you that it has taken Eskom

for a ride. And I am – I you know I am beginning to be of the view that you are actually – this commission or the – the reason this commission exists and this commission is – is caught up in between the business interests of the current President of the Republic and the former President of the Republic and the previous Public Protector actually took sides without looking into the evidence and the only thing that makes me comfortable now is that you are guiding your team to look at the evidence and I am confident that once
 10 you have looked at the evidence that the conclusion would be far better than Professor Thuli Madonsella.

I have written an opinion piece actually saying – actually Professor Thuli Madonsella who is as an apol – I mean an apology because she was caught up between the conflicting interest of associates of the current President of the Republic and associates of the former President of the Republic and the 00:26:55 but Chair we are going to go to that and I will have my opportunity to tell you why I am saying what I am saying.

20 **CHAIRPERSON:** Ja no that is fine. But I – I am going to repeat a point that I did mention to you some time in the past Mr Koko. Some of the people who have – who have had information may be bringing us the relevant and important information at the tail end of the work of the commission. Despite the fact that from 2018 I made announcements and

said please if you have got information of matters that fall within the Terms of Reference of the commission bring them to us and when I made those announcements I did not say this group of people must do that but that group must not do that it was an open invitation to everybody.

Of course some people brought information as soon as possible and then others brought it at some stage and I am sure now there might be other who have not even brought it but yet it is relevant, it is important and it falls
10 within the Terms of Reference of the commission.

So – so we may have a situation where if we get information that is relevant, that is important it happens at the time when there is just no time. But we would have loved to have received it much earlier and if we had received it much earlier we could have done something about it.

MR KOKO: I accept Chair.

CHAIRPERSON: Yes.

MR KOKO: I am just eagerly waiting.

CHAIRPERSON: Yes.

20 **MR KOKO:** And I cannot wait to deal with the legal opinion with the three legal opinions from CDH.

CHAIRPERSON: Okay.

MR KOKO: Just to show you how you have been taken for a ride.

CHAIRPERSON: No that is alright.

MR SELEKA SC: Ja.

CHAIRPERSON: We are at four o'clock. Let us take the normal ten minute break but before we do that let us have a discussion so that we have a common understanding of the way forward. From my side I am expecting that we should be able to go into the evening as long as we have not finished. That is point 1.

Point 2 which probably may not have been known to Mr Koko and Mr Barrie is that there is a possibility that
10 tomorrow may be available in case you are available Mr Koko and Mr Barrie your legal team but let us first talk about going into the evening. You are all – we all accept that we go into evening. Mr Barrie.

ADV BARRIE SC: I am very definitely not ...

CHAIRPERSON: No I was not talking about the evening – this evening.

ADV BARRIE SC: Oh the evening is fine.

CHAIRPERSON: This evening is fine but tomorrow you are not available? Okay alright. I guess Mr Koko it does not
20 help if you – even if you are available.

MR KOKO: Yes.

CHAIRPERSON: If your counsel is not available.

MR KOKO: Chair we can work all night.

CHAIRPERSON: Okay alright so that is fine let us adjourn for ten minutes and then we will come back and continue.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you, Chair. Ja, still on the Online Vending, Mr Koko, then. So we have gone to the list. We have gone to the email. And I wish to add to that Ms Matshepo's version, talking about negotiations between Eskom and McKinsey for the conclusion of the MSA. She
10 says that... Chair, I am just going to read from her affidavit.

CHAIRPERSON: Where ...[intervenes]

ADV SELEKA SC: Would you ...[intervenes]

CHAIRPERSON: Will you... Do I need to go there or you...

ADV SELEKA SC: No.

CHAIRPERSON: Do not? Okay.

ADV SELEKA SC: Mr Koko, you also do not need to.

MR KOKO: Okay.

20 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Okay.

ADV SELEKA SC: Well, let me just... you. I wanted to read from October 2015 but she simply says:

“Messrs Matshela Koko and Anoj Singh added initiatives that were originally on the

proposal...”

That is the proposal by McKinsey/Regiments.

“These were Online Vending Duvha 3 Insurance, **Hugo(?) 3** Insurance claim...”

And she adds:

“Build Hitachi Insurance settlement...”

But for present purposes, Online Vending and the Duvha 3 insurance, which she alleges, you and Mr Singh added to the proposal. You want to comment on
10 that/

MR KOKO: Yes, Chair. Chair, you have a timeline that stands like this. Mr Koko participates in a conspiracy and a sham suspension on the 30th of March 2015 so that on the 26th of July 2015, in his absence, the board approves a mandate to negotiate with McKinsey. The negotiations with McKinsey, and the board approves the Negotiating Team.

In my affidavit, I list the Negotiation Team that the board appointed. You will find it on the BTC document dated the 6th of October 20... No, you will find the
20 document dated – it was approved on the 6th of July and you will also find it on the document dated 6 October 2015.

In that document, it is titled Feedback to the Negotiations. The Negotiating Teams says: We have been mandated by the Board Tender Committee to do the negotiations. The negotiating members are the following.

The negotiations started on the 28th of July 2015 to the 29th of September 2015, I think.

My second date could be correction but I think it is the 29th of September 2015. And this is what has been negotiated. We have stepped outside the board mandate and for that we ask for a condonation and the board rectifies that. And the board then says: Go and conclude. So. And that is all in October.

On the 23rd of October, I get a new assignment.
10 It is a document I wanted to have discussions with you during break and I still want us to go back to it because it explains all this. And I completely moved out of the situation of McKinsey on the 23rd of October. Of course, now that I have seen the documents that I have brought to you today, I understand why Ms Matshepo continues to send me emails to my email address and I have not responded to any of them.

I could not have negotiated the contract in November because the evidence before you in writing tells
20 you when the negotiations started, when the negotiations ended. And it tells you in names who did the negotiations. One of the things I am saying I am not happy with the investigations is that the people who did the negotiations are there. I have mentioned the names.

It would be very easy for your investigators to go

to them and say this document says you have negotiated it. Did you negotiate and what was Mr Koko's role? That has not happened. But somebody throws my name that I have negotiated. I did not. Evidence before you... Again, Mr Chair, I keep on saying, let us follow the evidence. What is the evidence in writing as meant, it says.

It does not say Mr Koko and Mr Singh were the negotiators. The Negotiating Team is listed. I have never responded to any of the emails Ms Matshepo sent me. I
10 had nothing to do with it. I had no reason to respond. With my counsel kept on asking me but why would she continue to send you this? And I said, the only explanation I could give is because I concluded via a Letter of Award, the Business Plan transaction.

Then she probably thought that I am still involved. But now that I see a letter that – and at the right time I would like to discuss it with you Chair. You will see, why I think she continued to do that, but I was not in the picture. The delegations is to the office. If you are the
20 Deputy Chief Justice, you have got delegation of authority. If we move you to another – to be the Justice President of Pretoria or North, you have got a different authority. And that is all what happened.

I just do not understand why it is so complexed for people to say the PFMA and the Eskom delegations,

you delegate to the office. And once the person moves out of the office... We can quibble about when did you leave the office, like we did with Ms Daniels. But once left the office, you leave the delegation in that office. The person who is left in that office is the one then that must deals with it.

It then makes sense to me, in hindsight, why I insisted Mr Mabelane is in the meetings that I am called in, that relates to things that I am not involved because he
10 had the delegation. So I ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: I really think, Chair, you need to zoom into this with a fine comb. Forget the gossips. Because Ms Matshepo had never given you anything, other than to simply say: Trust me. Trust me, Chair. Trust me as Ms Matshepo. Mr Koko and Mr Singh negotiated this. It is all what she told you. Besides that, she gave you nothing.

CHAIRPERSON: H'm. Ja.

MR KOKO: And by the way, she told a big lie about the
20 Indian chap in my office she was communicating to, who happened to be my personal assistant who is black and African. And when you pushed her she said: Oh, I remember. That part of her transcripts, blue lie. Now again, why would Ms Matshepo come here and tell you a blue lie and stand by it? I do not know?

I just do not know why would she come here and lie about it but I would like you to ask her. But this is a lie. Why did you lie? What interest you further to lie about Mr Koko? Because now I know, it is common cause that it is a lie.

CHAIRPERSON: H'm, h'm. Mr Seleka.

ADV SELEKA SC: Sorry, Mr Koko, you did not comment on my question. She says you and Mr Anoj Singh expanded a scope of the original proposal by adding other
10 initiatives which included the Online Vending. What is your comment?

MR KOKO: Chair, my comment is. I could not do that. I had no authority to do that. I could not. But.. I could not Chair. That is my comment.

ADV SELEKA SC: H'm. Okay ...[intervenes]

MR KOKO: I had no authority to do that.

ADV SELEKA SC: H'm.

MR KOKO: But I want... Another piece of evidence that you must – that you need to consider. If you look at all the
20 transactions that Ms Matshepo lists including Duvha 3 Insurance, are all in the delegations of the financial or the Finance Department, not in the scope of the role I was playing at the time, which is Group Executive Generation and Technology.

If she was saying it was a technical matter and I

added it, maybe. All of them, without... I mean, I heard Ms Daniels saying the same. I mean, when Ms Daniels was dealing with this document, she tried to make you believe all these things are in Mr Koko's space. She said that. But let me tell you. Duvha 3, for example, if you go to Eskom today, everybody will tell you: Duvha 3 is reconstruction. Is building a new boiler. It is Group Capital. It would have been under Masango's space. It had nothing to do with Mr Koko.

10 So it is a lie again. And why would they play like that? The Eskom's delegation... You know, if you go to Eskom now and say: Who is responsible for Group Capital? Mr Koko was never ever in his 23-year life at Eskom responsible for Group Capital. Mr Masango was really involved, was responsible for Group Capital for 9 years of his 22... 24-year life in Eskom.

 Why do people come here to lie to you like that? And we tolerate and we do not press them out. We do not say: Show us the evidence.

20 **CHAIRPERSON:** Well, Mr Koko, you bring – you come here, you do affidavits, you put annexures precisely for that point so that once there is evidence that shows that they may not be telling the truth, then they can be confronted with that. So everybody is being asked to make their input, who has personal knowledge, who knows

something so that at the end, where it looks like somebody should be confronted with a document or a version from somebody else, that is done.

That is why, even with you, Mr Seleka is putting to you versions that come from other people. Even with them, he would be doing so, to say Mr Koko says this about them. Those who have testified already, it does not mean they cannot be called back if something props up that was not there before to say: What do you say about
10 this? So all of that ...[intervenes]

MR KOKO: I would like Ms Matshepo to be confronted ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...with the evidence that... But she must be confronted in person.

CHAIRPERSON: Yes.

MR KOKO: She is a mere secretary. She could not have been assigned to you as a secretary to deal with high-level financial stuff that are not in Mr Koko's area.

20 **CHAIRPERSON:** H'm?

MR KOKO: One. Two. The Duvha 3 and all others are to in the scope of Mr Koko. Three. The negotiations with McKinsey were completed on the 29th of September and were presented to the Board of Eskom in a document of the 6th of October. Four. Five. The Negotiating Team

members are listed by the Board of Eskom. That is the evidence that is before you.

CHAIRPERSON: H'm. But also Mr Koko. Apart from the fact that the Commission has to probe certain matters when a witness gives evidence, the rules also give a person such as you if a witness has said something that implicates you, the right to apply to the Commission for leave to cross-examine them and challenge their version. So, in other words, it is not just the Commission.

10 From your side, if they have implicated you and said something about you that is not true, that seeks to put you into allegations of state capture or corruption, you are free to make that application ...[intervenes]

MR KOKO: Yes ...[intervenes]

CHAIRPERSON: And so they will be challenged and confront them with all of that.

MR KOKO: And in most cases, I have been invited to do so Chair.

CHAIRPERSON: Ja.

20 **MR KOKO:** I accept.

CHAIRPERSON: Okay alright. Mr Seleka.

MR KOKO: Thank you.

ADV SELEKA SC: Mr Koko, do not keep that doc – keep that report you are referring to. I know you know it Chair. I could refer the page reference to you. It was to Exco

Procurement Sub-Committee, 8 October 2015 to the Board of Directors, Tender Committee, 22 October 2015 and the compiler of Business Unit, the name is Dongi(?) Zodwa(?) ...[intervenes]

MR KOKO: Dongi Zodwa.

ADV SELEKA SC: And the end-user is yourself, Matshela Koko.

MR KOKO: Yes ...[intervenes]

CHAIRPERSON: Where are you reading from now? Hang
10 on mister ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: Where are you reading from?

ADV SELEKA SC: I did say I can give you the page reference, Chair.

CHAIRPERSON: Oh, okay. I did not hear that.

ADV SELEKA SC: Yes.

CHAIRPERSON: What, Bundle 8? Bundle 8(a)?

ADV SELEKA SC: No. [laughs] Sorry, Chair.

CHAIRPERSON: Okay. Have you left me behind?

20 **ADV SELEKA SC:** Yes... No. It is just that Mr Koko referred to it. It is in Bundle 14, Chair. 14(c).

CHAIRPERSON: Okay. Do I need to go there or I can...?

ADV SELEKA SC: No, it is just... I want to just ...[intervenes]

CHAIRPERSON: Oh, okay just read.

ADV SELEKA SC: ...read to Mr Koko ...[intervenes]

CHAIRPERSON: Just hang on a second. Mr Barrie, your issue has fallen away?

ADV BARRIE: Ja, it was the information I wanted...

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes. Ja, Mr Koko, I think follows – he mentions ...[intervenes]

MR KOKO: I ...[intervenes] [Speaker not clear.]

ADV SELEKA SC: Yes.

10 **MR KOKO:** I ...[intervenes]

CHAIRPERSON: Are you referring to the document that gives the names of the Negotiating Team?

ADV SELEKA SC: He says it does.

MR KOKO: Ja, it does.

ADV SELEKA SC: But you will show me Mr Koko.

MR KOKO: I am going to show you Chair.

ADV SELEKA SC: Yes.

MR KOKO: Okay.

20 **ADV SELEKA SC:** Let us go to then the Eskom Bundle. If you give me that 14(c).

MR KOKO: If you give me that opportunity, I will do so. I think it is quite important.

ADV SELEKA SC: Yes, on the second last page, the names are there.

MR KOKO: Okay.

ADV SELEKA SC: Yes?

MR KOKO: And my point is, Chair. If the names ...[intervenes]

CHAIRPERSON: Hang on one second Mr Koko. Mr Seleka, my space is limited here.

ADV SELEKA SC: Yes.

CHAIRPERSON: I have Bundle 18 and Bundle 8, 8(b). Which one should I keep for the moment and which one could I let – send away until – when you need to use it?

10 **ADV SELEKA SC:** Ja. Chairperson is going to need 8(a) for that list.

CHAIRPERSON: H'm?

ADV SELEKA SC: So 8(b) can be removed.

CHAIRPERSON: Okay.

ADV SELEKA SC: 8(b) can be removed.

CHAIRPERSON: And Bundle 18 can remain?

ADV SELEKA SC: Bundle 18, remove it for now Chair. You can remove it for now.

CHAIRPERSON: Okay let me not remove it because I can
20 keep it until you come back to it.

ADV SELEKA SC: Yes.

CHAIRPERSON: What page on Bundle 14?

ADV SELEKA SC: That is page 829.36.

CHAIRPERSON: Yes, I have got Bundle 14, 829.36.

ADV SELEKA SC: Yes. Point 36 of that report.

CHAIRPERSON: Is that the document that is supposed to have the list of the negotiators?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: The... You will find the list, Mr Koko, you will correct me, on page 829.43.

MR KOKO: Chair, you will not only find the names in that document but you will also find the negotiated outcome. And my counsel has got the minutes of the board that
10 approves and condones the deviations from the board's mandate.

CHAIRPERSON: Now that will be important to have also. But in the meantime, this document...

ADV SELEKA SC: Yes.

CHAIRPERSON: This document is written Feedback Report. It is addressed to the chairperson of – Chairman, Exco Procurement Sub-Committee, Board of Directors and the Tender Committee. It is dated – there is the date of 8 October 2015 next to the chairman. And then the date of
20 22 October 2015 next to the Board of Directors. And it is – the compiler is reflected as Dongi Zodwa Mokwatle. The business is Commodity Sourcing. And unit and name of end-user is reflected as Matshela Koko. And the description is about:

“Feedback on negotiated on outcome with

McKinsey & Company to develop the current Top Engineers Programme Internal Consultant Unit that can provide world-class management consulting services capable of resolving emerging company wide risks by unlocking cash without prior rendering...”

Yes. Now we know, and Mr Seleka, you said the list of the Negotiating Team appears at page ...[intervenes]

ADV BARRIE: Chair, I am sorry to interrupt. I am... Are
10 we on Bundle 8, page 29.36?

CHAIRPERSON: We are at Bundle 14.

ADV BARRIE: Bundle 14?

CHAIRPERSON: Ja. But the page is 829.36 and I have just moved to page 829.43 of that document. And the names of the Negotiating Team is given there as Prish Govender, Dongi Zodwa Mokathle, Donston Maku, Raydene(?) Doll(?), Schneholeger(?) Ngra(?), Mandla Kobinza. [00:21:11] You said there is the negotiating outcome as well, Mr Koko? Do you want to draw my
20 attention to that?

MR KOKO: Can I put it just behind you? Just give me the page?

CHAIRPERSON: 829.43, it is where the list of the Negotiating Team appears. 829.44 is the last page of the document, I think.

MR KOKO: Chairman, I have the document in front of me but it is ... bundle. But if I can take you to paragraph – Section 2 of the same document?

CHAIRPERSON: Section 2 of...?

MR KOKO: The same document. The first document you just were on. You will see number 1 is introduction. Am I correct Chair?

CHAIRPERSON: Oh, where is says: Approved Mandate, Parameters and Negotiation Results?

10 **MR KOKO**: Correct, Chair.

CHAIRPERSON: Oh, okay. You say... So that is where the – the results of the negotiation are to be found under that heading?

MR KOKO: Yes.

CHAIRPERSON: Okay alright. Mr Seleka.

MR KOKO: You can see on the left-hand side is the approved mandate.

CHAIRPERSON: Yes?

MR KOKO: And on the right-hand side is the results.

20 **CHAIRPERSON**: The results achieved.

MR KOKO: Achieved. And the result achieved and the mandate, not all of them are ...[intervenes]

CHAIRPERSON: The same.

MR KOKO: ...the same.

CHAIRPERSON: Ja.

MR KOKO: That is why the board had to ...[intervenes]

CHAIRPERSON: Ratify?

MR KOKO: Ratify.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka, I guess now we ...[intervenes]

ADV SELEKA SC: Yes. Mr Koko, quickly because we are dealing with the – Ms Matshepo's version that you
10 amended the scope of the original proposal, you and Mr Singh but I think you have taken it a step further to the negotiations, whether or not you were involved in the negotiations. So.

Well, we will deal with – you have answered the first, which is, you could not have done that. You could not have amended the originals. But let us see the original proposal. Let see it at this document. The feedback report was signed by you. You are the last signatory on the 6th of October 2015.

20 **MR KOKO:** Yes.

ADV SELEKA SC: Chairperson, if you need the page reference, you will let me know.

CHAIRPERSON: No, I just wanted to say.

ADV SELEKA SC: Yes?

CHAIRPERSON: That document at page 829.43.

ADV SELEKA SC: Yes?

CHAIRPERSON: Apart from listing the names of – members of the approved Negotiating Team.

ADV SELEKA SC: Yes?

CHAIRPERSON: Also has in another column a list where it says Negotiation Team participants. And I see that it list under that the same names, if I am not mistaken. No, no. There are more names. It list certain names. Some of those names appear under the approved Negotiation Team
10 but others do not appear but it says those are the Negotiation Team participants.

ADV SELEKA SC: Yes.

CHAIRPERSON: As opposed to the approved Negotiation Team. And maybe to state the obvious. Mr Koko does not appear... Mr Koko's name does not appear on any of the two lists.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

MR KOKO: Yes. So what we do Chair and the board
20 insist on that for transparency because most of these projects take long and people are not always – they do not stay in the same positions for long. So the board approves a Negotiation Team and for some reason there are movements and the team leader pulls in new people that were not approved by the board.

The requirement of 1034 is that you have to be transparent to the board about who participated in the negotiations, who were not originally on the list. And that is why you have got a before and after.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. So the point of these two lists – the point you are making, Mr Koko, just now, the point you are making now is that there is an approved list ...[intervenes]

10 **MR KOKO:** Yes.

CHAIRPERSON: ...of members of the Negotiation Team?

MR KOKO: Correct.

CHAIRPERSON: And there is a list of participants in the negotiations?

MR KOKO: Correct.

CHAIRPERSON: Which might include people who were not participating.

MR KOKO: Correct.

20 **CHAIRPERSON:** But those are people who, as a matter of fact, participated.

MR KOKO: Correct.

CHAIRPERSON: The other is a list of those who were approved?

MR KOKO: Correct.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: H'm. Thank you, Chair. Mr Koki, then – did they give you the right file?

MR KOKO: Yes, they have. Thank you.

ADV SELEKA SC: Yes. Please turn to page 829.37. I just want you to explain to the Chairperson...

MR KOKO: 829...

ADV SELEKA SC: Point 37.

MR KOKO: I am there.

ADV SELEKA SC: Yes. Paragraph 1.4, I would like you
10 to explain to the Chairperson, which reads:

“That the Negotiating Team that will also serve as a Steering Committee for the development of Eskom’s Top Engineers Consulting Unit be authorised under the chairmanship of the Group Executive Technology and Commercial to develop, negotiate and implement the above, subject to Eskom’s delegation of authority...”

Is that Group Executive of Technology and
20 Commercial yourself at the time?

MR KOKO: Yes.

ADV SELEKA SC: Yes.

MR KOKO: Yes.

ADV SELEKA SC: So how do we – how should we understand this which includes, not only to develop and

implement, but also to negotiate?

MR KOKO: [No audible reply]

ADV SELEKA SC: As the chairperson – so then the Negotiating Team will serve as a Steering Committee under the chairmanship of yourself.

MR KOKO: Yes.

ADV SELEKA SC: To do, amongst others, negotiation. So how do we – how should that be understood?

MR KOKO: Well, it is self-explanatory, sir.

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

MR KOKO: It is as it is. The only issue that I ...[intervenes]

CHAIRPERSON: Well, I am not sure that it is self-explanatory Mr Koko. You said you were not – you did not negotiate this. There was a Negotiating Team, there was a document made and give a list which we have looked at. That is true, your name is not there. Mr Koko is saying: Here is clause or paragraph 1.4 which says:

20 “The Negotiating Team will also serve as a Steering Committee for the development of Eskom’s Top Engineers Consulting Units...

And it says:

“...under the chairmanship of the Group Executive Technology and Commercial to develop, negotiate and implement the above,

subject to Eskom's delegation of authority..."

As I understand it and not having... It refers to above. I have not gone back to see the above.

And I have not looked to – I have looked at the Negotiation of Authority Process which also says subject to the Delegation of Authority. But on the face of it, as I understand it, it seems to say there is a Negotiating Team and that Negotiating Team, for certain purposes, will be taken to the Steering Committee.

10 So maybe under circumstances you do not call it a Negotiating Team. You call it a Steering Committee.

MR KOKO: Correct.

CHAIRPERSON: And they say, when it is a Steering Committee, it will be checked by the Group Executive Technology and Commercial.

MR KOKO: Correct.

CHAIRPERSON: And then it says what they should then do as the steering committee chaired by the Group Executive Technology and Commercial.

20 **MR KOKO:** Correct.

CHAIRPERSON: It says they must develop, negotiate and implement the above. Now the above I suspect is this top engineers programme, I assume.

MR KOKO: Correct.

CHAIRPERSON: Is that correct? Ja. So Mr Seleka's

question therefore is in the light of paragraph 1.4 and your answer that you were not involved in negotiations still stands.

MR KOKO: Correct.

CHAIRPERSON: Yes.

MR KOKO: Because this is post BTC.

CHAIRPERSON: Yes.

MR KOKO: Post board approval.

CHAIRPERSON: Yes.

10 **MR KOKO**: Which happened on the 22 October.

CHAIRPERSON: Yes.

MR KOKO: And on the 23 October I started a new job.

CHAIRPERSON: Now this document, as I said, it has got two dates. One is 8 October 2015, another one is 22 October 2015. I am not sure whether it is intended to say it was given or sent to the Chairman on the 8 October and it was sent or given to the board of directors on the 22nd.

MR KOKO: Chair, can I ...[intervenes]

20 **CHAIRPERSON**: I remember you said there was a meeting of the board on the 22nd.

MR KOKO: Can I explain it?

CHAIRPERSON: Yes, explain, yes.

MR KOKO: Before a transaction sits at the board tender committee it must serve at the executive tender committee, so the executives must approve it before it goes.

CHAIRPERSON: Yes.

MR KOKO: And that happened on the 8 October.

CHAIRPERSON: Because or one more of them must take it to the tender committee.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: And that happened on the 8 October.

CHAIRPERSON: 8 October?

MR KOKO: Yes.

10 **CHAIRPERSON:** Okay.

MR KOKO: And then on the 22 October the board tender committee met.

CHAIRPERSON: Yes. So this board of directors which on the face of it or which might give one the impression that this 22 October is directed at board of directors it might simply be there – it might be there to simply say this was a committee which is a subcommittee of the board of directors.

20 **MR KOKO:** No, Chair, the way it says – you see, it says board of directors tender committee.

CHAIRPERSON: Yes.

MR KOKO: Of the meeting of the 22 October 2015.

CHAIRPERSON: Yes but that is the point I am making that I should not think it is talking about the board.

MR KOKO: No, no, no.

CHAIRPERSON: Something about the tender committee of the board.

MR KOKO: Exactly, Chair.

CHAIRPERSON: Ja, okay, okay. So ...[intervenes]

MR KOKO: And subcommittee of the board tender committee resolved as per 1.4.

CHAIRPERSON: Yes.

MR KOKO: Right?

CHAIRPERSON: Okay.

10 **MR KOKO:** So that is futuristic.

CHAIRPERSON: Oh, okay, okay.

MR KOKO: We resolve that in the future.

CHAIRPERSON: Okay, okay, so ...[intervenes]

MR KOKO: This must be implemented.

CHAIRPERSON: So you are saying that this document, as I say it – okay, I see that in terms of signatures it signed in October, three of the people signed it, signed it on the 2 October 2015 and then you signed it on the 6 October 2015. So the document was – but if it was signed so early
20 in October how can it have 22 October – how can it refer to a meeting that took place after?

MR KOKO: No, no, it is signed on the 6 October and the meeting is on the 22 October.

CHAIRPERSON: Yes.

MR KOKO: So it is after – the meeting is after.

CHAIRPERSON: But I thought that it seeks to record what had happened already by the time those who signed it signed it.

MR KOKO: Yes, what you see here has happened already.

CHAIRPERSON: But the 22nd has not happened.

MR KOKO: No.

CHAIRPERSON: The meeting.

MR KOKO: No, no, the negotiations happens before the
10 meeting.

CHAIRPERSON: Ja. Yes, yes.

MR KOKO: Based on the mandate that was given in July. The negotiations are done but you cannot implement until you go to the authority that gave you the mandate.

CHAIRPERSON: Ja.

MR KOKO: Which is the board tender committee. The board tender committee sits on the 22 October and this document is prepared for that purpose.

CHAIRPERSON: Ja, you see, as I understand you, at
20 least earlier on, you were saying that date of 22 October 2015 reflects the meeting that took place on that date.

MR KOKO: Exactly, Chair.

CHAIRPERSON: Of the tender committee.

MR KOKO: Exactly.

CHAIRPERSON: So what I am putting to you is that on

the 6 October when you signed this document you could not say there was a meeting on the 22nd that had happened because it had not happened.

MR KOKO: Yes, Chair, that is how the process is set up, Chair.

CHAIRPERSON: Ja.

MR KOKO: So when there is a future meeting documents are prepared three weeks in advance. You sign them through – it is Eskom law, three weeks in advance
10 documents must be ready, 14 days in advance the board members must receive them and then 14 days later the meeting sits.

CHAIRPERSON: So – no, no, what you are saying, that I understand but you agreed earlier on when I said it seemed to me to reflect a meeting that had happened and yet it had not yet happened.

MR KOKO: No, no, no, Chair, if I said yes, I apologise.

CHAIRPERSON: Ja.

MR KOKO: This is the meeting that had not happened.

20 **CHAIRPERSON:** Ja, it was a future meeting.

MR KOKO: It was a future meeting.

CHAIRPERSON: Ja, ja.

MR KOKO: It was a future meeting.

CHAIRPERSON: But then I hope that the document does not anywhere purport to reflect what happened at a

meeting that had not taken place.

MR KOKO: No, it has not, Chair.

CHAIRPERSON: It has not, okay.

MR KOKO: No, no, not at all.

CHAIRPERSON: Well, in this Commission we have heard such situations.

MR KOKO: No, no, no, no, no, Chair.

CHAIRPERSON: Alright.

MR KOKO: All what this document said, on the 6th, this is
10 what is happening, this is what has happened, we must go
and inform and get a new mandate from the board, that is
in the future. And the date of the future – all the
documents, you will see they always have a future date.
So when I sign it, oh, I know, the next board meeting is on
the – when I was signing it on the 6th, this document tells
me actually I am signing this thing on the 6th for the board
meeting of the 22nd.

CHAIRPERSON: No, no, I understand when you say that
but one would have expected that the document would say
20 something like next meeting of the committee, 22 October.

MR KOKO: Chair, this is what that is supposed mean in
the first stage, I accept ...[intervenes]

CHAIRPERSON: No, I accept that you say that is how is
understood that is what – but I would have expected that it
would say like next meeting, just to alert everybody the

next meeting where this document is supposed to be presented at date ...[intervenes]

MR KOKO: I accept your point there, Chair, as long as we understand what it means.

CHAIRPERSON: Ja. No, no, that is fine.

MR KOKO: I accept your point.

CHAIRPERSON: That is fine. Mr Seleka?

ADV SELEKA SC: Mr Koko, let us see – let us go to the first page of this feedback report ...[intervenes]

10 **CHAIRPERSON:** But let us complete this point, Mr Seleka and Mr Koko, I am sorry.

ADV SELEKA SC: Yes.

CHAIRPERSON: So, Mr Koko, you – is your point or part of your point this, that as the 6 October, which is when you signed this document, the idea was that the person occupying your position, whether it was you or whoever, should be the Chairperson of the steering committee?

MR KOKO: Exactly, Chair.

CHAIRPERSON: Is that right?

20 **MR KOKO:** Exactly.

CHAIRPERSON: And then you say the tender committee sat on the 22 October and approved this.

MR KOKO: Correct, Chair.

CHAIRPERSON: But on the 23 October you moved out of this position.

MR KOKO: Correct, Chair.

CHAIRPERSON: And therefore you could not play any role – you could not chair the steering committee anymore.

MR KOKO: Exactly, Chair.

CHAIRPERSON: Yes. Okay, alright.

ADV SELEKA SC: Thank you, Chair. Yes, I was trying to do exactly that finalisation, Chair. If we go to page 1, Mr Koko.

CHAIRPERSON: Sorry, I took that away from you.

10 **ADV SELEKA SC:** I will deal with it differently, I see where the Chairperson ...[intervenes]

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: 829.36, Mr Koko, the introduction and – because I am trying to understand this in the light of your explanation to the Chairperson. Paragraph 1 says:

“Introduction. In accordance with a mandate approved by BTC...”

board tender committee.

20 “...via round robin on 6 July 2015 to negotiate with McKinsey and Co to develop the current top engineers programme into an internal consulting unit that can provide world class management consulting services capable of resolving emerging company wide risks are driving savings and unlocking cash, this report reflects the results of

thereof and requests ratification of the negotiation feedback.”

Then it says:

“The mandate provided was as follows.”

Now that is the mandate provided on 6 July 2015.

MR KOKO: Correct.

ADV SELEKA SC:

10 “The mandate to negotiate with McKinsey and Co to develop the current Top Engineers programme into an internal consulting unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash is hereby approved subject to the following.”

So Chair, this is a restatement of what was decided on the 6 July 2015 by BTC. Then you have, 1.1, it gives you the points that was decided, 1.1, 1.2, 1.3 and then 1.4 because I am trying to ...[intervenes]

MR KOKO: Ja, I agree with you.

20 **ADV SELEKA SC:** Because I am trying to have the Chairperson and us be on the same page. No, Chair, that is fine, just keep it there. Then ...[intervenes]

CHAIRPERSON: But if you agree with him, Mr Koko, okay, on the 6 July you were still on suspension, is that right?

MR KOKO: On July I was still on suspension.

CHAIRPERSON: Yes, yes. Well, if you agree with him then the question would be between the 6 July and the 20 July obviously because you are still on suspension you would not have chaired the steering committee, maybe it was chaired by whoever was acting in your position but when you came back on the 20 July, between the 20 July and the 23 October you have already said you never formed part of the negotiations.

10 **MR KOKO:** Certainly, Chair, I never did that.

CHAIRPERSON: Yes, do you know whether anybody did take your place, you did chair the steering committee when you were back?

MR KOKO: Chairman, to the best of my knowledge and I am certain that I am not wrong at all, was never a steering committee. A steering committee was never set up.

CHAIRPERSON: So, well I guess there was no need to set up the steering committee because 1.4 says the negotiating team has just put on a different cap.

20 **MR KOKO:** Yes.

CHAIRPERSON: The steering committee, there would only be on addition, the Chairperson would be ...[intervenes]

MR KOKO: Right.

CHAIRPERSON: Ja, so the structure was there by virtue

of the agreement.

MR KOKO: Correct.

CHAIRPERSON: Of this document.

MR KOKO: Correct, correct.

CHAIRPERSON: So the only question is whether the Chairperson ever called a meeting of the steering committee.

MR KOKO: There was never a meeting, Chair.

CHAIRPERSON: Now before you came back from your
10 suspension do you know whether there was somebody who chaired such steering committee?

MR KOKO: I have no knowledge of that, Chair.

CHAIRPERSON: Ja, you never had. Ja but you say when you were back you ...[intervenes]

MR KOKO: There was never a steering committee. All what happened in September, once we decided that we need a corporate plan, I sent an email to the team for an update, guys, how far are you with the negotiations you are doing with McKinsey and that is a document that Mr Seleka
20 was referring to, that they gave me the feedback on. That is the only thing that they said.

CHAIRPERSON: But seeing that you signed this document on the 6 July and you would have seen this clause 1.4 for signing it, how did it come about that you did not give effect to it because you were the person who

should have given effect to it once you were back.

MR KOKO: Because the negotiations were complete by the time I signed it on the 6th, there was nothing ...[intervenes]

CHAIRPERSON: They were completed before you came or...?

MR KOKO: Before the 6th, there was nothing to do before the 6th.

CHAIRPERSON: Oh, before the 6 October.

10 **MR KOKO:** On the 6th when I signed this document...

CHAIRPERSON: Yes, they had been completed.

MR KOKO: They had been completed there was nothing more to do.

CHAIRPERSON: And from 20 July to that time you were not aware that you were supposed to chair this committee.

MR KOKO: Not at all.

CHAIRPERSON: Is that so?

MR KOKO: Not at all.

CHAIRPERSON: And nobody told you about it.

20 **MR KOKO:** And nobody told me about it.

CHAIRPERSON: Yes.

MR KOKO: All what I knew as a commercial executive is that there is this transaction on the engineers and it was on this basis and that is why I had a meeting with the Chairman but this resolution never came to me at all. In

fact the first time I saw this resolution was when I signed this document.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: A couple of things arising for there, Mr Koko, let me clear one. There was a steering committee, Mr Anoj Singh was here, testified, he was the Chairperson of this steering committee.

MR KOKO: No, Chair.

10 **ADV SELEKA SC:** And there are minutes of that steering committee.

MR KOKO: No, Chair.

ADV SELEKA SC: Yes, Mr ...[intervenes]

CHAIRPERSON: Let him finish, Mr Seleka.

ADV SELEKA SC: Ja, I managed to finish as he was interrupting, Chair.

CHAIRPERSON: Oh, okay, Mr Koko, response?

20 **MR KOKO:** Chair, again it is case of mistaken identity. The steering committee that Mr Singh was talking about started to the best of my knowledge in January 2016 for the ...[intervenes]

CHAIRPERSON: Corporate plan.

MR KOKO: Not for the corporate plan for the MSA.

CHAIRPERSON: Ja.

MR KOKO: Then Mr Singh had his own steering committee for the corporate plan for the contract that I

signed on the 29 September. It was a financial transaction for the purpose of the business plan. So and this is why I said, you know, people intend to combine these two which are different. Mr Singh was running a project to draft a business plan that must be ready in February. He managed it, he ran it, I was – I do not even remember being in those meetings, it was a financial thing that he ran and if businesses had to contribute there were people that were part of that but that is not a standing committee that
10 is envisaged here.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chair, I am no way, Mr Koko, confusing corporate plan, business plan with the Top Engineers programme. The Top Engineers programme became part of the MSA, the steering committee was formed, it was chaired by Mr Singh. We have minutes of that meeting. I do not have those minutes, Chair, and I do not know, I cannot talk to it.

ADV SELEKA SC: Yes.

20 **MR KOKO:** I was not part of it, I do not know.

CHAIRPERSON: But are you saying, Mr Seleka, that the steering committee that Mr Singh chaired is the steering committee contemplated in paragraph 1.2 – 1.4?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I was not to explain – I have heard the Chairperson interpret that paragraph 1.4.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I want us to go back to it.

CHAIRPERSON: Yes, yes.

ADV SELEKA SC: So that we can understand.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because you see, Chair, the BTC when it sat on the 6 July 2015, the resolution actually says the
10 Acting Group Executive Technology and Commercial is authorised.

CHAIRPERSON: Is? Is authorised?

ADV SELEKA SC: It says that:

“Resolved that a negotiating team that will also serve as a steering committee for the development of Eskom Top Engineers consulting unit be authorised under the Chairmanship of the Acting Group Executive Technology, Commercial to develop, negotiate and implement above strategy
20 subject to Eskom delegation of authority.”

So the paragraph reads the same except that in the resolution the word “acting” is inserted.

CHAIRPERSON: Yes, where is the resolution?

ADV SELEKA SC: The resolution is on page, the same bundle, page 829.14. So that is Eskom bundle 14(c) page

829.14.

CHAIRPERSON: Okay, I have got it:

“It is resolved that...”

1, 1.1 and then 1.4.

“That a negotiating team that will also serve as a steering committee for the development of Eskom Top Engineers consulting unit be authorised under the Chairmanship of the Acting Group Executive Technology and Commercial to develop, negotiate and implement above strategy subject to Eskom delegation of authority.”

ADV SELEKA SC: Yes.

CHAIRPERSON: I guess that the inclusion of “acting” would make sense because at that time whoever was in that position was acting.

ADV SELEKA SC: We know who it was, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Mr Koko will also know.

CHAIRPERSON: Ja, was it Mr Mabelane?

20 **ADV SELEKA SC:** Correct.

CHAIRPERSON: Yes, okay. But of course Mr – I do not know whether Mr Koko is going to say well, that was specific to the acting person or not.

MR KOKO: No, Chair, I had nothing to say, actually.

CHAIRPERSON: Yes.

MR KOKO: I had no knowledge of that.

CHAIRPERSON: Ja.

MR KOKO: It was [indistinct].

CHAIRPERSON: Yes.

MR KOKO: You know in my language we have something called [speaking vernacular] and Mr Seleka, I do not know if you understand that. You are putting things to me that I had no knowledge of.

CHAIRPERSON: No, Mr Seleka, continue and put the
10 point you wanted to put.

ADV SELEKA SC: Yes.

CHAIRPERSON: But one of the things you were saying or you were I think suggesting is that you may have a certain interpretation of clause – of paragraph 1.4.

ADV SELEKA SC: 1.4.

CHAIRPERSON: That might different from the interpretation I have.

ADV SELEKA SC: Yes.

CHAIRPERSON: And that is separate from the acting.

20 **ADV SELEKA SC:** Yes, no, that is separate from the acting.

CHAIRPERSON: Ja. What is that interpretation?

ADV SELEKA SC: And maybe we should go to it when it is decided on the 6 July 2015, Chair, because it will make sense.

CHAIRPERSON: Well, maybe start before I go there so I can – simply looking at 1.4.

ADV SELEKA SC: Yes.

CHAIRPERSON: What is that interpretation?

ADV SELEKA SC: Where is the Chairperson now?

CHAIRPERSON: I am at 829.37. I am sorry, Mr Barrie?

ADV BARRIE SC: Mr Chairman, it is with some trepidation that I would now wish to just assist. If – and again coming back to the point. If one tries to attribute
10 meaning to a document then one has to read it in context in the whole.

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

ADV BARRIE SC: To read that ...[intervenes]

CHAIRPERSON: No, that might be the reason why Mr Seleka wants us to go to the other clause.

ADV BARRIE SC: No, no, I understand that but that is the very point.

CHAIRPERSON: Yes.

ADV BARRIE SC: If you read the document as it stands
20 there and you will read the same wording on the 6 July no doubt.

CHAIRPERSON: Yes.

ADV BARRIE SC: If you read it in context it is clear that the negotiation of the initial agreement is covered by 1.1.

CHAIRPERSON: Yes. No but let me get his interpretation

first.

ADV BARRIE SC: Yes but now – and just read the whole thing and then it is very clear that 1.2, 1.3 and 1.4 ...[intervenes]

CHAIRPERSON: Yes, no, but let me hear his version and then we can go further.

ADV BARRIE SC: 1.2, 1.3 and 1.4 deal with the implementation phase.

CHAIRPERSON: No, no, that is fine, Mr Barry, I am
10 saying for now I just want to hear it.

ADV BARRIE SC: All I am saying is please – no, I am sorry, please just read the whole document ...[intervenes]

CHAIRPERSON: No, Mr Barrie, no Mr Barrie, no Barrie ...[intervenes]

ADV BARRIE SC: In terms of the prescripts of law of law – [inaudible – speaking simultaneously] interrupting me, in terms of the prescripts of law regarding interpretation of written matter.

CHAIRPERSON: No, Mr Barrie, no, no, no, Mr Barrie. Mr
20 Barrie please sit down. Please sit down. I do not want to happen again, Mr Barrie, it has happened before ...[intervenes]

ADV BARRIE SC: Chair, chair ...[intervenes]

CHAIRPERSON: I am chairing here ...[intervenes]

ADV BARRIE SC: What I am saying is ...[intervenes]

CHAIRPERSON: When I say sit down, sit down. Please.

ADV BARRIE SC: Please just ...[intervenes]

CHAIRPERSON: You are continuing to speak, Mr Barrie.

ADV BARRIE SC: [inaudible – speaking simultaneously]
of the prescripts of law.

CHAIRPERSON: Mr Barrie, I said to you sit down.

ADV SELEKA SC: Mr Barrie, sit down. Thank you.

CHAIRPERSON: I am not going to tolerate this anymore.

ADV BARRIE SC: Chair, I stood up, I said with some
10 trepidation [inaudible – speaking simultaneously]

CHAIRPERSON: No, when I say sit down, sit down until I
am finished what I am saying. If you ask to speak after I
have spoken, indicate that you would like to speak and if I
permit you, you speak. If I do not permit you do not speak.

ADV BARRIE SC: If you interrupt me should I just
...[intervenes]

CHAIRPERSON: I will interrupt you when you do not want
to listen.

ADV SELEKA SC: Mr Barrie, please sit down.

20 **ADV BARRIE SC:** As you – sorry?

CHAIRPERSON: I will interrupt you when you do not want
to listen to me.

ADV BARRIE SC: I thought that I was suggesting to you
how [inaudible – speaking simultaneously]

CHAIRPERSON: Sit down now, Mr Barrie. Sit down Mr

Barrie. Mr Seleka?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Let me hear your interpretation please.

ADV SELEKA SC: Yes, Chair. So the paragraph reads and I think the timing, if you look at 6 July 2015 it makes sense. It says that:

“That a negotiating team...”

Then you have this addition:

10 “...that will also serve as a steering committee be
authorised under the Chairmanship of the Acting
Group Executive Technology and Commercial...”

CHAIRPERSON: Okay ...[intervenes]

ADV SELEKA SC: To do certain things.

CHAIRPERSON: You are not reading 1.4 now, you are reading the resolution.

ADV SELEKA SC: I am reading the resolution which is also 1.4, Chair.

CHAIRPERSON: Okay, I wanted you to read 1.4.

ADV SELEKA SC: Of the feedback report.

20 **CHAIRPERSON:** As is because I understood you say my interpretation of 1.4 or yours is different from mine.

ADV SELEKA SC: Yes.

CHAIRPERSON: Now if you say it is different from mine because you read it together with something else that appears somewhere, that is fine.

ADV SELEKA SC: No.

CHAIRPERSON: But if you say it is different reading it as it is, then I want you to tell me what that interpretation is.

ADV SELEKA SC: Okay.

CHAIRPERSON: Reading 1.4 as is.

ADV SELEKA SC: Yes. The interpretation is, Chair, the negotiating team, it is being authorised, the negotiating team, under the Chairmanship of the Acting Group Executive.

10 **CHAIRPERSON:** Ja, you see, now you put acting whereas 1.4 does not have acting on page 829.

ADV SELEKA SC: Yes, okay, that is because – no, no, it does not matter, Chair, let me ...[intervenes]

CHAIRPERSON: Ja, let us leave out acting for now.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then we later on go to it if we need to go to it, ja.

ADV SELEKA SC: Yes. Okay, let me go to where the Chairperson is because it still reads the same even without
20 the word acting.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja, so it says:

“That a negotiating team...”

Because they are reproducing what was resolved by the BTC, that a negotiating team that will also serve as a

steering committee for the Eskom's Top Engineers consulting unit be authorised. So the authorisation is to that negotiating team, under the Chairmanship of the Group Executive Technology and Commercial to do certain things, to develop, to negotiate and implement the above. So I know that ...[intervenes]

CHAIRPERSON: Right.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then just indicate what the difference is
10 between my interpretation and yours.

ADV SELEKA SC: Yes. What the Chairperson was saying, was saying that when the negotiating team becomes the steering committee ...[intervenes]

CHAIRPERSON: So I was saying it could be different hats.

ADV SELEKA SC: Yes, that is right. You were saying when it becomes, sorry.

CHAIRPERSON: Ja, you were saying – your interpretation does not - does your interpretation contemplate that the
20 negotiating team could wear different hats as steering committee?

ADV SELEKA SC: Yes, that, I agree with you on that.

CHAIRPERSON: Ja.

ADV SELEKA SC: But where we seem to have different interpretation, Chair, is on this. My interpretation is the

steering committee, when the board, the BTC, makes this resolution, it gets to be authorised under the Chairmanship of the GE Commercial and Technology to develop and negotiate. So it does not wait when it becomes a steering committee, it is already under the Chairmanship of the GE Commercial and Technology.

CHAIRPERSON: Okay, so what you are saying is, the Group Executive Technology and Commercial chairs the negotiating team and not necessarily chairs primarily the negotiating team but that negotiating team can also sit as a steering committee and when it sits as a steering committee it is still chaired by the same person namely the Group Executive, is that what you are saying?

ADV SELEKA SC: You see, the second part is not here.

CHAIRPERSON: H'm?

ADV SELEKA SC: That second part, Chair, is not here from the – from the...

CHAIRPERSON: The one of the Group Executive Technology and Commercial chairing the steering committee?

ADV SELEKA SC: Yes.

CHAIRPERSON: That is the one you say that part is not here.

ADV SELEKA SC: Is not clear, yes, from the reading ...[intervenes]

CHAIRPERSON: Is your interpretation that the negotiating team becomes – runs a steering committee, without the Group Executive, which has it when it is the Steering Committee?

ADV SELEKA SC: No I am saying – I am just saying it is not clear from this Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: It says the negotiating team that will also serve ...[intervenes]

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: ...as the Steering Committee ...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: ...for the development of the Top Engineers Consulting Unit.

CHAIRPERSON: Ja.

ADV SELEKA SC: ...be authorised, so it seems to me that the reading of this paragraph could be made without reading - you could read it without, that will also serve.

20 And when you do that, I think you come to what I am saying. It could read that a negotiating team be authorised under the Chairmanship of the Group Executive technology and commercial to develop, negotiate and implement. You see what I am saying, Chair?

CHAIRPERSON: Okay, alright. So, you are saying there

are two possible interpretations maybe more than two and you choose a particular one. The one is that the negotiating team exists without the Chairmanship of the Group Executive, in one scenario and in another scenario, it exists under the Chairmanship of the Group Executive technology and commercial.

ADV SELEKA SC: That is the scenario, Chair.

CHAIRPERSON: And you say, this latter scenario is the one that you believe 1.4 is dealing with.

10 **ADV SELEKA SC:** Correct, Chair.

CHAIRPERSON: So that you say the Group Executive technology and commercial is contemplated to be the person who is for all intents and purposes is the Chairperson of the negotiators.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: And then where it says that will also serve as a steering committee for the development of Eskom's Engineers Consulting Unit, you say that might be the negotiating team acting without the Group Executive
20 chairing it.

ADV SELEKA SC: Correct, Chair because we can discern from this paragraph, who is contemplated as to be the Chairperson.

CHAIRPERSON: Ja, okay that may be one of these may be the correct interpretation, but now I understand it, and

then we say Acting Group Executive when we go to the resolution.

ADV SELEKA SC: That is right.

CHAIRPERSON: Okay just now I understand it ja, okay.

ADV SELEKA SC: And I think that interpretation is given credence by the fact that the BTC at the time since July 2015, was opening a door for negotiations. So it is saying, we are establishing this negotiating team under the Chairpersonship of Mr X. This negotiating team in the
10 future it will become a steering committee.

CHAIRPERSON: Okay.

ADV SELEKA SC: But now, it is established under the Chairmanship of Mr X.

CHAIRPERSON: Yes, okay alright now I understand, okay continue, what do you put Mr Koko?

MR KOKO: And then, Mr Koko, you come back on the 20th of July 2015.

MR KOKO: Yes.

ADV SELEKA SC: Now, you have said to the
20 Chairperson, well, let me ask you, what do you do? Because then you are, you are coming back to your position on the 20th of July 2015. Mr Mabelane who was acting would give way to you. Did you assume your role as the GE Commercial and Technology?

MR KOKO: Yes.

ADV SELEKA SC: And you then much later in October, well, before we reach October, the feedback report says the negotiation started on 28th July 2015. That is when you were back eight days ago.

MR KOKO: Yes, that is what the document says.

ADV SELEKA SC: Yes, tell the Chairperson, insofar as that is concerned. Did you play any role in the negotiations?

MR KOKO: I played no role, zero.

10 **ADV SELEKA SC:** You said no.

CHAIRPERSON: Did Mr Mabelane report to you when you came back any activities in which he had been involved as Chairman of this committee, of this team or not?

MR KOKO: Chairman, you can be persuaded to adopt a particular position and you will be wrong, this is what happened. The Board Tender Committee appointed a negotiating team, Mr Govender was the lead negotiator and he negotiated the contract, that is it. I got back the outcome of the negotiating on the 6th of October, so on the
20 3rd of October - on the 3rd of September, I wrote a note to a couple of them asking for progress. That is exactly what happened. The rest is gossips and people trying to – what has happened Chair is exactly that, the Board...[intervene]

CHAIRPERSON: No, that may be what happened factually...[intervene]

MR KOKO: That is what happened factually.

CHAIRPERSON: Yes, but what is written here on 1.4 is not...[intervene]

MR KOKO: I have never had sight of what is happening in 1.4 because I conveniently suspended myself.

CHAIRPERSON: Yes.

MR KOKO: I conveniently participated in a suspension scam so that I do not have sight of document.

CHAIRPERSON: Yes, okay alright Mr Seleka.

10 **ADV SELEKA SC:** Yeah, but the document is reproduced in your feedback report of October 2015, talking about negotiations that started on the 28th of July 2015.

MR KOKO: What is wrong with that Chair?

ADV SELEKA SC: No, you know, you say you distance yourself from this document, you would have had sight of it to reproduce what is there in your feedback report.

MR KOKO: No, I signed it, I cannot distance it.

CHAIRPERSON: Mr Koko let Mr Seleka finish first before you respond.

20 **ADV SELEKA SC:** Yes, you signed it so you would have had sight of the BTC Resolution that that we have just gone through.

MR KOKO: Ja, on your 6th of October.

ADV SELEKA SC: Yes.

CHAIRPERSON: So was there any handover report that

Mr Mabelane gave to you when you came back?

MR KOKO: Chair, there was in my view, a detailed discussion about the handover. It was detailed enough for me to think that I need to go and talk to the Chairman hence the email I sent. What Mr Mabelane did not give me, whether it may be an omission on his side and that is the part that you must put to him, I cannot speak for him, is to bring to my attention that there is a steering committee that I have to Chair. Mr – and let me tell you

10 Chair...[intervene]

CHAIRPERSON: But let us get this out of the way. There was no written handover report?

MR KOKO: No, Chair there was no written handover report.

CHAIRPERSON: Okay, alright continue.

MR KOKO: But I need to, I need to continue Chair. I can tell you now, in spite of what Mr Seleka wants you to believe, there were no steering committee, and he says his got minutes of it that were chaired by Mr Singh, I would
20 like to have sight it, I know nothing of that sought.

I can tell you now and I do not think I am wrong. There were no steering committee on the McKinsey MSA. The steering committee that I know of, is the steering committee of business Act of the contract that I signed on the 29th of September, and the one on January 2016, on

the MSA.

I know of no other steering committee it is not common in Eskom who have steering committees during negotiations that are Chaired by the Group Executive, it is not there. So I invite you to ask for Mr Seleka to let you have sight of the minutes that he says he has for that steering committee.

CHAIRPERSON: But what you are saying means if it is true, is that the negotiating team that negotiated was not
10 composed in the manner in which paragraph 1.4 of the resolution may have intended because as I understand it, Mr Govender led the negotiations and concluded everything.

MR KOKO: That is correct Chair and this is what you see on page 8.29.43, that is what you see.

CHAIRPERSON: Ja, okay Mr Seleka.

ADV SELEKA SC: Thank you Chair.

MR KOKO: But Chair, I am really interested in this minutes of the steering committee, I want to see that.

20 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Yes, thank you Chair. Chair, may I tell Mr Koko I am not trying to persuade the Chairperson one way or the other. I have put to you the version of Mr Singh, he has produced the minutes, he deals with the minutes in his affidavit, he Chaired that minute, it is not me

who is producing that evidence it is him.

MR KOKO: Chair, I am still interested in those minutes.

ADV SELEKA SC: And Chair, you will recall he testified before you now Mr Koko says there was no steering committee for the SLA.

MR KOKO: No, Chair there was a steering committee for the SLA that started in January 2016. There was no minutes for the negotiations of the SLA in 2015. No, there was no steering committee for the negotiations of the SLA
10 in 2015. I know nothing of that sort, Mr Seleka says it is there, there was a steering committee in 2015 and there were minutes. I am simply saying, can I see them?

CHAIRPERSON: You would like to see them.

ADV SELEKA SC: No, sir do not misunderstand me. The negotiating team is one thing, the steering committee I am talking about is in respect of the SLA, which is I have said Mr Anoj Singh was the Chairperson of and has produced the minutes. He has said in his affidavit the dates – I mean stated the dates of the steering committee in regard
20 to the MSA February, March, June, July and he mentioned August as well.

So that is the steering committee I am talking about if you understood me differently that is an incorrect understanding.

CHAIRPERSON: That is the steering committee that is

related to what?

ADV SELEKA SC: To the MSA Chairperson.

CHAIRPERSON: To the MSA?

ADV SELEKA SC: Correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja, which is what is contemplated, I have said to the Chairperson, is that steering committee contemplated in this resolution we have been looking at.

CHAIRPERSON: Oh.

10 **MR KOKO:** Chair, may - there was no steering committee in 2015 during the negotiations of the MSA, there was no such.

ADV SELEKA SC: But Chair, I am not even suggesting that because that is the negotiating team in 2015.

CHAIRPERSON: Okay, now let us get clarity on where there are difference is in terms of understanding. The steering committee that Mr Seleka you say Mr Anoj Singh has testified about that relates to the MSA.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Did he say that sat for some months in 2016?

ADV SELEKA SC: Correct, Chair they started on...[intervene]

CHAIRPERSON: Not in 2015?]

ADV SELEKA SC: No.

CHAIRPERSON: Okay, here we are talking about 2015...[intervene]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...in this resolution.

ADV SELEKA SC: Yes.

CHAIRPERSON: And this resolution talks about the steering committee, okay.

ADV SELEKA SC: Firstly, the negotiating team.

CHAIRPERSON: The negotiating team and it refers to a
10 steering committee.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Koko says, there was no steering committee in 2015.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that correct?

MR KOKO: That is what I am saying, there was no steering committee in 2015 that was Chaired by or supposed to be Chaired by the Group Executive Technology and Commercial.

20 **CHAIRPERSON:** Yes, so...[intervene]

ADV SELEKA SC: I am not saying anything different.

CHAIRPERSON: You are not saying anything on this?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: I did not say that.

CHAIRPERSON: Okay, alright. Okay, so I think we are on the same - so the minutes of the steering committee that you were talking about are those minutes of meetings of the steering committee of that happened in 2016?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Ja, and Mr Koko, you say nothing about that, either or do you?

MR KOKO: No, no I agree, there was a steering committee in 2016 that started in January. I participated in some of
10 those.

CHAIRPERSON: Yes, okay alright.

ADV SELEKA SC: All I was correcting Chair, is a statement that there was no steering committee in respect of the SLA but I think Mr Koko has now clarified. He is saying there was no steering committee in 2015, I am saying I never said there was one in 2015. It was established in respect of the MSA but it started in...[intervene]

CHAIRPERSON: In 2016.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Okay, alright.

MR KOKO: Chair, the fact what we must lose it is why we are here. We are here because Ms Mothepu makes an allegation that I have changed the scope with respect to master services agreement and the order sales contract.

I have showed you the negotiating team, I have showed you the negotiating outcomes, I have showed you the delegations of authority. I could not have done that purely on paper.

And Ms Mothepu has told you and has given you nothing to support her allegations, other than to simply say, trust me, yes.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair, well let us take it
10 step by step, Mr Koko because I think what you are trying -
what you are at pains to seek to show or say to the
Chairperson, is that you were not involved in the
negotiations for the MSA.

MR KOKO: I am not at pains Chair; I am simply taking
you through the evidence. I am simply taking you through
the paperwork and I just want you to conclude not on what
I am telling you, but on the evidence before you.

ADV SELEKA SC: Ja, but you are telling the Chairperson
that you were not involved in the negotiations.

20 **MR KOKO:** I am not saying Chairman all what I have told
you is to go to page 829, you will find the negotiating team
there.

CHAIRPERSON: No the answer Mr Koko is yes, that is
what I am saying and it is supported by the documents,
that is what you should say.

ADV SELEKA SC: Yes.

MR KOKO: Ja, okay Chair.

ADV SELEKA SC: Okay, now, let us see, this emails that are amongst other people sent to yourself. Let us turn to page still on Eskom bundle 14 Chairperson page 811.113.

CHAIRPERSON: I am sorry, what page again?

ADV SELEKA SC: 811.

CHAIRPERSON: Eight, zero, eleven?

ADV SELEKA SC: Eight, eleven.

10 **CHAIRPERSON:** Oh, eight, one, one?

ADV SELEKA SC: Yes, point one, one, three. Now Mr Koko there is a couple of this emails and with patience, we will go through them and I would like you to explain to the Chairperson, what is going on there.

ADV SELEKA SC: Are you on that page?

MR KOKO: Yes, I am there Chair.

ADV SELEKA SC: So this is an email from the gentleman at McKinsey sent on Friday 24 July 2015. You are certainly back from suspension and you are the first person to whom
20 - whose email address appears on the email and you are also the first person to whom the email is addressed.

So the subject is draft LOI for Eskom Tops Program. Can you confirm that the top engineering program we have been talking about?

MR KOKO: Yes, I do.

ADV SELEKA SC: There is an attachment there, it says:

“Dear Matshella, Edwin and Trish.

Please find enclosed a draft for an LOI for immediate commencement of our work. It has been aligned with our legal department, let me know what you think or put us directly in touch with your legal people.

Have a good day.

Lawrence.”

10 Please tell the Chairperson what this is about?

MR KOKO: Chair, I have nothing to say about this Chair, the negotiating team that is dealing with it and the negotiating team leader is cooperating and he deals with it. I do not get involved in it.

CHAIRPERSON: The question is the email includes you...[intervene]

MR KOKO: Yes, I cannot stop...[intervene]

CHAIRPERSON: How would it include you if you were not involved?

20 **MR KOKO:** I cannot stop – I have never discussed with Lawrence, two days after I came back to work. He knows I am back cause it is published, so he sends me a note. I do not command him, I do not instruct him and I have never negotiated with him. In my daily life as a Group Executive, people think I am that important and they send to me and

for me, for as long as the right person is involved who is allocated he is dealing with it, that is it.

CHAIRPERSON: Did you by any chance respond to it?

MR KOKO: No, I did not.

CHAIRPERSON: You did not?

MR KOKO: No, I did not.

CHAIRPERSON: Okay, continue Mr Seleka.

ADV SELEKA SC: Thank you Chair, now, Mr Koko can you - well, let me let me simply – let us look at the
10 attachment because he said please find enclosed the draft for an LOI for immediate commencement of our work. It has been aligned with our legal department. Now the attachment is on the next page, it is a draft letter which is intended to be addressed to McKinsey and specifically addressing Mr Saga. Is it correct that this draft letter was a draft emanating from Eskom?

MR KOKO: I do not know, I have not – I have never seen this thing, I have not.

ADV SELEKA SC: I think it will help if you assist the
20 Commission Mr Koko because you are the first person addressed in this email.

MR KOKO: Ja, you see Chair this is the conspiracy and I know he is going to be upset and I am going to be upset to because my name is there I must know.

CHAIRPERSON: Well if there is a letter that is addressed

to you, one would expect you to know unless you say I have never...[intervene]

MR KOKO: But why do you say this letter is attached to me, Chair?

CHAIRPERSON: Well it says Dear Matshella, Edwin and Trish.

MR KOKO: Yes, it is attached to three people.

CHAIRPERSON: Ja, let me make sure that I – did you receive it all as an email?

10 **MR KOKO:** No, I do not even remember this email.

CHAIRPERSON: Yes.

MR KOKO: But even if I have received it Chair let me tell you what happens.

CHAIRPERSON: Ja.

MR KOKO: My PA would open my emails and action my items and my PA would have known that the Board has delegated Mr Govender to deal with this, so the right person will deal with this, so the right delegated person by the Board would deal with this, in fact...[intervene]

20 **CHAIRPERSON:** Do you mean she or he would not even let you see it and then get the instruction from you to pass it on to other people?

MR KOKO: She will do if she is unsure, if she is unsure she will ask. If she is sure she knows it she will action it to the right person but there was no ambiguity or lack of

clarity about who the Board delegated to deal with this and the fact that my name appears to it, on it should not - in fact the way Eskom works Chair it would be irregular for me to intervene and deal with issues that the Board have not delegated to me because then I could be accused of influence.

It has happened many times so what I do when this thing comes I ask and you will see in some documents, who is delegated to deal with this, this one is so let him
10 deal with it, I am not in getting involved. I should not get involved legally so, the Board has deemed it prudent a delegated person interferes, I should not interfere with it.

ADV SELEKA SC: Ja, but it is very clear Mr Koko from the documentation we have gone through that Mr Edwin Mabelane was only delegated insofar as he was acting and for as long as he was acting. Now you are back 20 July 2015 this is four days later.

MR KOKO: Chairman, when I take exception the Commission should be presented with Mr Mabelane's
20 evidence, Mr Mabelane must tell his version about what was happening at the time because I cannot...[intervene]

CHAIRPERSON: Well Mr Seleka is entitled to say to you, to probe why it would be sent to you and you would not deal with it in circumstances where you are back at work, number one, number two the resolution contemplated that

Mr Mabelane would only deal with it insofar as he was acting now he was not acting so one would expect that now that the incumbent was back, one would expect the incumbent would take over.

MR KOKO: Chairman, this is where I am trying to assist you.

CHAIRPERSON: Yes.

MR KOKO: I told you what factually happened not the hearsay.

10 **CHAIRPERSON:** Yes.

MR KOKO: The Board appointed a negotiating team, you saw the names of the negotiating people, you saw the names of the people who participated. It is not a hearsay you saw them these were the people who were mandated by the Board to negotiate.

The other people participated, they were also there. In that context I would have been - improper to interfere with the team, I would have been extremely improper for me to interfere with the team. The Board has decided in
20 its own prudence that these team of people must negotiate this contract.

So whatever comes to me I do not respond to it or I forward it or I leave it to the person who is in charge of that negotiating team. I cannot stop people from sending me anything but when it comes to me, only this team that

is approved by the Board must deal with it.

If I interfere with the team, it would be improper.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chair, and the position is even made clearer in your feedback report, which you signed, you removed the word acting, and now you put GE Technology and Commercial.

MR KOKO: Is that Mr Seleka's evidence that I have removed the word acting?

10 **ADV SELEKA SC:** Well, the people who drafted and signed that document, the feedback report. When I say you I am saying the collective.

MR KOKO: Chair, Mr Seleka just said you removed the acting, is it his evidence?

CHAIRPERSON: Yes, but he says he is not talking about you, as an individual says, the group of people who signed it, which includes you. You know English says you, and the singular, you know.

MR KOKO: No, I need to know Mr Seleka is presenting
20 his own evidence.

CHAIRPERSON: Well he is suggesting to you that - as I understand what he is saying to you, that the people who signed that report are the authors of the report. And when they wrote that report, they did not talk about an Acting Group Executive. The fact that the resolution talks about

an Acting Group Executive, so that is what he is saying.

MR KOKO: Chairman, let me tell you why that is wrong. The Board delegates to a position not to an acting position. So it was not right from day one, that there was an acting position. The resolution from day one on the 6th of July 2015 should have said from day one, Group Executive, Technology and Commercial not acting.

CHAIRPERSON: Well, I do not - I am not sure that you are right about that...[intervene]

10 **MR KOKO:** I am right, Chair.

CHAIRPERSON: Mr Koko because when the position might remain the same, but the person could be permanent or acting, okay.

MR KOKO: Chair, you are wrong.

CHAIRPERSON: No, no the person when he or she is not the permanently appointed person would be the acting, that is why if the President is out of the country, they will be an Acting President but the powers and the duties would usually be the same for both the incumbent and the acting
20 person.

MR KOKO: Chairperson, Eskom delegations of authority never delegates to an Acting GM or an Acting CE. Delegations of Eskom delegates to a CE, I have been in Acting CE before, the delegation is to the CE. The person in that office has got those powers.

CHAIRPERSON: The same powers?

MR KOKO: They have got the same powers.

CHAIRPERSON: Ja.

MR KOKO: So it is unusual and improper for a resolution to read we delegate to an acting an Acting Group Executive.

CHAIRPERSON: Well, I am not sure how much it matters, because the fact of the matter is, the resolution says Acting Group Executive...[intervene]

10 **MR KOKO:** Yes, but...[intervene]

CHAIRPERSON: ...rightly or wrongly.

MR KOKO: But that is why – let me tell you where it matters because now I am accused of changing it from acting to not acting. It is an accusation, it is an allegation that I take exception to, if the resolution came in and said acting and then I would have said but why acting there is nothing like this.

CHAIRPERSON: Well the fact of the matter is, the resolution talks about Acting Group Executive.

20 **MR KOKO:** Yes.

CHAIRPERSON: The report, that report talks about Group Executive.

MR KOKO: Which is the correct way of doing it.

CHAIRPERSON: Yes, but the two are not the same.

MR KOKO: Yes, but you cannot cast especially because I

have done the right thing.

CHAIRPERSON: Well, I guess Mr Koko you have said what you want to say about this, Mr Seleka.

ADV SELEKA SC: Yes, thank you, Mr Chair to the extent - well, Mr Koko to the extent you have said we should ask Mr Mabelane. Chair let us go to page 702 in the same bundle point 60.

CHAIRPERSON: Seven, zero, two point six zero?

ADV SELEKA SC: That is correct, Chair. So the affidavit
10 start on page 702.38. Now that is the affidavit of Mr Edwin Pupane Mabelane, are you at the relevant page Chair.

CHAIRPERSON: I am at page 702.60.

MR SELEKA SC: That is right. We will give Mr – paragraph 1.3. Chairperson you see under the heading The McKinsey MSA Contract under paragraph 12 but we will give Mr Koko a chance to get there. You – oh so you are at it.

So there he deals with the McKinsey contract and I am skipping paragraph 12.1, 12.2 let us go to 12.3 Chairperson he says:

20 “When negotiations with McKinsey started Mr Koko had returned from his suspension and my acting period had ended. I handed over all commercial functions back to him and returned to Group Technology. The negotiations took place over a three month

period and culminated in a submission to the Board Tender Committee for the approval of the negotiating outcome on 22 October 2015.”

And he goes on to talk about other things. So Mr Koko you too – you went back into your position. He handed over he says all commercial functions back.

MR KOKO: It is – it is not – it is common cause Chair that I came back on the 22 July 2015.

10 **CHAIRPERSON:** Oh 20th not 20th?

MR KOKO: 22nd – 20th of July 2015.

CHAIRPERSON: Yes. Yes.

MR KOKO: And came into my position of Group Executive Technology and Technology and Commercial and assumed all the powers of the office. It is common cause.

CHAIRPERSON: Ja. What he said in that paragraph Mr Seleka as well.

MR SELEKA SC: Yes I wanted to go there.

20 **CHAIRPERSON:** Oh you wanted to continue. Okay continue.

MR SELEKA SC: I wanted to go there but he says the SO 8th October

“Key to the approval was the format of the contract being a SMA instead of MEC as to the mandate. The SMA format of contract

was proposed by the Project team lead by Prish Govender and supported by Eskom internal legal department. I was not directly involved with the preparations for an execution of the negotiations. However I continued to interact with members of the negotiating team to provide clarity where required which included discussions with Eskom's internal legal and compliance departments."

So he - you see that email that is also addressed to him as the second name there he is going to say he did not take part in the negotiations.

CHAIRPERSON: Well before – before you – Mr Koko responds.

MR SELEKA SC: Yes Chair.

CHAIRPERSON: I note that in this paragraph Mr Mabelane does say the SLA format of contract was proposed by the project team led by Prish Govender.

20 **MR SELEKA SC:** Yes Chair.

MR KOKO: And that is what the board mandated.

CHAIRPERSON: If the – if the – if team there means the negotiation team.

MR SELEKA SC: Yes.

CHAIRPERSON: Then it seems to support what Mr Koko

was saying that Mr Prish Govender was leading that team.

MR KOKO: Chair I am saying factually that is what happened.

CHAIRPERSON: Yes, yes.

MR KOKO: That is...

CHAIRPERSON: So although- although Mr Mabelane says in the first line of paragraph 12.3 that when the negotiations with McKinsey started Mr Koko had returned from his suspension and his acting period had ended and he say he
10 handed over all commercial functions back to him and to Group Technology.

MR SELEKA SC: Yes.

CHAIRPERSON: He does not in this paragraph say that Mr Koko then chaired or led that negotiating team. He seems to say Mr Prish Govender was leading the team.

MR SELEKA SC: Yes, no that is – that is correct Chair. The – the...

CHAIRPERSON: It may well be that Mr Mabelane needs to be asked about some of these matters in the light of Mr
20 Koko's evidence.

MR SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

MR SELEKA SC: Specifically the – well because we can see from the – from the resolution and the feedback report or from the feedback report that Mr Prish Govender is already

identified as leading the team. But over and above that you have that 1.4.

CHAIRPERSON: Ja.

MR SELEKA SC: Which says under the chairmanship.

CHAIRPERSON: Ja.

MR SELEKA SC: Of the (speaking over one another).

CHAIRPERSON: I think that must be raised with Mr Mabelane and whoever else.

MR SELEKA SC: Yes.

10 **CHAIRPERSON:** To see whether they say the factual situation is different from the factual situation that Mr Koko...

MR SELEKA SC: Yes Chair.

CHAIRPERSON: Testifies about.

MR SELEKA SC: Yes Chair. Chair you still have that Eskom Bundle 14 in front of you.

CHAIRPERSON: Yes.

MR SELEKA SC: Shall we then go to page 811.119. .119.

CHAIRPERSON: Yes I have got it.

MR SELEKA SC: So Mr Koko this is an email again from the
20 McKinsey official Dr Alexander Weiss or Weiss Wednesday
29 July 2015 it is a – the email is addressed to Ngagema at Eskom a couple of people are copied there but you are also there. And the subject line is Workshop with Matshela Monday afternoon. And it reads:

“Hi Thando hope this email finds you well.

Christina and I today in the morning saw Matshela. Over the discussion Matshela suggested to have a workshop on Medupi Monday afternoon where he suggested to also invite Abram. Let Matshela and you talk and what would be a suitable starting time for this workshop? I will align the troops on our side. Many thanks all the best.”

Could you explain to the Chairperson what is this about Mr
10 Koko?

MR KOKO: No Chair. This is quite a very simple ...his is quite a very simple ..

CHAIRPERSON: Yes well I was going to say Mr Seleka is your understanding that the workshop related to the matters of the negotiating team?

MR SELEKA SC: Yes. That the issues Chair which were being discussed regarding the workshop related to matters of the MSA. So he can...

CHAIRPERSON: Mr Koko.

20 **MR SELEKA SC:** Clarify it.

MR KOKO: Ja Chair I think it – this is what happens when you try to connect the dots. So first you must understand that McKinsey has been in Eskom since 2011 – 2007 and McKinsey has been working in my affidavit says that has been working on the ...

CHAIRPERSON: A number of matters.

MR KOKO: A number of matters. McKinsey was employed at Medupi and Kusile by Group Capital. So I do not know why...

CHAIRPERSON: Say this is not necessarily connected.

MR KOKO: Ja.

CHAIRPERSON: With...

MR KOKO: I do not know why Mr Seleka tries to connect these dots. But here is the relevance. There is the most
10 important point. This workshop in fact I think I phoned – I may have phoned McKinsey to initiate this and they came to see me. Because it was after the meeting of the 22nd of July where the board has endorsed the design to cost strategy and you will see part of the scope of work on the 100 – on the business plan agreement is Medupi and Kusile costs – what we call them? Cost estimate – the final cost estimates. Because we are going to put a business plan now it became very important what would be the final number of Medupi and Kusile. And I think I may have called McKinsey saying we
20 need to know because you guys are working at Medupi the Medupi – McKinsey was resident on McKinsey – on Medupi and Kusile.

CHAIRPERSON: Medupi.

MR KOKO: They were based there.

CHAIRPERSON: Ja.

MR KOKO: So I say it is – we need – I will bring my engineering team and preferably on the Saturday because I will not find time 00:09:34.

CHAIRPERSON: During the week.

MR KOKO: Ja let us workshop this thing and get the final cost of Medupi and Kusile because the cost as they stand now cannot be accommodated in the NERSA determination. They cannot be so we need a very deep cut in costs and we need the right people on site to workshop what we cut at
10 Medupi and Kusile. And that can only happen if the top engineers and the McKinsey team that has always been on site since 2007.

CHAIRPERSON: Mr Seleka.

MR SELEKA SC: Thank you Chair. So Mr Koko you are saying to the Chairperson that the issue regarding Medupi did not relate to the MSA?

MR KOKO: This issue did not relate to the MSA.

MR SELEKA SC: This issue?

MR KOKO: This issue did not relate to the MSA.

20 **CHAIRPERSON:** He says this workshop did not relate to the matters that were being dealt with by the negotiation team.

MR SELEKA SC: Yes.

CHAIRPERSON: But it did – it related to Medupi.

MR SELEKA SC: Yes. So...

CHAIRPERSON: Did I put it correct Mr Koko?

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR SELEKA SC: Yes. Was there an issue regarding Medupi that would have fallen under the MSA?

MR KOKO: Yes.

MR SELEKA SC: Okay which one is that?

MR KOKO: Yes because what – what is in the MSA was claims management. The Eskom claims were running away. So part of the scope of the MSA is claims management. How
10 do we remove - reduce...

CHAIRPERSON: That is claims against Eskom?

MR KOKO: The claims against Eskom on Medupi and Kusile.

CHAIRPERSON: Ja.

MR KOKO: They were horrendous and those were part of the MSA. They were there. But this workshop here on Medupi and Kusile was meant to fit into the business plan in February 2016 that was meant to be designed to cost strategy. But the guys were there we did not have to employ
20 them. They were employed already. They had a running contract.

MR SELEKA SC: Okay. So the emails on page 811 the following pages basically. 811.120 and 811.121 you will give the same response?

MR KOKO: Yes.

MR SELEKA SC: That this does not relate to the MSA?

MR KOKO: Yes. He is connecting the dots very wrongly. It is a bad connection of the dots.

MR SELEKA SC: Okay. Now let me get your response to this – on page 811.125 or – no let me go page by page. Let me go page by page. Page 811.122. Can you explain to us what is this email about?

MR KOKO: I do not remember this email and I can tell you now I do not think this meeting took place.

10 **MR SELEKA SC:** It says update on the negotiations.

MR KOKO: Update on the negotiations yes.

MR SELEKA SC: So this one you do not remember?

MR KOKO: No, no I am saying to you that even if I remember for your sake I would not have had this meeting.

MR SELEKA SC: This is a meeting request.

MR KOKO: This is a meeting request.

MR SELEKA SC: Is it because it relates to the MSA negotiations?

20 **MR KOKO:** No, no, no I do not – I would have used an offensive term but I will not.

CHAIRPERSON: Mr Koko is the document or – at page 811.123 an attachment to the one at page 811.122?

MR KOKO: I beg your pardon.

CHAIRPERSON: Or Mr Seleka whoever can assist?

MR SELEKA SC: Chair.

CHAIRPERSON: The document at page 811.123 was it an attachment to the document at page 811.122?

MR SELEKA SC: No Chair.

CHAIRPERSON: No okay. Alright. So the update on the negotiations that was said to be attached.

MR SELEKA SC: Mr Koko...

CHAIRPERSON: Attachment where is it?

MR SELEKA SC: No Mr Koko says it is a meeting request. Is it a meeting request?

10 **MR KOKO:** This would be a meeting request and I would not take the – such a meeting.

CHAIRPERSON: But Mr Seleka you referred us to that email is the position that the update is not – was not – is not available? The update on the negotiations. You see that document.

MR SELEKA SC: Oh there...

CHAIRPERSON: At page 881.122.

MR SELEKA SC: Yes.

20 **CHAIRPERSON:** Says attachments update on the negotiations. And I was trying to see where – where is that update on the negotiations.

MR SELEKA SC: Oh. The investigator says it will be at – a calendar – because it is a meeting request it will be a calendar with the date for the meeting indicator Chair. I do not think they have printed it out here.

CHAIRPERSON: Oh okay.

MR SELEKA SC: Yes.

CHAIRPERSON: Alright.

MR KOKO: Chair not necessarily. Not necessarily because this – I do not even see the – where is attachment?

MR SELEKA SC: Where is what?

MR KOKO: Where is attachment on this email?

CHAIRPERSON: Well that is what I have been putting.

MR SELEKA SC: That is what the Chairperson is asking we
10 do not have the attachment.

CHAIRPERSON: Ja.

MR KOKO: No I cannot comment on this.

CHAIRPERSON: Ja.

MR KOKO: I cannot – I just cannot comment on this.

MR SELEKA SC: Yes. But Chair I was asking Mr Koko is it because this is an update on negotiations in regard to the MSA.

MR KOKO: Ja but Chair I am saying to you I would not take an update on anybody about negotiations that the board has
20 delegated to somebody else and are led to somebody else. I would not do that.

MR SELEKA SC: Okay so the answer to my question is yes.

MR KOKO: Yes to what?

MR SELEKA SC: That this is negotiations on the MSA?

MR KOKO: I do not know.

CHAIRPERSON: Ja I think he says he does not know because ...

MR KOKO: I do not know.

CHAIRPERSON: Because the document is not even there.

MR KOKO: I do not even have the attachment.

MR SELEKA SC: Yes Chair he says he will not take an update but from the person.

MR KOKO: No Mr Seleka is being unreasonable. He must put the update – the attachment to the document. Let me
10 look at the document. On the basis of the total package I can try to jog my memory.

CHAIRPERSON: Ja.

MR KOKO: You cannot give me half stories and try to zoom in 00:17:09 in saying (inaudible) then I must be able to comment. Give me the whole inside documents then I can comment. This is not an inside document. It is ...

CHAIRPERSON: Ja, no, no the – the attachment is not there that is for sure.

MR SELEKA SC: We will find it Chair.

20 **CHAIRPERSON:** Ja.

MR SELEKA SC: My investigator is here he will print it out.

CHAIRPERSON: Ja okay alright.

MR SELEKA SC: Ja. Let us go to the next page. 811.123. It is another email from a McKinsey official. Wednesday 12, August 2015. Okay that is the same date as the previous

email the time is at 14:50 it is addressed to you directly. The subject line is For your perusal – for your personal use only.

“Strategy online for 10 for 10 program. Fine Matshela as discussed please find enclosed the preliminary slides for the turnaround strategy. Please keep this confidential. Lawrence.”

So explain to the Chairperson what is this email?

10 **MR KOKO**: You know Chair you know I am – it is really frustrating to see how things get twisted. So I have ..

MR SELEKA SC: Chair – sorry can I ask who is twisting what?

CHAIRPERSON: Hm.

MR SELEKA SC: Who is twisting what?

CHAIRPERSON: Mr Koko who is twisting what?

MR KOKO: This information is being twisted for the purpose of this commission Chair. I cannot be intimidated by Mr Seleka. I will not.

20 **CHAIRPERSON**: Sorry.

MR KOKO: This information is being twisted for the purpose of this commission and Mr Seleka is not going to intimidate me. I will not allow him to do that.

CHAIRPERSON: No, no Mr Koko. Mr Koko Mr Seleka is entitled to say when you say this information is twisted.

MR KOKO: No but he is being intimidating me.

CHAIRPERSON: No, no, no.

MR KOKO: All along.

CHAIRPERSON: No, no.

MR KOKO: I will not tolerate that Mr Chair.

CHAIRPERSON: No, no Mr Koko no, no, no. Mr Seleka has not intimidated you. You said – he asked you a question about this document. You said this document or information is being twisted. He was entitled to want to find out what is
10 being twisted and who is twisting it?

MR KOKO: Chair let me explain to you why I said this information is being twisted.

CHAIRPERSON: Yes but – but clarify first who is – who do you say is twisting it?

MR KOKO: I am going to explain to you.

CHAIRPERSON: Ja.

MR KOKO: Why this information is being twisted.

CHAIRPERSON: And who is twisting it?

MR KOKO: I am going to explain to you.

20 **CHAIRPERSON:** Ja. Okay.

MR KOKO: So Chairman McKinsey has been in Eskom since 2007. McKinsey has got – had developed a program for us for what we call a Top Engineers Program. We had close to 30 of them on the job. They worked under the tutelage of McKinsey. They were permanently at Eskom. They had a

permanent office. Lawrence was a team leader for McKinsey for the Top Engineers full time and they will write strategy documents for me with the Top Engineers and this one will be one of it. This will be a strategy document that the Top Engineers and McKinsey sit with me and we say what is the landscape at Eskom? What is going on in Eskom? Where are the levers? How do we fix Eskom done? It will be done together with the Top Engineers. This had nothing to do with the MSA. It had everything to do with the Top consulting
 10 Engineers that sat on the second floor that met every day. I met them every Tuesday. And every Tuesday they will take me through the strategy documents between McKinsey and Eskom. Now that is the twisting I am talking about. That simple – I mean the first thing is – was McKinsey at Medupi and Kusile. You twisted to say – to want to link with MSA. Now you have got Top Consulting Engineers document and program you want to twist it and force it to – to MSA. It cannot be right.

CHAIRPERSON: But who are you saying is twisting it?

20 **MR KOKO:** Mr Seleka is doing it. This is Mr Seleka putting things.

CHAIRPERSON: How – how is he doing it?

MR KOKO: Because he is taking a document that has nothing to do with the MSA – with the MSA and he trying to force it on the MSA.

CHAIRPERSON: Well Mr Koko you must understand Mr Seleka's role. Mr Seleka is the evidence leader. He was not at Eskom. He was not employed at Eskom. He does not have personal knowledge of how things happened at Eskom. He is – he relies on what information is given to the commission. When he relies on that and you give evidence he is entitled to probe what you say and he is doing nothing more than probing. You are entitled to say you remember when he was taking objection – exception when you said he
10 was mistaken and I said I did not see anything wrong with that. You are entitled to say you are mistaken in connecting these two. This is the position because you know what the position was and he is giving you a chance to say to her what you know. That is the position. He is not trying to twist anything but he is just entitled to test whether it could be that this information means a or it could mean b without necessarily saying a is correct or b is correct but to test what you say.

MR KOKO: Chairman there was McKinsey at Eskom before
20 the MSA. There was a McKinsey at Eskom before MSA.

CHAIRPERSON: Ja.

MR KOKO: People are feeding Mr Seleka with documents that come before the PFMA – MSA and they are trying to force them on the MSA. Alternatively Mr Seleka's investigator going into my former emails and looking for

anything that is McKinsey and trying to force it and twist it – I will repeat twist it into MSA. It is not acceptable.

CHAIRPERSON: Hm. Mr Seleka.

MR SELEKA SC: Thank you Chair. As far as I remember Chair I gave Mr Koko the opportunity to explain the email I did not put any version to it. But Mr Koko the – this email has an attachment for turnaround strategy please keep this confidential. And the document follows after that on the next page. The document is titled Eskom Turnaround changing
10 the game. Discussion document 3 August 2015. There is an executive summary there. And I would like you to explain because I see some of the issues they discussed the second – it says:

“Eskom’s proposed path – path forward as understood from the recent management discussion is untenable. The forecast growth in operating primary and capital costs create a funding hole of R2.23 trillion over the next fifteen years with the approved tariff project
20 fee of 8% per annum.”

Then you have the next bullet point which says:

“It is time for a more creative response one that delivers a long term sustainable tariff project fee of 10% per annum in line with
00:25:00 and reinstates Eskom as a catalyst

for growth and not a stumbling block to it.

Four pillars are necessary to deliver. This design to cost led turnaround (the cost reflective tariffs led approach)."

And then you have the sub-bullet points there.

"Generation excellence, 00:25:36 rocks no excuses new built and capital delivery, delivery of Kusile, Medupi, Ngula with P50 targets (including claims management)."

- 10 Are you saying to the Chairperson this turnaround strategy as they refer to does not relate to the MSA?

MR KOKO: No Chair. Chair I am going to ask – I am really going to beg you. I am really, really going to beg you. There was a McKinsey before Eskom – before MSA. It worked with the Top Engineers. This is the scope of the Top Engineers. McKinsey was a resident in that office. I am going to ask you Eskom in their own – when they were on the real hunt they went to tell people that there was no such a thing called the Top Engineers. It never existed. The poor
20 engineers were crying, coming to me and crying. They says we were sitting in front of the Chairman who was telling the media we do not exist. I am going to ask you Chair to go back to Eskom and ask for an affidavit from the Top Engineers. They are there. And this is the scope document that they have reported – it was their job. Some of them

were sitting at Petro SA we seconded them to Petro SA to play a similar turnaround work of Petro SA. Mr Seleka knows this has nothing to do with MSA.

MR SELEKA SC: Did you just attribute some knowledge on my part there?

MR KOKO: I beg your pardon.

MR SELEKA SC: Did you just attribute knowledge on my part?

CHAIRPERSON: No I do not think I heard anything like that.

10 **MR KOKO:** Chair I have answered the question.

CHAIRPERSON: Ja.

MR SELEKA SC: Is he not saying Mr Seleka knows?

CHAIRPERSON: No I did not hear that.

MR SELEKA SC: Oh.

CHAIRPERSON: Did you say that Mr Koko?

MR KOKO: No Chair.

CHAIRPERSON: Okay alright.

MR SELEKA SC: Okay. Thank you. Because you McKinsey has spoken about a turnaround program which relates to the
20 MSA in their affidavits before the commission.

CHAIRPERSON: Well what...

MR KOKO: It makes sense Chair. It will make sense Chair why McKinsey will do that.

MR SELEKA SC: Ja.

MR KOKO: Because what we were trying to do into the

future was to bring the Top Engineers and McKinsey and blend them and have one program. It would make perfect sense so the – the turnaround in the scope that was envisaged in the MSA into the future. It makes sense to talk about turnaround. There is no other way it can because all that we are doing was to turnaround Eskom.

MR SELEKA SC: Okay. Chairperson I thought you wanted to give some indication of when we should stop?

CHAIRPERSON: I think we can still go on. I know Mr Koko
10 said we can go into the midnight. So I think we can go on. We might just need to take a ten minutes break. You know after every two hours it might not be a bad idea to take a short break. As far as I am concerned we can after the break go on and then we can review the situation at eight or thereabout. I know that when I say that I must be alive to the fact that you have been standing from morning. So you are – you are free to indicate when you – when continuing beyond a certain time would be unfair to you because you are the only one standing. Is that alright?

20 **MR SELEKA SC:** That is fine Chair. That is fine.

CHAIRPERSON: Yes.

MR SELEKA SC: I am more – I am more worried about the support staff.

CHAIRPERSON: Yes well. The commission support staff they – they – I mean we do beyond six quite often but if

there has been a problem whenever we have gone beyond six o'clock as far as the support staff is concerned but it has not been brought to my attention then it should be brought to my attention. So if there is a problem maybe it could be brought to my attention during adjournment but I do want to say as I normally say I very much appreciate everybody's cooperation with regard to these evening sessions. I know that it may be quite inconvenient but I think the support that everybody gives is based on the realisation that nobody
10 would be wanting to work during the day and in the evening unless it was really necessary and we are trying to make the best we can of the time available. So we will take that – a short adjournment. If there will be a problem if we go up to eight and review the situation at eight in terms of the support staff let me be 00:01:21 during the adjournment.

MR SELEKA SC: Yes.

CHAIRPERSON: Okay. We will take a ten minutes adjournment. Well it is about twelve minutes – thirteen minutes past six let us resume at twenty five past.

20 **MR KOKO:** Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay alright. Let us continue.

ADV SELEKA SC: Yes. Thank you, Chair. I would like...

Mr Koko, ask you to go to page – the same bundle, page 702. So we are going back to Mr Mabelane' s affidavit. 702.58.

MR KOKO: Seven, o...

ADV SELEKA SC: 702.

CHAIRPERSON: 702.158?

ADV SELEKA SC: 58.

CHAIRPERSON: 58?

ADV SELEKA SC: Well, Mr Koko, I think this relates to
10 the answer you gave about McKinsey being present there
in regard to the Top Engineers Programme.

[Break in recording]

CHAIRPERSON: ...158?

ADV SELEKA SC: 58.

CHAIRPERSON: 58?

ADV SELEKA SC: Yes. But.. Well, Mr Koko, I think this
relates to the answer you gave about McKinsey being
present there in regard to the Top Engineers Programme
before 2015. Mr Mabelane here deals with the
20 background, the McKinsey involvement with the Top
Engineers Programme. He talks about it from 2010, 2011.

In 2011, he then appointed as the Senior
General Manager, motivated for McKinsey retention to
assist the outreach management function. Then it goes to
11.5. 11.5 says:

“The training programme named Top Engineers Programme stated in earnest in February 2013 and was housed in the Engineering Department of the Group Technology Division...”

Now I am going to read only those portions that I wish you to comment on. And then 11.6, and you are welcome to go to more than – beyond what I am reading. 11.6 then reads:

10 “During the 2014 financial year, Eskom was experiencing cost challenges and restrictions on the use of consultants came into effect.

I believe this was also in response to Treasury instruction note 2013/2014 and the Business Productivity Programme was implemented in response to a lower tariff determination and to fulfil a condition for governance, the whole package.

20 The Top Engineers Programme stopped due to drying up of consulting work from McKinsey and a team working with the Divisional Executive secured an Exco approval for Business Case for the creation for a permanent Top Engineers Programme that will help to deliver and accelerate critical business

projects for Eskom whilst reducing reliance on external consultants and continue the development of top engineers beyond the foundational year currently on the offer in March 2014...”

Then 11.7 says:

“Although both approvals were granted, they could not be implemented due to funding challenges.

10

The Engineering Department did not have the adequate manpower budget to absorb the top engineers and Group Technology did not have funds to implement the required Top Engineers Programme.

All attempts to secure funding proved fruitless as Eskom was itself faced with challenges.

The top engineers were deployed to support individual executives in their day to day functions as well as supporting the CFO, the then FD on the business activity.

20

These undertakings were executed without McKinsey’s support...”

11.8 says:

“Various funding avenues were explored for almost eight months until the proposal for the

master services agreement was developed and supported by the newly appointed acting CE, Mr Brian Molefe.

At the time, I had undertaken custodianship of the programme as my role as acting Group Executive, Group Technology and Commercial.

The team of McKinsey introduced me to the various unsolicited proposals that have been shared with various stakeholders and in particular Mr Koko...”

10

Now, having read this, I want, this time around, to put what I think I see from these paragraphs and then you can comment. One is that, there was a point when McKinsey’s involvement came to an end because there was no funding for its involvement. And this, it would appear to have been during 2014. Let me stop there and hear what you have to say.

MR KOKO: That is false, Chair. That is definitely false. McKinsey was involved at Medupi and Kosile for certain.

20 What is true is that the scope of McKinsey shrunk significantly at Eskom in 2014. But it is false to say McKinsey’s work came to a stop at Eskom in 2014.

ADV SELEKA SC: So when Mr Mabelane says the undertakings were executed without McKinsey’s support, now how do you understand that statement?

MR KOKO: Yes. So. And this is one thing that makes me proud Chair and I am not credited for it and I get criticised for it. When I started with the Top Engineers Programme, I wanted to have hundred top engineers and when we – the ten top is a descriptive term. It is not a arbitrary term. We had in my group 3 000 engineers and I wanted the very top and the top was not defined at that point. We would even go back to the highest school and keep the *aggregate(?)* of the highest school matric. And I had a simple rule.

10 **CHAIRPERSON**: That is in order to arrive at the understanding whether a particular individual could be classified as top?

MR KOKO: Exactly.

CHAIRPERSON: Ja, okay.

MR KOKO: Exactly. And everybody will tell you, including McKinsey, I had simple one – I had one mandate for McKinsey. I said to McKinsey, I want you to create a McKinsey in Eskom and you walk away. That was my objective. And I had a discussion to the highest people at
20 McKinsey that you are going to do the recruitment of the top engineers for me.

I have got a pool of engineers and this pool of engineers you are going to recruit them as if they are going to work for McKinsey. You are going to train them as if they work for McKinsey. And I want to see them

performing at the same level as McKinsey. Therefore, Chairman, I must declare upfront. I had a lot of admiration for McKinsey.

If somebody go sits and tells you that, then you must know it is true. I had a lot of admiration for individuals at McKinsey. So I wanted to *produce(?)* McKinsey and I had a number. I said I want to have a hundred top engineers. We later changed them to top consulting – top consultants that will do the work.

10 I think we had close to 30, just over 30 when the National Treasury Practice Note came in that we talked about that discouraged the work of McKinsey and the McKinsey work dropped. Now it dropped at the right time Chair because I had 13 McKinsey people that are Eskom people, if you know what I mean.

And it are these people that Mr Mabelane is talking about, that when the McKinsey numbers dropped, we had 30 people. And let me tell you Chair. And one of the pains I had is parting contract with those young men
20 and women because they are the ones who had the brainpower to tell me and advise me what to do to stop load-shedding and Mr Molefe.

So Mr Mabelane is right when he says work continued with Eskom's Top Consulting Programme but he is not correct to say there was no McKinsey footprint in

Eskom because they were there at Medupi, they were there at Kusile.

And when we funded the Top Engineers Programme, is that we had said to McKinsey we are going to give you a contract to work at Medupi and Kusile and in return we had what we call an *SDNL(?)* obligation to train us for the Top Engineers Programme but we will not pay you for that. We will only pay for – if you take these top engineers, we will take them to Lufthansa, for example, we
10 will pay for that because you are training them.

If you take these top engineers – so what – the agreement we had with McKinsey is that, if you get jobs in other state-owned companies as part of the training, these top engineers will be part of your call to go and work there. So it worked well.

And I am ...[indistinct] Mr Mabelane raised it here. Did they do – they did the work. I wanted hundred. But he is not correct to say there was no footprint of McKinsey at Eskom. And every time there is a footprint of
20 McKinsey at Eskom, it ties into the top engineers because the understanding was, you do not work on your own.

You work with the top engineers and we want to increase from – I mean, we started from zero, we had 30 and we wanted to take it to a hundred.

ADV SELEKA SC: Yes. Then in paragraph 11.8, he

carries on to say:

“Various avenues were explored for almost eight months until the proposal for the master services agreement was developed and supported by the newly appointed acting CE, Mr Brian Molefe...”

Ja, let me stop there. In that paragraph:

10 “The team from McKinsey introduced me to the various unsolicited proposals that have been shared with various stakeholders and in particular Mr Koko...”

Your comment on that paragraph?

MR KOKO: I can confirm that I had various proposals from McKinsey. I can confirm that. I can also confirm to you that the intervention by National Treasury on the use of consultants was having the desired effect because you see here now, we are struggling to increase the scope of McKinsey.

20 And the only reason we were struggling is because we complying to that practice note of National Treasury. So Mr Mabelane is right when he says the various funding models, avenues were then explored to deal with the requirements of National Treasury.

But here is what is interesting Chair, and I do not know why many people will miss it. If I was captured

and doing the bidding for McKinsey who would later come with Trillian. At this point, it is when I get suspended.

CHAIRPERSON: Is this roundabout 11 March?

MR KOKO: Yes.

CHAIRPERSON: Of 2015?

MR KOKO: Yes.

CHAIRPERSON: Okay.

MR KOKO: And this is the part I am saying, we should stop connecting the dots and look at exactly what
10 happened. McKinsey – Mr Mabelane replaced me in my office. Then McKinsey continued working with Mr Mabelane and says we – the man that is suspended, this is what we were discussing with him.

So if I was part of this ploy. Remember, I gave the board an opportunity to not suspend me on the 11th of March in the evening when I fought back. They would have said but this is our man. Leave him to do our bidding for us. Leave him to get McKinsey for us. The evidence just does not tie up Chair.

20 **ADV SELEKA SC**: Yes, Mr Koko, we are talking about that but we know that you were the only executive that came back at Eskom.

MR KOKO: Chairman, I did not bring myself back.

ADV SELEKA SC: Ja, but ...[intervenes]

MR KOKO: It is the board members who brought me back.

They have to be held to account.

ADV SELEKA SC: Yes.

MR KOKO: I think they were irrational to suspend me in the first place and give Mr Govender who ran Generations for seven years and run it into the ground and they left him there. They left Mr Tshokolo there who was running General to the ground. And when for somebody who has nothing to do with Generation. I think they were irrational from day one.

10 **ADV SELEKA SC:** Yes. I wanted to complete by saying, which turn of events happens to be – I do not know whether it happens to be or turned out to be, according to the evidence of Ms Daniels in regard to the meeting of the 10th of March 2015. That is what I wanted to complete there and ...[intervenes]

MR KOKO: Chair, I am glad Mr Seleka has brought this topic again. It is one of the topics I wanted to tell – I told my counsel that if it does not come, we must raise it. I say the fascination in the committee about the balcony at
20 Melrose Arch.

CHAIRPERSON: H'm, h'm.

MR KOKO: It is such a fascination. Chair, and here I am going to *get(?)* you and I will be very disappointed if you say no.

CHAIRPERSON: H'm?

MR KOKO: But I am going to ask you to go to Ms Goodson's affidavit.

CHAIRPERSON: H'm?

MR KOKO: Yes, mister ...[intervenes]

ADV SELEKA SC: I know, we are going to put that version to Mr Masango.

MR KOKO: Mr Barrie, if you can go to mister – if you can help me with Ms Goodson's affidavit, please? 18.3. The paragraph 18.3.

10 **ADV BARRIE:** [No audible reply]

CHAIRPERSON: Yes.

MR KOKO: And what I want to tell you Chair is this.

ADV BARRIE: [Indistinct]

MR KOKO: The Commission, and I do not think I am wrong, is labouring on the basis that Mr Masango went to Melrose Arch once.

CHAIRPERSON: Well, that is what he said.

MR KOKO: That... Yes, that is what I told him.

CHAIRPERSON: H'm?

20 **MR KOKO:** So when you are taking pictures on ...[intervenes]

CHAIRPERSON: I am sorry.

ADV BARRIE: Ja, I see just – I am just looking at the index. I see Ms Goodson's affidavit at page 423 of Bundle 14 but I have electronic numbering. So I have difficulty

getting this. But I think Mr Koko ...[intervenes]

CHAIRPERSON: Okay.

ADV BARRIE: ...asks for a... reference to this affidavit.

[Speaker not clear.]

CHAIRPERSON: Okay alright. Well, maybe Mr Koko you can tell me first what it says, the part that you want to take us through.

MR KOKO: Yes. So when you ask Mr Masango – when Mr Seleka asked Mr Masango: Did you meet – did you go –
10 did you ever go back to Melrose Arch? He says: I cannot remember. And that is what *she(?)* says. When Mr Seleka asked him again: Have you ever met Mr Essa again? He says: Mr Koko tried to asked me to go and meet him and I refused. And I do not know if my other colleagues but I refused.

That is his – that is what is in the transcripts. What I want to show you here is that the evidence of Ms Goodson says in December 2015 Mr Essa introduced her to Mr Masango in her office.

20 **CHAIRPERSON**: I do recall that there is a witness and it may well be that it is Ms Goodson who says in his or her affidavit that, if I recall correctly, he found Mr Masango in Mr Salim Essa's office or Trillian's office ...[intervenes]

MR KOKO: That is Ms Goodson

CHAIRPERSON: Yes. So I know that there is such

evidence and it caught my attention because Mr Masango, as far as I could recall, had said he had never been...

MR KOKO: Yes.

CHAIRPERSON: He had never gone there.

MR KOKO: Yes.

CHAIRPERSON: So ...[intervenes]

MR KOKO: I need you to go there.

CHAIRPERSON: There will be a need to put that to him and test it.

10 **MR KOKO**: Yes.

ADV SELEKA SC: Yes.

MR KOKO: So either Ms Goodson is not telling the truth or Mr Masango is not telling the truth but both of them cannot be right. But in the event that Ms Goodson is telling you the truth. You do not need to send people to Melrose Arch to take pictures. You can even do that on Google Map. But Mr Masango has been there in December. So he will know there is a balcony. And that balcony had nothing to do with me.

20 **CHAIRPERSON**: But was not that December 15?

MR KOKO: It was December 15.

CHAIRPERSON: Yes, yes.

MR KOKO: So why would you not remember? If you were there on December 15, you will know there is a balcony...
Yes.

CHAIRPERSON: H'm, h'm. Well, he said... No, he said when he testified here he said when he was going to the meeting with you, because he had said you had called him, he said when he was close, you – he saw you on the balcony and he was talking to you over the phone.

MR KOKO: Ja, he probably saw Salim. We were going to visit Salim.

CHAIRPERSON: Sorry?

MR KOKO: He probably saw Salim on the balcony when
10 he went to visit Salim.

CHAIRPERSON: Yes. So what I am saying is. He did say that – he did talk about the balcony when he gave evidence here. He was talking about the balcony in relation to the 10th of March.

MR KOKO: Ja, but I am saying Chair.

CHAIRPERSON: H'm?

MR KOKO: I am saying Chair. All what he had to do was to be at Melrose Arch to see the balcony. And according to his version – according to Ms Goodson's version, he has
20 been to Salim Essa's office on the 10th of December. So he will know there is a balcony.

CHAIRPERSON: No. But if Ms Goodson is talking about December 2015, when she, according to her version, met Mr Masango in Mr Salim Essa's office at Melrose Arch. December 2015 happened after March. So he could not

say... If Ms Goodson was saying: Actually, December 2014 I had met him there. And then Mr Masango gave evidence as if on the 10th of March 2015 it was the first time, then I would understand what you are saying.

MR KOKO: But Chairman maybe I am not explaining myself.

CHAIRPERSON: Ja.

MR KOKO: Let me be direct.

CHAIRPERSON: Ja.

10 **MR KOKO:** Mr Masango is recreating an event. And the balcony story, he did not see it on the 10th because he was not there on the 10th. He saw it on the other day and the only other day I can point to ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...is December 2015.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Yes. Thank you, Chair. But... Ja. Mr Koko, I hope you can deal with the issues that pertain to yourself.

20 **MR KOKO:** I am dealing with the issues that pertain to myself but I am showing you the type of witnesses you are dealing with.

ADV SELEKA SC: Ja because ...[intervenes]

MR KOKO: The implicating.

ADV SELEKA SC: Because we can address the version

they have to answer to them.

MR KOKO: No.

CHAIRPERSON: Yes. No, no.

MR KOKO: No.

CHAIRPERSON: Mr Koko is right ...[intervenes]

MR KOKO: No.

CHAIRPERSON: ...to point out... Mr Koko.

MR KOKO: [No audible reply]

CHAIRPERSON: Mr Koko is right to point out what, in his
10 view, maybe inconsistent or are in conflict with
Mr Masango's evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: So he is right to say: This witness said
to you he only went to Mr Salim Essa's office or to Melrose
Arch on the 10th and he never went back there. So if
Mr Koko gets to know that another witness says she met
him in that same office in December 2015, he is right to
raise that, to say: This person is not telling the truth when
he says he never went back to Mr Salim Essa's office.
20 Okay ...[intervenes]

ADV BARRIE: Chair, may I just ... just for purposes of the
record to refer to the relevant page in this bundle?

CHAIRPERSON: In regard to what?

ADV BARRIE: In regard to what Mr Koko has just testified
so that you just have it in the same place in the record.

CHAIRPERSON: No, no. I know it. I do not need... As I have said, I have read it and I have noticed it. I will know how – where to find it. It is fine.

ADV BARRIE: Very well.

CHAIRPERSON: Ja. Yes, okay, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Before I forget Chair. We printed out what is the calendar attachment to that email that Mr Koko was saying is a meeting invite. So what you see there, the attachment, it is like a calendar
10 with a highlighted date. And if I can hand it up?

CHAIRPERSON: Oh, have you got a copy for everybody?

ADV SELEKA SC: Yes.

CHAIRPERSON: Copies for everybody?

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Just repeat, what is this again?

ADV SELEKA SC: This was an email on ...[intervenes]

CHAIRPERSON: Is it an attachment to the email that had
20 not attachment that we referred to earlier where the subject was: Update on Negotiations?

ADV SELEKA SC: Correct, Chairperson. That is what it is.

MR KOKO: And Chair, and this is the part that I said is the ...[intervenes]

CHAIRPERSON: Request for a meeting?

MR KOKO: Is a request for a meeting. And I feel disadvantaged because this is a type of thing I have to comment on that because there was a request for a meeting, then there must have been a meeting. I think it is just unfortunate.

CHAIRPERSON: No, no, no. Nobody... You said it is a request for a meeting.

MR KOKO: Yes.

10 **CHAIRPERSON:** And so I said I want to see the attachment if it is available. Mr Seleka has now made it available. So I am not sure what your complaint is.

MR KOKO: No, I am – I am not complaining Chair. I am simply showing you what I have go through because this is rather a very unfortunate proposition to use, to say because of this, therefore you are involved in the negotiations.

CHAIRPERSON: Well, Mr Koko, I think just wait because we did not have the attachment to that email. We now
20 have it. Mr Seleka has not said, now that he sees the attachment, what he would like to put to you

MR KOKO: Understood Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: It is because then I could ask you Mr Koko whether did the meeting take place as it appears

to be indicated on the attachment? The attachment says: Wednesday, 12 August 2015. And the indicated time is 13:00, 13:15. Location: Matshela's office.

MR KOKO: *The attachment is noted Chair.* [Speaker not clear.]

CHAIRPERSON: H'm. Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Are you going to have to – I have slotted this document behind that email and then paginate it
10 appropriately.

ADV SELEKA SC: I will.

CHAIRPERSON: Yes.

ADV SELEKA SC: It will come in, Chair, if I may indicate it now for the record.

CHAIRPERSON: Ja. H'm?

ADV SELEKA SC: It is page 811.122.1.

CHAIRPERSON: It is the top page?

ADV SELEKA SC: That is correct.

CHAIRPERSON: And then the next page will be
20 811.122.2.

ADV SELEKA SC: Two. Yes, Chair.

CHAIRPERSON: Okay. And that was bundle what?

ADV SELEKA SC: That is Eskom Bundle 14(c).

CHAIRPERSON: Okay. Yes, okay.

ADV SELEKA SC: Yes. Thank you, Chair. And just to

finalise Mr Koko and Mr Mabelane's affidavit. The proposals that he refers to, because he specifically says in paragraph 11.8 that:

“Various funding avenues were explored for almost eight months until the proposal for the master services agreement was developed and supported by the newly appointed acting CE, Mr Brian Molefe...”

And in the same, he says:

10 “At the time, I had undertaken custodianship of the programme as my role as acting Group Executive...”

That is your position?

MR KOKO: My apologies, Mr Seleka. You have lost me a bit.

ADV SELEKA SC: Okay we are back ...[intervenes]

MR KOKO: 11.8?

ADV SELEKA SC: Say again?

MR KOKO: You are at 11.8?

20 **ADV SELEKA SC**: 11.8, yes.

MR KOKO: Yes.

ADV SELEKA SC: Yes. Sorry, I could not hear.

MR KOKO: I am here now.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright. Mr Seleka, please do not

forget the question you want to put to Mr Koko.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But I just want to go back to something you said Mr Koko about paragraph 11.8. You said that this is the time when you got suspended. Is that correct?

MR KOKO: All of these proposals ...[intervenes]

ADV SELEKA SC: Ja.

MR KOKO: ...were happened before and just prior to my suspension.

10 **CHAIRPERSON:** No, what I wanted to point out is that either there is something inaccurate in what you are saying or there may be something inaccurate that Mr Mabelane says in his affidavit, because when you got suspended on the 11th of March 2015, Mr Molefe had not arrived at Eskom yet.

He only arrived around the 20th of April. So when he arrived you were on suspension.

MR KOKO: When Mr Molefe arrived, I was on suspension.

CHAIRPERSON: Yes. It is just that you see, in paragraph
20 11.8, Mr Mabelane says:

“Various funding avenues were sought for almost eight months until the proposal for the master services agreement was developed and supported by the newly appointed acting CE, Mr Brian Molefe.”

And when you said this is the time that I got suspended, so when I look at it, I say but it cannot be because you were suspended before Mr Brian Molefe arrived.

MR KOKO: Ja, so what Mr Mabelane is saying here and as I understand it and maybe just because I am too involved in the ...[intervenes]

CHAIRPERSON: Yes, ja, ja.

MR KOKO: So I know what was happening.

10 **CHAIRPERSON:** Ja.

MR KOKO: In 2014 the consulting work, not only for McKinsey, for the whole of Eskom took a dip and that was the consequences of the directive that we have put in place. To put it simply.

CHAIRPERSON: National treasury directive.

MR KOKO: Yes, yes. To put it simply, national treasury made, took the arbitrary nature of Eskom to, I could not decide and management could not decide. You had to justify yourself.

20 **CHAIRPERSON:** It made it more difficult to use consultants.

MR KOKO: It made it more difficult ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: To use consultants, that even when you need them ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: It becomes very difficult. So we explored different ways to, to ...[intervenes]

CHAIRPERSON: To find a way of using them.

MR KOKO: To find a way in using them, and then I was suspended. Now this is why Mr Mabelane says in paragraph 11.9, that the most feasible proposal was based on a self-funding principle and so the team after I left thought if we cannot, if it is difficult on a fixed rates basis
10 to employ consultants, maybe we can introduce a risk fee to the consultants and say to them you will only be paid on the value that you create in the business.

There were two problems with that, always. One is that measuring value is always difficult and it, you fight in between. Two, national treasury was clear and emphatic in their directive of 2012, that you can do it.

CHAIRPERSON: Yes, okay Mr Seleka.

ADV SELEKA SC: Yes, thank you Chair. Mr Koko, I hear you say the proposals were made prior and after your
20 suspension.

MR KOKO: Chair, I cannot talk about what happened in my, during my suspension. I cannot, I was not ...[intervenes]

CHAIRPERSON: Ja, you say prior and after.

MR KOKO: I ...[intervenes]

CHAIRPERSON: I know you referred to before.

MR KOKO: I apologise sir, prior.

CHAIRPERSON: Okay.

MR KOKO: That is what I meant.

CHAIRPERSON: Yes.

MR KOKO: Not ...[intervenes]

CHAIRPERSON: Not after you had come back.

MR KOKO: Not after, yes. I apologise.

ADV SELEKA SC: So Mr ... I thought the Chairperson was
10 going to this point, which is that you would have, well he
says the team for McKinsey introduced me to the various
unsolicited proposals that had been shared with various
stake holders and in particular Mr Koko.

So those proposals is Mr Mabelane correct here
that they had been shared with you?

MR KOKO: Yes Chair, before my suspension McKinsey
had different options about how to progress the top
engineers program and can be funded.

ADV SELEKA SC: Yes, and that specifically related to the
20 master service agreement.

MR KOKO: Eventually, remember master service
agreement came after I left, but all those initiatives ended
up into the master service agreement. In fact, the original
document that was shared, it was shared here and it was
shared at the board.

I think it was presented here by Mr Mabusa. It is a document that was motivated by me to EXCO. To, on a sole source afford McKinsey to progress the top engineers. It is dated 2014. You may remember Chair, it had a lot of writing.

You spend a lot of time not seeing what it was saying.

CHAIRPERSON: Well, I might not remember. There are so many documents that I could not read.

10 **MR KOKO:** If you go to 2014 documents on top engineers program, you will find it is signed by Mr Diamonds, Mr Arane, Steve Lennon, Mr Govender and Steve Lennon made a comment at the end that he support the program, but we must go on an open enquiry.

But Mr Diamonds approved it.

CHAIRPERSON: Okay.

MR KOKO: So that was done by me.

CHAIRPERSON: Okay.

20 **MR KOKO:** And what I think has happened post 2014, when I was suspended, was a difficulty of implementing that resolution that was approved by then Mr Diamonds and meeting it with the national treasury regulations.

CHAIRPERSON: Instruction notice.

MR KOKO: Instruction notice, and if you are a third party you will be happy because you will then say ja, national

treasury is having effect on Eskom. So Eskom could not take the document that was approved by Mr Diamonds and implement it as it is.

CHAIRPERSON: The instruction note came after it had been approved by Mr Diamonds?

MR KOKO: No Chair.

CHAIRPERSON: It was before?

MR KOKO: No Chair. So what has happened then was the, I think the instruction note, I may be wrong Chair but I
10 think the instruction note was 2012.

CHAIRPERSON: I thought that the document we looked at, well the directive of Eskom ...[intervenes]

MR KOKO: The directive of Eskom ...[intervenes]

CHAIRPERSON: Was 2014.

MR KOKO: Was 2014.

CHAIRPERSON: Yes, but you say the instruction note was much earlier.

MR KOKO: Yes, so there were two instruction notes from national treasury and maybe I am confusing you. The first
20 instruction note from national treasury was fixed rates. So it did not deal with how you appoint consultants.

CHAIRPERSON: It did not make it difficult other than that it is at fixed rates?

MR KOKO: Yes.

CHAIRPERSON: Okay.

MR KOKO: But I think there was a second one in 2013, 14 and that one is the one that we followed up ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: With our own directive and that one made it very, very difficult. So once Eskom, Mr Diamonds approved the top engineers program, I think from a commercial point of view and legal, merging what was approved and the new approach from national treasury created difficulty and we could not carry on with it.

10 In fact, if you read the letter that was written by Ms Nonkululeke Dlamini Vilethi, relates to the in-fighting within Eskom of the internal consulting unit of Eskom in the top engineers program and what precipitated that in-fighting, and because that in-fighting started in my time, is because the internal consulting unit of, in the CFO was pushing back on the top engineers program, because of the national treasury issue.

 So I think the MSA was a fixed be it a bad one, to deal with an approved Eskom program but to accommodate
20 the national treasury problem.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you. So to go back to the last bit on this exercise regarding the emails exchanged with you in regard to the MSA Mr Koko, and I want to go back to page ...[intervenes]

MR KOKO: Can I put this 14C away?

ADV SELEKA SC: Is it Eskom Bundle 14?

MR KOKO: This is 14C.

ADV SELEKA SC: 14?

MR KOKO: C.

ADV SELEKA SC: C, no that one.

MR KOKO: Okay.

ADV SELEKA SC: Page 811, point 168.

MR KOKO: 811, point 168.

10 **ADV SELEKA SC:** Ja, point 168.

MR KOKO: I am there, Chair.

ADV SELEKA SC: Ja, I think that is the email we touched on, well we touched on this morning but without making reference to the page number, so the email is dated 31 August 2015 at 14H45. It is from yourself to Mr Mabelane and Mr Govender.

You copied Mr Singh. The subject is McKinsey contract negotiations. Then you say:

20 “Colleagues, what is the update on the progress made with McKinsey. What needs to be done to conclude the negotiations and any other speaking points.”

Could this be the email you were referring to this morning?

MR KOKO: Yes.

ADV SELEKA SC: So you are saying this email indicates that you were not involved in the negotiations. You wanted feedback from them.

MR KOKO: Yes. So Chair, look at the people I address it to. These are the people delegated by the board, except Mr Mabelane, but the reason Mr Mabelane is copied, is because he was in commercial. Right. Now the email is dated 31st August 2018 and the, 2015 and the board has already resolved that we must have a business plan
10 contract.

Now I, let me get my bearing right. I said to you earlier I met, me and Mr Singh met with McKinsey between the 22nd of July 2015 and the 31st of July, and the 3rd of July ... 3rd of August 2015. I gave you that window and we briefed McKinsey about what we need them to do for us, for the business plan of February.

Now the reason I sent this note, is because at the back of my mind, I thought why do you recreate the will, when there is a contract being negotiated, and this
20 contract may have progressed sufficiently for us to use it, if it has and I knew the real issue here and all what I wanted them to tell me Chair, is that the rate issue is resolved.

If they responded to me and said the rates issue is resolved, I would have said let us sign so that we can do

the business plan. But I would not send and ask for feedback if I according to Ms Motepo's version I was directly involved in the negotiations with Mr Singh.

I would not do that, because I would know I am directly involved. I am the first one to know, so I will not ...[intervenes]

CHAIRPERSON: Because if you were involved, you would have been the leader.

MR KOKO: I would have been the leader if I was involved.

10 **CHAIRPERSON:** Ja.

MR KOKO: So I would know, but the leader is Prish Govender. That is why I am sending to him. Colleagues, what is going and I am asking you a further question, what bottlenecks do you have. Can I help you. Can I help you resolve these bottlenecks so that we can move on.

CHAIRPERSON: Okay.

ADV SELEKA SC: Sorry, I could not hear. You were saying what is resolved? I did not get the word you used?

MR KOKO: What bottlenecks ...[intervenes]

20 **ADV SELEKA SC:** No, no earlier. So that, you were saying you needed to know if something is resolved so that you can know whether you can deal with them in respect of the business plan.

MR KOKO: The only sticky issue with the MSA negotiations was the national treasury.

CHAIRPERSON: National treasury note?

MR KOKO: Yes.

ADV SELEKA SC: Okay.

MR KOKO: That was the only sticky issue. The rates are within our control. The rates, if they come to me and say we have an agreement ...[intervenes]

CHAIRPERSON: On the rest.

MR KOKO: On the rates, you know what I would have done?

10 **CHAIRPERSON:** Okay, I think that is what Mr Seleka ...[intervenes]

ADV SELEKA SC: Yes, that is what I just wanted to know.

CHAIRPERSON: It is on the rest.

MR KOKO: On the rates.

CHAIRPERSON: On the rates.

MR KOKO: Yes.

ADV SELEKA SC: Oh, the rates are resolved.

CHAIRPERSON: Yes, okay.

MR KOKO: Yes.

20 **ADV SELEKA SC:** Oh yes, that is what I wanted.

MR KOKO: They came to me Chair.

CHAIRPERSON: Ja.

MR KOKO: Let me tell you what I would have done.

CHAIRPERSON: Ja, if they said the rates are sorted out.

ADV SELEKA SC: Yes.

MR KOKO: You know what I would have done, I would have said to you cancel everything you are doing.

CHAIRPERSON: Sign.

MR KOKO: Sign. Cancel whatever you are doing, just cancel, sign.

CHAIRPERSON: Ja.

MR KOKO: But I could not do that if the rates are not resolved, because the rates are outside our control.

CHAIRPERSON: They are subject to, well ...[intervenes]

10 **MR KOKO:** Outside Eskom's control.

CHAIRPERSON: They were not necessarily subject to the national treasury, the recent national treasury note because that was not just about rates. It was about the actual use of consultants.

MR KOKO: Exactly. So they are outside our control.

CHAIRPERSON: Yes.

MR KOKO: So I cannot push.

ADV SELEKA SC: Yes. Okay, I understand. You could also explain the second line of the, your email, which says:

20 "What needs to be done to conclude the negotiations and any other sticking points."

MR KOKO: That is what I have just ...[intervenes]

ADV SELEKA SC: Were you aware of sticking points other than those you wanted to know about in this email?

MR KOKO: No, no. The only sticky points that I was

aware of, was national treasury related issues. That is why Chair I am asking what needs to be done to conclude the contract.

ADV SELEKA SC: The negotiations.

MR KOKO: With the negotiations. I am asking, I am not involved but there is a need for this contract. I want to help, I want to expedite but I could not.

ADV SELEKA SC: Yes. What do you think is the reason why Ms Motepo would say you were part of the team or the
10 persons, let me use that. The persons who were negotiating and that the two of you, yourself and Mr Anoj Singh expanded the scope.

Why would she say that?

MR KOKO: Chairman, I this is part of what I have dealt with you before, that people come here to tell you different versions that are ...[intervenes]

CHAIRPERSON: That you do not know why they tell.

MR KOKO: Do not know why they are telling that.

CHAIRPERSON: Ja.

20 **MR KOKO:** But can I give you a very short example, which is very clear. Which was brought to you and you asked for more details. So I am using this opportunity to tell you my view, so that when you get more details you know, one of the painful moments experiences at Eskom was on the 2nd of March 2017.

I bumped into Suzette, I think she came to my office and said what is going on. I said, Ms Daniels I apologise. I said what is going on. She says we just came out of the meeting. Prepare yourself for the worst. Something is not right.

CHAIRPERSON: It was Ms Daniels saying that to you?

MR KOKO: Ja.

CHAIRPERSON: Yes.

MR KOKO: Says I am just giving you heads up.

10 **CHAIRPERSON:** Yes.

MR KOKO: But prepare for the worst. I did not know what she was talking about and because it was a heads up from the board, you do not know what to ask because then you are not, soon you will be charged for wanting information from the board that does not belong to you.

So I keep a distance. But it turns out that that week I had moved people out of Kosile on the basis of the evidence that I had, that they are involved in corrupt activities at Kosile. I had a meeting with Mr Masango.

20 Then we were still tight.

CHAIRPERSON: That is the year when also being tight ended at some stage, 2017.

MR KOKO: No, in fact it ended then.

CHAIRPERSON: Oh, okay.

MR KOKO: That is when it ended up, because I had this

evidence that the people at Modupi are involved in corrupt activities and they are working with Abraham. When I looked at the evidence these people gave me, which was damning I could not directly link Mr Masango to it.

Later I did. I was given a fine, and then I called him. I said Mark, I am in a very difficult situation and we may not be related but I think we have got a position of conflict, based on what I know and based on what I know, I cannot leave you in the position that you are in.

10 If I do that, it will be negligent on my part. I know we are friends, but what I know I just do not think it is proper for me to leave you in that position. So I am going to move you from your current position to Ms Kraai.

This is counted them. I am mentioning Ms Kraai because she was here. These people are implicated. These ones, remove them immediately. Do not give them option and if you do not, I will do it for you or I will get people, these ones you just remove them.

20 In the same way I am not giving you any option to remove you. Then I am called to a meeting to be suspended, because I have suspended Mr Masango, because I have moved people from Kosile. I said to the Chairman in that meeting, fortunately I still had that file.

I said Mr Chairman, you are protecting corruption. You are, if what you are going to suspend me on is

because, and Chair the fortunate thing about this, there is an audio recording of that meeting. I have that audio recording.

CHAIRPERSON: Was the Chairperson still Dr ...[intervenes]

MR KOKO: Dr Ngobane. I ...[intervenes]

CHAIRPERSON: He said that you have been suspended in connection with suspending other people?

MR KOKO: Chair, there is an audio. There is an audio
10 recording of that meeting. I have it. If the legal team do not have it, I will pass it to them in the same way I gave them the others. Every time I listen to that audio I feel like crying.

That for doing the right things, Mr Masango lied to them and I was suspended. My counsel asked me but why would your friend do this? You are saying he is Make. You call him Make Loane. Why would he do this to you? I said Mr Barrie, I do not know.

I cannot explain that to you. But in hindsight time
20 has solved it, because that crowd is now on a three hundred thousand bail. Facing charges of racketeering fraud and corruption. If you asked me the same question then, I would have answered you like Mr Barrie asked.

Mr Barrie, this person is my friend. His son shares the same name with me. I do nothing without him. That is

why on the 10th of August, 12th of March when I was supposed, when I knew I was going to be suspended, the first person I called was him.

So I going back to Mr Seleka's answer, why is Ms Motepo ...[intervenes]

CHAIRPERSON: Questioning.

MR KOKO: Questioning. Why is Ms Motepo saying I was directly involved with the negotiations with Trillian when I was not, when the evidence shows so. I do not know. I
10 cannot explain it, but like Mr Masango, over time I think it will come out of the wash.

I do not buy the story that you know, he had a very acrimonious fall out with Trillian and McKinsey and that should not affect me. I think we are old enough when you fight with your Employer you should not drag me in. So other people have said but that is because he is fighting with Trillian and McKinsey and Mr Essa and therefore he sees you as Essa and that is where it comes from.

She is on the State Capture basting brigade and
20 she sees you are still, I do not know. I do not have an answer to that. All what I am saying to you is look at her evidence. It is glaring at you. It is false, it is a lie and I do not need to spend a lot of time to show you the documents that that is a lie.

ADV SELEKA SC: Yes.

CHAIRPERSON: To the extent that it may be necessary to for understanding certain things, that audio if the legal team does not have, Mr Koko you can send it through to them. Ja.

MR KOKO: In that audio you will hear board members saying Mr Koko has gone too far. He suspended Abraham, he must go.

CHAIRPERSON: Okay.

MR KOKO: And then comes the story from Ms Daniels that
10 actually Mr Koko did not get suspended on that day because a G brother, I heard him saying a G brother, phoned.

CHAIRPERSON: Yes.

MR KOKO: A G brother phoned and ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: Mr Ngobeni laughed at it.

CHAIRPERSON: Is that the same incident?

MR KOKO: That is the same incident.

CHAIRPERSON: Okay and you say you were suspended?

20 **MR KOKO:** No, I was not suspended.

CHAIRPERSON: Oh, you were not suspended.

MR KOKO: Because I told the board ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: You know, I was not nice with the board. In the board that day.

CHAIRPERSON: Ja, you told them your reasons.

MR KOKO: Yes.

CHAIRPERSON: And then they understood the point.

MR KOKO: Exactly.

CHAIRPERSON: Okay, and you say that is the reason why you were not suspended.

MR KOKO: That is correct Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Okay.

10 **MR KOKO:** It was not the board ...[intervenes]

CHAIRPERSON: I think it becomes more important that we get the audio.

ADV SELEKA SC: Yes.

CHAIRPERSON: In the light of that.

MR KOKO: It was not the board Chair, it was the delegation of the board and there were three of them.

CHAIRPERSON: It was Dr Ngobeni ...[intervenes]

MR KOKO: Dr Ngobene, Ms Klein and Ms Sithembe Khoza.

20 **CHAIRPERSON:** Okay.

MR KOKO: In the audio there were supposed to be four, and the one that was very vocal about my suspension, said I am not going. I have said my say, you go and that was Ms [indistinct] Mabude. It is a very sad recording Chair, and that you go out there to do the right thing and you get

suspended for it.

CHAIRPERSON: Right, Mr Seleka?

ADV SELEKA SC: Mr Koko, thanks. I am, in those emails but I want to go to Ms Motepo's emails just to show what she has given to the commission, then I will come back to this emails. The same bundle, let us go to Eskom Bundle, page 811 point 255.

CHAIRPERSON: That is Bundle 14?

ADV SELEKA SC: The same bundle Chair, yes.

10 **CHAIRPERSON:** Page 811.

ADV SELEKA SC: Point 255.

CHAIRPERSON: 255?

ADV SELEKA SC: Yes. Now I should say here Mr Koko, I know the feedback report says your negotiations were until September. But when you read the affidavit of Mr Amang Koah from McKinsey, he says there he went ...[intervenes]

CHAIRPERSON: Hang on, hang on, hang on Mr Seleka.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** You said we should go to page 811, point 255.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then?

ADV SELEKA SC: Yes.

CHAIRPERSON: Are you reading something from there or are you making some point ...[intervenes]

ADV SELEKA SC: I wanted to underscore what I am going to here, Chair.

CHAIRPERSON: Oh, okay. I just want to make sure I follow. Ja.

ADV SELEKA SC: Okay, okay. I will underscore it still but let us look at this email. Mr Koko, on your last, your previous appearance ...[intervenes]

CHAIRPERSON: Well, let us first say it is an email from Mosele Motepo.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Dated 30 November 2015 at 15H43 and it is addressed to [indistinct] @eskom.co.za and Mr Koko is CC'd there and the subject is balance sheet optimisation and cash unlocking financial initiative. Then you can take it from there.

ADV SELEKA SC: Yes, Chair and I must also indicate her email address is masilom@regiments.co.za. Mr Koko, you dealt with this last time. Let me just read it quickly. It says:

20 “Good day Matshela. I hope this email finds you well and it was a pleasure meeting you last week.”

 If I stop there Mr Koko, is that what she said about meeting you last week, correct?

MR KOKO: Chair, I had no relationship with Regiments in

Eskom. I have met Ms Mothepu several times as subcontractor of Trillian – of McKinsey.

CHAIRPERSON: As an employee of Trillian?

MR KOKO: No, as a subcontractor to McKinsey.

CHAIRPERSON: You mean she, an individual or she as representing a certain entity?

MR KOKO: She as representing a certain entity and she was not alone.

CHAIRPERSON: Okay.

10 **MR KOKO:** She had other hangers-on with.

CHAIRPERSON: Ja and what entity was she representing?

MR KOKO: Regiments.

CHAIRPERSON: Regiments?

MR KOKO: Yes, Regiments.

CHAIRPERSON: Alright.

MR KOKO: And they worked for McKinsey.

CHAIRPERSON: As subcontractors.

MR KOKO: As subcontractors, yes.

20 **CHAIRPERSON:** Ja, as Regiments subcontractors.

MR KOKO: Yes.

CHAIRPERSON: Okay.

MR KOKO: They worked for McKinsey on the business plan project.

CHAIRPERSON: Yes, yes.

MR KOKO: Remember the business plan project has a 30% outsource.

CHAIRPERSON: Yes, yes, yes.

MR KOKO: So they were part of the 30%.

CHAIRPERSON: Yes, yes, yes.

MR KOKO: Outsource.

CHAIRPERSON: Yes.

MR KOKO: And I cannot recall this meeting but I can confirm that I have met her.

10 **CHAIRPERSON:** On a number of occasions.

MR KOKO: On a number of occasions.

CHAIRPERSON: Ja, you – I am not sure that I understood the point you sought to make when you said you had no relationship with Regiments when you were at Eskom, if you did meet her as a representative of Regiments.

MR KOKO: Chair, I have a relationship with Trillian ...[intervenes]

CHAIRPERSON: With McKinsey.

MR KOKO: With McKinsey.

20 **CHAIRPERSON:** Yes, okay.

MR KOKO: Now McKinsey had two BEE companies they worked with at Eskom. One was Letsema and the other one was Regiments.

CHAIRPERSON: Ja, okay.

MR KOKO: So I have met Letsema, people I can still

recognise them, I can recognise them when I meet them and I have met Regiments.

CHAIRPERSON: Okay, so the only point you were making is simply that although you did meet with people attached to Regiments in particular Ms Mothepu, that does not mean that – that did not mean that Eskom had a relationship with Regiments.

MR KOKO: Eskom had no relationship with Regiments.

CHAIRPERSON: Eskom had a relationship with McKinsey.

10 **MR KOKO:** Yes.

CHAIRPERSON: And McKinsey had a relationship with Regiments.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: But, Chair, let me say this and I will be remiss if I do not say it. The subcontracting part, both on on-siting and other areas of the business was my passion.

CHAIRPERSON: Ja, okay.

MR KOKO: So that part – in fact if Mr Seleka came on the
20 part that say we were pushing the ...[intervenes]

CHAIRPERSON: The subcontractors.

MR KOKO: The [indistinct] 03.14

CHAIRPERSON: You would confess.

MR KOKO: I would confess.

CHAIRPERSON: Okay, alright.

MR KOKO: I, you know, I will give you another example that forced me to be out of favour at Eskom which people do not know, I insisted that the coal suppliers at Eskom must be – must have 50% BEE partners.

CHAIRPERSON: Ja.

MR KOKO: It is the only reason, Chair, if you do not know, that Anglo American had to disinvest in South Africa and sold its assets to Seriti and it is one of the sins I have committed but I do not feel bad about it, I get criticised
10 left, right and centre.

So I put a lot of pressure on McKinsey and I told you that I had a lot of admiration for McKinsey and I said to McKinsey I want to see you creating Top Engineers in South Africa but I want to see McKinsey in South Africa being 50% owned.

I was not prescriptive on who they must go to bed with. When they got in Letsema, I ...[intervenes]

CHAIRPERSON: You were happy.

MR KOKO: I was not only happy, I told them to do that.

20 **CHAIRPERSON:** Ja. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Mr Koko, talking of your passion for the subcontractors, is that the reason why you would have met with Ms Mothepu?

MR KOKO: Chair, I had a very soft spot for Ms Mothepu and I had a very soft spot for Ms Goodson. You know, one

day I want to have coffee with Ms Goodson in particular. I had a very soft spot for them.

Both of them came across stronger in areas that I was not strong in. They were not engineers, they were financial engineers and from the interactions I had with them, they had that strength.

But besides they were black women in – Chair, when you find – when you come across a very competent black woman who does not need favours from anybody you
10 will be stupid and naïve not to contact her.

And that was my approach. This lady seems to know what she is doing, she seems to be competent, let the politics of the country not affect here especially where you have control. I had the control.

So I do not know how I ended up interacting with her, I must have volunteered Regiments to her she must have volunteered Regiments to me. Either way I would not deny..

ADV SELEKA SC: Ja. I think my question was more at a
20 level of the transaction that was being discussed here, the balance sheet of the organisation, cash unlocking, financial initiative schemes, not necessarily the meeting with him as a person but the meeting with – I mean, with her as a person but a meeting with her as the company that she represented, your passion for the BEE.

MR KOKO: So, Chair, I would not have had the reason to interact with Ms Mothepu on say a lease back on optic fibre, prepaid electricity vending, EFC disposals, Hitachi claim, replacement on boilers and Duvha insurance claim and let me tell you why.

They are not in the scope of generation and technology which was the position that I had at this point, I would not have done it.

All this are in the financial space. These are the
10 space of the CFO. So I would not even know how to brief them. The best I can do when they come to me is to way go and talk to so and so space.

These are the space of the CFO. So I would not even know how to brief them. The best I can do when they come to me is to say go and talk to so and so, go and talk to so and so. I have no knowledge of this.

I am not trained in insurances issues, I am not trained in lease back and EFT disposal. When you dispose an EFT loan book of Eskom you do not need a person
20 trained in boiler technology.

My role, Chair, at Eskom, I was a corporate consultant for the boilers, I grew up through the ranks and I was recognised as an engineer, not as an EFC assets disposal so I would need help with this. I would not have meaningful discussions with them.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: What is the answer to my question?

MR KOKO: No, I had no reason to interact with Ms Mothepu on this transaction.

ADV SELEKA SC: Yes but that was not my question. My question was, was it your passion for BEE that made you meet with her, for BEE subcontractors?

MR KOKO: Chair, I said earlier – if that is – if you say – if somebody says to me you approached Ms Mothepu
10 because of her BEE credentials or because she was a black woman in Eskom, I would not ...[intervenes]

CHAIRPERSON: Deny it.

MR KOKO: I would not deny it. I do not think – I do not remember doing that, I do not remember whether she came to me or I went to her and I do not remember that. I think I remember going to Ms Goodson, that I think Ms Goodson and I have – I am the one who came closer to her and Ms ...[intervenes]

CHAIRPERSON: So is your answer that while you do
20 remember that you met with Ms Mothepu on a number of occasions you cannot remember whether either in part or in whole that was driven by your passion for subcontractors that had BEE.

MR KOKO: No, no, let me tell you what my passion would be on, Chair.

CHAIRPERSON: Ja but remember, his asking about passion [inaudible – speaking simultaneously]

MR KOKO: No, no, no, no ...[intervenes]

CHAIRPERSON: If you say it did not drive me [inaudible – speaking simultaneously]

MR KOKO: No, no, no, no, my passion for BEE will drive me towards McKinsey.

CHAIRPERSON: Yes.

MR KOKO: Not towards McKinsey's subcontractors.

10 **CHAIRPERSON:** Okay, okay.

MR KOKO: My passion for BEE in transformation will say it to the big guys I am doing business with you, I am going to contract with you, I need to see change, I need to see you changing at both operational, management and operational level. That is what I did with Anglo American but I would not go to McKinsey subcontractors. No.

CHAIRPERSON: Okay.

MR KOKO: I would not do that.

20 **CHAIRPERSON:** Is the position that you have no recollection what reason may have brought the two of you together over those number of occasions?

MR KOKO: That is correct, Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair. The reason I was asking you that, Mr Koko, is because of what you said

earlier. But also what you said for the parliamentary portfolio committee which seemed to be in line with what you were saying earlier. Remember when you were asked about why you went to the offices of Trillian after what you said was the workshop?

MR KOKO: Yes.

ADV SELEKA SC: You also cited your interest in the subcontractor service.

MR KOKO: Oh, yes, Chair, I paid particular attention to
10 subcontractors that are declared to me by the main subcontractor.

CHAIRPERSON: That are what to you?

MR KOKO: Are declared to me.

CHAIRPERSON: Okay.

MR KOKO: By main subcontractors and one of the discussions I had with Ms Goodson – and I apologise, Mr Seleka, for dragging her in because that is the relationship I remember the most.

I remember Ms Mothepu's relationship, I do not – so
20 when we had a discussion one of the first things I asked, I said, so you are the subcontractor to McKinsey? Yes. I have employed McKinsey, tell me what exactly are bringing mechanism, list the projects ...[intervenes]

CHAIRPERSON: Now you were speaking to whom now?

MR KOKO: Ms Goodson.

CHAIRPERSON: Goodson, okay.

MR KOKO: Ja. List the projects that ...[intervenes]

CHAIRPERSON: Is that meeting where you were asking her these questions the meeting at their offices or ...[intervenes]

MR KOKO: No, no, no, at the boardroom.

CHAIRPERSON: Oh, okay.

MR KOKO: Yes.

CHAIRPERSON: At Eskom, ja.

10 **MR KOKO:** Yes. Tell me what are you involved in ...[intervenes]

CHAIRPERSON: On the day that she became emotional or on another day?

MR KOKO: That is the day.

CHAIRPERSON: That is the day?

MR KOKO: That is the day. What are you working on? And I did that, Chair, because I am aware of the rent-a-black mentality.

20 You know, one of the biggest complaints that will come to me is that Mr Koko, you forced us into this and you forced this guy into this relationship and all what this guy is telling us, they sit at home.

CHAIRPERSON: Expect to collect the money?

MR KOKO: Yes, just sit at home. Just come and collect the money, we do not need you man, just sit at home and

my discussions with Ms Goodson at that time was – and I was very passionate about that.

When I meet subcontractors I asked them what are you busy with and then when they tell me hundred – remember I know what is mission critical and typically these people will give these guys tasks that are on the periphery and they will do what they think are critical, so if I show a sign that this project is critical, they put themselves on this project because according to them it is
 10 mission critical, the others can do other things, so – and that is why I always get involved with these people and if you talk to Eskom suppliers they will tell you about more than ten initiatives of this nature.

You know, I had another similar one call engineering consulting, purely for the engineers. The same. I say Mr consulting [indistinct] 15,17, you come from the US, this is what I want from you and then I will spend time with these BEE guys, what are you doing, what are you busy with? And then they came back and say no,
 20 this guy just tells me to sit at home. So that is my context.

And when they call me to their offices, Chair, I never said I will not come, I will go. I just will not go alone. I will go, I will not go alone. I will listen to them and where I can help, I will help. Where I cannot help, I will not help.

ADV SELEKA SC: Well, you made an intriguing statement about rent-a-black and they complained saying you forced us into this person that is making us to sit home, are you suggesting that you were forcing Trillian as a subcontractor to McKinsey as the main contractor?

MR KOKO: No, no, Chair, I did not attribute that statement to Trillian, all I am saying is the big white guys, they made – I forced them – I forced them into those relationships, they do not voluntarily...

10 **CHAIRPERSON:** They would be the ones who complained to you.

MR KOKO: No.

CHAIRPERSON: The main contractors.

MR KOKO: No, I would force the main contractors into this partnership. I would do that. I forced – and for those public that are listening, I forced Anglo American to sell 50% and they could not do it and they disinvested and I am happy they did that because now we have got Seriti which is black. So I would force these big guys – say guys, I am
20 not only here to generate electricity, I am here to transform Eskom and its supply chain. That part you are not going to negotiate with me. That part, if you would want to negotiate then get around because I am not going to entertain.

But these companies, then they go and make

partnerships on their own and once they make these partnerships, you know, it is like in a marriage, when things are nice, you never hear anything. Once there is a fallout then this ...[intervenes]

CHAIRPERSON: Subcontractors, they come to you and complain.

MR KOKO: Then they come to me and they will say you forced these guys to have a relationship with us.

CHAIRPERSON: Oh.

10 **MR KOKO:** You forced these guys to have a relationship with us. Now these guys just tell us to stay at home and come at the end of the month to collect a cheque. It is not what we want, Mr Koko, we want to earn our money, we do not want to sit at home to collect the check.

ADV SELEKA SC: Are you, Mr Koko, able to comment on this? When Ms Mothepu was here she was asked about what relationship Mr Salim Essa had with Regiments and she said he was the business development partner, not supplier, the business development partner and that she
20 was – well, Ms Goodson on the other hand says she is told Mr Clive Angel that Mr Essa is the one who makes things happen, so he – he makes the deals and that is how Regiments would get the deal or at that stage also Trillian. What happens in 2014 is that Ms Tsholofelo Molefe gets introduced to Mr Salim Essa, specifically in regard to the

funding plan for the corporate plan and they are introduced – he is introduced to her by Mr Colin Matjila, according to her, at Monte Casino as the people who can do this balance sheet and cash unlocking initiative and a meeting gets arranged for her, they do a presentation at Eskom, Mr Eric Wood and others and when they were asked about whether they have the capacity to render that service, Ms Tsholofelo Molefe says the response was that no, we normally contract with McKinsey.

10 Well, according to her, the end result was that she refused to sign the contract that was presented which was supposed to have been a proposal and they did – Eskom treasury did the work of the corporate plan and funding plan.

Now could it be that Mr Salim Essa was also in this case involved to broker the deal for Eskom to give work to McKinsey and that Regiments become a subcontractor?

MR KOKO: Chair, McKinsey did not meet Mr Essa to get a job in Eskom because they were in Eskom.

20 **CHAIRPERSON:** From 2007?

MR KOKO: From 2007. And Chair, I am confident that they never tendered for a job in Eskom for the better part of the 2007 because the tendering part was forced on me. I am probably one of the first persons to force McKinsey into a tendering in 2014. So all along they were getting

jobs from a sole source from 2007 and they came at Eskom at project Eyethu with Thulani Gcabashe.

So they did not need Mr Salim Essa to get the contract. But in any event, what is the evidence, Chair? The evidence is that McKinsey – the board of Eskom, the BTC on the 6 July approved the negotiations with McKinsey. So if ever there was a time that Eskom board played its hand that they will continue doing business with McKinsey was on the 6 July 2015, they did not meet Mr
10 Salim Essa.

I am aware, Chair, of the incident that Ms Molefe talks about. At that time I was in commercial. Ms Molefe did not tell me details that you have just mentioned but I was aware of it and she had some of the difficulties she had with Mr Colin Matjila about – she did not tell me the background of the meetings. She did not tell me.

CHAIRPERSON: Ja.

MR KOKO: But let me finish my answer this way. McKinsey did not meet Salim Essa, Mr Essa to do the
20 lobbying for Regiments, the board had played its part, McKinsey had not tendered for Eskom's jobs in 2007, they got jobs on a platter and I did not know Salim Essa in 2015, so I could not know what role he was playing.

ADV SELEKA SC: Okay, shall we go back to this email of Ms Mothepu? I read the first sentence, I will carry on on

the second. So the first one is:

“We had pleasure meeting you last week. I had a chat with Eric Wood regarding additional financial initiatives that need to be included as part of our balance sheet optimisation and cash unlocking financial initiatives stream. This include the sale and lease back on the optic fibre network, prepaid electricity vending, EFT disposal, Hitachi claims, replacement of boilers, Duvha insurance claim. We
10 are currently compiling a business case for these initiatives and require some information from you and your team.”

Why would she address such – an email with such contents to you?

MR KOKO: Chair, you have asked her that question and she answered it and she lied.

ADV SELEKA SC: Is what?

MR KOKO: Mr Chair answered (sic) Ms Mothepu that question.

20 **CHAIRPERSON:** Asked her the question.

MR KOKO: Asked, asked.

CHAIRPERSON: Ja.

MR KOKO: Chair, it tells you I...

CHAIRPERSON: Ja, you seem to have a problem, Mr Koko, referring to a question as an answer.

MR KOKO: My engineering qualities have got a worse, one of my engineering qualities you have a problem with the he and she's. Chair, you asked her the same question and regrettably she lied to you.

CHAIRPERSON: What was the answer she gave?

MR KOKO: She say – first you asked her why did you copy Mr Koko if he was your direct recipient of this email? And her answer was, I introduced her to an Indian gentleman and this Indian gentleman, I told her that has
10 answers for me for this and she, in the following emails, she eventually met this Indian gentleman and she was giving me feedback of the meetings with the Indian gentleman suggesting that Mr Zuma is an Indian gentleman and she was like I have a – after that appearance of her and after a lot of challenging and difficult times with my counsel, the only reason I think she sent me this email is because I am the one who signed the September 2009 contract and she did not realise, I think, that I am out of the office, that I am no longer the person who has the line
20 of sight of this.

This email communication continued until December when you see in the middle of them then Mr Mabelane comes in and they begin to realise that actually there is a new guy in the office, we have to be talking to Mr Mabelane and eventually in December it disappeared,

these emails do not come to me anymore because they were not meant for me, they are not my emails, they are all financial emails. I am even inclined to think that they would have been done, this project, within the business plan project.

CHAIRPERSON: By the way, who was in ...[intervenes]

MR KOKO: Was my secretary.

CHAIRPERSON: Yes. So I guess probably the reason why I asked her that question was because I would have
10 expected he had to address the email to you ...[intervenes]

MR KOKO: That is exactly what happened.

CHAIRPERSON: Rather than copy you.

MR KOKO: That is exactly what you asked her.

CHAIRPERSON: Yes.

MR KOKO: You asked her exactly that question.

CHAIRPERSON: Yes because if she had addressed it your secretary and not copied you but the text was meant for you, one could understand that maybe she was meant to correspond with your secretary and not directly with you
20 or whatever but the fact that she had your email address, she copied you and addressed the text to you in terms of the salutation but addressed the email to yourself, that it was a little unusual.

MR KOKO: Ja, Chair, I can tell you, I did action these emails. I did not discuss with her these emails. Even if I

wanted to they are outside my competency. I regret the fact that Ms Daniels has come here to tell you that this are in my area. I think if you take the delegations of authority and you bring back Ms Daniels, she will once again apologise for not being correct.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Ja.

CHAIRPERSON: I see we are at five to or four minutes to eight, so...

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

CHAIRPERSON: We can – ja, okay.

ADV SELEKA SC: Sorry, Mr Koko, on this, the part about Ms Daniels?

MR KOKO: Chair, Ms Daniels' testimony is that she has followed Ms Mothepu's testimony and she confirms to you that these issues are all – were in my area of responsibility.

ADV SELEKA SC: Oh, is that what you are saying?

20 **MR KOKO:** And I am saying if you – in the unlikely event that she comes back and you take the delegation of authority and you ask her again, she will confess to having made a mistake.

CHAIRPERSON: Well, without coming back physically, she can be asked to be asked to be available and she can be asked. Ja, okay.

ADV SELEKA SC: Okay because we did not put these emails to her.

MR KOKO: No you did not put this emails to her, but this project are in the least somewhere in the Commission, they were Ms Daniels the first two, in Ms Mothepu's affidavit.

ADV SELEKA SC: Okay, tell me is Ms Mothepu not sending you this email because of the meeting she had with you as she says the week before?

MR KOKO: No, Chair not at all - I would have very little
10 to discuss with Ms Mothepu on this transaction. So she comes in Chair and say, let us discuss the sale of EFC Disposal, say so you are going to sell the loan book of Eskom. I do not even know where it sits in Eskom, I cannot even spell it in Treasury. So the best I can tell you Ms Mothepu said go to Treasury, there is a person there responsible for EFC loan book.

I do not know it and then it comes to the next one and then it says, Hitachi claims. It says Ms Mothepu attached claims are at Medupi and Kusile it is group
20 capital. At best Ms Mothepu going to talk to so and so, I cannot help you there.

I have no soon knowledge of what is going on with the Hitachi claims. Then you go to the next one and say, this sale and this back on fibre optic network. Ms Mothepu I have never interacted with that but at best please go and

talk to so and so. That is the best discussion I can have with her.

ADV SELEKA SC: Chair, let me close with this, not that I am finishing the topic on this but insofar as you said the emails ended in December, please turn to page 811.358.

CHAIRPERSON: I just want to say before you go there Mr Koko, it does appear that certainly from the reading of this email at page 811.255 that she seems to be telling you whatever she is telling you in this email that there seems
10 to be a follow up on the previous week's meeting that she talks about, what do you say to that?

MR KOKO: Chair, I would not have a meeting with her to discuss this.

CHAIRPERSON: No, no that is not the question.

MR KOKO: So what I think she may be referring to is the meeting that – and I am even supposing Chair, I think I am walking on a dangerous ground. What she may be referring to is a meeting that she was in with McKinsey and I was there and we may have had a chat and then she
20 follows up with a with an email. Chair I am guessing and I do not want to guess.

CHAIRPERSON: Yes, no but my question is a different one. Whether, do you agree that when you read this email, you get the impression, one gets the impression...[intervene]

MR KOKO: That there was a meeting.

CHAIRPERSON: Not only that there was a meeting because she makes that point clearly.

MR KOKO: Yes.

CHAIRPERSON: But that she is following up on a discussion that happened at that meeting.

MR KOKO: Correct, Chair.

ADV SELEKA SC: That is the impression one gets.

MR KOKO: Correct.

10 **CHAIRPERSON:** Okay.

MR KOKO: But Chair while you are...[intervene]

CHAIRPERSON: Yes you are saying there was no such meeting or no, no you did not say there was no such meeting you said you had a number of meetings with her but you cannot remember whether you had a meeting with her during that particular week.

MR KOKO: Yes, that is correct but there is another piece of information that you have to revisit, is when she – it is her testimony to you about this because her testimony to
20 you about this throws everything out.

CHAIRPERSON: Ja, Mr Seleka.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: I think we can wrap up.

ADV SELEKA SC: Yes, for tonight.

CHAIRPERSON: For tonight, ja.

ADV SELEKA SC: Yeah, because that last paragraph...[intervene]

MR KOKO: 811.

ADV SELEKA SC: Well, let us stay here a little bit because that last paragraph says:

“We would like to set up time earlier this week with yourself and your team to source the information in order to complete the business cases by the end of the week.”

10 I mean she is so specific in her writing about you and your team that it is puzzling why she would write like this if this is not a follow up to your meeting.

ADV SELEKA SC: And it is even strange that Chair my team would not have anything to do with this, that is even strange. My team, my entire team put together would have nothing to do with every single thing that is put here.

CHAIRPERSON: Do you have any recollection whether you did receive this email?

MR KOKO: No, Chair.

20 **CHAIRPERSON:** And whether if you received it you responded?

MR KOKO: No, well I can tell you now I did not respond.

CHAIRPERSON: Ja, but you also do not remember.

CHAIRPERSON: That is it, I do not recall seeing it.

ADV SELEKA SC: You were saying earlier that your PA

would bring an email to your attention, in this case did that happen?

CHAIRPERSON: No, Chair I do not remember this but I am also saying my entire team put together will not have the competency to deal with these issues.

CHAIRPERSON: To deal with these matters.

MR KOKO: With these matters.

ADV SELEKA SC: Ja, but...[intervene]

CHAIRPERSON: Do you think - so what have you got a
10 reason why you think she might write to you about matters that you neither discussed with nor matters with you and your team?

MR KOKO: She has answered that question in her affidavit.

CHAIRPERSON: Ja, just remind me what she says?

MR KOKO: She says I gave her an Indian gentleman to work with who...[intervene]

CHAIRPERSON: To discuss these matters with you.

MR KOKO: To discuss these matters with.

20 **CHAIRPERSON:** And she thought she was referring to your PA?

MR KOKO: She was referring to my PA.

CHAIRPERSON: And you would not refer to your PA to discuss this.

MR KOKO: I would not refer her to my PA to discuss this.

CHAIRPERSON: Yes, okay maybe that might be ...[intervene]

ADV SELEKA SC: This last one Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: The page I was referring you to Mr Koko is 811.358.

CHAIRPERSON: 811?

ADV SELEKA SC: Point 358.

CHAIRPERSON: 358.

10 **ADV SELEKA SC:** Ja.

MR KOKO: 811?

ADV SELEKA SC: Point 358. So this is from her again Ms Mosilo Mothepu, MosiloM@regiments, Tuesday the 12th January 2016 and specifically addressed to you copied by Fahiemah Bahdat and then the subject is EFC, and we saw in that email EFC disposal.

MR KOKO: Ja, I mean this is it is even worse I mean why would I discuss EFC with her.

CHAIRPERSON: Let Mr Seleka finish Mr Koko.

20 **ADV SELEKA SC:** Yeah, remember you said to the Chairperson this email - the emails to you disappeared in December, she no longer sent you emails.

MR KOKO: Oh, ja I did.

ADV SELEKA SC: So what I am saying to you is her are emails in January 2016.

MR KOKO: No certainly I was not aware of this.

ADV SELEKA SC: So you were not aware of this either?

MR KOKO: No, no I was not aware of this email.

ADV SELEKA SC: There is another one on the 20th of January on the next page.

MR KOKO: Yes, I can see it.

ADV SELEKA SC: You were also not aware of this one?

MR KOKO: Ja, but again look at - really Chair I mean...[intervene]

10 **ADV SELEKA SC:** She says:

“Hi, Thando.”

MR KOKO: Hi, Thando – I mean really.

ADV SELEKA SC: “Thanks for accommodating me this afternoon as discussed, Matshela has requested a meeting with me on Friday afternoon. My team is available after 14:30.”

Is this...[intervene]

MR KOKO: And this one has no title about the meeting, I do not call this meeting time, Chair.

20 **ADV SELEKA SC:** Subject to meeting with Matshela.

MR KOKO: Yes, meeting with Matshela.

ADV SELEKA SC: You do not remember this?

MR KOKO: No, and this meeting I do not remember.

CHAIRPERSON: Well, why would you not think that this meeting that she is talking about may be one of those

many meetings that you said you did have with her.

MR KOKO: Yes, that is correct Chair yes that is why I am saying I do not remember, all that I can confirm is that I met with her several times but not to discuss transactions, financial issues, no that I would not do that.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes, Chair lastly look at the one of the 12th of January, the one you say you do not remember also she says:

10 “Hi Matshela.

 Compliments of the new year, as discussed telephonically I would appreciate it if you can assist in facilitating a meeting with Mike Ashley and his EFC team to understand the EFC business for the ultimate sale from Eskom’s ownership.”

So here she specifically refers to a telephone conversation with you.

MR KOKO: Yes, now, this is a very – I am glad we have this...[intervene]

20 **ADV SELEKA SC:** Can I ask you this question, do you admit that part, having the telephone conversation with her?

MR KOKO: Chair, it is possible, it is not possible I do not recall but look at the question is possibly she could call but look at the question it says please...[intervene]

CHAIRPERSON: Please facilitate a meeting with.

MR KOKO: Yes, these are people outside my department.

CHAIRPERSON: Yes.

MR KOKO: And it suggests that she is struggling to make relationship...[intervene]

CHAIRPERSON: On the face of it these email that is what, that is the thought I have Mr Seleka on the face of it this email may be consistent with Mr Koko's version of saying these matters are not matters I would discuss, I
10 would rather refer her to other people that is the sense I have. What do you say Mr Seleka?

ADV SELEKA SC: Chair, Ms Mothepu has provided us this email.

CHAIRPERSON: Yes.

ADV SELEKA SC: To substantiate her version that Mr Koko was involved in...[intervene]

CHAIRPERSON: In the negotiation.

MR KOKO: No, but she cannot say I am involved. She is asking me to connect her to other people.

20 **ADV SELEKA SC:** So let me just add.

CHAIRPERSON: Yes, let him finish.

ADV SELEKA SC: Mr Koko, also for increasing the scope, extending the scope.

MR KOKO: I cannot increase the EFC scope, where would I start? It is like saying, a lawyer in Johannesburg comes

to increase the scope in the office of the DCJ.

CHAIRPERSON: Has Mr Koko dealt with these emails in an affidavit?

MR KOKO: No, Chair I am seeing this emails for the first time today.

ADV SELEKA SC: No, no Chair they are – there are some of these emails are touched in Ms Mothepu's affidavit.

CHAIRPERSON: Oh, but some are new?

MR KOKO: Not this one, I can assure you.

10 **ADV SELEKA SC:** Not the one of the...[intervene]

MR KOKO: No not this email I can assure you.

ADV SELEKA SC: Not the one of January 2016?

MR KOKO: Not the one of the January 2016.

ADV SELEKA SC: No, I do not think that one is there, Chair.

MR KOKO: No Chair, I am telling you it is not.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: But the others are attached.

MR KOKO: The others are.

20 **ADV SELEKA SC:** But did you deal with them?

MR KOKO: Yes, I have I have put them in bundles and I have dealt with them.

CHAIRPERSON: Okay, alright I think let us stop here for the evening. Thank you to everybody, for all the cooperation to try and assist the Commission to do as

much as it can to finish its work. We appreciate all the sacrifices and I know Mr Koko, you are still ready to go up to midnight.

MR KOKO: Yes.

CHAIRPERSON: Thank you for everyone's preparedness to assist. Thank you to the staff, the technicians and everybody and of course Mr Seleka who has been standing since ten, this morning and your team.

Mr Barrie, thank you, your instructing attorney, Mr
10 Koko thank you to all of you for your cooperation. We will adjourn now, tomorrow there will be no hearing or maybe we need to start here. What is the position Mr Seleka in terms of the witness who was meant to be here anyway tomorrow?

ADV SELEKA SC: No, the witness has not indicated that he is not available so that is Mr Zwane, Chair.

CHAIRPERSON: Yes, so he is still scheduled to be here?

ADV SELEKA SC: Yes.

CHAIRPERSON: Oh so we should meet you might not just
20 not be able to deal with certain matters.

ADV SELEKA SC: That is right, it is the other two witnesses whose availability who I was exploring.

CHAIRPERSON: I had thought that you would have spoken to him or his lawyers so that he does not come here just for one hour.

ADV SELEKA SC: Okay, I can still do that, Chair.

CHAIRPERSON: Yes, try and do that because there is not much point to assemble just for one hour and then go away for the whole day.

ADV SELEKA SC: Yes.

CHAIRPERSON: We would have to arrange a day when we can cover all the matters that you need to question him on.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** But you will need to talk to me after you have spoken to him or his lawyer.

ADV SELEKA SC: I will do so, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Chair before - I beg your pardon Chair Just before the Chairperson adjourns that item aspect, Mr Koko raised this morning about the President. Mr Koko you mentioned that you made the point in your statement, but during the adjournment I was seeking to draw to your attention, that the statement I have seen, does not deal
20 with your suspension, *vis-a-vis* the President. It deals with the allegation of his interest in Glencore. Maybe you could clarify...[intervene]

CHAIRPERSON: My understanding was that he did not dispute that in his statement. He did not refer to the President instructing the Eskom Board to suspend him or

fire him. But he did that only in his oral evidence, but he said even in his oral - but I do not know whether he said even in his oral evidence – no, no he said in the labour court he simply said the VC and not the President. But in his oral evidence he said Deputy President then, is that right?

MR KOKO: What I just need to correct Mr Seleka is that I deal with my suspension in my affidavit.

CHAIRPERSON: Ja.

10 **MR KOKO:** I do deal with that.

ADV SELEKA SC: Yes, but I am making a point in regard to the allegation that it is the President who had given instructions for you to be suspended.

MR KOKO: I deal with it in my statement Chair, and I am saying it is government and it is very clear in my...[intervene]

CHAIRPERSON: To say government as opposed to the President?

MR KOKO: Yes, yes.

20 **CHAIRPERSON:** Okay.

MR KOKO: Yes, it is very clear in my statement, I think my statement of the 20th of November.

ADV SELEKA SC: I have seen that part. That part I know Chair because I did put it to him but if I give the President that statement and the President was at that time, not the

President.

CHAIRPERSON: Ja.

ADV SELEKA SC: How does it implicate him?

MR KOKO: Chair, that is why I said, I inquired that I have not seen the statement from former Minister Martins, Deputy Minister Martins or Ms Mokgekelo because I got from the DG...[intervene]

CHAIRPERSON: You do not want to repeat your evidence now because you have said that.

10 **MR KOKO:** No, no I have so my statement is that I gave here is clear.

CHAIRPERSON: And Mr Koko I think the difference between you and Mr Seleka is that Mr Seleka wanted to say to you, he did look at your statement and he did not find anywhere where you attributed the instruction to the Board to the current President.

And I think your answer is supposed to be as I understand it, yes I did not attribute it to the current President but I attributed it to government, is that correct?

20 **MR KOKO:** That is correct, Chair but I am mentioning, I am asking you not to stop there.

CHAIRPERSON: No, no, that - that part I think we dealt with it. I think Mr Seleka just wanted to confirm with you that in your statement, you do not attribute it to the current President.

MR KOKO: That is correct.

CHAIRPERSON: Ja, okay no that is fine. Okay, thank you very much we will now adjourn, we adjourn.

INQUIRY ADJOURNS TO 31 MARCH 2021