

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

**30 APRIL 2021**

**DAY 386**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 30 APRIL 2021**

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

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

**CHAIRPERSON:** Are you read?

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

**CHAIRPERSON:** Okay. For the record Mr Gama is represented by - is represented by the same legal team as before, is that right?

10 **ADV MYBURGH SC:** Yes Chairperson.

**CHAIRPERSON:** Okay alright. Please administer the oath or affirmation.

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

**MR GAMA:** Siyabonga Innocent Gama.

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

**MR GAMA:** No.

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

20 **MR GAMA:** Yes.

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

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

**CHAIRPERSON:** Thank you. Good morning Mr Gama.

**MR GAMA:** Good morning Chairperson how are you today?

**CHAIRPERSON:** I am alright how are you?

**MR GAMA:** Very well thanks.

**CHAIRPERSON:** Okay alright. Mr Myburgh are you ready?

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

**CHAIRPERSON:** Okay alright.

**ADV MYBURGH SC:** Mr Gama where we ended off on Monday from what I recall was working through the role  
10 that you played overall in relation to the acquisition of the 1064 locomotives. You had explained that you were involved in developing the business case but at the TFR level.

I just want to ask you when the final business case was submitted to the Transnet board we know it was approved on the 25<sup>th</sup> of April 2013 did you recommend and sign that business case – the final business case?

**MR GAMA:** I would not remember is there a document that you have that you want me to look at?

20 **ADV MYBURGH SC:** Were you present at the board meeting?

**MR GAMA:** I cannot recall whether I was or not.

**ADV MYBURGH SC:** Alright. And then you say that you were part of the post tender negotiations you mentioned to us and assisted us with the details that you were part of a

locomotive steering committee and the co-chairperson together with Mr Singh that that you did not become involved in the negotiations per se is that correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And we know that those post tender negotiations then culminated in the conclusion of locomotive service agreements which were signed on the 17<sup>th</sup> of March 2014. I think you did mention that those negotiations ultimately would result in the conclusion of  
10 contracts, correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And we know then that in May of 2014 the BADAC and I think after that the board of directors agreed to an increase in the ETC, do you play a role in that? Were you party to the memoranda that were put before the BADC and the board of directors?

**MR GAMA:** Yes

**ADV MYBURGH SC:** And then I think that we have touched on this as well – oh sorry and just to confirm so the – all of  
20 those steps were at the time where you were the CEO of TFR?

**MR GAMA:** Correct.

**ADV MYBURGH SC:** We have touched on it as well that when you then took up the position of Group Chief Executive whether permanently or acting you played a role

in the funding of the locomotives? You played a role in the China Development Bank loan and also the club loan, is that correct?

**MR GAMA:** No I did not play any role.

**ADV MYBURGH SC:** Well we will come to that. Did you not sign and author certain documentation relating to the China Development Bank and the club loan?

**MR GAMA:** I did not author any documents but I was involved in taking it to the correct people. The authors of  
10 those documents as I have said to you when it comes to funding and those are financial people that deal with those issues.

**ADV MYBURGH SC:** Alright well perhaps you could just describe to us what was your role?

**MR GAMA:** Sorry.

**ADV MYBURGH SC:** What was your role then in relation to the China Development loan and the club loan? These were as you know agreements – consultancy agreements advising agreements with Regiments in relation to the  
20 China Development Bank and with Trillian in relation to the club loan. What – how would you describe your role in relation to those contracts?

**CHAIRPERSON:** Or maybe would it be – maybe it would be more convenient if you took one by one Mr Myburgh.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Say do you have a role in this one if so what role?

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** And then the next one.

**MR GAMA:** Ja I think Chair it would be better if we went through the documentation.

**CHAIRPERSON:** Yes.

**MR GAMA:** And then ...

**CHAIRPERSON:** Okay.

10 **MR GAMA:** It would assist him because I could say I had a role I really just came in at the tail end of it when people have ..

**CHAIRPERSON:** Yes.

**MR GAMA:** Negotiated and then even the Chief Executive and then they will say okay and we now – we now have a loan that has been negotiated come let us take a pitch.

**CHAIRPERSON:** So well

**MR GAMA:** You cannot – you cannot say you played a role there.

20 **CHAIRPERSON:** Well I think maybe Mr Myburgh could take you one by one if that is not too cumbersome.

**ADV MYBURGH SC:** I – yes I mean each of these the China Development Bank loan and the club loan is a topic in itself.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** That I am going to examine.

**CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** Mr Gama – but I just wanted to get a bird's eye view of his overall involvement.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** If he says he wishes to deal with that when we come to the documents that is perfectly in order.

**CHAIRPERSON:** Yes so I think Mr Gama you for now you can say what you remember to have been your role if you  
10 do not remember that you had a role you can say I do not remember that I had a role or if I did have it might be an insignificant role but then when Mr Myburgh comes to the actual documents then we can go through them.

**MR GAMA:** That is correct Chair as I have said the raising of those loans I was not involved.

**CHAIRPERSON:** Yes.

**MR GAMA:** My role would probably be at the tail end – insignificant. There is not anything much that...

**CHAIRPERSON:** That you did.

20 **MR GAMA:** That I personally did.

**CHAIRPERSON:** Ja.

**MR GAMA:** It is insignificant. Maybe you will see my signature on one or two documents.

**CHAIRPERSON:** Ja.

**MR GAMA:** It does not mean that I played a role.



**CHAIRPERSON:** Ja.

**MR GAMA:** Ja.

**CHAIRPERSON:** Ja or it might mean it is an insignificant role as you put it. Ja it obviously just depend what the content of the documents is.

**MR GAMA:** That is correct.

**CHAIRPERSON:** Ja.

**MR GAMA:** Then we can go through it and actual arrangement yes.

10 **CHAIRPERSON:** Ja. Ja okay.

**ADV MYBURGH SC:** And then finally were you as you say at the tail end were you involved at all in the relocation from Pretoria to Durban of the manufacturing facilities of two of the OEM's?

**MR GAMA:** No I was not involved in the negotiation I was involved in the approval.

**ADV MYBURGH SC:** Yes. Alright so you were involved in the approval of what? The amounts and the payments etcetera?

20 **MR GAMA:** Yes in the approval of the relocation.

**ADV MYBURGH SC:** Sorry.

**MR GAMA:** In the approval of the relocation.

**ADV MYBURGH SC:** Alright. I want to now look at what appears to have been going on behind the scenes. As I understand Mr Gama under your watch you – is my

understanding correct that you initiated an investigation into the acquisition of the 1064 locomotives?

**MR GAMA:** That is correct.

**ADV MYBURGH SC:** And was that investigation incomplete at the time that you left Transnet as I have it in October 2018.

**MR GAMA:** That is correct.

**ADV MYBURGH SC:** We have seen some reference to that in the minutes of the special board meeting of the 13<sup>th</sup> of  
10 June 2017 that you produced in relation to the affidavit of Witness 2, correct?

**MR GAMA:** Ja that was the – I think that was the starting point where I was busy with Terms of Reference for the investigation.

**ADV MYBURGH SC:** I want to just sketch to you very briefly the evidence that has emerged from the investigations undertaken particularly by the money flow stream. They have led the evidence of an expert Mr Paul Holden – Chairperson you will know that he is due to  
20 continue his testimony in the month of May.

I should just make this very clear Mr Gama that what I am going to say to you now is what the evidence that they have presented appears to establish it. Of course we will be up ultimately to the DCJ to decide whether it has been or not. So I want to qualify what I am

going to say to you on that basis.

Firstly what appears is that in – in those instances where Regiments was appointed as the Supplier Development partner to McKinsey on the 1064 transaction advisor contract Mr Essa was paid 50% of all the fees at Regiments with laundry payments then having been made to Gupta companies. You want to comment on that?

**MR GAMA:** No I am not privy to the report – I have not seen it. I do not know anything about it.

10 **ADV MYBURGH SC:** Secondly in relation to this China Development loan funding contract which we spoke about what happened there and that as you know was part of the funding of the 1064 locomotives. What happened there is that Regiments were paid a success fee and we will come to this later of R189 million. 78% of that was paid out to a company called Albertime owned by Mr Kuban Moodley, have you heard that name?

**MR GAMA:** I have seen the name in the newspapers.

**ADV MYBURGH SC:** 78% of the R189 was paid out to  
20 Albertime and then R122 million of that landed up with Sahara Computers – was laundered into Sahara Computers. You know that Sahara Computers was a Gupta owned company?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Then in relation to the club loan

which we have also touched upon where you say you came in at the tail end and we will go to the documents in time there Trillian was paid R93 million. 80% of that 74% - R74 million was paid to Albertime. Do you know anything about that?

**MR GAMA:** No I do not.

**ADV MYBURGH SC:** Then what the money flows investigation has revealed and other investigations is that Mr Essa was involved in the conclusion of a number of so  
10 called BDSA's Business Development Services Agreements essentially would get a commission for brokering a deal. He concluded such an agreement with CSR in respect of the 359 electric locomotives that had a contract value as you know of R18 billion. Is that correct?

**MR GAMA:** I cannot remember what CSR contract was.

**ADV MYBURGH SC:** And the agreement provides for Tequesta which was the – the company that Mr Essa was involved in receiving a 21% commission.

Investigation has also revealed that Mr Essa  
20 concluded a number of these agreements including another one with CNR in respect of the 232 diesel locomotives the part of the 1064 transaction where the contract value was R9.9 billion.

So he had more than half of the 1064 locomotives covered by these so called BDSA's. You know anything

about that?

**MR GAMA:** No.

**ADV MYBURGH SC:** In fact and now I go outside of the 1064 what money – the money flows evidence is showing is that Mr Essa had a BDSA with CSR in respect of the 359 electric locomotives to a similar agreement with CSR in respect of the 95 locomotives, similar agreement in respect of 100 locomotives and there investigation has revealed that so far CSR have made kickback payments of 123  
10 million dollars to Gupta Enterprises. Comment on that?

**MR GAMA:** No I do not know anything about it.

**ADV MYBURGH SC:** The other thing that has emerged is that Mr Sharma the chairperson of the BADAC at the material times had a matrix of business relationships with Mr Essa. You know anything about that?

**MR GAMA:** I think there was an occasion to investigate a relationship. I think the board did an investigation into Mr Sharma.

**ADV MYBURGH SC:** Yes.

20 **MR GAMA:** Related with business that was called VR Laser. I do not know any other.

**ADV MYBURGH SC:** Now you were – you sat on the board together with Mr Sharma, is that correct?

**MR GAMA:** It is not correct.

**ADV MYBURGH SC:** Right. Did you interact at all with Mr

Sharma?

**MR GAMA**: Ja occasionally.

**ADV MYBURGH SC**: In what context Mr?

**MR GAMA**: He was the chair of the BADAC so from time to time when we went to present I was not a member of the board.

**ADV MYBURGH SC**: So this is at the time where you were at TFR.

**MR GAMA**: I was at TFR yes.

10 **ADV MYBURGH SC**: Alright. And you are correct in fact in those minutes of the meeting of the 13<sup>th</sup> of June which we spoke of a little earlier there is reference to that to, is there not?

**MR GAMA**: Sorry.

**ADV MYBURGH SC**: There is reference in the minutes of the meeting of the 13<sup>th</sup> of June which we spoke of a little earlier to an investigation or issues in relation to Mr Sharma?

20 **MR GAMA**: That is correct yes. It had not been completed I think at that time.

**CHAIRPERSON**: It had not been completed when you left/

**MR GAMA**: No I am saying we are talking about the fact that it had not been completed that investigation.

**CHAIRPERSON**: Oh – oh okay.

**ADV MYBURGH SC**: Perhaps I could just take you at this

point to Exhibit 27 you have it?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Referred to as the Transnet POI Reference Bundle. Could I ask you please to turn to page 319 part of the MNS report where they deal with a relationship between Mr Essa and Mr Sharma. It is Transnet Bundle 6 Chairperson.

**CHAIRPERSON:** One second Mr Myburgh. Thank you Mr Myburgh did you say page 318?

10 **ADV MYBURGH SC:** Page – so Transnet Bundle 6.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Exhibit BB27 page 319 Chairperson.

**CHAIRPERSON:** Okay alright. So there you see at paragraphs 3.1.15 and 3.1.16 their findings in relation to the connections between ...o there you see at paragraphs 3.1.15 and 3.1.16 their findings in relation to the connections between ...

**MR GAMA:** Sorry are you using the black numbers of the

20 **ADV MYBURGH SC:** Yes I am using the black numbers on the left hand side.

**MR GAMA:** Oh so I am on the right number.

**CHAIRPERSON:** Oh okay.

**MR GAMA:** 319?

**CHAIRPERSON:** 319.

**ADV MYBURGH SC:** 319.

**MR GAMA:** Ja.

**ADV MYBURGH SC:** So there you would have seen the matrix of relationships between Mr Sharma and Mr Essa – you would have seen this before, correct?

**MR GAMA:** I have not applied my mind to it.

**ADV MYBURGH SC:** Alright.

**MR GAMA:** I have not. Just a fleeting glance.

**ADV MYBURGH SC:** And then the other thing that has emerged from the investigations that is of relevance from  
10 an overall perspective and this relates – this relates to the relocation. You – are you aware of the fact that CNR SA concluded a business development supply agreement with a company called Becks in relation to their relocation to Durban?

**MR GAMA:** Yes I am – I became aware of it Mr Goncalves of the CNR consortium came to indicated to us that there was such an agreement and we requested that Werksmans Attorneys investigate it on our behalf.

**ADV MYBURGH SC:** And then what the evidence points to  
20 is that Becks obtained a commission of some R67 million and money flows intends to deal with this transactions and present evidence to establish that Becks is also a Gupta link. Have any comment on that?

**MR GAMA:** I am not privy to the – what you call it the conclusions of that investigation. I have never seen it the



conclusions of the investigation so I do not know anything about it but I know that when it was raised with me I – the first step I did investigation immediately commenced with.

**ADV MYBURGH SC:** So what you see is this sort of common thread that runs throughout is really the involvement of Mr Essa – he is involved in effect in the 164 transaction advisor contract getting 50% of the fees of Regiments. The funding agreements China Development Bank, Trillian, the business development agreements with  
10 two of the OEM's. What connections with Mr Sharma etcetera. You see that common denominator or thread?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** So this is the person that you met in Dubai in January of 2016, correct?

**MR GAMA:** That is correct yes.

**ADV MYBURGH SC:** Could I ask you to go to the bundle where certain documents have been added. And let me take you to documents relating to your stay at the Oberoi Hotel. Could I ask you to go to – and try and deal with  
20 them in chronological order so it will be easier for everybody. I want to start off ...

**CHAIRPERSON:** Is it Bundle 6?

**MR GAMA:** Which bundle do you want us to go to?

**ADV MYBURGH SC:** I beg your pardon Bundle 28 your bundle BB28. It is Transnet Bundle 7 Chairperson.

**CHAIRPERSON:** So Bundle 7? Transnet Bundle 7?  
Transnet Bundle 7 is it here? Oh I have got it ja.

**ADV MYBURGH SC:** Could you please turn to page 335 it  
is right at the end. When I say right at the end it is about  
three pages from there.

**CHAIRPERSON:** 335?

**ADV MYBURGH SC:** Yes. Are you there?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Mr Gama I am going to take you to a  
10 series of four or five documents – Chairperson I must place  
on record in fairness to Mr Gama that as you are aware  
these documents relating to the Oberoi Hotel and this  
featured as you know in Mr Singh’s examination are part of  
the Gupta Leak documents and as you also aware there is  
a project and I actually understand you to have confirmed  
this the other day when dealing with the different witness.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** There is a project that is being  
undertaken presently within the commission to authenticate  
20 these various documents.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** So I – I just point that out to Mr  
Gama in fairness.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Now Mr Gama at page 335 what you

see the first email from the Oberoi Dubai Hotel on the 20<sup>th</sup> of January 2016 and it is sent to ashu@sahara.co.za do you know who Ashu is?

**MR GAMA:** No.

**ADV MYBURGH SC:** Have you heard of Ashu Chawla?

**MR GAMA:** No.

**ADV MYBURGH SC:** He at a point was the CEO of Sahara Computers. You want to comment on that?

**MR GAMA:** No I do not know him.

10 **ADV MYBURGH SC:** And the Oberoi Hotel is sending a reservation confirmation to him in relation to you and you will see Reservation Confirmation your guest name Siyabonga Gama, you going to arrive on Friday the 22<sup>nd</sup> of January and leave on Sunday the 24<sup>th</sup> of January. We have confirmed those dates already. Correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And then over the page 336 you will see that you had been right at the bottom booked a deluxe suite, do you see that?

20 **MR GAMA:** Yes.

**ADV MYBURGH SC:** If you go back to page 335 what you see is that Mr Chawla then also on the 20<sup>th</sup> of January forwards this reservation to an email address reading salimessa@gmail.com do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And it is your own testimony that Mr Essa assisted you in booking this accommodation.

**MR GAMA:** Correct.

**ADV MYBURGH SC:** Then the second document that I want to take you to please is to be found at page 328 and I do apologise these are out of chronological order that is why I am dealing with them in this way. At 328 on the face of it you find an invoice from the Oberoi Hotel it refers to you and under that Sahara Computers. The company is  
10 reflected as Sahara Computers. On the right hand side arrival 22 January departure 24 January. Just before the double lines on the left hand side you see the word Billing. Opposite that it reads Entire bill to Sahara Computers and then \*\*\* no pre-auth \*\*\* and then the bill appears to have come to AED 4650. You see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And it then appears to have been signed by you, would you confirm that?

**MR GAMA:** Yes.

20 **ADV MYBURGH SC:** And says that above your signature:

“I agree that I am responsible for the payment of this bill in the event that it is not paid by the company from an organisation or the person indicated.”

You see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And would I – is your understanding the same as mine that that would then be a reference in this case to Sahara Computers?

**MR GAMA:** No.

**ADV MYBURGH SC:** To whom would it be a reference?

**MR GAMA:** It was just – it is one of those things when you get to check out they show you that bill and they say sign here and you sign for the bill.

10 **CHAIRPERSON:** Well I – well the – I think the proposition maybe can be put this way that in the writing that appears immediately above your signature the reference to the company organisation, there must be a reference to the company organisation reflected in the invoice. Now that is one thing. You seem to be saying, as I understand you. What you are emphasising is. You know, they put this maybe as you were checking out, in front of you, set aside and you signed it.

**MR GAMA:** Yes.

20 **CHAIRPERSON:** Which does not necessarily mean that the reference in those words to the company is not the reference to the company written in the invoice but may simple mean that you are saying: I did not even check. I just signed because it is some what you get given as you check out. So.

**MR GAMA:** H'm.

**CHAIRPERSON:** I do not know. I am not putting words into your mouth but I want to try and distinguish between the two scenarios.

**MR GAMA:** Ja, as I was telling(?) Chair, they show you the total amount. That is the most important thing and you can always check whether they did not put anything that you do not know of. If the bill is what it is, you sign for it and I do not know people who then read that fine print but  
10 - may not what is written there.

**CHAIRPERSON:** Well, I can tell you that I tend to read quite a lot because I think that nobody will believe me when I say I signed without reading, as a judge. So [laughs] Normally. And I think that would apply to Mr Myburgh too. [laughs] So I tend to read a bit and make sure I know what is written.

**MR GAMA:** Normally, people look at the amount whether I am being charged the correct amount. In most hotels when you check out they let you sign something. Ja.

20 **CHAIRPERSON:** Okay Mr Myburgh.

**ADV MYBURGH SC:** Well, I suppose then the question is. When you checked out, on the face of it, it does not appear that you paid this bill or did you?

**MR GAMA:** Yes, I did pay for it.

**ADV MYBURGH SC:** So there is another – there should

have been something else that then reflects a null balance because what you signed shows a balance owing of 4 650,00. Correct?

**MR GAMA:** It does not show a balance owing. It just shows the total.

**ADV MYBURGH SC:** Yes.

**MR GAMA:** H'm.

**CHAIRPERSON:** Well ...[intervenes]

**MR GAMA:** It just shows how much the amount is.

10 **CHAIRPERSON:** Well, it says balance in AED ...[intervenes]

**MR GAMA:** ...those show us the amount of the bill. That is all it means.

**CHAIRPERSON:** Yes.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Alright, Mr Gama. Let us go to page 317. So that bill you would have signed, correct me if I am wrong, on the 24<sup>th</sup> of January when you checked out?

**MR GAMA:** Yes.

20 **ADV MYBURGH SC:** 24 January ...[intervenes]

**CHAIRPERSON:** And you would have paid on the same day?

**MR GAMA:** I would have settled the same day.

**CHAIRPERSON:** Yes. Okay.

**ADV MYBURGH SC:** On 24 January 2016?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And let us have a look at page 317.

This is an invoice that is addressed from the Oberoi to Sahara Computers, on the face of it. The date is 2 February 2016. So that is more than a week later. And you will see there it lists a number of stays including yours. Your name is reflected there. Do you see that?

**MR GAMA:** Yes, I see that.

**ADV MYBURGH SC:** 22<sup>nd</sup> January to 24 January and the  
10 amounts tally up with the invoices 3 to 8. It is the  
4 650,00 AED. Correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Now what we also put in the bundle, is not necessary to go through it, is some invoices of other people whose name appear on that list. Mr Koko, Mr Mantsha. You know them, do you?

**MR GAMA:** Ja, I know them.

**ADV MYBURGH SC:** If you then go – so that is the  
2<sup>nd</sup> of February 2016. Let us go to the next document.  
20 That you will find at page 334. This is some three weeks  
later. Another invoice to Sahara Computers. And again,  
your accommodation is listed there in the amount of  
4 650,00 AED still be owing. Correct?

**MR GAMA:** Yes, I see that.

**ADV MYBURGH SC:** Yet you say you paid this?



**MR GAMA**: Yes, I did pay it.

**ADV MYBURGH SC**: And you say you paid it on the 24<sup>th</sup> of January?

**MR GAMA**: That is correct.

**CHAIRPERSON**: Would you have paid it with your ...[indistinct] credit card?

**MR GAMA**: So, I do not know. I do not want to take responsibility for this document because I did not write it.

**CHAIRPERSON**: H'm.

10 **MR GAMA**: It says invoice. I am sure – maybe it comes from the hotel.

**CHAIRPERSON**: Yes.

**MR GAMA**: But sometime later because I did not have – I could not find a copy of the invoice that I paid, I wrote to the hotel, probably in 2018, thereabouts or 2017. I cannot remember. I wrote to the hotel and I asked them to send me my invoice and they did and the invoice will show that I paid on the day that I left. I do not know if my team ...[intervenes]

20 **CHAIRPERSON**: Do you still have the invoice?

**MR GAMA**: My team has got a copy of the invoice and if ...[intervenes]

**CHAIRPERSON**: Yes, it would be important to make it available.

**COUNSEL**: Mr Chair, we are indeed in possession of that

document. It is perhaps something, when I do re-examine Mr Gama, will feature in that re-examination but I can confirm that there is such a document and in accordance with Mr Gama's evidence, that account was settled on the 24<sup>th</sup> of January 2016 and the document of the letterhead of the Oberoi Hotel, in fact, demonstrates and reflects a null balance on that very day.

**CHAIRPERSON:** Why has that document not been made available to us?

10 **COUNSEL:** It was most recently collated.

**CHAIRPERSON:** Yes.

**COUNSEL:** I have not had sight of it before the day before yesterday.

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

**ADV MYBURGH SC:** Mr Chairperson, it is not an issue. The issue of the – I am happy to hold it over and perhaps have a look at it at lunchtime but I am going to deal with other things that relate to this invoice in any event.

**CHAIRPERSON:** Ja.

20 **ADV MYBURGH SC:** So. But we will feed into that.

**CHAIRPERSON:** No, that is fine. But what I do want to say is that if there are any documents that Mr Gama or his legal team have which are relevant or material to any aspect of the matters that he is dealing with, the sooner we all have those documents, the better. Particularly because

if his counsel is going to re-examine on them, there should be earlier on them.

So I understand if it was recently obtained but if all arrangements can be made so that we all have them, just like the Legal Team makes available documents that it will refer Mr Gama to, the same should happen. So that would be helpful. Okay alright.

**MR GAMA:** Look, Chairperson. This is two days ago, two nights ago.

10 **CHAIRPERSON:** Yes.

**MR GAMA:** This document were suddenly emailed to us.

**CHAIRPERSON:** These ...[intervenes]

**MR GAMA:** These ones that Mr Myburgh is asking me to go through.

**CHAIRPERSON:** Oh, okay.

**MR GAMA:** Yes.

**CHAIRPERSON:** So you say ...[intervenes]

**MR GAMA:** They were sent to us two nights ago and nothing else. It just said: Look, here is a link, open it.

20 **CHAIRPERSON:** Oh.

**MR GAMA:** So and then it came with these documents. There has no one been in. There has been nothing to say what those documents are without ...[intervenes]

**CHAIRPERSON:** Okay.

**MR GAMA:** ...even say there are new documents that you

do not have.

**CHAIRPERSON:** Yes.

**MR GAMA:** Two nights ago at ten in the evening, these documents arrived.

**CHAIRPERSON:** Okay. No, that is fine. What we should do is. I mean, we just need to try and share as early as we can and where there has not been adequate time, let us see how we can handle those situation. The idea being that we want that to be furnished to everybody. Okay

10 alright.

**ADV MYBURGH SC:** Chair, I just wanted to point out.

**COUNSEL:** Sorry. It is important that I place this on record. So what Mr Gama has been moaning is what is contained in that second statement because this has been in the manner in which he has been dealt with. I am sure that you will give him the opportunity to place on record what his concerns are but certainly ...[intervenes]

**CHAIRPERSON:** Ja.

20 **COUNSEL:** ...there was no context to when we received these documentation two nights ago and that is the thing within which he has been dealt with in these proceedings and he is aggrieved by that fact. I must just put that on record.

**CHAIRPERSON:** H'm. Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes Mr Gama, do you feel in your

evidence now that you have been able to deal adequately with these documents?

**MR GAMA:** Ja, it does not delineate from the fact that a lot of these things – the manner in the way it which documents are distributed. To me, it is just designed to create some kind of an ambush where you do not know that you have a document. You never discussed it. But people who will say to you: Oh, please have a look at this document. This is the new pagination. But they do not tell  
10 you there are new documents that you have never seen.

It is not just this matter. There is a matter – I was here - I was being asked on whether I met President Zuma. And last week, I received new documents which the Commission has had since October last year that says there was a function in Durban that was sponsored by Transnet. But I have been asked a question beforehand and you cannot help, Chair, but think that you get asked questions and they designed, merely to just ambush you.

People have documents they withhold now. And  
20 then they are hoping that maybe you might say something that would then not corroborate the information that they have. This is not the only thing. I have talked about the tore(?) documents in the past.

**CHAIRPERSON:** H'm.

**MR GAMA:** The affidavit that taught(?) – had attested to

which were in the possession of the Commission which were not been given to me which are not been given timeously.

**CHAIRPERSON:** H'm.

**MR GAMA:** I can go on and on. There are many of these particular things that come through. That these – there is also the ...[indistinct] documents that just came through with this document ...[intervenes]

**CHAIRPERSON:** H'm.

10 **MR GAMA:** ...that were not there before but you do not get a warning, Chair, to say: We have these new documents. You just get given. Or, here is your new bundle.

**CHAIRPERSON:** Okay. No. One. Well, if you are asked about a document that you have not had enough time about, just raise that and we will look at that so that, if at all possible, that can be deferred so that you have had time to look at it to the extent that there documents that you have been given where you do not know what the  
20 context is or what the issues are about it. You wish to be advised. Please say so, so that you can be advised and then we will do what we can to make sure that there is fairness. Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes. Perhaps I could also just place this on record. Of course, the Commission's investigation

is an ongoing investigation and there are various work streams. I was, in fact, provided with certain of these documents by the Money-flows' work stream after Mr Gama gave his evidence. The other set of document, which we will come to now, it is a donation to the Jacob Zuma Foundation. Those documents were provided to me by an evidence leader. I think it is called the TNA Work stream. So that is how we came to get them. So, perhaps, that also needs to be taken into consideration.

10 **CHAIRPERSON:** Yes. So sometimes documents are within the possession of the Commission but they are not in a particular work stream. They are with a different work stream.

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

**CHAIRPERSON:** And one work stream gets to know about them ...[intervenes]

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** ...at a certain stage.

20 **ADV MYBURGH SC:** The other thing, which is also important, Chair, to bear in mind is that the relevance of these Oberoi documents also impacted on Mr Singh's evidence. So it is important for us that Mr Gama has confirmed that the author - at least one of these streams. So they have other implications and they come to be here not only in relation to Mr Gama. I think the Chair must

...[intervenes]

**CHAIRPERSON:** Yes but maybe you could consider of the future that if documents are sent there are some email or something that says ...[intervenes]

**ADV MYBURGH SC:** Identifies.

**CHAIRPERSON:** Ja, what they are and where they fit into anything in the whole matter.

**ADV MYBURGH SC:** That is a point well taken.

**CHAIRPERSON:** H'm.

10 **ADV MYBURGH SC:** Of course, Chair, if you go to the index, you could always work out where it was before.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And what are the new items.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** But it more – that could certainly be done better.

**CHAIRPERSON:** Ja, okay alright.

**ADV MYBURGH SC:** If we go to page 334, Mr Gama. On the face of it, it appears that Mr Duduzane Zuma and then  
20 Mr A Gupta also stayed in that hotel after you and that Sahara Computers was billed. Correct, on the face of it?

**MR GAMA:** Ja, I cannot talk to this document.

**ADV MYBURGH SC:** Sure.

**MR GAMA:** Its authenticity, its truthfulness. I did not draw it. And as I say, it purports that there were amounts



outstanding at times when they were not. So I do not know how those people work and how they deal with those issues but for me, it is not my place to comment about that document.

**ADV MYBURGH SC:** Could I then take you, please, to page 310?

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

**ADV MYBURGH SC:** Now this is a Times Live article that appears to have been published on the  
10 7<sup>th</sup> of September 2017. Did you read this ...[intervenes]

**CHAIRPERSON:** On what page did you say?

**ADV MYBURGH SC:** Page 317. It is 250.317, Chairperson.

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH SC:** Did you have occasion to read this article in or about the time that it was published?

**MR GAMA:** I cannot recall. There quite a lot of ...[intervenes]

**ADV MYBURGH SC:** Can you recall having been  
20 contacted by the journalist for comment?

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

**ADV MYBURGH SC:** The journalist appears to be Cow Cohen. Can you recall that person having contacted you?

**MR GAMA:** I have spoken to so many journalists. I cannot... I cannot confirm whether I have spoken to this

one or not. I mean, I have not had time to read this article. It is also one of those new documents...

**ADV MYBURGH SC:** So let us see ...[intervenes]

**MR GAMA:** I would need time to read it.

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

**MR GAMA:** I am saying I would need time to read it and see what it says.

**ADV MYBURGH SC:** Alright. Well, you have not read it?

**MR GAMA:** No, no. I have not read it.

10 **ADV MYBURGH SC:** Okay. So we can deal with – could you do that over lunchtime?

**MR GAMA:** Okay.

**ADV MYBURGH SC:** And then I will deal with that after lunch if that is suitable. Let me then take you, whilst we are working through these new documents, to the Truham(?) document. If we can get that out of the way. That you will find at page 314.

**MR GAMA:** Yes.

20 **ADV MYBURGH SC:** This is a document that you have provided us with and it appears that there was an investigation regarding allegation of plagiarism. Is that correct?

**MR GAMA:** Yes, that is the document I told you about.

**ADV MYBURGH SC:** Yes.

**MR GAMA:** That is the institution had done its own

independent investigation of the matter.

**ADV MYBURGH SC:** And so they were investigating plagiarism? Is that correct?

**MR GAMA:** They were investigating the McKinsey allegations.

**ADV MYBURGH SC:** Oh, I see. The first paragraph:

“I would like to inform you of the outcome of the Truham(?) Investigation into the allegation of plagiarism against you...”

10 **MR GAMA:** As a result of the McKinsey – remember, the allegation was that someone at McKinsey had made input into my academic work. So what they call it – that is of – as a result of that. As you read that document, it says that:

“On 6 August 2018, the Truham(?) office was made aware of an allegation of plagiarism against you. The source of allegation on the statement from the global consulting firm, McKinsey.

20 We understand the statement you have been made in response to press and social media coverage in South Africa on the matter...”

And then they talk about the statement which is credited to a McKinsey spokesperson. We have dealt with that at length at our last discussion.

**ADV MYBURGH SC:** Yes. So let us go to the decision or outcome. That is at the foot of page 315. It says under the heading, Decision and Outcome:

“After full consideration of the evidence, the Academic Board convened by conference call on 29 May 2019 during which they unanimously agreed that no action be taken at this time due to inconclusive evidence...”

Is that correct?

10 **MR GAMA:** Yes, that is what it says.

**ADV MYBURGH SC:** And then over the page:

“However, as I hope you could understand, the Academic Board also agreed that Truham should reserve the right to re-open the investigation should the South African Police investigation prompted by McKinsey, Section 34(1) one filing, yield a final report which includes inculpatory evidence specific to your Capstone Project academic work not  
20 previously available to Truham’s Investigation...”

Correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** I just want to ask you a few questions about the next paragraph.

“In making this decision, the Academic Board specifically noted evidence related to Ms Jacky Vermose(?) role in the project and considered whether or not her contributions were in violation of Truham’s policy on editorial assistance...”

So I think previously they had spoken about the fact that a woman assisted you to some extent with the editing. Is that then her name, Jacky Vermose?

10 **MR GAMA**: Yes.

**ADV MYBURGH SC**: And then the next sentence says:

“They also noted evidence relating to Mr Spencer Horne, any role he may have played and considered whether or not he assisted in any way that would have been in violation of Truham’s policies...”

Who is Mr Spencer Horne?

**MR GAMA**: Horne is a McKinsey Consultant that was working with SAGA.

20 **ADV MYBURGH SC**: So what role did he play?

**MR GAMA**: No, that was a document that he sent to us.

**ADV MYBURGH SC**: Alright.

**MR GAMA**: Which was a research document that was – I think it was either a Pricewaterhouse or McKinsey document. Some research that was related to what we are

doing, to say he could also look at this as part of what he would cite if you thought it was relevant.

**ADV MYBURGH SC:** Now I want to take you to the JZ Foundation documents.

**MR GAMA:** I do not think we can discuss those, these documents that I have asked for that I have not yet received.

**ADV MYBURGH SC:** Alright.

**MR GAMA:** But we can if you wish. Maybe I can then tell  
10 you ...[intervenes]

**ADV MYBURGH SC:** Alright.

**MR GAMA:** ...at that point if it has got a bearing or not on us.

**ADV MYBURGH SC:** Well, let me deal with that in fairness to you. Yesterday, the doc – you are right. You asked for certain documents and we made a request on Transnet. What we received yesterday and I do not know if you have seen it. Is a statement by Amverno Makungha. Have you seen that? If you go to page 338, right at the  
20 back. Perhaps I can take you through it first because what ...[intervenes]

**MR GAMA:** 338?

**ADV MYBURGH SC:** 338. I think it is the second last page, Mr Gama.

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

**ADV MYBURGH SC:** It is headed – and it is a short document. So let me take you through it and then we can work backwards. It says”

“Response to the judicial service commission inquiring on state capture on Transnet support of the former President, Jacob Zuma’s events...”

And she then sets about answering the questions or the things that you had asked for. Firstly, question:

10 The programme for the Youth Day event. She says that:

“Transnet’s Corporate Affairs sent a representative to support the event and for monitoring if the event took place.

Hard copy programmes are distributed on the day of the event.

Corporate Affairs does not have copies...”

The next question that was posed or document that was asked for - was the report from Transnet Group Communication on the function.

20 She says:

“Transnet received publicity through the event since Corporate Affairs ensured that such events should have the Transnet logo featured on the branding materials such as banners, programmes, including on plasma screens

used in the events, programmes and banners.

Transnet ...[intervenes]

**MR GAMA:** I can see the document. I do not think there is a need for us to read the whole thing and maybe you can ask what you want to ask.

**ADV MYBURGH SC:** No, I would like to go through it, if I may?

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

**ADV MYBURGH SC:** She goes on to say:

10 “Transnet was also recognised during the programme as one of the donors.

Most of the times when I attended, the event would be well-attended with strong media coverage...”

Then you had asked about any photography from the aforementioned function. She says that:

“Corporate Affairs did not procure the services of a photographer for these events.

20 The prominent department that captured the event was colleagues from the Government Communication and Information System...”

**MR GAMA:** Sorry, Mr Myburgh, through you, Chair. In any – we have been told that there were – there was an SABC video or something of that nature. So we wanted a video on the photography because – ja, they were saying



that there is somebody that they could not see  
...[intervenes]

**CHAIRPERSON:** Ja.

**MR GAMA:** ...in sitting on a table somewhere. So I  
thought I would assist the Commission ...[intervenes]

**CHAIRPERSON:** Ja.

**MR GAMA:** ...in terms of identifying that person.

**CHAIRPERSON:** Yes.

**MR GAMA:** ...but ...[intervenes]

10 **CHAIRPERSON:** Well, that would be important.

**MR GAMA:** But that be video has not been forthcoming.  
So if we can be given that video ...[intervenes]

**CHAIRPERSON:** Ja.

**MR GAMA:** ...one can be able to assist the Commission in  
terms of who that person was.

**CHAIRPERSON:** H'm. Is that a video that Transnet, as  
far you know, should have or SABC?

**ADV MYBURGH SC:** Well, Chair, we will come to the  
video now.

20 **CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** There is an affidavit on it.

**CHAIRPERSON:** Okay.

**MR GAMA:** The Commission has got the video.

**CHAIRPERSON:** Oh, okay alright.

**ADV MYBURGH SC:** So in the documents that was given

to Mr Gama, it includes that affidavit on – someone actually looked at the video. And then having received those documents, he then made a request for certain further documents and one of those requests was any photography. So we have a video, as I understood it, this relates to photography.

Then what this lady goes on to deal with... Sorry, if I could just... Question(?) full(?) report on Ms Anya ...[indistinct] Youth Day event in relation to  
10 represented Transnet, the aforesaid event. Well, she seems to have answered that. She says:

“The attendees at the Annual Presidential Golf Challenge were invited by the Department of Public Services and Administration as the coordinating department.

The Corporate Affairs Department was responsible for the branding part of the event.

The attendees were invited through the Coordinating Department...”

20 So would that been the latest document? Let us go back to the documents that you were given on the 6 April which then gave rise to your request that we have dealt with. Those documents we find commencing at page 250.16 and, Mr Gama, to shorten my examination of you, I am going to take you to what I consider to be the key

documents, they are also not in perfect chronological order.

Let us start with page 250.53. You will see that, if one tracks the chronology, things seems to have begun with this request for donations towards the Jacob G Zuma Foundation by this 01.12 on the 3 January 2015. Do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And it was addressed to you and it  
10 says in the first paragraph:

“On behalf of His Excellency, the President of the Republic of South Africa, Mr Jacob Zuma, we would like to offer you in your capacity as Acting CEO of Transnet the opportunity to contribute towards the Jacob G Zuma Foundation Youth Day event which is to be held at the Durban ICC on Saturday 20 June 2015.”

Do you see that?

**MR GAMA:** Yes.

20 **ADV MYBURGH SC:** If you then go to page 51 you will see that there is memorandum dated the 8 June 2015 which you signed on the 12 June 2015, that you see at the foot of page 52 and ultimately what was approved was the recommendation at paragraph 12:

“It is recommended that the Acting GCE approves for Transnet:

1. To pay a donation towards the Jacob G Zuma Foundation Youth Day event.”

Goes on to describe it.

2. That corporate and public affairs coordinates Transnet’s participation including branding.
3. Acting GCE recommends stakeholders to attend the event.”

10 Do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** So that is ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Gama, can I ask this question? I expected that this recommendation would also recommend the amount of the donation that they were recommending that you should – that Transnet should give – but I do not see on the recommendation – I do not know whether someone in the ...[intervenes]

**MR GAMA:** Just two lines above that, under financial  
20 implications, they have written an amount there, Chairperson. Okay, no maybe it is just the ...[intervenes]

**ADV MYBURGH SC:** Paragraph 10.

**CHAIRPERSON:** Ja, I can see 10, I did not see it before, I can see 10 now. Maybe it is just the use of the article “a” in the recommendation, to pledge “a” donation as opposed

to the donation which is mentioned above. Okay, but the – your understanding is that the recommendation was that you should, as Acting Group CEO of Transnet, donate that amount that is written in paragraph 10.

**MR GAMA:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV MYBURGH SC:** So that you sign on the 12 June 2015. If I could then ask you to go to a letter written to Securus(?) on that day. That you find at page 49. There  
10 you will see ...[intervenes]

**CHAIRPERSON:** Page 49?

**ADV MYBURGH SC:** 49, yes, Chairperson. There they – you write back to them:

“Thank you for inviting Transnet to support...”

Etcetera.

“We confirm that Transnet will partner with your foundation and pledge a donation of 500 000 and my colleague...”

A lady we have dealt with or whose memo we have dealt  
20 with.

“...will interact with your office.”

And you sign that on the 12 June 2015. Correct.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Then if I can take you please to page 26. So that is 12 June. On page 26 one finds an

invoice from the Jacob G Zuma Foundation dated the 17 June reflecting an amount due of R500 000 and it is sign p.p. on behalf of Ms Dudu Myeni the then executive Chairperson of the Jacob Zuma Foundation, is that correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And then the event presumably we know occurs on the 20 June. If I could just take you to what happens after that. Would you please go to page 28?

10 **MR GAMA:** 28?

**ADV MYBURGH SC:** 28, yes. Here is a memorandum that is addressed to you dated the 30 July 2015. If you go to page 29 you will see that you signed it, I will just ask you to confirm, on the 4 August 2015. Would you confirm that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And what you were approving, if I read this correctly, Mr Gama, was the recommendation that it is recommended that the Acting GCE assign the attached sponsorship/donation contract or the Jacob G Zuma  
20 Foundation, is that right?

**MR GAMA:** The contract, yes.

**ADV MYBURGH SC:** So the contract was entered into afterwards.

**MR GAMA:** Correct.

**ADV MYBURGH SC:** Now that contract you find at page –

or let us call it an agreement at page 30 and you will see at page 32, clause 1.9, there is the donation of 500 000.

**CHAIRPERSON:** I am sorry you should go to 30 and then you move onto another page, is that right?

**ADV PRETORIUS SC:** Yes, the agreement commences at page 30 and I had taken Mr Gama to page 32.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Where at clause 1.9 there is reference to the R500 000, Chairperson.

10 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And then if I could take you please to page 34 at clause 7.2:

“The Jacob G Zuma Foundation Youth Day event:

(a) 1 x table of 10 Transnet guests at the event.

(b) The Acting GCE will be seated at the main table with the host, His Excellency President G Jacob Zuma.

(c) An opportunity for Acting GCE to address the honoured guests and student.”

20 That is what you were getting for – in part for your R500 000, correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And then at 9.1:

“For this duration of this agreement Transnet shall be named as a sponsor and/or donor on all publicity

material or media related to this agreement which shall include media interviews, newspaper articles, flyers, posters, banners, etcetera .”

Is that correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** So we have seen then that on the 4 August you authorised the conclusion of this contract.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Now just incidentally, with reference  
10 to clause 7.2 did you attend this Youth Day event, were you seated at the table with President Jacob Zuma?

**MR GAMA:** No, the Acting GCE attended.

**ADV MYBURGH SC:** Sorry?

**MR GAMA:** The Acting GCE attended whoever it was at the time.

**CHAIRPERSON:** Just one second? Are you at page 42? What page are you?

**ADV MYBURGH SC:** 34.

**CHAIRPERSON:** 34?

20 **ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Oh, okay. Alright, what – your answer, Mr Gama, was that the Acting Group CEO of Transnet was sitting at the table with Mr Jacob Zuma?

**MR GAMA:** Ja, he attended, ja.

**CHAIRPERSON:** Yes. Were you not the Acting Group



CEO at the time?

**MR GAMA:** Not on the day.

**CHAIRPERSON:** Not on the particular day? Okay, so you were at Acting Group CEO but on the day somebody else was acting in your position?

**MR GAMA:** That is correct.

**CHAIRPERSON:** Okay, alright. And who was that?

**MR GAMA:** And that is what I wanted to try and help the Commission with.

10 **CHAIRPERSON:** Oh.

**MR GAMA:** Because, you know, when people say there is an identified black man sitting on the table.

**CHAIRPERSON:** Yes.

**MR GAMA:** But maybe I could identify him.

**CHAIRPERSON:** Okay.

**MR GAMA:** Because he must have been that person.

**CHAIRPERSON:** But you cannot remember his name or you can?

20 **MR GAMA:** No, no, I just suspect that it could it have been any of three people who are Durban-based Transnet people.

**CHAIRPERSON:** Oh, but you are saying you yourself did not attend the function.

**MR GAMA:** No, no, I was out of the country.

**CHAIRPERSON:** Okay. Mr Myburgh?

**ADV MYBURGH SC:** So did you – was someone whilst you were out of the country then appointed formally to act as the Group Chief Executive, it would have been that person?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And it would have been one of three people, who were they?

**MR GAMA:** Mr Socikwa was based in Durban and he was the CE of Port Terminals so I suspect that it could have  
10 either been him or his COO Mr Gwala or one of his General Managers Mr Ndlovu. Those are the people that I remember have represented me in one or the other functions in Durban when I could not attend.

**CHAIRPERSON:** For the transcribers, Mr Socikwa, would be S-o-c-i-k-a, is that right?

**MR GAMA:** Socikwa, S-o-c-i-k-w-a.

**CHAIRPERSON:** Okay. S-o-c-i-k-w-a and the other one would be Mr Gwala, G-w-a-l-a and then Mr Ndlovu and I think everybody knows how to spell Ndlovu, I would hope  
20 so. Ja. Okay, alright, Mr Myburgh?

**ADV OLDWADGE SC:** Mr Chair, if you will permit me. It seems a little misleading to me, this line of questioning and I will tell you why. Mr Myburgh finds it appropriate simply to refer to the provisions of clause 4 of the agreement and I was waiting for him to make a reference to

the so-called annexure A and it would not be correct to simply suggest to Mr Gama without making reference the contents of annexure A and I have that letter which seems to constitute annexure A, what this donation was to be used for and so it is not simple, that one must understand that annexure A is what is referred to in clause 4. So if Mr Myburgh is not aware of the existence of the letter which constitutes annexure A, I am happy to give it to him, but in fairness to Mr Gama because you see, annexure A makes it  
10 clear what that donation was aimed at.

**CHAIRPERSON:** Annexure A in the bundle that you are talking about?

**ADV OLDWADGE SC:** Mr Chair, it is annexure A to this very agreement.

**CHAIRPERSON:** Oh, okay.

**ADV OLDWADGE SC:** And in fairness that is what ought to be put to Mr Gama.

**CHAIRPERSON:** Well ...[intervenes]

**ADV OLDWADGE SC:** If Mr Myburgh does not do it then I  
20 will do it in re-examination.

**CHAIRPERSON:** Ja, you can do it in re-examination, let us allow Mr Myburgh to run his questioning the way he plans to. He might be tending to refer to annexure A later than now, in terms of timing. Mr Myburgh?

**ADV MYBURGH SC:** Yes, thank you. I understand my

learned friend says he has annexure A. Perhaps it is something that I can also get from him.

**CHAIRPERSON:** Oh, it is not here?

**ADV MYBURGH SC:** At lunchtime.

**CHAIRPERSON:** Yes. Okay, alright.

**ADV OLDWADGE SC:** Part of the Commission's bundle, Mr Chair.

**CHAIRPERSON:** Okay, let us continue, Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you. Alright, so that was  
10 on the 4 August. If we go to page 28 – sorry, we have dealt with 28. If you go to page 25 you will see then that also on the 4 August you approved that payment, is that right?

**MR GAMA:** Page 20...?

**ADV MYBURGH SC:** Page 25, so you approved the payment of the R500 000 on the 4 August.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And then if we go to page 40 you will see that the contract is signed on the 13 August, but it is  
20 not signed by you. Do you recognise who signed that?

**MR GAMA:** Ja, it is signed by – it says M Sekonyela, the general manager in the Operating Public Affairs.

**ADV MYBURGH SC:** And then finally to conclude the chronology, on the 19 August, if you could go please to page 24, payment is then effected.

**MR GAMA:** Page 20...?

**ADV MYBURGH SC:** 24, Mr Gama. Confirm that?

**MR GAMA:** Ja, I can see it, ja.

**ADV MYBURGH SC:** Now I want to take you to the affidavit that you find at page 16.

**MR GAMA:** One six?

**ADV MYBURGH SC:** One six. The affidavit of Simphiwe Madlala, a forensic investigator with the Commission.

**CHAIRPERSON:** And that is Simphiwe?

10 **ADV MYBURGH SC:** Madlala.

**CHAIRPERSON:** Madlala, ja. Okay.

**ADV MYBURGH SC:** Forensic investigator with the Commission and he says at paragraph 3:

“The purpose of this affidavit is to record the analysis conducted on the video footage provided by the SABC to the Commission relating to the 20 June 2015 Youth Day event organised by the JGZ Foundation.”

20 And then if I could just take you to a few paragraphs of this. At paragraph 7.2, says that:

“In instances where the podium appears the footage shows the person or persons who addressed the event with the background JGZ Foundation logos appearing behind them.”

7.3 The full stage from where speakers addressed the

audience is visible on the footage. I can confirm that the only branding and logos visible on the stage are those of the Jacob Zuma Foundation. There are none for Transnet.

7.4 The footage does not show any Transnet logo or other branding anywhere at the event.

7.5 The footage shows almost half of the President's table.

7.6 At the former President's table he was seated next  
10 to a woman who I am unable to identify on his left side, probably the former Premier of KZN, Mr Senzo Mchunu seated on the right hand side.

7.7 I could identify the following other persons at what appears to be at the former President's table."

And then he lists a, b, c and d.

7.8 I was not able to identify Mr Gama seated at what  
appears to be the former President's table nor  
anywhere else on the footage. I am able to identify  
Mr Gama because I have seen him before in the  
20 media."

So your – as I understand it, your answer to that is that the person who was Acting in the GCE in your stead attended this function, is that correct, Mr Gama?

**MR GAMA:** Yes.

**ADV MYBURGH SC:**

7.9 The footage shows three guest speakers who addressed the event including the former President, Ms Duduzile Myeni and Ms Bathabile Dlamini. Another gentleman who I cannot identify facilitated the introduction of students to the event. Some of the students appeared on the stage and *inter alia* passed their gratitude to the former President and the Foundation. The footage does not show Mr Gama addressing the event on that day.”

10 Do you know whether the person who went in your place would have addressed this event as you were supposed to have done of as the Acting Chief Executive was supposed to have done?

**MR GAMA:** That is why I asked for a report from the corporate affairs department of Transnet. I do not know whether – what Transnet has given appears to look like a report. Normally there should be a report. That report would answer those questions and unfortunately, I had delegated that to some else, I was not available at that  
20 time.

**CHAIRPERSON:** When somebody has been acting in your position when you are out of the country for whatever period would they have reported back to you on a function such as this to say I attended that function on your behalf or something like that and it went well, everything went in

accordance with the agreement or would they not?

**MR GAMA:** Normally when ...[intervenes]

**CHAIRPERSON:** Or they would give you a report, for instance?

**MR GAMA:** Ja, when somebody has been acting they will give a report that also gives you a summary of the significant decisions that they took. So within that context they would then also give that report. All of those types of reports would be freely available at Transnet.

10 **CHAIRPERSON:** But from your memory you cannot remember whether he said or she said he or she was there? He attended, you cannot remember, you would need the report to remind you.

**MR GAMA:** I thought the report would have assisted the Commission.

**CHAIRPERSON:** Ja.

**MR GAMA:** In terms of whatever it is that Commission ...[intervenes]

**CHAIRPERSON:** Ja.

20 **MR GAMA:** But I am not sure what needle in the haystack we are looking for here.

**CHAIRPERSON:** Ja. Ja, but what I am asking is, from memory you cannot remember whether you told you that they intended or not?

**MR GAMA:** No, they wrote in the report that the Acting



GCE attended.

**CHAIRPERSON:** Oh, okay, okay.

**MR GAMA:** They did write in the report.

**CHAIRPERSON:** Oh, okay.

**MR GAMA:** So that is why I asked for the report.

**CHAIRPERSON:** Okay, no, a request – that request has been made, Mr Myburgh, to get the report?

**ADV MYBURGH SC:** We requested that.

**CHAIRPERSON:** Yes.

10 **ADV MYBURGH SC:** And then what we got back was this – effectively a report, answer to questions by Nomvela Makunga.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** She being the corporate affairs person who says that she attended this function or this Youth Day event. She was asked who attended and represented Transnet. She gave an answer, she does not say Mr Gama did and nor does she say that his replacement, for want of a description, did. So Mr Gama's  
20 request was made on Transnet, DCJ, and this is what we got from her, herself.

**CHAIRPERSON:** Yes, yes, yes. Okay, no, that is fine. I guess that maybe she should be asked to depose to an affidavit and answer specific questions or she should be called, if possible, because it should not take long.

**ADV MYBURGH SC:** Yes, in the light of what Mr Gama has said, further investigation is required.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And certainly, if he can assist us by having a look at the video footage we can also – I presume that can also be arranged.

**CHAIRPERSON:** Yes, yes. Maybe what you can also do, Mr Gama, if you can tell us now, the names of the three possible persons, Mr Socikwa, what his name is and Mr  
10 Gwala and Mr Ndlovu so that, if need be, the Commission can try and get in touch with them to see who of them was acting in your place.

**MR GAMA:** Ja. Chair, maybe to avoid speculation because I also do not want to speculate like other people who come to the Commission here and speculate. If the Commission could provide me with the video I could be of assistance.

**CHAIRPERSON:** Immediately?

**MR GAMA:** The Commission has go the video from which  
20 Mr Madlala wrote this affidavit?

**CHAIRPERSON:** Yes.

**MR GAMA:** Yes. He said ...[intervenues]

**CHAIRPERSON:** How quickly can that be done, Mr Myburgh do you know?

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

**CHAIRPERSON:** How quickly can that be done, do you know?

**ADV MYBURGH SC:** I do not, I was provided, as I have already said, with this information by the TNA stream. I can make enquiries in relation to that over lunchtime.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** But in any event Mr Gama has given the three names already, as I understand it.

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

10 **ADV MYBURGH SC:** Alright and then at paragraph 7.11 it says in the last line that:

“Mr Siyabonga Gama was never introduced as a guest at the event.”

Well, I presume from what you are telling us that that makes sense, subject to investigation. Can I then ...[intervenes]

**MR GAMA:** Ja, Mr Gama was out of the country on that day.

**ADV MYBURGH SC:** Whereabouts were you?

20 **MR GAMA:** Sorry?

**ADV MYBURGH SC:** Whereabouts were you?

**MR GAMA:** Well, probably with some comrades in St Petersburg.

**CHAIRPERSON:** Okay, alright, thank you. Mr Myburgh?

**ADV MYBURGH SC:** Could I then, before I go to a more

substantial topic let me, whilst we are dealing with the new documents, let us go to the one right at the end, page 340. This is an affidavit from Susan Albertyn, dealing with your cost payment and she says at paragraph 5:

10           “Transnet’s finance department searched the Transnet records and requested Standard Bank, Transnet’s bankers at the time, to search its records for any payment to Transnet by Mr Gama in December 2009. No evidence of any payment could be found in Transnet’s records or by Standard Bank.”

Do you want to comment on that?

**MR GAMA:** I commented on this on Monday but I can comment again. The bank could not go back as far back as 2009 in terms of its records so if the bank had been able to go back we could have been able to find that but the bank statements that I could get, I think they only go as far back as November 2010 which is a year that we could not get.

20           In as far as Transnet records maybe it is one of those miscellaneous amounts that it is hardly able to see because it is probably too small for Transnet but if we had gone to my bank statements it would be easily found.

**ADV MYBURGH SC:** Alright. So let us then turn to the 3.3 notice that was issued to you in relation to Ms Gigaba’s evidence. Please would you go to page 124? Are you

there?

**MR GAMA:** 250.124?

**ADV MYBURGH SC:** 250.124, yes. So you were issues with this 3.3 notice and attached to that was the first page of Ms Gigaba's affidavit and then the portion relevant to you, those you find at page 128.

Now the first paragraph of relevance is paragraph 31.2. What is reflected there is that she says that Mr Gigaba also told me that Siyabonga Gama would be appointed as  
10 the Chief Executive Officer of Transnet before the appointment was made. Now Chairperson you will correct me if my recollection is wrong, I think you could hear this witness better than I could late on Monday, but as I recall her evidence on questioning by you Chairperson she indicated that this was actually supposed to be a reference to Mr Gama being reinstated as the Chief Executive Officer at TFR.

**CHAIRPERSON:** Yes, that is what she clarified ja.

**ADV MYBURGH SC:** I don't know if you want to comment  
20 on that at all, so her evidence was that she had heard that you would be reinstated before you were, I think that is her crisp summary, have you got any comment on that?

**MR GAMA:** I don't know Chair, I mean what is it that I could comment on, I mean I was not there.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** And then at paragraph 31.3 Mr Gigaba also told me that he intended to speak to Mr Gama to appoint his sister, Ms Gugu Gigama, to Transnet. To the best of my knowledge Ms Gugu Gigama was appointed and remains in the employ of Transnet. Do you want to comment on that?

**MR GAMA:** Ja, I don't know.

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

**MR GAMA:** I don't know about this, I don't know anything  
10 about this.

**ADV MYBURGH SC:** Alright. Could I ask you please  
...[intervenenes]

**CHAIRPERSON:** I am sorry you were reading from  
paragraph – Mr Myburgh?

**ADV MYBURGH SC:** 31.3 Chair.

**CHAIRPERSON:** Do you know a person called Gugu  
Gigaba by any chance?

**MR GAMA:** No.

**CHAIRPERSON:** You don't know her. Were you ever  
20 approached by anybody to appoint or facilitate the  
appointment of Mr Gigaba's sister to Transnet, or TFR?

**MR GAMA:** No.

**CHAIRPERSON:** No, okay.

**ADV MYBURGH SC:** Alright, let's ...[intervenenes]

**CHAIRPERSON:** But you would not be in a position to say

whether or not such a person was employed by Transnet or a division of Transnet at some stage or another, you would not know that?

**MR GAMA:** No, it is not in my personal knowledge Chair.

**CHAIRPERSON:** Yes, ja, ja, okay.

**ADV MYBURGH SC:** Alright, well let's go please to page 250.104.

**MR GAMA:** 104.

**ADV MYBURGH SC:** So on page 104 on the face of it you  
10 find three emails, starting at the bottom, from Gugu Gigaba dated the 15<sup>th</sup> of April 2016 it seems to be addressed to a person having the email address Nkunezi Gigaba and it says please find attached the CV as requested, do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Then the next email is from Malusi Gigaba and you see it is the address Nkunezi Gigaba so presumably the first email went to him. The second emails is Malusi Gigaba dated the 25<sup>th</sup> of June to Mr – is that Mr  
20 Buthelezi, Halomoli Buthelezi was he your Chief Operating Officer?

**MR GAMA:** Yes.

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

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And it says here with the issue –

could you translate that for us?

**MR GAMA:** No, no, no I am not your translator Mr Myburgh.

**ADV MYBURGH SC:** Perhaps you could assist Chairperson.

**CHAIRPERSON:** Well if Mr Gama won't assist "herewith the issue [speaking in vernacular] well I guess technically we should get a translator who will translate it but basically it saying here is the issue that we talked about or  
10 that I talked about. Okay.

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** And ashange is written there.

**ADV MYBURGH SC:** The issue we talked about just incidentally Chairperson when I was going through these documents with the investigators one of them typed these words into Google translate and there appeared "the issue we had talked about".

**CHAIRPERSON:** [laughing] Okay, ja.

**ADV MYBURGH SC:** Alright so that is an email from Mr  
20 Gigaba to your CEOO, Mr Buthelezi and then what you see at the top is an email from Ravi Naya who was he?

**MR GAMA:** He was the CEO of TFR.

**ADV MYBURGH SC:** The CFO? And he writes to Mr Buthelezi and re ...[intervenes]

**CHAIRPERSON:** Oh he was the CEO of TFR?



**MR GAMA:** Yes.

**CHAIRPERSON:** After he had moved to Group CEO of Transnet?

**MR GAMA:** Yes.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And he writes to Mr Buthelezi and he says “thanks Chief”, do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Now do I understand you to say you  
10 know nothing about the fact that your COO was dealing with this?

**MR GAMA:** No I don't.

**ADV MYBURGH SC:** Did he not speak to you about it?

**MR GAMA:** No.

**ADV MYBURGH SC:** And then if you go to page 105 there is a request to appoint Ms Gigaba to a position, is that correct? It is a bit difficult to read but the purpose of the memo says, the purpose of the submission is to request the approval of the Chief Operating Officer, Transnet, to  
20 appoint and I presume that is Ms Gigaba, to the position of Manager Continuous Improvement Factor from 1 February 2017 via – and I don't know what is missing there, appointment process, do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And what the recommendation

reflects at page 106, paragraph 12, it is recommended that the Chief Operating Officer and here you see it better, approve the appointment of Ms Gigaba to the position of Manager Continuous Improvement in the Organisational Development & Performance Department via the Executive Appointment Process, subject to the outcome of the necessary Transnet Human Capital processes.

Now what is the Executive Appointment Process Mr Gama? On the face of it ...[intervenes]

10 **MR GAMA:** That's where they appoint persons without having to go through the external advertising process.

**ADV MYBURGH SC:** So it is not a competitive process in other words?

**MR GAMA:** Ja, it was where if for instance you find somebody with a particular fleet of skills that you have been looking for and you have got the CV and it talks to what you want you can then do it via that type of process.

**CHAIRPERSON:** Where is it Mr Myburgh, where does it say, what does it say?

20 **ADV MYBURGH SC:** So at the end of paragraph 12, at page 106 it talks of the Executive appointment process Chair.

**CHAIRPERSON:** It is recommended that the Chief Operating Officer Transnet approve the appointment of Ms Gugu Gigaba to the position of Manager Continuous

Improvement in the Organisational Development and Performance Department via the Executive Appointment Process subject to the outcome of the necessary Transnet Human Capital processes. Oh, so it is the Executive Appointment Process that you were asking about?

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Okay so Mr Gama your answer is that that is a process that enables or that dispenses with a competitive process for the position.

10 **MR GAMA:** Ja, it dispenses with the external advertising.

**CHAIRPERSON:** Yes, yes, but internal advertising does it require that?

**MR GAMA:** You can still interview the people but you use the knowledge that you have which is the CV in terms of saying, identifying the talent.

**CHAIRPERSON:** Okay, so what I want to understand because you didn't just say it dispenses with advertising, you said external advertising, so I am trying to see whether it doesn't require external advertising but it does require  
20 that internally they should be made you just meant and there should be competition within.

**MR GAMA:** Ja, normally but it is not – there could be exceptions, normally when you appoint people externally you would have exhausted the internal advertising.

**CHAIRPERSON:** Processes ja, ja, okay so generally

speaking even with this process it is expected that there would be an exhaustion of internal competition.

**MR GAMA:** Ja.

**CHAIRPERSON:** And whether you go outside or you don't go outside but there would have been that internal competition.

**MR GAMA:** Ja.

**CHAIRPERSON:** Okay.

**MR GAMA:** But sometimes also Chair there are specific  
10 streams of talent or capability which we know that they are scarce skills like engineering or certain ...[indistinct] skills that through there is the human resources people are aware that those are scarce skills, for instance it is difficult nowadays to find a diesel mechanic.

**CHAIRPERSON:** Oh. I thought at some stage there were lots of those in South Africa.

**MR GAMA:** Yes there were lots but there has not been a lot of intake in Technikons and those types of places for those kinds of skills and then we have been promoting for  
20 instance that we will find young people who want to train as diesel mechanics because a lot of the young people nowadays they want to use the laptops, IT, but we still have diesel trains that we will be running for the next 30 years and if there isn't anyone who is coming through it becomes a problem, so that is why we started the

academies to try and deal with these issues.

**CHAIRPERSON:** H'm, ja, so you say there are – there would be certain skills that the Human Resources Department for example would know are difficult to find.

**MR GAMA:** Yes.

**CHAIRPERSON:** Are you saying that in regard to those skills then there can be an appointment without even internal competition or were you just making the point?

**MR GAMA:** Ja, there can be an appointment without even  
10 the internal ...[intervenes]

**CHAIRPERSON:** Internal competition.

**MR GAMA:** ...competition yes.

**CHAIRPERSON:** On the basis that we know these skills are scarce, I guess that they would know that they are not inside these skills, ja.

**MR GAMA:** Yes, because all the time there's an audit of the skills that they have and they know what they are looking for.

**CHAIRPERSON:** Ja, okay. Mr Myburgh?

20 **ADV MYBURGH SC:** Chairperson I see that it one o'clock, perhaps this is a convenient time to break.

**CHAIRPERSON:** Okay let us take the lunch break and we will resume at two o'clock.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

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

**ADV MYBURGH SC:** Mr Gama could I ask you please just to go to page 250.112. You will see that Ms Gigaba was then employed in a letter of appointment or offer of appointment was made to her on the 26<sup>th</sup> of January, do you see that at page 112?

**MR GAMA:** Yes.

10 **ADV MYBURGH SC:** Do you know whether she was then employed?

**MR GAMA:** Sorry?

**ADV MYBURGH SC:** Did you ever meet Gugu Gigaba?

**MR GAMA:** No, I do not know her.

**ADV MYBURGH SC:** Alright.

**MR GAMA:** I never met her.

**ADV MYBURGH SC:** Okay, then I would like to go to the Times Live article please and that you will find...[intervene]

20 **CHAIRPERSON:** So I am sorry, so Mr Gama, somebody who is appointed under this process that we talked about, which does not necessarily require outside advertisement, I think that is what you said. If it is somebody who is not coming from within the organisation, do you know how they would normally find such a person or whether there might be somebody in the department who is aware that there is

a position that requires the skills and they know, somebody has got those skills they talk to them or do you know whether the – it is a situation where people just write and say, I have got this qualifications if there is position for me.

I am just wondering if there has been no advertisement how somebody gets to know that there is such a position in a big organisations such as Transnet and its divisions?

10 **MR GAMA:** No, there are many ways and in terms of how it could happen, sometimes you get referrals, for instance, when I look at this particular one, it looks like it is something which was in the total quality management space, which is the links six sigma.

It is around improvement of processes and trying to make sure that you have less waste, and all of that, at some point, it became a very important aspect in terms of the kind of work that they were doing, so process improvement, continuous improvement was key.

20 And then there were a lot of people that we were able to get from outside it and there were specific manufacturing organisations that were targeted, like NAMPAAC, the breweries...[intervene]

**CHAIRPERSON:** Which could help people with such things.

**MR GAMA:** Which had these kinds of skills Mondri, Sappi all of those so - and then, once you had some of those people who come in, some of them then recommended others.

**CHAIRPERSON:** Okay.

**MR GAMA:** That they had worked with tote say look are you still looking for more people, we also know.

**CHAIRPERSON:** Okay.

**MR GAMA:** Yes.

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

**ADV MYBURGH SC:** Yes, thank you. I would like to return to the Times Live article that you found at page 250.310. Now Chairperson our learned friends have provided us with a copy of the invoice that we spoke about. Could I hand – and we have made copies, could I hand it up?

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I have put handwritten pagination as 250.341. So it will come right - but at the end of the  
20 bundle we will obviously add it formally to the bundle in due course.

**CHAIRPERSON:** Ja, okay, but in the meantime you said we must go to what page?

**ADV MYBURGH SC:** 310, Chairperson.

**CHAIRPERSON:** Okay, thank you.



**ADV MYBURGH SC:** 250.310. Mr Gama we - your invoice we have been provided with will be added to the bundle right at the end, you have a copy in front of you do you want to say anything about it now before we go to the article?

**MR GAMA:** No, I think if you look at the invoice it will say to you, it will show you all of those numbers and then at the end of the bottom there it will say 24/01/16 which is the date on which I left. It will say paid, so I think that will  
10 indicate that when I left that place I paid for it, but I did just ask the hotel to send me a copy and this is the copy that they have sent because I did not have a copy.

**ADV MYBURGH SC:** Perhaps I could just - and obviously I need to study this document but if you compare it to 328 perhaps you could do that now.

**MR GAMA:** Three?

**ADV MYBURGH SC:** Three, two, eight.

**MR GAMA:** Twenty-eight.

**ADV MYBURGH SC:** I see that if you compare 328 to this  
20 document on the right hand side, it ends after rate. So you do not have a printed on date nor the cashier, nor the page. Does your document 341 does it reflect the date upon which it was printed?

**MR GAMA:** The date when they printed it?

**ADV MYBURGH SC:** Yes.

**MR GAMA:** I do not see anything on the invoice itself. It probably will be in the email that they sent to me in terms of when they sent it to me, when I requested for it. I do not see any dates there it just shows the arrival date, arrival time and the departure time.

**ADV MYBURGH SC:** Alright well let us perhaps deal with that in the context of the Times Live article at 310.

**MR GAMA:** And in fact I think it is slightly different in the sense that on that - on the other one it just says departure  
10 I think it is just a custom number they just put 12, here it says 823, so which would have been more live document.

**ADV MYBURGH SC:** Sorry, what did you say?

**MR GAMA:** I am saying if you look at the one on 328 versus 341 at departure the only different that I see there is that the time, it has got the time as well.

**ADV MYBURGH SC:** Ah.

**CHAIRPERSON:** Well the times for departure are different in regard to the two.

**MR GAMA:** Yes.

20 **CHAIRPERSON:** But the time for arrival seems to be the same on both.

**MR GAMA:** Ja.

**ADV MYBURGH SC:** Alright, so if we then go to 310 and I take you through this article if a may and ask you for your comments along the way. So it starts off by saying or it is

headed Transnet CEO Dubai hotel stay, how Gupta's got the bill? And it starts off by saying:

“Two months before being permanently appointed as Transnet Group CEO Siyabonga Gama CEO enjoyed a two night stay at the five star Oberoi Hotel in Dubai apparently courtesy of the Gupta family. Gama has confirmed meeting key Gupta Lieutenant Salim Essa during the stay but denies that the Gupta's paid for him.”

10 Is that correct?

**MR GAMA:** Yes.

“The leaks Gupta emails have revealed a booking confirmation email to Gupta owned Sahara systems chief executive, Ash Chawla under Gama's name.”

We have seen that, correct?

**MR GAMA:** Yes.

20 **ADV MYBURGH SC:** “Chawla then forwarded the email to long-time Gupta family associate Essa, who until recently was a 60% majority shareholder of Trillian Capital Partners, financing consulting firm that netted millions in contracts with State owned entities Transnet and Eskom.”

Do you have any comment on that?

**MR GAMA:** Comment on the paragraph?

**ADV MYBURGH SC:** Well, I suppose what we have seen

is that Chawla then did forward the emails to Essa, that we have seen.

**MR GAMA:** Yes, I have seen that the forwarding of the email.

**ADV MYBURGH SC:** “Trillian was formed when CEO Eric Wood broke away from his partners at Regiments Capital company, which already had established business links with State owned companies.”

Did you ever know that that is how Trillian was formed with  
10 Mr Wood breaking away from Regiments?

**MR GAMA:** I think it is things that we came to understand.

**ADV MYBURGH SC:** Alright.

**MR GAMA:** There was a session from Regiments that was asked in favour of Trillian at the point when it happened.

**ADV MYBURGH SC:** Wood last month bought Essa’s shares in Trillian that would have been August 2017.

“But when confronted with allegations that Gupta’s or their associate had picked up the tab Gama  
20 insisted he had paid his own way.”

Is that what you said?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** “Gama also provided an invoice which

he claimed to be from the Oberoi and which is

stamped paid. The invoice does not show the hotel's name, does not say who settled the bill and was printed in June 2017 a year and a half after he stayed at the Oberoi Hotel and around the same time he was approached for comment by Times Live for the first time.”

Do you want to comment on that?

**MR GAMA:** Yes, I did not have a copy of the bill. So I approached the hotel to send me, I just gave them the  
10 dates when I was there.

**ADV MYBURGH SC:** Yes, but this paragraph reflects that you provided the journalist with an invoice.

**MR GAMA:** Yes, it could be this invoice.

**ADV MYBURGH SC:** But how can I be that invoice because it is recorded here unless it's wrong, that the invoice does not show the hotel's name. Does not say you settled the bill and was printed in June 2017.

**MR GAMA:** He probably got it wrong.

**ADV MYBURGH SC:** Alright, do I understand that you say  
20 that you sent this invoice 250.341 to the journalist?

**MR GAMA:** Ja.

**ADV MYBURGH SC:** Right?

**MR GAMA:** Yes, there is not any other.

**ADV MYBURGH SC:** “The leaked emails reviewed  
however

that a month after Gama stay in February 2016 the Oberoi emailed Chawla's a statement for Sahara Computers outstanding account."

I think we have seen that, correct?

**MR GAMA:** Yes, we have seen that.

**ADV MYBURGH SC:** "On the account Gama's bill is listed as unpaid, including that of Denel's Board Chairperson Mr Dan Mantsha and Eskom head of generation Matshela Koko. The amount is the same  
10 as on the invoice Gama provided."

We have seen that, correct?

**MR GAMA:** Yes we saw that this morning.

**ADV MYBURGH SC:** And then...[intervene]

**CHAIRPERSON:** I am sorry, can go back to the invoice before one, the journalist there says that the invoice that she is talking about or he is talking about was stamped paid. I see the words paid here, but I do not think that is stamped paid.

Can any of you see stamped paid or a stamp with  
20 paid because I think that is what I expected somewhere it says stamped paid.

**MR GAMA:** I also did not - this one has got the hotels names so I do not know how they would say it did not have the hotel name.

**CHAIRPERSON:** Yes.

**MR GAMA:** So it is inconsistency and so one cannot talk on behalf of the report.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So if you look at the invoice there is no stamped paid. Then there is an error because there is the hotel name and then the invoice that the journalist had according to this paragraph was printed in June 2017. Can you see that 341 was printed in June 2017?

**MR GAMA:** I cannot see any dates on that but I do have  
10 the actual email that was sent to me, so I do not have the dates on here, I do not know where the person gets the dates from.

**ADV MYBURGH SC:** When we were at the 1,2,3,4,5 the 6<sup>th</sup> character of in the middle of the page. Quote:

“I can confirm that Salim Essa of Trillian was a contractor of Transnet Gama said.”

Did you provide that information to the journalist?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Quote:

20 “When I was in Davos, I received a request for a meeting from Essa since I have travelled on Emirates Airlines, he suggested he meet me in Dubai during the stopover since he was in Dubai at the time Gama continued.”

Is that correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Quote:

“I agree and he suggested that we – sorry, that he will reserve a hotel room which I paid for he said adding that Trillian and Regiments contracts were later cancelled by Transnet.”

Is that correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** “Gama explained that Essa quote

10 raised the issue of his involvement in Trillian which was being formed as an off shoot of Regiments.”

Do you want to comment on that?

**MR GAMA:** Ja, it must have been the discussions that I had with Essa when I was in Dubai.

**ADV MYBURGH SC:** Now you remember on Monday, when you gave evidence, your evidence was that there had been no mention of Trillian and there was no mention of a migration from Regiments to Trillian. You spoke in the abstract about the potential formation of a wholly owned  
20 black consultancy company.

**MR GAMA:** That is correct, Chair, but on Monday, it was now five years after I had met Essa, this one is probably more correct because it was probably still fresher in my head in terms of what I think is there. This is 2017, this is four years ago and so if you ask me now, six years later, I



cannot give you exact, exact but I think the contexts and the discussion remains the same.

**ADV MYBURGH SC:** So tell us what you and Mr Essa discussed about Trillian in Dubai?

**MR GAMA:** Do you want us to read the article which looks a little bit fresher or you want me to try and recall, I would need to read this because this happened in 2017, Chair. In terms of one's memory, and at that time, I would say it was still a bit fresher. I cannot remember word for word, but I  
10 think the context as I have said of creating a black owned firm with the consulting capabilities, South African owned was really the key thing that was being discussed. So, you will see in 2017 Trillian had then also had informed by that when I met Essa I think it was still a concept. So I think those are the differences.

**ADV MYBURGH SC:** Well you say here that Essa raised the issue of his involvement in Trillian, which has been formed as an offshoot of Regiments, of course, the loan which you authorised payment of that was to Trillian in  
20 December of 2015, not so?

**MR GAMA:** We going to have to have to look at the date.

**CHAIRPERSON:** So is the position that you had not intended to go to Dubai or stop there and spend two nights prior to Mr Essa calling you, that is a change in your plan that or get as a result of that call from him?

**MR GAMA:** Ja, I wanted to buy the dress that was my whole intention.

**CHAIRPERSON:** Yes.

**MR GAMA:** And then when he called then I got the idea that in any event when I am stopping there I could just stay one night longer. It sounds like tonight, early hours of the morning.

**CHAIRPERSON:** Oh, and then.

**MR GAMA:** Yes.

10 **CHAIRPERSON:** Okay.

**MR GAMA:** And then I just spend one night and then I left, ja.

**CHAIRPERSON:** Okay, so you may have been there for around 24 hours or just over 24 hours.

**MR GAMA:** I say 36.

**CHAIRPERSON:** About 36?

**MR GAMA:** Yes.

**CHAIRPERSON:** Okay.

**MR GAMA:** Between 30 and 36, I was there.

20 **CHAIRPERSON:** Oh, okay.

**MR GAMA:** Yes.

**CHAIRPERSON:** Okay, so initially, were you going to spend the night at all there – you were going to have a stop over by and then proceed?

**MR GAMA:** Ja, I was going to stop over and I think the

stopover was fairly long...[intervene]

**CHAIRPERSON:** Ja, quite a few hours.

**MR GAMA:** It was seven or eight hours at the airport and then continue.

**MR GAMA:** Then continue, ja.

**CHAIRPERSON:** Oh, okay. So you say in terms of the two nights, it might look like two nights in the normal way but it was less than 48 hours?

**MR GAMA:** Yes, no absolutely. I would have arrived  
10 there probably one or 2am there.

**CHAIRPERSON:** Oh, okay.

**MR GAMA:** And then...[intervene]

**CHAIRPERSON:** And then of course, in the hotel you have been booked the previous night.

**MR GAMA:** Yes, the hotel starts charging you from 7 o'clock the previous day.

**CHAIRPERSON:** Yes, okay alright.

**ADV MYBURGH SC:** In relation to that paragraph what I have been asking you about whether or not you authorised  
20 payment to Trillian in December, perhaps you could just keep your finger at 318 sorry, 311 and then turn to page 250.72.

So 250.72 this is an invoice from Trillian for Leader Ranger of the ZAR 12 billion club loan facility and you were being charged Transnet R82million with VAT

R93million. Is that correct that you authorised that the 3<sup>rd</sup> of December 2015?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** The month before you meet Mr Essa?

**MR GAMA:** Yes, except that this is Trillian Asset Management which is a capital raising entity, as I understand it, it is owned by someone else, a different person.

10 **ADV MYBURGH SC:** And if we go back to 311.

**MR GAMA:** So I do not know at which point Essa assumed any ownership of Trillian, whether it is this Trillian or it is another Trillian. I think you may have the name, but I think there were something called Trillian Capital I think that could be Trillian Consulting. So I do not think it is the same entities that we are talking about.

**CHAIRPERSON:** Oh, they might be related companies.

**MR GAMA:** Yeah, they could be related parties, in terms of maybe ownership but this one of Trillian Asset  
20 Management was a different entity.

**CHAIRPERSON:** I am sorry you said?

**MR GAMA:** And it could also quite possible Chair that when we are talking in 2017, you now know the name of the entity that was eventually formed to be this Trillian because if you read this newspaper article, it says that

Wood last month bought Essa's shares in Trillian, so I do not know those dealings, I am not privy to that but lots of things could have happened.

**CHAIRPERSON:** Okay, what page did you say we must go to Mr Myburgh?

**ADV MYBURGH SC:** I taken Mr Gama to page 72, I would want to go back now to the article at 311, Chairperson. So then the next paragraph says:

10                   “Essa said the expertise would remain the same as  
                      core resources would be migrated from Regiments  
                      and that the quality of work for Transnet would be  
                      unaffected Gama told Times Live.”

Did you say that?

**MR GAMA:** Yes, I must have.

**ADV MYBURGH SC:** Alright, and then:

                      “Gama was booked to stay in the deluxe suite for  
                      two days between January 22 and 24, 2016.”

It says that:

20                   “You were permanently appointed as GCEO in April  
                      2016 after acting in that position from April 2015.”

It goes on to say:

                      “Flight bookings found in the leaked email show that  
                      AJ Gupta was in Dubai for half a day at the same  
                      time. Gama denied ever having met with Ajay  
                      Gupta, saying he only met Essa in Dubai and later

confirmed he had met Essa on previous occasions at the Transnet offices.”

Was that referred to those two occasions that you have testified about?

**MR GAMA:** That is correct.

**ADV MYBURGH SC:** And then there is a lot in the next page. It is not particularly relevant but can I take you four paragraphs from the bottom of page 312:

10 “Information from the leaked Gupta emails revealed a contract between Hong Kong based company Tequesta owned by Essa and locomotive manufacturer, China South Rail which resulted into Tequesta netting around R5.3billion in consultancy fees since 2014. CSR one of four companies was awarded the line share of Transnet R50billion locomotive procurement project in 2014. Gama in July this year announced Transnet had appointed Workman's attorneys to conduct an investigation into these claims, which include whether or not  
20 Transnet was overcharged and if it followed its own procurement processes.”

Do you want to comment on any of that?

**MR GAMA:** I think the investigations which we started in June or July 2017 were occasioned by these reports that we received and I think we then received there also a

formal letter from the EFF with much more detail, which we then gave to Workmen in order for them to undertake the investigation.

**ADV MYBURGH SC:** And then it goes on to say:

“Advocate Geoff Budlender was also tasked to investigate Trillian by its former Board Chair Tokyo Sexwale.”

It concludes by saying:

10 “His report released at the end of June 2017 said  
Transnet paid around R105million to Trillian  
between April and June 2016 some of which appear  
to be work Regiments had actually done,”

Do you want to comment on that?

**MR GAMA:** Yes, it was on this basis that there appeared to be - what do they call it? Between Regiments and Trillian, they appeared to be a lot of fights that they picked up amongst themselves after Regiments had asked us to cede the work to Trillian and then when Transnet had paid some of these invoices to Trillian then Regiment had come  
20 back at a later stage and said look, this invoice should have been paid to Regiments or there were claims that the people were not Trillian people they were Regiments people.

We started getting very confused at Transnet as to what was Trillian and what was Regiments and it was at

that point – because now people had to generate credit notes and debit notes, it seemed that there was disputes and arguments even amongst them as to whether the people who had done the work had left Regiments to become Trillian.

So you know if somebody has been working for you, so somebody came to the company, they were Regiments at a point and then they say no, we are no longer Regiments or part of Trillian we are continuing with the work and then this  
10 other new people who are Trillian and then Regiments comes back later and says no but you know these people to be Regiments people why do you pay Trillian? It was that kind of confusion that started to arise and then we then said look we do not want to get involved in whatever it is that they were doing because Regiments had written to us to say there was a re-engineering exercise that they were performing and this is as a result of that re-engineering exercise Trillian would now do the work.

They then came back maybe in August or September  
20 I cannot remember saying that re-engineering exercise that they wanted to do had not succeeded and that therefore everything would now go back to Regiments.

We now found ourselves at the centre of trying to say was this invoice Trillian was it Regiments it was whatever then? I just said to the legal team look there is lots of things



that are going on here that I do not understand it is just better for us to extricate ourselves from this connection that was this – was this sent.

**CHAIRPERSON:** It sounds like sounds similar to what I have heard in relation to Eskom McKinsey and Trillian and Regiments but I do not see what is confusing as far as I am concerned because if you are Transnet you have a contract with Regiments and they have done the work you owe Regiments not somebody else. If some of Regiments staff  
10 resigns or move elsewhere you pay Regiments. It is their own story what they do. You have a contract with Regiments.

**MR GAMA:** Ja I think what you did not hear Chair they wrote to us in March on the reports – Regiments wrote to us in March and say we are ceding the contract to Trillian so then the cession took place and then the invoices were now being paid to Trillian.

**CHAIRPERSON:** But I would...

**MR GAMA:** And then at a later date Regiments then says  
20 you paid ...

**CHAIRPERSON:** You should have paid us.

**MR GAMA:** Yes.

**CHAIRPERSON:** Not them.

**MR GAMA:** Yes.

**CHAIRPERSON:** Yes but what...

**MR GAMA:** And then we are saying to them we are not the ones that should be trying to manage your disputes as Transnet and then they were writing all kinds of letters to say but even the people that came there they were Regiments people you knew that etcetera, etcetera. That is when we then just said look we had been told by Regiments that they are ceding the contracts to Trillian and that is why we paid Trillian. If Regiments is saying they want to hold Transnet liable for something which they are saying belongs  
10 to them but was paid by Transnet to Regiments – I mean to Trillian that was the confusion Chair I was not confused about who we should pay but we are now getting into nitty gritty of things that had nothing to do with us.

**CHAIRPERSON:** Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes thank you. Perhaps whilst we now dealing with Trillian and this club loan there something that is on our radar can we perhaps just deal with that? The club loan documents if we going to deal with them in chronological order need to start please with page 298 –  
20 250.298 and this is a memorandum to the BADAC as we know it from yourself that is what it reflects requesting to appoint Trillian as lead manager in the 1 billion ZAR equivalent club loan. If you go to the end of the document Mr Gama page 302 the recommendation was that the acquisitions and disposal committee

1. Approve the appointment of Trillian in the place of JP Morgan as a lead manager with the 1.5 billion dollar ZAR equivalent club loan which was previously confined to JP Morgan.
2. Approve the termination of JP Morgan's ZAR syndication loan.
3. Delegate authority to the GCE to approve all documentation relating to this confinement.

And that is something that you recommended yourself on the  
10 22<sup>nd</sup> of September 2015. Is that correct?

**MR GAMA**: Yes.

**ADV MYBURGH SC**: So what was the cause of or the need for the termination of JP Morgan's ZAR syndication loan?

**MR GAMA**: Ja. So Chair this is a memo which when I sign it it is five days old. Can we agree with that as I mean seven days old can we agree with that Mr Myburgh? It is compiled by the Group Treasurer because we are going to have to read into the record what the Group Treasurer told us as the compiler of the document. So he compiles the document on  
20 the 15<sup>th</sup> – is it the 15<sup>th</sup>? – oh okay it...

**CHAIRPERSON**: In September 2017 – well you know...

**MR GAMA**: It is 17 September.

**CHAIRPERSON**: When they write dates like this.

**MR GAMA**: Yes.

**CHAIRPERSON**: You do not know whether 17 is the date or

the year but ...

**MR GAMA:** Ja I start with the year but a lot of people start with the date.

**CHAIRPERSON:** Ja.

**MR GAMA:** With the date ja. Ja he started with the page.

**CHAIRPERSON:** Oh so that is the date – ja the day –

**MR GAMA:** So he starts on the 17<sup>th</sup>.

**CHAIRPERSON:** September 2015.

**MR GAMA:** Yes.

10 **CHAIRPERSON:** Okay the next one is signed on the same date.

**MR GAMA:** Ja so those two could have been together to sign it.

**CHAIRPERSON:** Ja and the next one signed the day

**MR GAMA:** On the 18<sup>th</sup>.

**CHAIRPERSON:** And then you signed on the 22<sup>nd</sup> of September.

**MR GAMA:** Yes.

**CHAIRPERSON:** Right.

20 **MR GAMA:** So when you read into the record you need to then say you ask the question and then the two of us can then go to the board of the document to find out the questions that Mr Myburgh wants to ask.

**ADV MYBURGH SC:** As to why it was necessary to terminate JP Morgan's mandate. What part do you want to

go to?

**MR GAMA:** So in the discussion under discussion he says under number 12 that when it became apparent that JP Morgan – maybe let us start it a little bit earlier. On number 6 or maybe at number – at number 4 he says that there were two tranches to this. One is a US dollar 1.5 billion facility and the other one is a standby facility of 1 billion dollars. And then he indicates that JP Morgan had been appointed through a confinement to lead the club – the ZAR club as a  
10 substitute for the US dollar standby facility to bring the overall costs of the transaction lower and to avoid foreign exchange exposure.

And then at number 6 he then says Transnet considered a dual tranche to fund the Chinese locomotives acquisition.

And then at number 7 he then says it was decided to utilise the 1.5 billion from CDB and JP Morgan was to underwrite the ZAR equivalent funding which was then the 1 billion. So JP Morgan was initially going to underwrite 1  
20 billion dollars.

He then says it would have enabled Transnet to meet the rating urgency requirements. And then consequently there was a revised term sheet and mandate letter with CDB as a result of that and then he says Regiments Capital was appointed as a 1064 locomotive funding advisor and he then

says that one of their SD initiatives was to develop other smaller black owned organisations in the industry and that is when then this Trillian Asset Management then arises – he says it is one of the beneficiaries of that initiative.

If we then go into JP Morgan he says that it became apparent that JP Morgan would not be able to deliver the ZAR loan Regiments and then Regiments engaged with its SD beneficiaries to see if there were options available to Transnet.

10           And he then says that Trillian would be able to deliver on Transnet's requirements for a club loan deal at a price and tenure which was most comparable to both the CDB loan and the Morgan proposal.

So he then moves away from the initial underwriting which was – JP Morgan was going to do the 1 billion according to this.

Then he moves to a club loan which means different banks would now syndicate different amounts to create the same thing. I think they called it lended – I cannot – I think  
20 they used a word lended funding.

The reason they said they went for this was because it would be cheaper to do a blended loan with different banks than for JP Morgan to do one where it underwrite it itself.

I think that was the discussion but I was not party to the discussion so everything that I know is the things that I

was told and listening.

**ADV MYBURGH SC:** Alright so you confirm then if I understand you correctly that the Group Treasurer Mr Ramasabudi

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Was the actual author of this.

**MR GAMA:** That is correct.

**ADV MYBURGH SC:** This memo. Alright. So that is something you signed on 22 September 2015 can you then  
10 please go to page 250.63.

**CHAIRPERSON:** Just before we go there with regard to this memo Mr Gama my understanding of the fact that you were the most senior person among the signatories.

**MR GAMA:** Yes.

**CHAIRPERSON:** Of that memo and that the memo was directed at a higher authority I would imagine.

**MR GAMA:** Yes.

**CHAIRPERSON:** A committee of the board my understanding would be that you would be the one taken to  
20 be the owner of the memo. Now I must explain what I mean when I say the owner.

As far as the – the committees is concerned to whom the memo was addressed if they wanted to hold anybody responsible about what they were told here they would look to you because you are the most senior person who – who

signed whether your subordinates got anything wrong that would be between you and your subordinates. Would that be a fair understanding?

**MR GAMA:** Ja. Some of these issues Chair are complex matters.

**CHAIRPERSON:** Ja.

**MR GAMA:** And we always had to make sure that the people who – so somebody would have come for instance I probably would have called Peter to say okay you guys have come up  
10 with this can you explain for me 1, 2, 3, 4 and then they would explain and I would say okay now it makes sense. And then on that basis then I would sign and then we go to the committee but I would not even attempt Chair at the committee to try and explain this myself.

**CHAIRPERSON:** Okay.

**MR GAMA:** We would get the compiler, the treasurer to go to the committee to explain this because this is what they do for a living. This is what they wake up to go to work to do. The Chief Executive is the General Manager. A Chief  
20 Executive...

**CHAIRPERSON:** They are specialists.

**MR GAMA:** Yes these people are specialists in their area. The Chief Executive is somebody who tries to bring a lot of different issues together but you cannot be a Jack of all trades. Ja.



**CHAIRPERSON:** So – so what you are saying is – is what you are saying this? That yes to a certain extent the committee would be entitled to look to me.

**MR GAMA:** Yes.

**CHAIRPERSON:** Because I am the most senior person who recommended.

**MR GAMA:** Yes.

**CHAIRPERSON:** And I am expected to recommend what I understand.

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

**CHAIRPERSON:** I cannot recommend something I do not understand.

**MR GAMA:** That is correct.

**CHAIRPERSON:** But there would be an understanding that there might be certain intricacies in respect of which I might need specialists.

**MR GAMA:** Yes.

**CHAIRPERSON:** To come and explain some of the details.

**MR GAMA:** Yes.

20 **CHAIRPERSON:** Is that right?

**MR GAMA:** That is correct and in fact when the memo is still new it is still even fresh in your mind what they have explained to you but if you meet the same memo.

**CHAIRPERSON:** Ja years later.

**MR GAMA:** Years later you ...

**CHAIRPERSON:** You will not remember.

**MR GAMA:** You will not remember because it is not – it is not your bread and butter.

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

**ADV MYBURGH SC:** Do I understand that you then relied heavily on the advice of Mr Peter?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And this was in August – sorry September of 2015?

10 **MR GAMA:** September 2015 yes.

**ADV MYBURGH SC:** I just want to – to mention to you there is evidence before the commission that Mr Peter in August of 2015 and other months received so called invoice tracking schedules from Mr Wood at Regiments.

**MR GAMA:** Sorry he received what?

**ADV MYBURGH SC:** So called invoice tracking schedules from Mr Wood at Regiments that indicated payments being paid to Gupta Linked shell companies for example Homix etcetera. It indicated how payments made to Regiments  
20 were then split out amongst various companies. Did you know anything about that?

**MR GAMA:** No I do not know anything about it. You are saying he knew about ...

**ADV MYBURGH SC:** I am saying there is some evidence before the commission that you received invoice tracking

schedules which reflected how amounts paid to Regiments were disbursed amongst various companies.

**MR GAMA:** (Mumbling).

**CHAIRPERSON:** He is saying there is evidence that has been led before the commission which reflects that around this time September and other months of 2015 or thereabout he Mr Peter was being furnished with invoice schedules showing how money that had been paid to Regiments was being divided or distributed among certain companies related  
10 to the Gupta's or associated with the Gupta's. Is that correct Mr Myburgh?

**ADV MYBURGH SC:** Yes certainly.

**CHAIRPERSON:** Yes so that is what he is saying.

**MR GAMA:** So that is what he is saying. Okay.

**CHAIRPERSON:** Ja that is what he is saying and he is asking whether you know anything about that

**MR GAMA:** No.

**CHAIRPERSON:** And I think you have said – ja. Okay.

**ADV MYBURGH SC:** So perhaps I can just and I do  
20 appreciate that you have not been party to this. Let me just explain it in a little bit more detail.

So the evidence before the commission and of course I premise all of this again DCJ on the fact that it is a – it is not to say that you will accept this but there is some evidence that reflects the following Mr Gama and that is that

Regiments were appointed as McKinsey's skills supply development partner in relation to the 1064 transaction advisory contract and they were appointed in circumstances where there was an agreement that Mr Essa would get 50% kickback of Regiments fees payments to them and Mr Moodley would – Kuban Moodley would get 5%.

Now the two entities nominated by those gentlemen were Mr Essa payments were made to a company by the name of Homix and in the case of Mr Moodley payments  
10 were made to a company by the name of Albertime.

So what these invoice tracking schedules would show is amounts paid. So they came in from Mr Wood from Regiments they would show that X amount was paid to Regiments and then it would reflect that 50% was due to Homix and five 5% was due to Albertime. Those are the schedules that there is evidence of. Mr Peter having received and incidentally it is something that still needs to be dealt with Mr Singh also is still to be – this is still to be put to him but there is also some evidence to the effect that  
20 he similarly received those schedules.

**MR GAMA:** No.

**ADV MYBURGH SC:** You do not know about that?

**MR GAMA:** No, no I do not know anything about it.

**ADV MYBURGH SC:** And then I did put to you yesterday for what it is worth that you probably have heard that Mr Singh

had eight safe deposit boxes at Knox Vault – you have heard that have you?

**MR GAMA:** No I do not know the number. I have heard this concept of Knox Vault as you know I did write to the commission about it because my name was also at some point associated with this.

**CHAIRPERSON:** So you..

**MR GAMA:** I do not know the...

**CHAIRPERSON:** You heard about the company and you  
10 heard that he had some safety boxes but you do not know the number?

**MR GAMA:** Yes, no there was a newspaper article Chair.

**CHAIRPERSON:** Yes okay.

**MR GAMA:** That said there was these vaults.

**CHAIRPERSON:** Ja.

**MR GAMA:** As I understand it is safety deposit boxes and in  
– in that newspaper article my name was cited. So I had occasion then it was in 2019 to write to the commission to say I see my name next to this Knox Vaults but I think we  
20 have since come back to indicate that no my name should not have been there.

**CHAIRPERSON:** Okay.

**MR GAMA:** It should not have appeared there. But I know that Mr Singh's name also appeared next to that. I think it was also – it was my name and Brain Molefe and Singh but

some of that is not true.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Well I think perhaps it is appropriate to place formerly on record as you know Chairperson that there is certainly no formal evidence from within the commission that Mr Gama has or had a safety deposit box at Knox Vaults.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** And then perhaps just to end that off  
10 Mr Peter well certainly his mother I do not know if you know anything about this she – he or she had seven safe deposit boxes there.

**MR GAMA:** No I do not know anything about it.

**ADV MYBURGH SC:** Okay well I suppose we all keep our money in different places. Now that is then the 22<sup>nd</sup> of September 2015. Take you to the – the next document in the chronology and that you find at page 250.63. So remember the memorandum that you recommended was placed before the acquisition or it was meant for the acquisition and  
20 disposal committee.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And you see that on this 1<sup>st</sup> of October 2015 they then resolved essentially exactly the same as your recommendation. Correct?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Then if you go over the page on the 18<sup>th</sup> of November 2018 this document is addressed to Transnet by Trillian. The document you will see that you signed.

**MR GAMA:** Where are you now?

**ADV MYBURGH SC:** I beg your pardon I am at page 64 the page after the – the resolution.

**MR GAMA:** Okay.

**ADV MYBURGH SC:** Of the DADC.

10 **MR GAMA:** Yes.

**ADV MYBURGH SC:** So this is a letter seems of engagement letter really dated the 18<sup>th</sup> of November from Trillian to Transnet and you will see at page 250.66 that you signed this document.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And so did Mr Peter.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And it signed on behalf of Trillian by Mr Daniel – is it Ray?

20 **MR GAMA:** I think it says Roy.

**ADV MYBURGH SC:** Roy. Had you ever met Mr Daniel Roy?

**MR GAMA:** No.

**ADV MYBURGH SC:** Had you ever met anybody from Trillian?

**MR GAMA:** Ja which Trillian? These Trillians there are many of them.

**ADV MYBURGH SC:** This Trillian – this letter comes from Trillian Boutique Asset Management.

**MR GAMA:** Yes. I do not know Mr Roy.

**ADV MYBURGH SC:** But had you ever met anyone from this company?

**MR GAMA:** Yes I thought that you had said that Mr Wood he bought some shares from Trillian. I had known Wood from  
10 Regiments.

**ADV MYBURGH SC:** So this is a letter of engagement – it is the R12 billion club loan facility and if you go over the page to 65 you will see that at 3.1 the third paragraph R82 million due and payable upon execution of the club loan facility agreement relating to the transaction. Do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** So that is 18 November 2015. You will see if you now go to page 72 that on the same day 18  
20 November 2015 Trillian then furnish Transnet with an invoice, do you see that?

**MR GAMA:** Yes. The invoices were I think they accompanied this.

**ADV MYBURGH SC:** Yes.

**MR GAMA:** They probably accompanied this agreement and are related to ...



**ADV MYBURGH SC:** Alright.

**MR GAMA:** That document that you were showing me earlier that Mr Ramasabudi.

**ADV MYBURGH SC:** Okay.

**MR GAMA:** Wrote ja.

**ADV MYBURGH SC:** So do I understand that the work had then already been done? Is that what you are saying?

**MR GAMA:** Sorry.

**ADV MYBURGH SC:** Had the work already been done or ...?

10 **MR GAMA:** No, no I am saying that – if I take you back.

**ADV MYBURGH SC:** Yes.

**MR GAMA:** To where we were. If I take you to 303.

**ADV MYBURGH SC:** Yes.

**MR GAMA:** There is a document at 303.

**ADV MYBURGH SC:** Ja we are going to come to that in the chronology.

**MR GAMA:** Yes so...

**CHAIRPERSON:** So when you take – when you say take you back you mean take you forward?

20 **MR GAMA:** No we were there.

**ADV MYBURGH SC:** I – we were not at 303 I think the document you are looking for...

**MR GAMA:** We were in the page before.

**ADV MYBURGH SC:** Ja.

**MR GAMA:** That is when

**CHAIRPERSON:** Oh.

**MR GAMA:** When you said let us go to the next page I went to this page but you were somewhere else.

**CHAIRPERSON:** Okay yes.

**ADV MYBURGH SC:** I think you meant 298 Mr Gama. In other words it is linked to that Ramasabudi memo.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** That you approved. Absolutely.

**MR GAMA:** I am saying all of this they should be read  
10 together.

**ADV MYBURGH SC:** Yes no absolutely.

**MR GAMA:** Because they are part of the same letter.

**ADV MYBURGH SC:** We get the – we get the memo, we get the BADAC resolution and then we get the letter of engagement – said we must read it together.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And we get the invoice. So I think the only point I am making is perhaps I could just ask you to comment on this. There is a letter of engagement in other  
20 words these people are saying this is what we are going to do. Right. And we are going to be paid upon the execution of the club loan facility. They tell you that on the 18<sup>th</sup> of November 2015 and on the same day they send you an invoice that you see at page 250.72. Correct?

**MR GAMA:** Yes except that the memo that we just gone

through Ramasabudi claims that they have been working with him for five months previous – this is the memo that we sent to the board. So he says at page 300 point 24.

**ADV MYBURGH SC:** Okay Mr Gama, Trillian has not existed for five months. That is the point ...[intervenes]

**MR GAMA:** Well, I do not know. I am just telling you what Ramosebudi says. So he says I have been writing to these people for five months and then he then writes another memo to say find this agreement which is the agreement  
10 that we are going through now. This is what we are discussing now with Mr Myburgh, in November. He then says here is an agreement that you must sign. So I am saying all of these things are related. We must not look at them as if they are not related. The first thing that happens is the memo. It is the memo that goes to the ...[intervenes]

**CHAIRPERSON:** Committee.

**MR GAMA:** ...to the committee.

**CHAIRPERSON:** H'm.

20 **MR GAMA:** Then the committee approves. Once the committee approves, you then get the resolution. And then he writes another memo attaching this agreement and that is the one I said that I said we must not pretend as if they are not related. And he writes another memo, attaching this, to say can you please sign the agreement based on

what was approved on the 1<sup>st</sup> of October. Ja.

**ADV MYBURGH SC:** So, Mr Gama, I fully appreciate they must be read together but if I take you back to the invoice. Do I understand what you are saying there is, as far as you are concerned, this work had already been done?

**MR GAMA:** According to what I have just showed you on page 300.24. He says that ...[intervenes]

**CHAIRPERSON:** Sorry. I am sorry, Mr Gama. You have talked about page 300.24.

10 **MR GAMA:** Yes.

**CHAIRPERSON:** Is that paragraph 24 you are talking about?

**MR GAMA:** It is paragraph 24.

**CHAIRPERSON:** At page 250.300?

**MR GAMA:** That is correct.

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH SC:** So it reads ...[intervenes]

**CHAIRPERSON:** Oh, yes ...[intervenes]

20 **ADV MYBURGH SC:** “Financial advisor negotiations support the Trillian provided through this entire process took in excess of five months which was done at risk with the expectation of compensation only on successful completion of the transaction.”

That is what he said.

**MR GAMA:** Yes, that is what he said. So I am saying if you take it from that, then you are saying this work that has been done for five months before this and then he then attaches this agreement ...[intervenes]

**ADV MYBURGH SC:** So ...[intervenes]

**MR GAMA:** ...to the other memo. So it is now month six. So I think you have to assume, according to him, it is now the sixth month and then here is an invoice. So I am saying to you, Mr Myburgh, that if it cannot be that you  
10 think that as soon as the agreement is signed, then there is an invoice. According to Mr Ramosebudi, he is saying they have done work for six months. That I cannot vouch. I have never been...

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** So what you are saying is. I guess your answer should have been a yes to Mr Myburgh.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** You are saying, based on what you were told, you understood that work had been done for five  
20 months?

**MR GAMA:** Yes.

**CHAIRPERSON:** What you are saying is. Whether that was factually true or not, you do not know.

**MR GAMA:** That I do not know.

**CHAIRPERSON:** Yes.

**MR GAMA:** But I am just saying ...[intervenes]

**CHAIRPERSON:** [Indistinct] ...[intervenes]

**MR GAMA:** ...from what – yes.

[Parties intervening each other – unclear]

**CHAIRPERSON:** Ja. You say that was your understanding.

**MR GAMA:** Yes.

**CHAIRPERSON:** Ja. H'm. Okay.

**ADV MYBURGH SC:** Alright. And then what we see – so  
10 that was your understanding and then what see is, if you  
go to page 73.

**CHAIRPERSON:** I am sorry. Where is the agreement that  
Mr Gama says ...[intervenes]

**ADV MYBURGH SC:** We will come to the memo but I think  
he refers to, Chairperson, in the chronology.

**CHAIRPERSON:** H'm, okay.

**ADV MYBURGH SC:** There is another memo and I am  
going to come to that.

**CHAIRPERSON:** Okay, okay.

20 **ADV MYBURGH SC:** So the invoice is dated 15 November  
– oh, sorry – 18 November 2015. And then if you go over  
to page ...[intervenes]

**CHAIRPERSON:** Where is the invoice? I am trying to  
make sure I do not lose you.

**ADV MYBURGH SC:** The invoice is at page 72,

Chairperson.

**CHAIRPERSON**: Okay.

**ADV MYBURGH SC**: 250.72.

**CHAIRPERSON**: Ja, these documents are too far apart.

**ADV MYBURGH SC**: Yes, they are.

**CHAIRPERSON**: And it makes it difficult to ...[intervenes]

**MR GAMA**: Ja.

**CHAIRPERSON**: ...to follow.

**MR GAMA**: That is what I was saying.

10 **CHAIRPERSON**: Yes.

**MR GAMA**: That we got all of them together and ...[intervenes]

**CHAIRPERSON**: Is it not possible, Mr Myburgh, even if it is after today. Maybe because of the complications of the – of pagination. Is it not possible to take ...[intervenes]

**ADV MYBURGH SC**: We could try ...[intervenes]

**CHAIRPERSON**: ...all of that together and put them at the back ...[intervenes]

**ADV MYBURGH SC**: We can try.

20 **CHAIRPERSON**: ...in the right sequence. Ja.

**ADV MYBURGH SC**: Not...[intervenes]

**CHAIRPERSON**: There would be duplication but that is fine. Then we know where to find all of them.

**ADV MYBURGH SC**: We will do that, DCJ.

**CHAIRPERSON**: Ja.

**ADV MYBURGH SC:** Alright. So the invoice is at page 72. At page 73 is the payment advice dated the 19<sup>th</sup> of November. Is that also your signature?

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

**ADV MYBURGH SC:** Mr Gama?

**MR GAMA:** Oh, is it 75?

**ADV MYBURGH SC:** 73.

**MR GAMA:** 73?

**ADV MYBURGH SC:** Ja.

10 **MR GAMA:** Yes.

**CHAIRPERSON:** Page 250.73? Point 73. Because I am looking at page 73 but ...[intervenes]

**ADV MYBURGH SC:** 250.72 and 250.73.

**CHAIRPERSON:** Okay alright. It seems that it will be important to keep on saying 250 because ...[intervenes]

**ADV MYBURGH SC:** Certainly.

**CHAIRPERSON:** ...there may be confusion if we just say so because there is a 73. Okay 250.73.

20 **ADV MYBURGH SC:** Yes. So that takes us to the 19<sup>th</sup> of November 2015. Now, if I can take you, please, to the second memorandum that Mr Gama has been referring to and the agreement that you asked about Chairperson. That memorandum, you will find back at page 303 – 250.303. This is now signed by Mr Gama on the 3<sup>rd</sup> of December 2015. And Mr Gama, you confirm that you



have signed it on the 3<sup>rd</sup> of December 2015?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** And is this again – this is something, it seems, that is addressed to you, Mr Peter and Mr Selinga from Mr Ramosebudi. So he is again the author of this document in effect. Is that right?

**MR GAMA:** That is correct.

**ADV MYBURGH SC:** And the recommendation is.

10                    “It is recommended that the acting GCE and  
                         the GCFO sign off on Trillian Asset  
                         Management’s invoice for services rendered to  
                         and behalf of Transnet in this capacity as  
                         Trillian’s originating and coordinating mandate  
                         leader ranger or ZAR 12 billion club facilities.”

Is that correct?

**MR GAMA:** Yes.

20                    **ADV MYBURGH SC:** At then takes us back. So after you  
                         have signed that on the 3<sup>rd</sup> of December 2015, presumable  
                         if you go to page 72, that is then what caused you to sign  
                         the invoice on that day?

**MR GAMA:** Yes. So, as he says in his recommendation,  
                         either commence that me and the acting CFO signs on the  
                         ...[intervenes]

**ADV MYBURGH SC:** Yes.

**MR GAMA:** Yes but it is the same day.

**ADV MYBURGH SC:** So, DCJ, when you asked about the contract. There is no contract from what we can work out. The closest one gets to it is really the letter of engagement that you will find at 64, which is a formal letter signed by *Mr Rooi* and Mr Gama and Mr Peter.

**CHAIRPERSON:** Mr Gama, you confirm that? When you talked about a contract, you are referring to the letter of engagement?

**MR GAMA:** Yes.

10 **CHAIRPERSON:** Okay.

**MR GAMA:** I think in that the parties tried to put in place whatever the expectations were, Chair.

**CHAIRPERSON:** Ja, okay.

**MR GAMA:** Ja.

**ADV MYBURGH SC:** And then, if you go to page 74 you will see this is a bank record of Trillian which reflects and this we get from colleagues of ours in Money-flow. On the 4<sup>th</sup> of December 2015, there is an incoming payment of R 93 480 000,00. Do you see that?

20 **MR GAMA:** Yes.

**ADV MYBURGH SC:** And that was the money paid. And then if you go down about the middle of the page, you see an entry 8 December 2015. The sixth entry, 8 December 2015, there is a payment out to Albatime of R 74 784 000,00. Do you see that?

**MR GAMA:** Yes.

**ADV MYBURGH SC:** We then also, Chairperson, attached some parts of the transcript relevant to or relating to the evidence of Mr Mohammed Mohammedi and Mr Ramosebudi. Mohammed Mohammedi was called within this stream. Mr Ramosebudi was called within the Money-flow Stream, as you might remember.

Can I just take you, please, to page 76? It is an extract from Mr Mohammedi's evidence. And at line 18,  
10 Advocate Phillip Makena SC said:

“Do you know why Trillian was paid that amount? What was or what did they do to be paid that amount?”

Mr Mohammedi answered:

“Well, it is alleged that they were a supply development partner to Regiments.

That is the information that is being presented but in discussion and that I have had, they are unable to find any documentation or any  
20 evidence that Trillian did in fact work on the ZAR Club Loan.

We do not believe – we are not able to.

We have discussed this with the previous Treasurer.

We asked for simple documentation, et

cetera...”

Are you able to comment on that?

**MR GAMA**: Well, I think the Treasurer, Mr Ramosebudi, is the right person to talk to this. I cannot talk to this. I was given the impression, Chair, and given the understanding, as we have read together those documents, that Trillian had done all of this Club Loan arrangement work. And so I do not know if I have to go and say let us look at what the work was, what it is that I would look for. I do not know  
10 but the Treasurer indicated to us that they have done the Club arrangements. So I would not be able to comment on what Mohammedi is saying, what he saw or what he did not see.

**ADV MYBURGH SC**: Mr Gama, did you yourself witness any work being done? You must remember that Trillian is an offshoot of Regiments. Did you witness any work being done by anyone at Trillian?

**MR GAMA**: Mr Myburgh, I have said to you that I did not do any of this work. It is – I did not get involved in this  
20 financial things. So my involvement is when Ramosebudi says we must go to the ADC. Trillian has been doing this work. We must change from JP Morgan, we must change from Underwriting to create a Club Loan and these are the people who have done that work. So I never even been to the Group Treasurer’s office.

**CHAIRPERSON:** So, you can either ...[intervenes]

**MR GAMA:** I cannot ...[intervenes]

**CHAIRPERSON:** You can neither dispute ...[intervenes]

**MR GAMA:** I cannot dispute it.

**CHAIRPERSON:** ...when it was done?

**MR GAMA:** Ja, I do not ...[intervenes]

**CHAIRPERSON:** So when somebody says it was not done, you cannot say anything.

**MR GAMA:** Ja.

10 **CHAIRPERSON:** If they say if it was done, you do not know?

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

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Alright. Well, let me then take you to Mr Ramosebudi. If you have a look at page 250.80. My colleague, Mr Chaskalson SC says: “Well ...[intervenes]

**CHAIRPERSON:** You said which point? Zero, eight point ...[intervenes]

**ADV MYBURGH SC:** 250.80. Eighty.

20 **CHAIRPERSON:** Eight, zero. Okay. Yes, continue.

**ADV MYBURGH SC:** My colleague, Mr Chaskalson SC says:

“Well, the evidence will show that the amount of R 93 480 000,00 was paid into Trillian’s bank account on 4 December.

Are you aware that four days later, 80% of that amount, being R 74 780 000,00 was transferred to Albatime?”

He says:

“I am not aware of that.”

And then he is asked:

“Well, can you think of any reason? Did Albatime played any role whatsoever in the Club Loan?”

10 He says, well, he does not know.

Now, Mr Gama, just again to point out that on these invoice tracking schedules that were provided to Mr Peter, payments to Albatime were actually reflected. And then over the page, page 81, fourth line. Did you – he asked him:

“Did you ever encounter Albatime at all?”

In the second line:

“No, I have never encountered Albatime.”

20 And then he refers to Kuben Moodley. Did you ever meet Kuben Moodley?

**MR GAMA:** No.

**ADV MYBURGH SC:** Now, incidentally, prior to giving this evidence, Mr Ramosebudi at page 232, he was asked by Mr Chaskalson:

“Had you seen anyone from Trillian actually

arranging the loan?”

Then Ramosebudi said:

“At the beginning when we were dealing with this they were not there.”

**MR GAMA**: Sorry, he said what?

**ADV MYBURGH SC**: He said:

“At the beginning when we were dealing with this they were not there.”

Chaskalson says:

10 “Yes, they were not there and the arrangements were being made by people then at Regiments.”

Ramosebudi said:

“That is precisely true.”

**CHAIRPERSON**: I am sorry, Mr Myburgh. Where are you?

**ADV MYBURGH SC**: So, I am reading... Chairperson, this is not in the – these documents.

**CHAIRPERSON**: Oh, okay.

20 **ADV MYBURGH SC**: I am reading from page 232 of the transcript of Day 314.

**CHAIRPERSON**: Not in the bundle?

**ADV MYBURGH SC**: No.

**CHAIRPERSON**: Oh, okay alright. Please just repeat what you read because I was not able to connect with ...[intervenes]

**ADV MYBURGH SC:** So at line 21 Advocate Chaskalson says:

“Had you seen anyone from Trillian actually arranging the loan?”

Ramosebudi:

“At the beginning when we were dealing with this they were not there.”

Advocate Chaskalson:

10 “Yes, they were not there and the arrangements were being made by people then at Regiments.”

Mr Ramosebudi said:

“That is precisely true.”

**CHAIRPERSON:** H’m.

**ADV MYBURGH SC:** Do you have any comment on that?

**MR GAMA:** So what are you saying? Are you saying Mr Ramosebudi says the people who did the work were from Regiments but he decided to tell us we must pay Trillian?

20 **ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** That seems to be what he said when he is being questioned by Mr Chaskalson.

**MR GAMA:** So perhaps the work was done but by other people and not by Trillian but he then decided that he would mislead us and tell us that Trillian had been doing



the work. I think that is the sum-total of it from what ...[intervenes]

**CHAIRPERSON**: Certainly that is what, from your point, you would say if you said his memos said to you Trillian had done the work over the previous five months.

**MR GAMA**: Yes.

**CHAIRPERSON**: And you say now, he says Regiments did the work. You would then say but that is not what he said in the memo here, if that is how you understood his memo.

10 **MR GAMA**: Yes, because I think it is then misleading.

**CHAIRPERSON**: H'm.

**ADV MYBURGH SC**: So perhaps I could, just to finish off on this, take you to Exhibit BB-27. That is the Transnet POR Reference Bundle.

**CHAIRPERSON**: Mr Myburgh, I must say. I think we will adjourn about quarter to five, just so that you can pace yourself properly.

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

**CHAIRPERSON**: Ja.

20 **ADV MYBURGH SC**: Yes.

**CHAIRPERSON**: Is that Bundle 6?

**ADV MYBURGH SC**: That is Transnet Bundle 6. Yes, Chairperson. Exhibit BB-27.

**CHAIRPERSON**: Okay. And that is on what page?

**ADV MYBURGH SC**: I would like to take you, please, to

page 398.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And could I just direct your attention because there is reference here also to the statements made by Mr Ramosebudi?

**CHAIRPERSON:** [No audible reply]

**ADV MYBURGH SC:** So could I ask you, please, to have a look at 398, paragraph 2.7.29 from the MNS report?

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

10 **ADV MYBURGH SC:** So, furthermore, in our interview with Ms Matshepo – and we know that she is from Regiments. She confirmed that:

“All the work done in relation to the Club Loan was executed by Regiments. By the same token, Messrs P Ramosebudi and Alani Magele confirmed in our interview that they only dealt with Ms Matshepo and Mr Wood from Regiments...”

**MR GAMA:** So, you are saying this is a different stream?

20 Did you establish then why Mr Ramosebudi had claimed that Trillian did the work?

**ADV MYBURGH SC:** Do you have any comment on that, Mr Gama?

**MR GAMA:** I was not there. I cannot comment on it. I am asking ...[intervenes]

**ADV MYBURGH SC:** You see ...[intervenes]

**MR GAMA:** I was asking a question whether – was Mr Ramosebudi ever asked why he said Trillian did the work when it was done by Regiments?

**CHAIRPERSON:** Well, maybe before we talk about that question. I just want to make sure you understand two points, 7.29 at page 398 to the extent that you might not know Ms Matshepo, who is referred to there, she used to work for Regiments. You might or you might not know.

10 She used to work for Regiments. She has given evidence in the Commission and she did move to Trillian at some stage coming from Regiments.

**MR GAMA:** H'm.

**CHAIRPERSON:** So MNS, from what we see here, did interview her as well and so she is the one here who, according to MNS, confirmed that all the work done in relation to the Club Loan was executed by Regiments. I think in relation to Eskom to – you will recall, earlier on I said what you were telling is similar to what I have heard

20 in relation to Eskom, McKinsey, Trillian and Regiments.

**MR GAMA:** Yes.

**CHAIRPERSON:** Because in – under Eskom too, Eskom paid a certain amount of money. I think R 30.4 million or R 34 million, I cannot remember, to Trillian in circumstances where is that dispute as to who should have

been paid and it seems that it is Regiments who had paid – who had done the work but I think somebody like Mr Singh might at some stage just find that Trillian had made – had done the work but I think he seems to accept now that it looks like Regiments had done the work but Trillian was paid.

So she testified in regard to the Eskom situation as well and said it was Regiments which had done the work. So it looks like here too, in relation to Transnet, she  
10 says:

“In regard to the Club Loan, Regiments had done the work but Trillian was paid..”

**MR GAMA:** And maybe that is why, Chair, I was saying to you earlier that we got confused because Regiments started writing lots of letters to us saying that we have paid the wrong people but I do not think it was in relation to this one. What I do not understand, still, is. If Regiments did the work why there now another entity too...

**CHAIRPERSON:** To do what?

20 **MR GAMA:** To invoice.

**CHAIRPERSON:** Well, maybe they did not allow it to invoice. [laughs]

**MR GAMA:** Oh.

**CHAIRPERSON:** Maybe it is invoiced and the question was whether either Transnet or Eskom decided to honour

the invoice even though another entity have done the work, you now. So. But with regard to the question you asked, Mr Myburgh might be able to answer but I can just say this that when Mr Peter – was it Mr Peter or Mr Ramosebudi, who testified under the Money-flow Work stream, Mr Myburgh? I think it was Mr Ramosebudi.

**ADV MYBURGH SC:** Yes, Ramosebudi.

**CHAIRPERSON:** Ja. That is another work stream. It may be that he was asked about that aspect or he might not  
10 have been asked because – but their focus is different. It is more on Money-flows. So I cannot remember whether he was asked or not.

**ADV MYBURGH SC:** Chair ...[intervenes]

**CHAIRPERSON:** He talked about why he wrote the memo that he wrote which you understood to be saying Trillian had done the work.

**MR GAMA:** Yes, that is what I have known all ...[intervenes]

**CHAIRPERSON:** Ja.

20 **MR GAMA:** ...from what he had told us but now you are saying no.

**CHAIRPERSON:** Ja.

**MR GAMA:** When he says, even himself, that it was people from Regiments. So I do not know what caused him to say to us it is Trillian.

**CHAIRPERSON:** H'm, yes. Mr Myburgh, you had asked the question ...[intervenes]

**ADV MYBURGH SC:** Yes, I just want to ...[intervenes]

**CHAIRPERSON:** ...maybe that has not been answered because I interrupted.

**ADV MYBURGH SC:** I think the important thing, Mr Gama, to appreciate is what actually going on around you here because when you look at Money-flows. Money-flows reflects this. From the 3<sup>rd</sup> of December, you signed an  
10 invoice. From the 4<sup>th</sup> of December, R 93 million is paid to Trillian. On 8 December 2015, 80% of that is paid to Albatime. Albatime is linked to Gupta money laundering.

**MR GAMA:** H'm. Ja.

**ADV MYBURGH SC:** So just pick up on 398. You talked about letters being written by Regiments and you did not think that it applied here. I just want to take you to paragraph 2.7.31. It reflects that:

20 "On 12 September 2016, Regiments wrote a letter to Transnet and recorded the following in relation to the Club Loan, the payment of R 93 million for the Club Loan.

This fee relates to work done by Regiments for the capital raised in transaction management and hedging advisory services related to the 1064 Locomotives Funding together with the

Club Loan of which Regiments invoiced and was paid the relevant fee...”

So it is not that they have allowed someone to get the fee. They say that they invoiced and were paid.

“While it was originally anticipated that JP Morgan would be appointed – arranges for the Club Loan and Regiments would assist JP Morgan in the execution thereof.

10 As you are aware, Regiments had requested Transnet ultimately took over full responsibility as lead managers with all the incumbent work being performed by Regiments.

This work was completed by Regiments in December 2015...”

**MR GAMA:** Ja, it was... I do not know what to call it.

**ADV MYBURGH SC:** You see, Mr Gama. You met with Mr Essa the next month in Dubai.

**MR GAMA:** Yes. [laughs]

20 **ADV MYBURGH SC:** Alright. Then I just wanted to ask you, please, to go to page – Bundle 7, DCJ at page 168.

**CHAIRPERSON:** Is that page 250.158?

**ADV MYBURGH SC:** No, this is the original 168.

**CHAIRPERSON:** Oh. Yes, I have got it. Have you got it, Mr Gama?

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

**ADV MYBURGH SC:** So, if I could ask you to – perhaps you can turn to the beginning of the file at page 7. So your finger at 168 and then please turn to page 7. Okay. So can I just direct your attention – so this is part of the one of the 10.6s that you were issued with and at paragraph 1.15 you specifically address in additions in the allegations in the ...[intervenes]

**MR GAMA:** Sorry, page 7, no paragraph?

**ADV MYBURGH SC:** Are we not in this – no, you are in –  
10 sorry, can I ask you please to go to bundle 7, it is your file.

**CHAIRPERSON:** The one that has got your affidavit.

**ADV MYBURGH SC:** EXHIBIT BB28. I do apologise.

**MR GAMA:** Okay, we go to page 7, you said?

**ADV MYBURGH SC:** 7 please.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** So this is part of one the 10.6s that was issued to you. Paragraph 1.15.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** You specifically address in addition  
20 to the allegations in the aforementioned affidavits or statements (annexures) your involvement in the following.

**CHAIRPERSON:** I am sorry, paragraph 1...?

**ADV MYBURGH SC:** Point 15.

**CHAIRPERSON:** Not at paragraph?



**ADV MYBURGH SC:** No, I am at page 7 of bundle 7, Exhibit ...[intervenes]

**CHAIRPERSON:** Oh, I am sorry, I am looking at page 6.

**ADV MYBURGH SC:** EXHIBIT BB28.

**CHAIRPERSON:** I am sorry, I am looking at page 6. Okay, I have got page 7. Ja? And the paragraph?

**ADV MYBURGH SC:** 1.15 you specifically address in addition to the allegations in the aforementioned affidavits or statements (annexures) your involvement in the following. Have a look at subparagraph 2:

“R1 billion equivalent club loan involving Trillian as lead arranger.”

Do you see that?

**MR GAMA:** I see that.

**ADV MYBURGH SC:** Asked to address your involvement in that. If you go then to page 168.

**MR GAMA:** Yes.

**ADV MYBURGH SC:** You say at paragraph 53 at paragraph 1.15.2 of the notice:

20 “I had no involvement with the R1 billion equivalent loan involving Trillian as lead arranger.”

**MR GAMA:** Yes.

**CHAIRPERSON:** I am sorry, Mr Myburgh, maybe it is too late in the day, I just seem not to find the pages you are referring to. I have got – I am on Transnet bundle 7.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** And I am at page 168. Are you talking about 250.168?

**ADV MYBURGH SC:** No, the original 168.

**CHAIRPERSON:** That is where I am but...

**ADV MYBURGH SC:** That is page 53 of the affidavit.

**CHAIRPERSON:** H'm? Ja, it is page 53 of the affidavit.

**ADV MYBURGH SC:** Then I am referring the witness to paragraph 53, so that is right at the top.

10 **CHAIRPERSON:** Oh, okay, okay, now I can see.

**ADV MYBURGH SC:** And it says at paragraph 53 at paragraph 1.15.2 of the notice. That is the regulation ...[intervenes]

**CHAIRPERSON:** The notice at page 7?

**ADV MYBURGH SC:** At page 7, yes.

**CHAIRPERSON:** Okay, but – because also when I was at page 7...

**ADV MYBURGH SC:** Yes.

20 **CHAIRPERSON:** I could not see the paragraph you were reading from.

**ADV MYBURGH SC:** Okay, so DCJ ...[intervenes]

**CHAIRPERSON:** At paragraph 7 my first paragraph is 8.2.2.4.

**ADV MYBURGH SC:** No, are you ...[intervenes]

**CHAIRPERSON:** Is it 7 of 15?

**ADV MYBURGH SC:** No, it is...

**CHAIRPERSON:** Or is it under 1 – I have, you know, when you come to – then it is BB28 the green divider.

**ADV MYBURGH SC:** Yes, that is right.

**CHAIRPERSON:** And then you have got Mr Gama's statement.

**ADV MYBURGH SC:** Well, how does bundle start?

**CHAIRPERSON:** Maybe I was looking – I think I was looking at Mr Gama's statement, that is the first document  
10 that I have.

**ADV MYBURGH SC:** How BB28 starts, Chairperson, is:

“With your directive...”

**CHAIRPERSON:** BB28 starts with in the indices or one index.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** And then after the index there is a page with Mr Todd's names all over and Mr Makwanazi.

**ADV MYBURGH SC:** I think we have got it – we have to be going fundamentally wrong, DCJ.

20 **CHAIRPERSON:** Ja, maybe Mr Gama's statement was slotted in the wrong place.

**ADV MYBURGH SC:** May have been.

**CHAIRPERSON:** But after the statement I have go the 10.6 directive.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Which starts on page 3 black numbers.

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

**CHAIRPERSON:** And then ...[intervenes]

**ADV MYBURGH SC:** And if you could go to page 7 of that.

**CHAIRPERSON:** Okay. Ja, you see, I was looking at page 7 of Mr Gama's statement. I think that is where – now I can see.

**ADV MYBURGH SC:** Yes.

10 **CHAIRPERSON:** Okay, okay, okay.

**ADV MYBURGH SC:** So at page 7, that is part of the 10.6s, Chair.

**CHAIRPERSON:** Yes, now I have got both pages.

**ADV MYBURGH SC:** So there you will see paragraph 1.15.2 and the answer to that appears at page 168.

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

**ADV MYBURGH SC:** Your answer is at 53:

“I had no involvement.”

Do you want to comment on that?

20 **MR GAMA:** Yes, I can say it again without any fear of contradiction that I had no involvement.

**ADV MYBURGH SC:** Mr Gama, what we have seen is that you were the final signatory on the recommendation that served the [indistinct], you then signed the letter of engagement, you then signed the invoice and you were

also a signatory to a preceding memorandum authorising you to do that and you say you no involvement?

**MR GAMA:** Mr Gama, read it for me again, 1.15.2.

**ADV MYBURGH SC:** I suppose you have got to read it with 1.15 as well:

“You specifically address in addition to the allegations in the aforementioned affidavit your statement ...[intervenes]

**MR GAMA:** No, no, I am saying 1.15.2 at page 7.

10 **ADV MYBURGH SC:** Yes?

**MR GAMA:** Read it.

**ADV MYBURGH SC:** You have to read it, you will bear with me for a moment, together with the leading paragraph, talks about your involvement in the following:

“The R1 billion equivalent club loan involving Trillian as lead arranger.”

**MR GAMA:** Yes.

**ADV MYBURGH SC:** Your involvement.

20 **MR GAMA:** Yes and then I say to you I had no involvement with the R1 billion equivalent loan involving Trillian as lead arranger. I do not know anything about it, I still do not.

**ADV MYBURGH SC:** Are we then – did we get the number wrong or what are we ...[intervenes]

**MR GAMA:** Ja, you were talking about R1 billion, it was R12 billion that we have been discussing. There is a huge difference between R1 billion and R12 billion.

**ADV MYBURGH SC:** It should have been the 1 billion dollar.

**MR GAMA:** Yes, so you want me to answer questions – that is why I say to you I have no fear of contradiction on that.

**ADV MYBURGH SC:** Is that the approach that you  
10 adopted to your affidavit?

**MR GAMA:** No, it is not an approach, I do not know how many lead arrangers, what do you call it, how many loans that Trillian did. So you asked me about a particular loan and I say to you I do not know anything about it, it is too ...[intervenes]

**CHAIRPERSON:** Let us just get – let us get this clear. In the top directive:

20 “You are asked to address in addition to the allegations in the aforementioned affidavits or statements and annexures your involvement in the R1 billion equivalent club loan involving Trillian as lead arranger.”

**MR GAMA:** Ja.

**CHAIRPERSON:** So – and your answer is:

“I had no involvement with the...”

And you quote:

“R1 billion equivalent loan involving Trillian as lead arranger”

And from what you are saying your point is, if they mentioned the R12 billion then you would answer differently?

**MR GAMA:** Yes, I would answer that differently.

**CHAIRPERSON:** Yes.

**MR GAMA:** Because, remember, Chair, I am not the  
10 Group Treasurer.

**CHAIRPERSON:** Ja.

**MR GAMA:** I do not know how many loans that what do you call it that Trillian did.

**CHAIRPERSON:** Ja.

**MR GAMA:** The only one that I know is the R12 billion, that one I know.

**CHAIRPERSON:** Yes, so you are saying - yes but this for R1 billion...

**MR GAMA:** The 1 billion I was not involved, I do not know  
20 anything about it, Chair.

**CHAIRPERSON:** Okay, alright.

**ADV MYBURGH SC:** You know of there having been more than one club loan.

**MR GAMA:** Sorry?

**ADV MYBURGH SC:** You know of there having been more

than one club loan.

**MR GAMA:** I would not know how many club loans are there at Transnet. Transnet has got many, many loans. Got many loans, different institutions. I think close to one hundred and something billion, if I am not mistaken.

**ADV MYBURGH SC:** Chairperson, that brings me to the end of my questioning in relation to the R12 billion club loan. This is a convenient time to adjourn.

**CHAIRPERSON:** Yes. Okay, we are going to adjourn  
10 now. What is your estimate of how much more time you will need to finish all the evidence?

**ADV MYBURGH SC:** Accumulatively probably one day.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** But could be done easily I think over two night sessions.

**CHAIRPERSON:** Yes, I was thinking about two nights. I think what I would like both teams to do is to see whether there are evenings next week when everybody would be available because if I have got dates, maybe a few dates,  
20 maybe two, three, or whatever but maybe two, three other dates could be given for the following week, evenings, just evenings.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja. So that I am going to look at what evenings are open next week, maybe that other week as



well so that we if possible can slot Mr Gama in. We can negotiate these dates because they are short notice.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** If we can find dates that suit everybody we will use them. If we cannot find then we will give more reasonable notice and just fix other dates. So maybe Mr Myburgh and counsel for Mr Gama, you can talk and then you can - Mr Myburgh, you can let me know over the weekend what dates have you got available.

10 **ADV MYBURGH SC:** Yes, Chairperson.

**CHAIRPERSON:** Ja. Okay, Mr Gama, thank you for availing yourself, we are going to adjourn and then if you come back next week it will be evenings that have been agreed, maybe early that other week if – so but if we cannot find dates that suit everybody then we just give reasonable notice. But thank you.

**MR GAMA:** Thank you very much, Chairman.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS TO 3 MAY 2021**