

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

04 MAY 2021

DAY 388



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22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 04 MAY 2021

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

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Good morning Mr Koko

MR KOKO: Good morning DCJ.

CHAIRPERSON: Thank you. Okay are you ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Yes. Okay and Mr Koko is represented
10 by the same legal team as before?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chair there is also a legal
representative for Mr Jabu Mabuza.

CHAIRPERSON: Yes.

ADV SELEKA SC: She may want to place herself on
record.

CHAIRPERSON: Ja please she must do that. You can do
that from where you if your mic is working. Ja that one
20 should be working.

ADV MATHABATHE: Good morning Chair.

CHAIRPERSON: Good morning.

ADV MATHABATHE: My name is Leago Mathabathe and I
am from Nortons Incorporated and I appear on behalf of Mr
Jabu Mabuza.

CHAIRPERSON: Okay.

ADV MATHABATHE: He did notify the Secretariat that our client does not at this stage intend to apply to cross-examine Mr Koko however we just wish to place on record that his right in this regard is...

CHAIRPERSON: I am sorry you are ...

ADV SELEKA SC: We cannot hear.

CHAIRPERSON: I cannot hear you well ja.

ADV MATHABATHE: Oh We just would like to place on
10 record that our client's rights in this regard are expressly reserved.

CHAIRPERSON: Yes okay alright.

ADV MATHABATHE: Thank you.

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

REGISTRAR: Please state your full names for the record.

MR KOKO: Matshela Moses Koko.

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

20 **MR KOKO:** No.

CHAIRPERSON: Do you consider the oath binding on your conscience?

MR KOKO: Yes.

REGISTRAR: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing

but the truth; if so please raise your right hand and say, so help me God.

MR KOKO: So help me God.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chairperson I am going to do a recap but also explain what we need to cover in the evidence in regard to Mr Koko.

10 By way of a recap we were in Eskom Bundle 14(c) dealing with the emails exchanged between – or rather sent by Ms Mosilo Mothepu to Mr Koko and that was in regard to various issues regarding the MSA, the cash unlocking initiatives and certain aspects which became part of the Service Level Agreement.

 And the evidence of Mr Koko then what remains of it relates to the transactions which is the McKinsey/Trillian transactions on the one hand and on the other the Tegeta transactions.

20 And just by way of explanation is that Mr Koko's evidence will be given against the backdrop of these facts which I will summarise now.

 On the McKinsey/Trillian you have the corporate plan for which there was a – the appointment of McKinsey to provide services in regard to the funding plan for the

corporate plan. McKinsey was appointed and the services were rendered with Regiments. The issue is the payment of the so called BEE partner of McKinsey after the corporate plan services related were rendered.

Chairperson will recall a R30.6 million payment was made but not to Regiments to Trillian and that has been an aspect addressed with Mr Koko previously as well as Mr Anoj Singh.

The other aspect regarding McKinsey and Trillian
10 relates to the Service Level Agreement or as they call it the Master Service Agreement.

During the negotiations of the Master Service Agreement McKinsey subjected Trillian to a global assessment review the outcome of which was negative in regard to Trillian. McKinsey then decided we will not continue our negotiations further to incorporate Trillian as our sub-contractor.

That contract has other difficulties related to it because according to Dr Weiss he only received a copy to
20 sign much later in September/October 2016 but by that time he says in his affidavit and the evidence has been shown the contract had been terminated in – on 16 June 2016.

As a result of the termination a submission was made to the BTC of Eskom to settle with McKinsey and its

BEE partner without the name being disclosed and we know from Dr Weiss' affidavit and evidence that they never had – McKinsey never had a BEE partner in respect of the Service Level Agreement.

But payments were made that amounted to R1 nearly R1.6 billion combined to McKinsey and to Trillian in respect of the Master Services Agreement.

So we would like Mr Koko before I move onto to Tegeta in summary to explain these transactions – to
10 explain these payments because we know from the evidence that he formed part of the Steering Committee that was specifically dealing with the services under the so called Master Services Agreement.

That is on that score. Then the Tegeta transactions which we will deal with start with the Cooperation Agreement and I go step by step once I have done this Mr Koko.

Start with the Cooperation Agreement between Eskom and OCM which gets to be terminated in June 2015
20 after the arrival of Mr Molefe. Thereafter there are meetings with Eskom officials Mr Koko also included with OCM regarding further supply of coal to Eskom but also the acquisition of OCM by Tegeta/Oakbay the Gupta owned companies.

There is a meeting on the 24th which is important –

24 November 2015 where Mr Koko is present and he impresses on OCM officials that you must sell the assets not only of OCM but you must sell the assets of OCH. So the scope of the assets gets widened which was not the original offer made by Tegeta.

With that Chair is Mr Koko's letter to the DMR which necessitate – which brings about the submission of December 2015 for the R1.68 billion pre-payment decision which gets to be converted into a guarantee.

10 We will show that there are emails between Mr Koko and Ms – one official at the DMR Mr Joel Rapela before the letter to the DMR is made before the submission is submitted to the board and it is a discussion that leads up to these documents.

With that is the question of why that submission was made – the reasons for that submission. Why did the board had to decide this matter on such an urgent basis and Mr Koko will be given a chance to explain himself on that.

20 There is a subsequent submission now it is in April 2016 this one is for an amount of R659 million payment to Tegeta. It is a pre-payment. There is no coal yet – they are making a pre-payment to Tegeta. That too will require the explanation from Mr Koko.

The treatment of Tegeta versus OCM/Glencore will

come under the spotlight particularly in regard to the – the penalties claim of R2.17 billion which they sought to enforce against OCM but change it substantially when it came to Tegeta. And on top of that gave Tegeta temporary relieves in terms of which Eskom then comprised on the quality of coal and the quantity of coal – something we do not see when it comes to OCM particularly in respect of the Corporate – Cooperation Agreement.

And from – from the transactions Chairperson the –
10 the picture that emerges is that the money that was being generated for the – for Tegeta’s benefit – for the Gupta’s benefit was meant to assist them in the acquisition of OCH ultimately.

With that background in mind we are going to have to see whether we cannot cover all these issues today with Mr Koko.

CHAIRPERSON: Ja okay alright you may start. Mr Koko you – your facial expressions suggest to me you are asking to say something?

20 **MR KOKO:** Yes Chair.

CHAIRPERSON: Yes.

MR KOKO: Chair I – this is my sixth time today.

CHAIRPERSON: Yes.

MR KOKO: And I must tell you that for the very first time I am feeling aggrieved because after the sixth occasions I

have not told my story. I have submitted an affidavit to the commission. I was told on the first day that I must take it as read. By the way they look – things are going I do not even think that my counsel will be given an opportunity to re-examine me.

CHAIRPERSON: She will be.

MR KOKO: I hope he will not be technically told that he does not have the time. But Chair the – the – there are important issues that I (talking over one another).

10 **CHAIRPERSON:** You would want to deal with.

MR KOKO: I feel very strong about.

CHAIRPERSON: Ja.

MR KOKO: And the summary of Mr Seleka ...

CHAIRPERSON: Does not cover you.

MR KOKO: Makes it more important Chair.

CHAIRPERSON: Ja.

MR KOKO: Let me say this. Mr Seleka's story of Optimum starts with the Cooperation Agreement and that is because of the gossip that is being going around and you will find
20 that gossip in Ms Thuli Madonsella's report. You will find that gossip in the OUTA Report too. You will find that gossip in the newspapers.

The story of Optimum starts much earlier than that. It starts when the Deputy President or we start when Mr Ramaphosa was the President of – was the chairman of

Optimum.

I have requested from the legal team the hardship notice that was submitted by Glencore OCM on the 2nd of July 2013. I got an email – I got a reply back that says we have requested it from Optimum and we will give it to you when we get it.

I did not want to come here today without that hardship notice. That hardship notice is very important Chair because the story of Optimum is the one that says
10 there was state capture Mr Molefe was brought to Eskom and when Mr Molefe was brought to Eskom he cancelled the Cooperation Agreement – he imposed penalties on Optimum – he then drove Optimum into hardship.

When the actual – when the actual hardship notice was in 2013 not in 2015 it is very important Chair that we read into what was in the hardship notice because I am really tired of the whole – of the gossip. I am really tired Chair of people listening to the gossip and ignoring the documentary evidence that is there.

20 And one of the things we are going to do today Chair and you are going to be very angry with me – very frustrated with me but I am going to force you to work of the documents not out of the gossip.

So I do need – and I will be very angry if Mr Seleka does not show the – the hardship notice that was submitted

by Optimum/Glencore on the 13th of July 2013 that was followed by an arbitration agreement on the 12th of December 2013.

Chairman the – the other thing I need to address you to is that it cannot be that witnesses come to you – to this commission to mislead you and get away with murder.

I come here to assist you to get to the truth. There are witnesses here Chair who come here with the intention of misleading you so that you do not get to the truth and I
10 really want to take you to task and say there has to be a recourse for witnesses who come here to mislead you deliberately so and I will – and it is very easy to show which witness has misled you deliberately.

Let me give you an example. Mr Clinton Ephron never submits in this commission statements under oath. We get pushed – we get harassed to present statement to this statement under oath and we do so because we understand why because we do so out of respect and we have committed that we will assist the commission.

20 Mr Ephron does not do that and he lies deliberately in his statements. And Chairman I will build up to this topic because this behaviour of Optimum/Glencore it will come out when we discuss the – the details of Optimum.

He comes here and says Mr Ramaphosa was never the chairman of Optimum. When I listened to him saying

that I knew he was lying.

CHAIRPERSON: Hm.

MR KOKO: The – who was the CEO of Optimum when Cyril Ramaphosa was the chairman of Optimum I think it was Mr Clinton Ephron. He cannot forget his boss but he does so for a reason Chair and we will get into the details of why does – did he come to the commission to lie to you deliberately and later when he is shown to lie he submit another statement to the commission and say I made a
10 mistake. I was misled by other things.

It cannot be Chairman.

CHAIRPERSON: Yes, no..

MR KOKO: These people who come to the commission to lie there has to be consequences. Mr Clinton Ephron lied to protect his business associate Mr Ramaphosa is a business associate of Glencore and he is being protected by Glencore. I will get into the details. It cannot be Chair.

CHAIRPERSON: No, no Mr Koko I understand. Let me say starting with Mr Ephron I did previously say he needed to
20 be approached by the legal team of the commission with regard to the issue of – I think it was in regard to an issue that was raised by Mr Brian Molefe namely he was saying in effect if I recall correctly that Glencore was trying to extort money from Eskom by the demands that they were making in terms of the coal price.

MR KOKO: And I will show why he is saying that because he is right.

CHAIRPERSON: Yes and – and he referred to the fact that I think when Mr Ephron was giving evidence or somebody else was giving evidence some time back I had raised the issue of why it was that Glencore had signed a coal agreement with no escalation in terms of why there is no provision and at a certain time they were now complaining that that vice that too oppressive and so on so I could not
10 understand that.

I had raised that so Mr Molefe went back to that and said Chairman this is what you raised when so and so was giving evidence and it was appropriate and then he elaborated following upon his evidence I asked the legal team to obtain an affidavit from Mr Ephron with regard to I think Mr Brian Molefe said they had not done due diligence if I am not mistaken so I said well Mr Ephron must be approached to obtain an affidavit to deal with this issue which I think was subsequently furnished but now when I
20 say that I must be careful because it might not be an affidavit it might be a statement so I might not have picked up what it was but it was furnished and then of course I think he was asked to comment on Mr Brian Molefe's evidence about Mr Ramaphosa having been chairman at a certain time of OCM I think and I think he – he did file an

affidavit – an affidavit or statement I am not sure.

ADV SELEKA SC: It is a statement – it is a statement
Chair.

CHAIRPERSON: And subsequently another one saying it
was a mistake or whatever. So – so I just mention that and
I think I have said to the legal team arrangements should
be made for him to come and deal with these matters in –
in the hearing and give evidence.

10 So – so a gate has not been – but I think I have
said that.

ADV SELEKA SC: Yes.

CHAIRPERSON: To the team. So – so I thought let me
clarify that in the first place. Secondly you will be given a
chance to – to deal with the issues that you want to deal
with.

20 It may be that at a certain stage the commission's
legal team is questioning you on certain matters and they
might not cover everything that you wish to be covered.
When you answer them just answer them in a manner that
you believe is adequate to give your side of the story.

But when they are done or at a certain stage I will
give you a chance to cover whatever else might not have
been covered under the questioning which you think is
important to place before me.

So that chance will be given. So you do not need to

be concerned about that.

MR KOKO: Thank you Chair.

CHAIRPERSON: And if you want to expose any witnesses who have lied here do that it is important – okay.

MR KOKO: Chair thank you very much I really appreciate that.

CHAIRPERSON: Yes.

MR KOKO: But I – there is another issue that I need to cover.

10 **CHAIRPERSON**: Ja.

MR KOKO: When I was here the last time I made a plea I actually asked you in earnest because I – I – you know there is this pre-occupation of the balcony at Melrose Arch which assumes that Mr Masango has been to Melrose Arch only once and therefore it becomes important and I have – I am showing that – I have referred to a statement of this concern that in fact he wanted Ms Goodson was introduced to Mr Masango in his office almost seven months later when Mr Masango denied that he has been there twelve
20 month – he has even been there again.

He has lied about the meetings on the side of the road. He has lied about the meetings on July – on March 11 but park that. What is more important for me is that I asked you Chairman – I begged you that go to Ms Daniels' computer and my proposition is based on the properties of

the doc – of the four suspension letters that were made to this commission by Mr – Ms Klein and Mr Khoza that they were – they actually originated from Ms Daniels and modified by Mr Essa.

I asked you that go to Mr – go to Ms Daniels' computer it has been imaged and my proposition is that you will find them there and they – and that will link Ms Daniels to Mr Essa.

I listened to the specialist affidavit and I was hurt
10 when I heard him say he does not have Mr Daniels computer or he does not have Ms Daniels images.

When I asked and I also told you previously that when it is matters that affects Mr Koko your investigators and your legal team are very quick – are very quick to make a follow up but they have got blue eyed witnesses I still do not understand why that the computer of Ms Daniels or its images were not made available to the specialists.

I think there is a deliberate – I have got a thesis
20 why it was not done because they are protecting Ms Daniels. They do not want to disturb her evidence. I can also see what they are doing.

My images of my computer at Eskom should also be given to the computer experts. They can – they must not chip their way. I have played open cards with you. I have

told you I have never cont – interacted with Ms – Mr Essa on line. I have told you I have never had telephone conversation with Mr Essa. Your commission has got all the telephone records. This commission was set up Chair on the basis of the telephone conversation between Mr Molefe and Mr Ajay Gupta. That is what Ms Madonsella used and all of a sudden Ms – even Mr Molefe was not really asked about that.

I have a problem that my computer – the images of
10 my computer and the images of Ms Daniels have not been made available to the experts. Because I will tell you what is going to happen. When you get the results they are going to say but it is inconclusive because we did not have Mr Koko's images.

It is very clear having listened to the expert and I am much more convinced that those suspension letters originated from Ms Daniels and were modified on an Apple computer of Salim Essa. It is very important.

CHAIRPERSON: Ja.

20 **MR KOKO:** Now the second thing Chair that I want to bring to you; you also asked – I said to you Ms Daniels ought to know who she was talking to when she emailed me and copied Infoportal address. She ought to know – to have known who she was blind copying that she did not want me to know. You asked for those emails. My gut feel

tells me that you do not have them as yet and I – I do not understand why you do not have that with you as yet when then you asked your team to give them to you. But I have brought them to you Chair.

I have asked my team.

CHAIRPERSON: Yes.

MR KOKO: I have got my legal team.

CHAIRPERSON: Yes.

MR KOKO: Mr Barry if you can give Chair – because my
10 suspicion tells me that your team I have made the proposition that your team will not give it to you. Again they are protecting Suzanne and they should have them to you because it is very important.

CHAIRPERSON: Yes.

MR KOKO: The second part is the emails – is the conversation between – is the transcript of Dr Ngubane when he said he was talking to

CHAIRPERSON: Mr Seleke.

MR KOKO: Seleke when Seleke was not even in the
20 employ of ...

CHAIRPERSON: Of Public Enterprises.

MR KOKO: Of Public Enterprises. You asked for those transcripts again I suspect you do not have them.

CHAIRPERSON: But I do not remember the transcripts relating to that but if they are available you know we can –

I do not remember that part asking for that.

MR KOKO: I remember very well Chair.

CHAIRPERSON: But I may have I do not know.

MR KOKO: I remember – You can go to the transcripts.

CHAIRPERSON: I have been listening to any witnesses for the past three years.

MR KOKO: Mr Seleka even said to you there is no point of going there.

CHAIRPERSON: Ja.

10 **MR KOKO**: He even said that. But you ask for the emails when Ms Daniels was talking to you and blind copied Infoportal.

CHAIRPERSON: Okay. Okay.

MR KOKO: Because they – they will come again Chair they will come again. Then we go to Ms Mothepu Chair. We spent the whole day last week when I was here the whole day going through emails – seven emails and – and the fury of Mr Seleka is that he will go through the emails and he linked me to McKinsey and we will finish it off now.

20 And then yesterday I got – yesterday – yesterday afternoon, I get an affidavit from McKinsey, from the Legal Team dealing with those seven emails and I hope we will get to it, and all what McKinsey is telling you is that the negotiations of the MSA started in July 2015 to November 2015 and Mr Koko was never involved in those

negotiations.

That is the affidavit that comes from McKinsey yesterday and yet we sit here going through Ms Matshepo's emails saying Mr Koko was a lead negotiator and here comes a lead negotiator from McKinsey saying: I negotiated this contract. Mr Koko was never here. Chairman, these are the type of witnesses ...[intervenes]

CHAIRPERSON: H'm.

MR KOKO: [Indistinct] ...[intervenes]

10 **CHAIRPERSON:** But you must cringe(?) the Legal Team in regard to that affidavit from McKinsey because they would be the ones who obtained it and it kind of supports you.

MR KOKO: I accept that. All that I am saying to you is that why would the witness come to you and present emails to you that I have never replied to and say Mr Koko was a lead negotiator when the lead negotiator on the other side said: I negotiated this contract. Mr Koko was never involved.

20 These are the type of witnesses Chair that are not helping you get to the – there are things Chairman that I know personally that I know exactly what happened, that I can easily assist you and – but you are not assisted.

CHAIRPERSON: Ja.

MR KOKO: Because other witnesses are trying to take it

elsewhere.

CHAIRPERSON: H'm, h'm. But it is important that you provide your assistance as well because if you do not then the story is one that you believe that it is not true. So it is important that I get all sides. But I want to talk about the issue of ...[intervenes]

MR KOKO: But...but ...[intervenes]

CHAIRPERSON: ...computers and the imaging of computers. Mister... Well, let me say this. It may be that
10 the – you will know that the investigators had obtained some investigators opinion about those pre-suspension letters but I think after you had raised the issue of Ms Daniels and they need to check, I said to the Legal Team they need to obtain another opinion.

So that we see whether it is still the same effect or different effect and that led to the specialist that you would have heard I was not happy that certain things had not been covered during the evidence of that specialist.

As a result, you would have heard that the
20 arrangement was that he needed to go back and deal with certain matters and the arrangement is that he will come back. Now...

But I want to have this things, this issue dealt with and finalised and I am thinking that the way to do it, Mr Seleka, I wonder whether your junior or somebody or

the investigators if they are here, if they can get hold of the specialist concerned.

ADV SELEKA SC: Yes.

CHAIRPERSON: And get hold of Ms Sharon van Rooyen. She is one of the senior – she is one of the – leadership of the investigation. And if they could come here maybe at one o'clock or two o'clock. What I would like to happen is that in your presence and in the presence – in your presence, Mr Koko and his legal team can articulate to the
10 investigators exactly what he says in his view should be looked into so that if there is a problem with doing it, it can be addressed, they can raise the challenges there and then.

ADV SELEKA SC: Yes.

CHAIRPERSON: Hopefully, at the end of that discussion there will be clarity in terms of what is possible, what is not possible and that which is possible will be done in what time. So that is what I would like to see happen.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** So that Mr Koko and his legal team are there to convey to the investigators what he is conveying to say this and that and that and that.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because the – certainly there should be no perception that the Commission does not want to look

into certain matters that should be looked into. So that is what I am suggesting. Mr Koko, would that be fine with you?

MR KOKO: Chairman, that will be fine. There is a document and my counsel call it a wish list.

CHAIRPERSON: Yes.

MR KOKO: And that is a document that Ms Daniels says I got to her and it had my handwritten notes.

CHAIRPERSON: Yes, yes, ja.

10 **MR KOKO:** I mean, again ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...it is as simple as that.

CHAIRPERSON: Ja.

MR KOKO: If it is my document, it will be found on my computer.

CHAIRPERSON: Ja, okay.

MR KOKO: It is 2015.

CHAIRPERSON: Ja.

MR KOKO: It will be found on the computer. Look for it.

20 **CHAIRPERSON:** Yes.

MR KOKO: Chair, the last thing I want to say is that we received the statement that was made to the Hawks by Ms Alana in 2018. Now that I have interacted ...[intervenes]

CHAIRPERSON: Is that from Travel Excellence?

MR KOKO: Travel Excellence. Now that I have interacted with it, I know understand that is not helpful for the Hawks but we have asked for the originals.

CHAIRPERSON: Yes.

MR KOKO: We still have not received them.

CHAIRPERSON: Yes, ja.

MR KOKO: It was a very false affidavit that borders to perjury and misleading the end of justice and it is one of the weaknesses that I need you to deal with.

10 **CHAIRPERSON**: H'm, h'm.

MR KOKO: Ms Alana cannot come here and deliberately lie to you.

CHAIRPERSON: Ja.

MR KOKO: But to remedy that, the Commission – I think the investigators realised that it is a hot potato. They are going to assist(?) Alana – affidavit from Ms Suliman, which is equally, in my view, to mislead you and has perjury in it and we will get to it and we will get to it when we get to those dealings(?).

20 But Chairman, people cannot come here and deliberately lie to you and get away with it. I do not come here to lie to you. But the Travel Excellence people like Mr Clinton ...[indistinct], like Ms Suzanne Daniels who lie. Cannot get – come here and lie and get away with the murder.

CHAIRPERSON: No, no that is fine. You – it is important that if you believe that the evidence they give in their affidavits and whatever is not true, you give the evidence that would contradict them. I wanted to say Mr Koko and I know that the last you were here I did say something about this. I am keen to make sure that every concern you have raised. We have been able to apply our minds to it. If we think it has merits we address it.

10 If we take a different view you are told we have looked at this. We do not agree everyone of them as you – as I said earlier on. I do the same with other witnesses. I have done the same with Mr Brian Molefe in regard to Ms Ephron. I am doing the same with regard to Mr Montana who was here yesterday.

So when people have got concerns, they are free to raise their concerns and I want us to – I want the Legal Team, I want the investigators to look at those properly and in the end I want to be satisfied that those concerns have been looked at.

20 If they have merit, something must be done. If they – if they do not agree we know why they do not agree. So the last time I think we talked about the issues that had been covered in your attorney's letters sometime back. So if there are other concerns that you have previously articulated and you know that to your knowledge they have

not been addressed, please feel free to raise them again as we go along.

And the idea is that they need to be given attention, whether they will agree with you or not but they need to be given attention. Where it looks like there should be further action, there should be further action. If it does not appear that further action is justified that is fine but at least you must know what has happened to those concerns.

10 **MR KOKO**: Chairman, I feel I am being listened to. So I appreciate that. Just on a light note. There is News24. It is running a series called Eskom Files.

CHAIRPERSON: Ja.

MR KOKO: And it is putting names of people there which are the names of the people that I have listed. And they are talking about R 178 billion reeked tender. Now Chairman, I have always said my blood is blue. The problem of Eskom today is the R 450 billion debt that it accumulated through its build(?) programme.

20 And many South Africans were looking at this Commission and say it will say something about the real Eskom problem. I mean, I am on record to say the only way you can sort Eskom problem is to get at least R 250 billion of its debt and put it into a sovereign debt. This Commission is going to finish its work without

addressing the real Eskom problem. I think the scholars in the future are going to get you and worry about it.

CHAIRPERSON: [laughs] Well, we must tell now the scholars, Mr Koko, that maybe it is because the Commission did not get there because maybe Mr Koko did not respond to my call in 2018 to say everyone who has got information that falls within the terms of reference, please come forward. Okay alright. [laughs]

MR KOKO: Understood, Chair.

10 **CHAIRPERSON**: Ja. [laughs]

MR KOKO: I have disrupted(?) you.

CHAIRPERSON: Okay alright.

MR KOKO: Yes.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Chair, I did not hear part of the Dr Ngubane – maybe I will get to it in due course Mr Koko.

CHAIRPERSON: Well, it was simply this. Mr Koko said Dr Ngubane, he – Mr Koko said: I asked for a transcript of
20 conversations between Dr Ngubane and Mr Seleka – Seleke. [laughs] Seleke.

ADV SELEKA SC: Oh.

CHAIRPERSON: And he was saying he suspects that I have not been given those. So I just said ...[intervenes]

ADV SELEKA SC: I see.

CHAIRPERSON: ...I do not have a recollection of that.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is what you said Mr Koko, is that right?

MR KOKO: Correct, Chair.

CHAIRPERSON: Ja, ja, ja.

ADV SELEKA SC: Yes. No, Chair, I confirm that that request I also do not have any recollection of it but let us cut to the chase Mr Koko. Mr Koko, in regard to the – let
10 me start with the Corporate Plan but I am going to an answer which you gave me, not to go into the details of it.

Remember in regard to the Corporate Plan, I told you about the evidence of Ms Tsholofelo Molefe who said that in 2014 when she was doing the budget, she was being told that the minister said the budget is not robust enough and as a result Mr Collin Matjila offered to make her meet with what turned out to be Mr Salim Essa who offered to help them with the balance sheet optimisation and cash unlocking initiatives but instead of a doing a
20 proposal they gave a draft agreement and she did not agree with that.

They did not get Mr Salim Essa, did not get what he wanted at the time and he had told Ms Molefe when he was asked about whether you have capacity, said that: Yes, we work with McKinsey from time to time. You recall

that?

MR KOKO: I do, Chair.

ADV SELEKA SC: And your response was: Well, McKinsey does not Regiments to get work at Eskom.

MR KOKO: That was my response, Chair.

ADV SELEKA SC: Yes. But I think the point I was making to you was different. It was that Regiments needed McKinsey to get work at Eskom and this is what was happening. That Regiments was approaching Eskom and
10 saying: We have the capacity of McKinsey with us. You could give us the work and we will do the work. So it is just the other way around.

MR KOKO: Ja, except that it does not make sense Chair. I have said – I have told you that McKinsey has been in Eskom, as far as I remember, since what we call Project AA2. Project AA2 was led by Mr Gcabashe in 2005 to 2007. Chairman, I sound and look old when I talk about Eskom issues. My association with Eskom is 33-years.

Mr Thulani Gcabashe brought Eskom – brought
20 McKinsey into Eskom in 2005, 2007 in Eskom and up until 2013, I do not remember McKinsey tendering for a job at Eskom. For lack of a better word, McKinsey was a captive - Eskom was a captive market for McKinsey. Chairman, I grew up to have a very good appreciation of McKinsey. I like that competencies and in certain instances I was the

one who brought them into specific projects on a sole(?) source(?) basis and I was not the only one.

The Top Engineers Programme is my programme. I started it in 2011/2012. The first call(?) was 2013/2014. And I had a big dream and my dream was simple. I said to the McKinsey – the top man in McKinsey, I am – you have been doing business in Eskom for a long time and I want to have a difficult conversation with you. And this conversation is the one that says at that point - and it is
10 not a joke Chair – at that point Eskom was spending close to R 5 billion a year on consultants and McKinsey was having a big share of it.

I said I want to give you a contract to train and build my top engineers and those top engineers, we will call them Top Engineering consultants and they will replace you. He left. So they – and I am going long but that is the point. So I struggled to see why McKinsey would want to tag along Regiments. I think ...[intervenes]

CHAIRPERSON: Ja, I think Mr Seleka is the other way
20 around.

ADV SELEKA SC: Yes.

CHAIRPERSON: You should be saying, you do not understand if that is the case, why Regiments would approach Eskom for work and still would rely on ...[intervenes]

MR KOKO: That is my point.

CHAIRPERSON: Ja.

MR KOKO: Certainly.

CHAIRPERSON: Yes.

MR KOKO: I struggle to see how Regiments will come to Eskom and say: Give me work, I have got McKinsey.

CHAIRPERSON: Well, would they not do that Mr Koko if they know that you want to give opportunities to black firms, black companies and they say we are black? We
10 see that you know McKinsey. They have been doing a lot of work for you. So we know you and trust them. But now we want you to give us work but you will have the comfort of knowing that behind us we have got people whose experience and competence you trust.

The only difference now is that that they will come behind. We will be at the flanks. Whereas all along they have been in the front and they have been alone.

MR KOKO: No, Chair, we will not do that.

CHAIRPERSON: H'm?

20 **MR KOKO**: We will contract with McKinsey.

CHAIRPERSON: Yes, but I am asking whether there would be anything wrong if they – if their reasoning was along those lines?

MR KOKO: Yes.

CHAIRPERSON: Whether or not ...[intervenes]

MR KOKO: Oh, no ...[intervenes]

CHAIRPERSON: [Indistinct]

[Speakers intervening each other – unclear]

MR KOKO: Chairman, I would not even entertain that.

CHAIRPERSON: Yes, yes.

MR KOKO: It is hogwash, actually.

CHAIRPERSON: Yes.

MR KOKO: It is nonsense.

CHAIRPERSON: Yes.

10 **MR KOKO**: I will not entertain that.

CHAIRPERSON: Yes.

MR KOKO: I will say ...[intervenes]

CHAIRPERSON: Why?

MR KOKO: I will say to them I will contract with McKinsey.

CHAIRPERSON: Yes.

MR KOKO: McKinsey brings different BEE players ...[intervenes]

CHAIRPERSON: Ja.

20 **MR KOKO**: ...to Eskom.

CHAIRPERSON: H'm?

MR KOKO: I will not tell McKinsey who to bring.

CHAIRPERSON: Yes.

MR KOKO: McKinsey – the company I was very familiar with that McKinsey used in Eskom at that – in most of the

times.

CHAIRPERSON: H'm?

MR KOKO: In most of the material times McKinsey and Eskom, it is a company called McKinsey Letstima(?).

CHAIRPERSON: H'm? Yes.

MR KOKO: So ...[intervenes]

CHAIRPERSON: So they have – for some time they had been bringing ...[intervenes]

MR KOKO: Yes.

10 **CHAIRPERSON**: ...a BEE partner.

MR KOKO: Yes.

CHAIRPERSON: Ja ...[intervenes]

MR KOKO: And the different partners.

CHAIRPERSON: Yes, ja.

MR KOKO: So I would not accept ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...somebody who say: Give me a job. I will bring ...[intervenes]

CHAIRPERSON: Yes.

20 **MR KOKO**: ...McKinsey.

CHAIRPERSON: That is now – I – is that because McKinsey's expertise and experience was at a certain high level ...[intervenes]

MR KOKO: Regiments is not McKinsey...

CHAIRPERSON: No, no. [laughs]

MR KOKO: [laughs]

CHAIRPERSON: Everybody would understand that but the – I mean, you had set, I imagine, McKinsey, you must bring a BEE partner.

MR KOKO: Yes.

CHAIRPERSON: Okay. So in that scenario McKinsey is the main ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...contractor.

10 **MR KOKO**: Yes.

CHAIRPERSON: Okay. So at what stage in terms of your own approach would you allow the situation to start being reversed, where you can see black firms being brought into the main contractors?

MR KOKO: Chair, my game plan was simple.

CHAIRPERSON: Because – let me finish. Because I imagine that when one talks about BEE and transformation and so on, and when you say a white firm must bring a BEE partner, the idea must be that the BEE partner must
20 actually get exposure and ...[intervenes]

MR KOKO: Must transition.

CHAIRPERSON: ...experience and transfer of skills. There must come a time, at some stage, where that BEE partner can contract with Eskom without the white contractor. So now, that is why I am asking you the

question. If you say you would never contract with Regiments or Trillian in that situation because there is McKinsey, at what stage must the black firms always come be brought in by the white contractors or there would come a time where you can say I can teach the white contractor, I can teach McKinsey because there is a black firm that has got expertise and experience that is better find for this job?

Or you could say, the two can partner but they
10 can come as equal partners now. Now the black firm does not have to be, you know, just be brought along. They can come as equal partners to Eskom. So at what stage would that happen?

MR KOKO: Chair, yes. You know, we had done something beautiful at Eskom and one of the things that happening was listening to doctor – Mr Mabuza, sitting here and saying the Top Engineers Programme never existed.

So I sat with my team at McKinsey and I looked at the scope of consulting engineers and I said – we came
20 to a conclusion that we actually need hundred top consultants at the level of McKinsey in-house in Eskom. And we set a development programme and selected them and we actually seconded them to McKinsey to train as McKinsey partners and they worked with McKinsey wherever they went. I remember they spent a lot of time at

Petro SA.

And at one point, I think when I left Eskom, there were around 30 and we were growing them to a hundred. And my expectation was that by the time we get to a hundred, the R 5 billion that we will spend into Eskom, we will not spent it anymore. We will do the work in-house. That was my plan.

So I did not expect Trillian or Regiments to transition to contract ...[indistinct]. In fact, I was – my
10 plan with the Top Engineers was to do everything in-house. And ...[indistinct] arose and may – was making more important by the National Treasury's practice note.

CHAIRPERSON: You see, I understand that completely and I think it probably is quite commendable to aim for that objective and it is good for Eskom but talking about transformation in general and not focussing on Eskom, the question I had to put to you is. Why would you not reach a stage where you can say: I can contract directly with a black firm and not have a white firm or have both of them
20 come to Eskom as equal partners.

MR KOKO: Chair ...[intervenes]

CHAIRPERSON: I am going back to the question of –

MR KOKO: No, let me answer ...[intervenes]

CHAIRPERSON: Okay. Let me hear your answer.

MR KOKO: No, let me answer you directly because we

have done something about it.

CHAIRPERSON: Yes, ja.

MR KOKO: We have done it in the engineering space and we have done it in the management space. So we had a tender for example and on both engineering and management spaces and we called them panels, Panel A will be the McKinsey's international guys. We have Panel B and Panel C.

CHAIRPERSON: And put them in Panel B.

10 **MR KOKO**: No, no, no.

CHAIRPERSON: [laughs]

MR KOKO: What I am saying to you is.

CHAIRPERSON: [laughs]

MR KOKO: No, no, no Chair. No, no, no Chair.

CHAIRPERSON: [laughs]

MR KOKO: We had a process where the Panel C will transition to Panel A. So I had ...[intervenes]

CHAIRPERSON: So there was a plan for growth ...[intervenes]

20 **MR KOKO**: Yes.

CHAIRPERSON: ...and upgrading?

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: Yes. I know – if you go into the engineer space, they will tell you. We came in as Panel C's and

now we are in Panel A. Now we are competing with everybody else.

CHAIRPERSON: Yes, yes, yes. So I guess your answer, therefore, is, to my question. Yes, they would reach a point where we could contract as Eskom with the black firm without a firm ...[intervenes]

MR KOKO: Oh, certainly.

CHAIRPERSON: ...without a white contractor.

CHAIRPERSON: Yes, yes.

10 **MR KOKO:** Certainly.

CHAIRPERSON: And would also – would you also answer in the affirmative to say there could be – we could have a situation where they come as equal partners?

MR KOKO: In fact, McKinsey will testify, if you put it to them, that when – you realise that when we – with the Eskom procurement says 30% to BEE and I want – I have also pushed them to 50/50.

CHAIRPERSON: H'm?

MR KOKO: That you must come in, go select a competent
20 black consulting company and come 50/50 with them.

CHAIRPERSON: H'm.

MR KOKO: I experienced a lot of pushback most of the time and I did not succeed but in one or two instances I had.

CHAIRPERSON: H'm. So I guess that, maybe this might

be a revision of your previous answer, when you said that no you would not contract with Regiments or Trillian, you would contract with McKinsey.

MR KOKO: Ja, at that stage Regiments was not at the ...[intervenes]

CHAIRPERSON: Yes. No, your answer should be, in principle you would have no problem ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...with contracting with Trillian or
10 Regiments or a black firm if you were satisfied that they have the expertise and experience.

MR KOKO: Of course, of course.

CHAIRPERSON: So it is just that this particular one, you knew that they did not have that.

MR KOKO: No, I did not even know them Chair.

CHAIRPERSON: Oh, you did not even know them?

MR KOKO: I did not ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: I did not even know them.

20 **CHAIRPERSON:** Ja, okay alright. [laughs]

MR KOKO: Ja. [laughs]

CHAIRPERSON: Okay.

MR KOKO: The first Regiment person that interacted with was Matshepo.

CHAIRPERSON: Yes.

MR KOKO: And let me tell you. She came across as a very – I do not want to come out bad, I do not want to hurt – to do harm to her.

CHAIRPERSON: Well, you had good things to say about your impression of her.

MR KOKO: Yes.

CHAIRPERSON: Ja, ja.

MR KOKO: And that is why I do not want to be misunderstood.

10 **CHAIRPERSON:** Ja.

MR KOKO: She came across as very potential but not there yet.

CHAIRPERSON: Ja, ja, ja. Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: I do not know whether in the process your question was answered but I may have taken Mr Koko to other issues.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** No, let us see - you see what I was putting to you is a witness version not a hypothetical situation, so:

“The witness...”

That is Mr Matshela.

“...invited me to a meeting. In that meeting Mr

Salim Essa showed up. Mr Salim Essa was offering to do the service. I asked him whether they have capacity. His response was, we work with McKinsey from time-to-time.”

It is not a hypothesis I am putting to you, it is a version of this witness that Regiments was making this offer to Eskom against the background of having McKinsey as their partner.

CHAIRPERSON: Ja and in order to timeframes do you
10 want to just say when that was?

ADV SELEKA SC: I remember that is ...[intervenes]

CHAIRPERSON: What was the...?

ADV SELEKA SC: That is around April 2014.

MR KOKO: It should be '14, Chair. I remember that incident.

CHAIRPERSON: Okay.

MR KOKO: I remember this incident well because I was the procurement person.

CHAIRPERSON: Yes.

20 **MR KOKO:** And I was one of the persons that Mr Molefe shared the experience with. And, Chair, contrary to many stories, you know, I listened to the President talking about deployment and state capture. I was interviewed for my job by Mr Matona, Mr Marokane and Mr Molefe. I was not...

CHAIRPERSON: You mean you were not recommended by the deployment committee.

MR KOKO: I was not recommended by the deployment committee, I did not work for the ANC, I work for the state.

CHAIRPERSON: Yes but of course the President did say that the deployment committee when it comes to SODs only deals – they make recommendation, on his version, in regard to CEOs and I think members of the board.

ADV SELEKA SC: Correct, yes.

10 **CHAIRPERSON:** So he restricted it to that level.

MR KOKO: Ja, Chair, I would have been aggrieved if I was a product of a political formation. I worked over 30 years of my life, I was recognised by my peers globally as a leader in engineering [indistinct]. I was a corporate consultant at Eskom. I was the most senior engineer at Eskom, nobody was higher than me in engineering and I will be very aggrieved – let me put it this way, I worked for the state, I did not work for the party.

CHAIRPERSON: Ja, ja.

20 **MR KOKO:** But, Chair, I remember Ms Molefe's story, evidence, and I may have missed the evidence but I know the story very well.

CHAIRPERSON: Okay, yes.

MR KOKO: And at that point I am one of the people who supported her that show these people the finger. Process-

wise we cannot do what they want us to do and I was proud that she was able to pull it through and it was very difficult. I remember her meeting with the board members and I am happy at the time Mr Mkhwanazi supporting her and Mr – Ms Bonnie [indistinct] Dr Bonnie [indistinct] supporting her and she did the right thing. All they have done is [indistinct].

ADV SELEKA SC: Yes. But then, Mr Koko, after she was essentially removed as the CFO, as the FD of Eskom in
 10 2015 we see that Regiments is able to partner with McKinsey and do exactly what they sought to do under her tenure which is this funding plan in respect of the corporate plan and that appointment of McKinsey, you signed the letter, McKinsey then partnered with Regiments and Regiments rendered services which, on Ms Mosilo's version, these are services that "we had to go to Eskom officials to help us do this funding plan." That is Regiments.

On the other hand, McKinsey official says "we had
 20 not been contracted before to do corporate – or the funding plan for the corporate plan. Eskom's officials had done it all the time." So they had the capacity to do it. But here under your watch, with Mr Singh, Regiments gets the contract. How do you explain that to the Chairperson?

MR KOKO: Chairman, I am glad this question is raised.

Mr Seleka says “under your watch” Regiments got a contract with Eskom. Chairman, on the 29 June 2015 NERSA made a determination to reject the Eskom application for what we called a selectively opener. I said previously when I was here that up to that time the business plan, that Mr Seleka is talking about, was based on what we call a cost reflective tariff and all what it meant is that Eskom will have a wish list, that wish list will be translated into cost and all those costs will be covered by
10 the tariff, the cost reflective tariff, that is a business plan that Mr Seleka is talking of.

Post 28 June 2015 when NERSA rejected a selectively opener of 52.8, Chairman I even – I brought the announcement for NERSA because if Mr Seleka did not raise it, I was going to raise it, that is part of my story and my counsel has it as well.

Eskom could not rely on the tariff to cover its wishes. So we needed a mindset change that says instead of a corporate plan that is based on a cost reflective tariff,
20 we need a corporate plan that is based on the design to cost and that cost is the cost that NERSA gives us. It is a big [indistinct], Chair. It says Eskom, forget what you want, man, forget your wish list, the regulator gave you the cost, design your operations within that cost. Eskom has never done that. So whoever says Eskom people are

capable of doing that, is just – it is not supported by the evidence. So we, prior to that ...[intervenes]

CHAIRPERSON: So there was a new way of doing things.

MR KOKO: Exactly.

CHAIRPERSON: As dictated by the regulator.

MR KOKO: Exactly.

CHAIRPERSON: And previously things had been done differently.

MR KOKO: Yes. You know, it is like your son coming –
10 my son coming back from school, says I want this, I want
this, I want that, and then I come back and say you know
what, [indistinct], my son is [indistinct], I used to work for
Eskom, Eskom used to pay handsomely, you could afford to
go to Dubai with your mom, this time you can only go
Swaziland because I do not work, you are going to have to
live within that constraint.

It was a painful process and let me tell you, there
was a big, big push back from Eskom because Eskom
people – Eskom mindset, you see it even today, Eskom
20 mindset is there – and Chairman, the Optimum proposal,
that Mr Seleka is so passionate about, will present its
opportunity to deal with it.

Eskom is my – I guess it is always [indistinct], we
are a government-owned entity, we can take the Optimum
proposal, however expensive it is, government will fight

with us but ultimately they will bail us out. Government will always bail us out, government has always bailed us out.

You know, there is a case now – and Chairman, this is where I get upset and there is a case now similar to Optimum, similar to Glencore, it is called South32, South32 is now Seriti. They go to Eskom, they have got the same fixed price contract over 40 years.

Now they go to Eskom and they have learnt from
10 Seriti – they have learnt from Optimum. They go to Optimum and say we are in hardship and we want to increase our costs from R2.66 per ton to R550 per ton over the life of the contract and the numbers that I read in the newspapers is that it is going to cost Eskom an additional R40 billion and Eskom is saying we must do it.

National Treasury says you cannot do it. So National Treasury is becoming the Koko over time. So the problem with Eskom today and the problem with the team that Mr Seleka is talking about is that they worked on the
20 basis that says listen – you know, it is a matter of time, they will get angry, they will insult us but when they [indistinct] and they see the lights going off they will bail us out. I came back from suspension, I got the message very clear. Chairman ...[intervenes]

ADV SELEKA SC: Can we deal with that later, Mr Koko?

MR KOKO: No, no, no, we cannot, this is at the heart of it because they corporate plan, all what the corporate plan meant was go and design your operations to fit to the cost of NERSA. So there was a need, one.

Two – and Chairman, my counsel also brought the minutes and we will not go home, we will even sleep here until you look at those minutes of the 26 February 2015 that deals with the financial position of Eskom.

We will also look at the minutes of the 22 July
10 2015. I know them, I lived them, I managed them, they are on my fingertips. We then had to contract McKinsey who have been developing this on the sidebar and do this on the - in the centre line. We contracted with McKinsey. We did not contract with Regiments.

So I take exception that Mr Seleka has put to me that “under your watch you contracted with Regiments.” I did not contract with Regiments, I contracted with McKinsey. I put a requirement to McKinsey that 30% of your work must be on a BEE partner.

20 At that point the letter that I signed, again on the 29 September 2015, did not say to McKinsey I am contracting to you, the 30% must be Regiments. It did not. It could have been [indistinct] Regiments.

CHAIRPERSON: Well, I am not sure that I understand why the Eskom team that had always worked on the basis

of what you referred to as wish list, why if they had the right technical qualifications and materials they would not be able to work on the basis of a certain cost determined by the regulator to say this is the cost. Whatever you do you must know this is the cost. Are you able to throw light on that?

MR KOKO: Yes, yes. It is a legacy issue. Eskom – there is a monster called electricity pricing policy. The electricity pricing policy says that Eskom costs have to
10 migrate to a cost reflective tariff.

I think they give time over five years. Now, the Eskom people have taken that to heart and they would resist anything that deviates to the electricity pricing policy. So when you go to them and say guys, here is the MIPD3.

The MIPD3, we had to – requested revenue of R1.1 trillion. NERSA has granted us R885 billion of that R1.1 trillion. We are now short R225 billion.

So ordinarily if we assume that we have a very
20 competent regulator, the regulator has competently decided that we must leave over the MIPD3 period with R885 billion and not R1.1 trillion. The pick push within Eskom, it says NERSA is mad. NERSA is mad, we will rather go to court, if needs be.

And you have that big pushback and I used to say

to Brian and others that, you know, one of the things we needed was external person who has not grown within Eskom but technically was competent to say guys, we have a regulator.

The regulator is competent, the regulator is looking at the interests of the consumer and the interests of Eskom. He has looked at our wish list, has listened to the consumers, has made a decision. Have a mindset change, change, you smell the coffee. Chair ...[intervenes]

10 **CHAIRPERSON**: So it was a question of mindset.

MR KOKO: It is a mindset, Chair.

CHAIRPERSON: So you are saying that they were too used to doing things in a certain way and that had resulted in a certain mindset which would have made it difficult for them to address – to deal with this post the regulator's determination properly.

MR KOKO: Exactly. And we did not have time, Chair. Remember that we had to – we had to submit the business plan in February 2016 and the board meeting that took that
20 decision was on the 22 July. And we had to do all that and submit the business plan by February. We just did not have the time.

The Eskom people, once you - you know, the term I used at Eskom, once you become unreasonable with them, eventually they see the light, eventually they see the light.

CHAIRPERSON: Oh.

MR KOKO: That this business is not going to change.

CHAIRPERSON: Okay. We are at twenty five past, do you want to use the last five minutes and then we take the tea break?

ADV SELEKA SC: Indeed, Chair, that was going to be my proposal.

MR KOKO: So, Chair, I take exception that I contracted with Regiments under my watch. I object to that. I
10 contracted with McKinsey and I did not tell McKinsey who they must bring. They could have easily brought in Letsema, they could have easily brought in anybody.

CHAIRPERSON: Ja, I do not think Mr Seleka said you contracted with Regiments, I think he still said you contracted with McKinsey but why must I speak for him?

ADV SELEKA SC: Yes, Chair, thank you. The fact of the matter is your appointment of McKinsey, Mr Koko, that
20 appointment ultimately led to McKinsey bringing Regiments on board. I have got two more questions for you and then we move on.

One, arises from that list you were talking about, you and Ms Suzanne Daniels and Chair, I want us to quickly go there.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because Mr Koko has said his

handwriting is – I mean, that is his handwriting on that list and that is Eskom bundle 8(a) on page 87.88 and Mr Koko, can I explain because I do not know the basis on which you I am passionate about the Optimum proposal and you taking exceptions to some of the questions put to you.

The questions are meant to give the opportunity to respond to what appears from the evidence to be what took place. Sorry? 87.88.

CHAIRPERSON: Well, I think we must just take the tea
10 break. Ja, because he is taking long to – let us take the tea break, we will deal with the questions when we come back. It is now half past, so it has taken five minutes. So they can look for the right page during the tea break. So when we come back you can then pose the question.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Let us take the tea break, we will resume at quarter to twelve.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let's continue.

ADV SELEKA SC: Thank you Chairperson. Yes, Chairperson just before we adjourned, I was referring to page 87.88 on that Eskom bundle, page Mr Koko.

Just maybe one question Mr Koko from this, against the project, named Project Elibra Angelo there is a handwriting there “we could buy”, since it’s your handwriting, maybe you can help us there. Then there’s TBC and the handwriting again it says, “give me a fixed price I give you the partner”, could you explain to the Chairperson what you meant about this, and to whom was this statement directed.

MR KOKO: Excellent. Chair I - for one of my CV’s I did a
10 concept design that cited Kusile ...[indistinct] so when our grandchildren grow up, they will be told it was Mr Koko who decided, amongst others that that power station is cited there. And there was a reason for that, and that reason was no different to the – what Eskom has done in the past. You look for where the coal is, you find the coal and that’s where you build the power station and then you build a power station, you build a mine, you put a conveyor you transport the coal via the conveyor, it’s always cheaper to put coal on a conveyor than to put on the road. That is the
20 only reason why Kusile is there. The coal field that is there was owned by Anglo American, it was called New Largo. One of the mistakes we did, and there’s a reason for that but it’s not for this purpose, was that we build a power station before the mine was there. That, you normally don’t do, normally you complete the mine and

then you build a power station and the power station was built and then we started the discussions to develop the mine and one of the discussions Ms Daniels brought to me was the development of New Largo and there were prior discussions with Mr Marukane who was doing the job before me and Minister Gigaba, they were prolonged and basically there was nothing happening but this note was saying to – well before I go to the next, then we have an industry that we developed in 2008 on the basis of the
10 2008 coal mandate which we'll come to when we deal with it later. We had 2000 trucks on the road, two problems with them they were very expensive, and they were killing people on the road. The fatalities of non Eskom employees on the road was just too high and they were just too expensive, so we started building a line, we call it a ...[indistinct] line and it was under the project called, "road to rail migration strategy". So, we were building a railroad to our – to Majuba and we were removing – and the plan was that once that rail is removed, we will remove the
20 trucks from the road to rail. Now, here is the issue that was pertinent at this time. What do we do with the coal truckers, 2000 a day of them once we are finished with this line? We have created this industry we need to just transition, that's the term I used, we adjust transition that we build the rail we put coal on the rail, but we find

something to do for these coal truckers which had organised themselves under an organisation, they call it, TCF Coal Transportation Forum...[intervenes].

CHAIRPERSON: Now, the truckers, was – did that refer to the owners of the trucks or the drivers or the workers...[intervenes].

MR KOKO: No, the owners of the trucks, the owners.

CHAIRPERSON: The owners, okay.

MR KOKO: So, now when Ms Daniel came to me with New
10 Largo, she wanted to do a cost plus mine like we've done
with others, I said, no, not a chance, not in my time. You
know, I listened to Mr Clinton Ephron taking you for a ride,
you know it's amazing when you don't come from this
industry how people who are the benefactors take you for a
ride, trying to justify to you that the cost plus mines, in
today's terms are the best for Eskom. In my affidavit,
when I wrote my affidavit, I was saying to my wife, I'm
writing a thesis in my affidavit", so that people – the
engineers that are starting to work at Eskom today, when
20 they lay their hands on my affidavit it's a thesis for them, I
write a lot, I like writing they must learn something out of
it. So, I devoted a chapter and a verse in my main affidavit
about the value of cost plus mine and a fixed plus mine.
That a fixed plus mine only makes sense in that time when
Eskom's sovereignty was – in a time when

Eskom...[indistinct] was better than the sovereign vetting and Eskom cost of capital was cheaper. So, Eskom can then raise capital and build a mine, it made sense then. I can tell you now, Chair, there will not be another cost plus mine, they will never ...[intervenes].

CHAIRPERSON: Because it will be more expensive?

MR KOKO: Because it will be more expensive. The people who say to you, cost plus mines are better are the Clinton Ephron's because they're the benefactors, it's the
10 Executives, they are the benefactors but let me tell you, whether they like it or not, the economics will dictate, Eskom will never have another cost plus mine and this is the note here. I'm saying to Suzanne, give me a fixed price we're not doing any cost plus mine here. The only time, Eskom will do New Largo is not on a cost plus mine it's on a fixed plus but go and tell Anglo we'll give them a partner, we'll give them a partner and we will follow the process but that partner will be those 2000 truck owners that are driving our – that we have on the road everyday
20 that we are going to remove once the...[indistinct] are finished, we can't leave them, we can't leave them on the streets, we have to create - I mean there were 2000 truck drivers a day each driver multiplied by two or three will be about 3000 households plus the owners of the trucks, we can't leave them on the streets. We – and I was really

passionate about this and it collapsed after I left. We are going to take these people, you know I've done the same with Erna ...[indistinct] I'll tell you about Erna.

We're going to take all these truck owners, they must organise themselves into a company and they are going to own New Largo within Anglo American, they are going to be the BEE of New Largo, that's the partner. Just to divert quickly, I've done the same on Arnot and I see in the affidavit of Godjo he writes about it, he doesn't tell the
10 truth. When we closed Arnot and there was a Mooifontein surface right I said to Exxaro, take the former Exxaro employees, put them into a company, let them own the company I will then make sure that they get the contract, they are there now and it's one of the legacy projects I'm proud of. Eskom must just give them the contract, then you've got the employees who work the mine being the owners of the mines, it will be a great pleasure for me to have these 2000 – these owners of 2000 truck drivers being the BEE of Anglo American on a fixed cost mine. So,
20 the question is, who did I direct it to? I directed this to Anglo American, they must give me a fixed price I will give them the partner and the partner will be the owners of the trucks that we will remove. The partner will be the TCF which are the owners of the truck drivers that we will remove on the road when Majuba Rail is fixed.

CHAIRPERSON: Okay just repeat who you directed it to?

MR KOKO: This is directed to Anglo.

CHAIRPERSON: Anglo?

MR KOKO: Anglo.

CHAIRPERSON: Who were the owners of...[intervenues].

MR KOKO: New Largo.

CHAIRPERSON: Ja, okay.

MR KOKO: Yes.

CHAIRPERSON: Okay.

10 **MR KOKO:** You give me a fixed price I will not agree a cost plus mine, you give me a fixed price and I will give you a partner and the partner will be these truck drivers, this industry that I've built that will be redundant, not all of them will be redundant because not all the coal will be going to Majuba but 90% of the coal is going to Majuba. Majuba is a power station that does not have a mine.

ADV SELEKA SC: Thank you Chair. So, Mr Koko, what you are telling the Chairperson is that you would give a BEE partner to Anglo?

20 **MR KOKO:** Correct.

ADV SELEKA SC: I thought that's something you don't do, I couldn't hear your evidence earlier?

MR KOKO: Chair, we don't do it, we generally don't do it. In my lifetime at Eskom, there were two instances in my 25 year life at Eskom – sorry there was only one this would

have been the second one, no this was this first one. The Arnot one was the second one, so we've done it only twice, we will do it only twice and the first one was Arnot, and this will be the second one and there is an operational need for that. I mean, take Arnot for example, Arnot had a coal supplier agreement with Eskom for 40 years for 40 years we had Arnot employees there.

Now, the contact comes to an end, it's not cancelled so you – again you will see in the affidavit of Mr
10 ...[indistinct] it says cancelled, it's not cancelled, 40 years has come, it comes to an end. What do you do with the people that are there that have been part of Arnot for 40 years?

CHAIRPERSON: Well, bearing in mind that these are ISU business people, the truckers.

MR KOKO: Of course.

CHAIRPERSON: Yes, these are business people why should you, as Eskom, decide that they should be partners to a particular transaction to a particular project? Why
20 should they – why should you not allow a situation where they compete with whoever to be partners and then whoever succeeds, succeeds, it could be them it could be somebody else as long as there are justifiable reasons or the one that succeeds, then that's fine?

MR KOKO: Chair, this is not Eskom, this is not just

Eskom.

CHAIRPERSON: Yes.

MR KOKO: So, it is not Eskom. We – if we had to implement this, we'll have to go through the governance process and this type of transaction will need a Section 54 Notice with the National Treasury's approval. So, it would have to be approved along those lines, so Eskom has not made this decision, these are my ideas that I would have to motivate to the Board and finally National Treasury, but I
10 felt that we have an obligation of creating business continuity for this industry that will just collapse.

CHAIRPERSON: But, I would have thought that your approach ought to be, whoever – we can't determine, in advance, who should be the BEE partner okay but all we can do is, insist that there should be a BEE partner but how that BEE partner is selected is none of our business, maybe I'm putting it – not in the best way but as long as – maybe the best that you could do is to alert them that is the truckers, that this is what's going to happen, you might
20 with to put yourselves in a position where you would compete with whoever, if there is to be a partner that will be taken, a BEE partner...[intervenes].

MR KOKO: Chairman that's how we operated.

CHAIRPERSON: Yes.

MR KOKO: That principle we applied. We would resist

imposing BEE partners on any supplier of Eskom, there have been attempts to force us in that direction and it would not fly...[intervenes].

CHAIRPERSON: You rejected that?

MR KOKO: We rejected that we would not do it. The case of New Largo and I'm not talking about Arnot because it will look like a distraction I don't want to look like – you to be distracted, was unique. For some reason and obviously before my time, we created this industry and it
10 was not created out of a competitive environment, there was nothing competitive about it when it was created and on many occasion, we wanted to stop it because it was not even cheap. You may remember, in one State of the Nation address they blocked Pretoria, they have done that twice.

CHAIRPERSON: I seem to remember something in the news and TV...[Intervenes].

MR KOKO: Yes, they've done that twice.

CHAIRPERSON: Ja.

20 **MR KOKO:** One of the fall-out I had with the Primary Energy Group Executive which eventually led to her resign was the manner in which the coal truck transporters were handled because they had the potential of seriously destabilising Eskom's operations, they were a pain and we, at a personal level, had Managing Generation of going to

Managing Generation at that time. I knew that one of the things I have to do quickly was to make sure that the construction of Majuba Rail gets finished as soon as possible and that's close to 14million tons of coal a year and one of my key success factors was to get the Majuba Rail done, it's not done even now by the way it's an indictment it's not done but I did not want – I did not want to spend a lot of time dealing with the after effects of the Majuba Rail with the truckers, I did not want to do that and

10 I – when I was talking to them, and I talk to them, by the way, guys this things – and I started that conversation with them Majuba Rail is going to happen guys, whether you like it or not and there's been toy toying's about Majuba Rail, I say, you can toy toy with Majuba Rail it is a business and it's imperative I am going to do it but there's a silver lining for you. You organise yourself, there's New Largo coming, it's the same industry, you take people, you'll do that. Now, Chair, like I am saying to you, we don't give BEE partnersto Eskom suppliers, we don't do it, but I

20 thought this was exceptional circumstances to shut them up and to give them hope.

CHAIRPERSON: So, you say, this was a deviation from the norm?

MR KOKO: Correct.

CHAIRPERSON: And you say, the justification was that

they could destabilise Eskom's coal?

MR KOKO: Correct.

CHAIRPERSON: H'm, Mr Seleka?

ADV SELEKA SC: Thank you Chair.

MR KOKO: It's said that New Largo is not developed by now by the way it's very sad and I can tell you it's one of the problems why Eskom costs will continue to run away.

CHAIRPERSON: H'm, yes?

ADV SELEKA SC: Was that achieved Mr Koko or is that
10 what you're saying now?

MR KOKO: No, New Largo is not – there's no New Largo, even today.

ADV SELEKA SC: Oh no I'm talking the transaction here, Anglo teaming up with the partner you were suggesting?

MR KOKO: No, Chair. So, a couple of things have not happened.

ADV SELEKA SC: Say again?

MR KOKO: A couple of things have not happened. The
20 Majuba Rail has not happened, New Largo has not happened and there's a stalemate with the trucks now.

ADV SELEKA SC: I was wondering, as you were explaining this, Ms Daniels says the list is yours, you say it's hers and you go further to say, she was the one coming with this proposal of the cost plus mine in regard to that project. Would it have been in her place to do that?

MR KOKO: Of course, yes. Chair, one of Ms Daniels' lies...[intervenes].

ADV SELEKA SC: Can I just say this, so that you can, comprehensively cover the question to the Chairperson. Remember this is the first day of your coming from suspension...[intervenes].

MR KOKO: No, it's not the first day of coming back, that's a lie, it's not...[intervenes].

ADV SELEKA SC: Ja, let me finish, let me finish.

10 According to her evidence this is the first day of your coming from suspension and you have said to the Chairperson that by the time you came back, she no longer reported to you she had been moved to Dr Ngubane's office and it is that context I'm asking you this question, whether it was in her place for you even to entertain what she was – what you say, she was proposing?

MR KOKO: Chair, it wasn't her place. So, one of the things – and I'm just answering directly, and I want to give the Chair - it wasn't her place. To deal with that and to
20 suggest that it was not here, in her place that's when she suggested that I was not her supervisor and if I was not her supervisor then it will not be in her place. Then, she can't give me a document – she can't bring a document for me suggestions from the Chair and the Chair wants feedback and then I will entertain her because I'll tell her,

but you don't work for the Chairman, you work for me, I must be the one talking to the Chair, you don't work for the Chair. That is why she deliberately tried to lie to you and she did that for two reasons, one was to cover up on the info portal address and the second one is this one because if I was her supervisor and she brings these documents I will say, what the hell, what is this and the Chairman must come talk to me if he needs feedback from me but now she's in the office of the Chairman, her supervisor is the
10 Chairman. It's well within her right to say, my boss wants an update on this then I entertain her because it's within her right, within her delegated authority to chase us around and she was doing, exactly that.

ADV SELEKA SC: Yes, sorry Mr Koko, let me check whether I understand you correctly. Are you now saying, Ms Daniels was coming to you with this list from the Chairperson?

MR KOKO: I always said that Chair, I always said that.

CHAIRPERSON: So, you – and by that, what you mean is
20 that, at the time of her coming with this document to you, she was already working in the Chairperson's office?

MR KOKO: Yes.

CHAIRPERSON: Yes, and what was her position in that office again?

MR KOKO: Chairman, she was, either still a Senior

Manager in the Chairman or the company Secretary.

CHAIRPERSON: Ja.

MR KOKO: This conversation happened September/April when I was going to – when it was known that I'm leaving commercial.

CHAIRPERSON: Okay.

ADV SELEKA SC: Well, Chair let me just say, I've never head Mr Koko saying, the list came with Ms Daniels from the Chairperson.

10 **MR KOKO:** Chairman I've always said that go check the transcripts, I've always said that. I said, she brought this to me saying her principals are looking for feedback and her principals is the Board or the Chairman, I've always said that, if you care to go and check...[intervenes].

CHAIRPERSON: Ja, I'm going to check that ja.

MR KOKO: If you go and check the transcripts, you'll find it.

CHAIRPERSON: Ja, h'm.

20 **ADV SELEKA SC:** Ja, because her version is that it is you who said, your principals have asked you to concentrate on this...[intervenes].

MR KOKO: Chair, this matter can be easily resolved by just checking the transcripts.

CHAIRPERSON: H'm no, no I think this last one is Mr Seleka saying what her version is.

MR KOKO: No, I listened to her, I watched her, so I know her.

CHAIRPERSON: Yes.

ADV SELEKA SC: And then...[intervenes].

CHAIRPERSON: Ja, but your junior will try and check or somebody will try and check the transcripts.

ADV SELEKA SC: We will check Mr Koko...[intervenes].

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: And then, Mr Koko there is a name
10 there...[intervenes].

CHAIRPERSON: No, but let's just also get this. You have said, Mr Koko, this document, you didn't make these notes on it on the 20th of July when you came back you say it was in September 2015?

MR KOKO: Correct, Chair.

CHAIRPERSON: Okay, alright.

MR KOKO: Chair, I used the term, September/October.

CHAIRPERSON: Oh September/October okay.

MR KOKO: It's towards – it was known already by that
20 time that I'm going to transition out of commercial to Generation.

CHAIRPERSON: Okay.

MR KOKO: And the basis of this, for me, I understood it but because I'm leaving her principals the Board, or the Chair is looking for feedback.

CHAIRPERSON: H'm.

ADV SELEKA SC: Thank you Chair. Well, my investigator has found a portion – well the transcript where Mr Koko talks about this on the 29th of March 2021. Mr Koko I'll read – that's on page – I'll start on page 181 of that transcript, I start with, I say,

10 “Ja the question is simply this one, you don't deny having a meeting with Ms Daniels in the morning of 20 July, is that correct. Mr Koko says, Chair on the morning of the 2015 I have meetings with all...[intervenes].

CHAIRPERSON: On the morning of?

ADV SELEKA SC: Of the 2015...[intervenes].

CHAIRPERSON: Oh, that's how it's written?

ADV SELEKA SC: That's how it's written.

CHAIRPERSON: Okay, okay.

20 **ADV SELEKA SC:** “I have meetings with almost all my direct reports so I will not deny that I met Ms Daniels on that day. I will not deny I met, I made a point that I need all my direct and by the way, Ms Daniels was not my direct report on that day, but I will not deny having met her she was very important in my work, that I will not deny having that. Yes, then it's me, yes, you have said you got that list I'm talking about with the transactions, McKinsey being

one of them, online vending being one of the, Duvha Three with the amounts you say, you got it from her, Mr Koko says correct. Then I say, she said it was your list, Mr Koko says, no Chair I got it from her, and I can tell you now it was, even if I met Suzanne, I don't deny meeting her on that day, in fact I'll be very surprised if I did not meet her on that day. So, for all intents and purposes you can proceed on the basis that I met. It's unlikely that I could not have met her, I just – so let's proceed on that basis Chair. Mr Koko, he carries on, that one pager that we are talking about never arose on that day that one pager arose in the second half of October when I was about to leave my job as a Group Procurement Officer. Then I say, yes, and you know that she has given evidence by way of a supplementary submission to the Parliamentary Portfolio Committee on this very aspect. Mr Koko says, yes, I do, and I carry on to say, and her version was, you said the list is of transactions that your principals say that you must focus on. So again, I put her version to you and Mr Koko says, she said that at the Parliament, I think she said it here too. And your comment on that, Mr Koko says, it's nonsense Chair, that I can tell you that's blatant

nonsense and then I said but you admitted that the handwriting on that list is yours, that's correct Chair, that's Mr Koko. I say, when she was here last time around, she mentioned that, then there was an intervention there".

I know I've gone through the transcript, I haven't – well I may be mistaken but I haven't come across that she came with it from the Chairperson.

CHAIRPERSON: Well, there is a part you read earlier on
10 where Mr Koko was saying she was not heard direct – I can't remember what word ...[intervenes]

MR KOKO: Yes, a direct report.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Which may suggest that he was saying she was not under her – under him at the time. There was that part I do not know –

ADV SELEKA SC: Yes it is.

CHAIRPERSON: If you want to go back to that part.

20 **ADV SELEKA SC:** Yes. Mr Koko says:

"I met Ms Daniels on that day. I will not deny I met; made a point that I will meet all my direct and by the way Ms Daniels was not my direct report on that day."

CHAIRPERSON: That is what you meant?

MR KOKO: That is my point Chair.

CHAIRPERSON: Yes, ja. You might not – from what has – what has been read might not include any statement that she was already in the chairperson’s office but..

MR KOKO: Yes

CHAIRPERSON: There is the part which says she was not reporting to me.

MR KOKO: That is exactly.

CHAIRPERSON: Ja.

MR KOKO: That is what I – it is – I have consistently said
10 that.

CHAIRPERSON: Ja. Okay. Of course the – the one thing which emerges from that and I just want you to comment because maybe we can get it out of the way now is that whereas now you were saying it must have been about September – October when she came to you with this document what was read there seems to suggest that you were saying that it can be taken that you met her if regard to this document on the 30th of July.

MR KOKO: No, no, no Chair.

20 **CHAIRPERSON:** That was my impression.

MR KOKO: No, no it is very clear there it says October.

CHAIRPERSON: Huh-uh is – was that your impression? I am –

MR KOKO: Chair if you can – then he must read again. He must read again. It clearly says October.

CHAIRPERSON: Just read – read again. I – I know that there might be reference to later but I thought most of the time.

ADV SELEKA SC: Yes.

CHAIRPERSON: It was a response to what Mr Seleka said namely that Ms Daniels says she met you on the 20th of July and from what he was reading that is Mr Seleka it seems that you were saying you will not deny that you met on that day or something like that.

10 **MR KOKO:** Chair – Chair it is – it is quite simple.

CHAIRPERSON: Ja.

MR KOKO: I am saying to you – I am saying in the transcripts I cannot remember that I met Ms Daniels on the 20th but she was so important to me that it is unlikely.

CHAIRPERSON: Ja.

MR KOKO: That I did not have that meeting.

CHAIRPERSON: Ja.

MR KOKO: So let us proceed on the basis that I have met her.

20 **CHAIRPERSON:** Yes, ja you say that ja.

MR KOKO: I cannot imagine that I have not met her.

CHAIRPERSON: Yes.

MR KOKO: But I am also saying on that day she was not my direct report.

CHAIRPERSON: You do say so.

MR KOKO: But I am also saying in no ambiguous terms she must – Mr Seleka must read again.

CHAIRPERSON: Ja.

MR KOKO: That list came to me October.

CHAIRPERSON: Yes.

MR KOKO: And the reason I am mentioning October I am trying to – it is a time stamp for me when I leave. I am saying I have just said to you earlier it is September/October because that is when I was leaving. She – can he please
10 read it Chair so that we put this to bed.

CHAIRPERSON: Yes. If – if his understanding is the same as yours it might not be necessary. Is your understanding the same as Mr Koko's?

ADV SELEKA SC: Yes Chair to – to some extent correct.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because I put to him Ms Daniels version.

CHAIRPERSON: Yes.

ADV SELEKA SC: Which is that there was a meeting in the morning of 20 July 2015 when according to her version she
20 saw the list Mr Koko holding and left it on the desk when he was called by Mr Molefe. He then sec – she then secretly made a copy and kept one. So all that according to her is 20 July 2015 the first day of Mr Koko.

Mr Koko then admits the meeting and we should proceed on that basis but later says in the answering that

the one pager arose in the second half of October.

CHAIRPERSON: Is this the one pager?

ADV SELEKA SC: This is the one pager.

MR KOKO: Yes.

CHAIRPERSON: Oh okay maybe I may have confused that when we were talking about – when you referring to a one pager I think I was thinking of another document that we have dealt with.

MR KOKO: No Chair this – this.

10 **CHAIRPERSON:** Under Eskom. This is the same document?

ADV SELEKA SC: This is the same.

MR KOKO: This was the document that was before you when I was answering that question.

CHAIRPERSON: Yes. Yes. No, no that is fine. I think you both should remember another document or was it?

ADV SELEKA SC: The two pager that one.

CHAIRPERSON: Oh that was a two pager.

ADV SELEKA SC: That is a two pager.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** That is in December Chair.

CHAIRPERSON: Okay alright.

MR KOKO: That is the 10th of December.

CHAIRPERSON: Ja.

MR KOKO: 10th of December.

CHAIRPERSON: No, no that is alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Let us continue.

ADV SELEKA SC: Then Mr...

MR KOKO: You know there are things you cannot forget in this commission and you know one of them is the 19th of February letter.

CHAIRPERSON: Ja no the 19th of February letter. Ja is you see – you see Mr Koko I can see you – you listened – you listen and watch even when you are not giving evidence.

10 **ADV SELEKA SC:** He is studiously watching Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Koko then there is a name there. On the left hand margin towards the bottom.

MR KOKO: Zestilor.

ADV SELEKA SC: Zestilor ja – Zestilor which we understood from Ms Daniels that it has been widely reported to be a company where Mr Salim Essa's wife is a shareholder. You could maybe enlighten the Chairperson.

20 **MR KOKO:** Yes I had that affidavit. I was listening. Chair when I do not remember the – what was this about I do not know Zestilor Zestilor – I believe it is Zestilor. I want to – (inaudible). I do not have

CHAIRPERSON: But is it your handwriting?

MR KOKO: It is my writing yes.

CHAIRPERSON: Oh but you just cannot remember.

MR KOKO: No I cannot remember but remember Chair what is in here was a two way conver – was a record out of a two way conversation so I do not – I mean this – I think I do not even remember why I wrote stop paying T-Guys I do not know what.

CHAIRPERSON: Well somebody I do not know if it was you but somebody or was it Ms Daniels who said T-Guys may have been T-Systems.

ADV SELEKA SC: Oh is that where you are now Chair?

10 **CHAIRPERSON**: Huh?

ADV SELEKA SC: Is that where the Chair is – that was my next question.

CHAIRPERSON: No, no I am – I know I am in the same page what you called the one pager but you see at the – there it is written stop paying T-Guys.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is what Mr Koko is referring to.

ADV SELEKA SC: Yes.

MR KOKO: Yes.

20 **CHAIRPERSON**: He says he cannot remember what that was about so I am saying to him I think somebody has given evidence saying if I recall correctly that T-Guys may have been a reference to T-Systems.

ADV SELEKA SC: Yes.

MR KOKO: Ja. So – so...

ADV SELEKA SC: But has Mr Koko now finished addressing Zestilor?

MR KOKO: Yes, yes.

ADV SELEKA SC: Oh.

CHAIRPERSON: Ja he – ja he says

ADV SELEKA SC: He cannot remember.

CHAIRPERSON: It is his handwriting but he cannot remember and I think he says he does not know the entity.

MR KOKO: I do not – I do not know the entity and I cannot
10 remember why ...

CHAIRPERSON: Ja why you wrote that.

ADV SELEKA SC: Okay. Then they are still paying T-Guys yes, no the Chairperson is correct the recollection is correct that Ms Daniels said the – this referred to T-Systems.

CHAIRPERSON: Ja. She may – she may have put it

ADV SELEKA SC: In a speculative.

CHAIRPERSON: Not – ja – not so

ADV SELEKA SC: In a speculative manner.

CHAIRPERSON: Not so confidently she might ja – she may
20 have speculated that it could be T-Systems.

MR KOKO: Chair we never had a plain dispute with T-Systems.

CHAIRPERSON: Yes.

MR KOKO: We never had any dispute of payment with T-Systems.

CHAIRPERSON: So you do not understand why – and is that the one also your handwriting?

MR KOKO: It is my handwriting on this F at the bottom I do not know what that means

CHAIRPERSON: What that F means.

MR KOKO: What that F means.

ADV SELEKA SC: But we can ask a direct question Mr Koko who did you have in mind as T-Guys stop paying T-Guys.

MR KOKO: No I am saying I do not know – I do not
10 remember who they are. All what I am telling you is that if it is T-Systems ...

CHAIRPERSON: It would not make sense.

MR KOKO: It will not make sense because – and then this is...

CHAIRPERSON: You never had a pay dispute with them

MR KOKO: And this is something you can go back and check in the – based on records we never had a dispute with T-Systems.

CHAIRPERSON: Ja. Yes Mr Seleka.

20 **ADV SELEKA SC:** Yes. Chair we traversed this page last.

CHAIRPERSON: Ja, no we must not ..

ADV SELEKA SC: I want to – I want to move on.

CHAIRPERSON: We must not repeat ja.

ADV SELEKA SC: Because – ja. Mr Koko lastly on the Corporate Plan ...

MR KOKO: No before you – you go there Chair. Mr Seleka made song and dance about ...

ADV SELEKA SC: But Chair can I say...

MR KOKO: I apologise.

ADV SELEKA SC: The – the qualifications that I am passionate about something.

MR KOKO: I – I apologise Chair but I have to deal with this. I have to

ADV SELEKA SC: Chair.

10 **MR KOKO:** Chair I take it back.

CHAIRPERSON: Well Mr Seleka.

MR KOKO: I take it back.

CHAIRPERSON: He is apologising now.

ADV SELEKA SC: Yes.

MR KOKO: I take it back.

CHAIRPERSON: But – but I think...

MR KOKO: If it will help us move a little bit...

CHAIRPERSON: I think – I think some of the gabs – some of the gabs are meant to try and –

20 **MR KOKO:** Ja (inaudible).

CHAIRPERSON: And – and in “deal with you “

MR KOKO: I meant no harm Chair. I meant no harm.

ADV SELEKA SC: Apology accepted.

CHAIRPERSON: Ja.

MR KOKO: Chair the – the online vending

CHAIRPERSON: Hm.

MR KOKO: This commission has dealt with it for a long time and I have taken it seriously and I went to dig out the minutes. You will remember it is one of the emails that I have sent to Dr Ngubane that he is denying and I know exactly what was going on there and I have said to you we had a commercial process that we ran – that was untainted. It started before I was suspended and when I came back unbeknown to me but I was briefed by my predecessor that
10 there was a proposal from Blue Label. Now in hindsight the CEO of Blue Label was the board member of 00:11:00

ADV SELEKA SC: It was Mark Pamensky.

MR KOKO: Mark – Mr Mark Pamensky and I always qualify Chair that I do not suggest any form or level of impropriety Chair facing Mark Pamensky so please understand me. I just find it an interesting coincident that they had decided that they will be the Master Vendor and they will pay Eskom upfront and we must dispense of the process that we rendered that was untainted. And my meeting with Mr – with
20 Dr Ngubane was said you cannot do it. You just cannot do it. And – and I – I suggested to you that if I was doing the bidding for the Gupta's I would make sure it happens. I have brought the minutes of the board of February 2016 it clearly says there was change in strategy. That change in strategy is still not complete and the best the board could do when

the contract was to expand it by – to extend the existing contracts by a year to allow the board to sort out their new strategy that I refused to accept. I told them you have to see those minutes Chair.

Now and I am saying –

CHAIRPERSON: Ja, no, no that is fine.

MR KOKO: I am saying to you that is not consistent with the behaviour of somebody doing the bidding for an external party. That is just not consistent and the – what – and what
10 I always try to address you on Chair is that there are rumours and there is evidence. Please be persuaded by the documentary evidence before you - when you finally make up your decision. There is too many rumours. I have heard many rumours.

CHAIRPERSON: No, no.

MR KOKO: The documentary evidence must be the overriding issue.

CHAIRPERSON: No that is fine. Two things. You spoke earlier – much earlier when we were started about among
20 other things Mr Abram Masango I forgot to mention to you that I have asked the legal team to arrange for Mr Masango to come back so that he can give evidence but also he can be questioned about that meeting that you talked about. The meeting that I think – is it Ms Goodson or Ms Mothepu?

ADV SELEKA SC: Goodson. Goodson Chair.

CHAIRPERSON: It is Goodson ja so I just wanted to make – say that I have said that should be done. Number 1.

Number 2 I was going to say earlier on and I did not that I remember that last time among other things you mentioned a number of things maybe three – maybe four I am not sure which you said support which you said are inconsistent with the idea that you were doing the bidding of the Gupta's or Salim Essa.

MR KOKO: Correct.

10 **CHAIRPERSON:** To the board. So you have mentioned one of them now. If at all possible I would like you to mention those in a – in a supplementary affidavit or document just say here are these things that I said are not consistent with me having been doing the bidding or whatever. It is just that it will be convenient. I know it will be in the transcript but if you can do that I would appreciate it.

MR KOKO: Chairman I will – I will do that.

CHAIRPERSON: Ja okay.

MR KOKO: But the MSA is one of them.

20 **CHAIRPERSON:** Okay alright.

MR KOKO: It is always –

CHAIRPERSON: But what you ...

MR KOKO: If I was doing the bidding for Mr Essa for the MSA.

CHAIRPERSON: Ja.

MR KOKO: I would not have said to Dr Ngubane.

CHAIRPERSON: Ja.

MR KOKO: We will not have this contract unless we get National Treasury's approval otherwise we will do it on the fixed 00:15:15 it does not happen.

CHAIRPERSON: Yes I think the other one who you said was – was this – at instruction maybe in inverted commas.

MR KOKO: To boycott Sunday Times.

CHAIRPERSON: About the newspapers.

10 **MR KOKO:** Yes.

CHAIRPERSON: City Press, Mail & Guardian

MR KOKO: It did.

CHAIRPERSON: So put an affidavit ...

MR KOKO: It did not – it did not happen because I said I will not do it.

CHAIRPERSON: Ja that is what – that is what you mentioned so put – do an affidavit and say here are the things that are inconsistent with this idea that I was doing the bidding for the Gupta's or Salim Essa and then
20 substantiate as much as you – you are able to. Let us have that as a separate document.

MR KOKO: And just to say – just for something that is controversial.

CHAIRPERSON: Hm.

MR KOKO: We could have done these things and I could

have made sure that they are done legally if I was doing the bidding for them.

CHAIRPERSON: Hm.

MR KOKO: Because I was – I would bring my team in I say we do this thing legally. I – never do such a thing I would never clean up the mess.

CHAIRPERSON: Ja. Okay alright.

MR KOKO: Ja.

ADV SELEKA SC: Thank you Chair. Mr Koko just two
10 things and I want to move away from the Corporate Plan. So we have the evidence of Ms Mothepu.

CHAIRPERSON: Oh okay I think – for some reason in my ears that came wrongly. You said you wanted to move away from the Corporate Plan sounded like you were saying you were moving away from the Koko Plan. Okay alright.

ADV SELEKA SC: Certainly from behind Chair. We have the evidence of Ms Mothepu Mr Koko who says

“Regiments had to...”

CHAIRPERSON: Do I keep Bundle 8?

20 **ADV SELEKA SC:** Let us – let us move it – move it away
Chair.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Ja. Thank you. Thank you.

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Ja. It is – the evidence of Ms Mothepu

who says:

“Mr Anoj Singh had requested this funding plan to be done over the weekend. They did one he then rejected it and they had to turn to Eskom Treasury specifically Mr Andre Pillay to help them produce this funding plan. Mr Singh has also accepted I can use the word conceded before the commission also that the funding plan was a product.”

10 **CHAIRPERSON**: Sorry Mr Koko have you got the right file in front of you? Are you looking for the right file?

ADV SELEKA SC: No, no he is not...

ADV SELEKA SC: He was putting away now.

MR KOKO: I was just putting away the file.

CHAIRPERSON: Okay. He does not need any file in front of him?

ADV SELEKA SC: No Chair.

MR KOKO: Not now

ADV SELEKA SC: Not now Chair.

20 **CHAIRPERSON**: Now why do I need to have one then?

ADV SELEKA SC: Not now Chair.

CHAIRPERSON: Okay continue.

ADV SELEKA SC: Chair we need to finish the evidence of Mr Koko.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: So Ms – Mr Singh has also accepted to the Chairperson that the funding plan was a product of collaboration between the Eskom Treasury and the officials of Regiments. Do you have any comment on that – that Eskom Treasury played a part if you take Ms Masilo's evidence a significant part in the final product in respect of the funding plan?

MR KOKO: Chair I have no personal knowledge of that but I will be very surprised if the Eskom Treasury was not
10 involved. It would be a – an anomaly.

ADV SELEKA SC: Thank you. And you are aware that Regiments was paid R30.6 million for working on that funding plan?

MR KOKO: Chairman I am aware that the invoice came to me and I refused to pay. I have – even before the commission read on the newspapers that it was indeed paid.

ADV SELEKA SC: Yes. Could you have done anything beyond just...

CHAIRPERSON: Just – but I am sorry you said Regiments
20 was paid?

MR KOKO: No Trillian – no, no, no.

CHAIRPERSON: Trillian yes. Trillian.

MR KOKO: Can I – can I rephrase?

CHAIRPERSON: Ja.

ADV SELEKA SC: No that is fine.

CHAIRPERSON: Ja but you started with Mr Seleka.

ADV SELEKA SC: Ja.

MR KOKO: No Trillian was paid.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

MR KOKO: For the work that was allegedly done by Regiments.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** You are correct. Could you have done something more than just refusing to authorise the payment? Could you have stopped based on your explanation to the Chairperson of the reason why you refused Mr Goodson's request that but we did not have a contract with Trillian could you have actually gone ahead to stop that payment from being made?

MR KOKO: No.

ADV SELEKA SC: And what is the reason?

20 **MR KOKO:** No so – so the way Eskom works Chair and again I have made this plea to you to go and get I called it a policy in Eskom and called it Managing Contracts Insep. There is another one I would add to that it is called Accounts Payable Policy that is an Eskom policy.

And the Eskom – both those documents were saying

...

CHAIRPERSON: Just one second. What I have been asking the legal team to get and I think that arises mainly from Mr – arose mainly from Mr Singh's evidence but it might be connected with what you may have said previously also was I said a document – an Eskom document that would explain who has what responsibilities in the process that leads to payment of invoices.

MR KOKO: Yes. Ja and those are the two documents I am (Talking over one another).

10 **CHAIRPERSON:** Those are the two documents.

MR KOKO: Yes.

CHAIRPERSON: The one is saying.

MR KOKO: Managing Contracts Insep.

CHAIRPERSON: Managing Contracts.

MR KOKO: And Accounts Payable Policy.

CHAIRPERSON: Yes okay. I know that you told me that you have received one of the documents but I do not know if that is what it is called.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** One of these.

ADV SELEKA SC: The Accounts Payable we have received it.

CHAIRPERSON: We have got that. Yes.

ADV SELEKA SC: And unfortunately we received – is it a statement or affidavit.

CHAIRPERSON: Ja.

ADV SELEKA SC: From an Eskom official in the wee hours of this morning.

CHAIRPERSON: Yes okay.

ADV SELEKA SC: So we have not shared it with Mr Koko.

CHAIRPERSON: Ja.

ADV SELEKA SC: So Accounts Payable is there and the Supply Chain Management Policy.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** Which is the 1034.

MR KOKO: The 1034 yes.

ADV SELEKA SC: 1034.

CHAIRPERSON: Yes.

ADV SELEKA SC: This...

CHAIRPERSON: The one about Managing Contracts you do not have?

ADV SELEKA SC: No this one we do not have.

CHAIRPERSON: Okay. Try and get that one.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** So you must concede Mr Koko now that when you raise issues they are followed up.

MR KOKO: Chair – Chair they will help but let me tell you what – how they will help.

CHAIRPERSON: Hm.

MR KOKO: Is that people make up stories to condemn and

criminalise people who have complied to the Eskom framework and I do not think it can – it is right and I have said it many times that up to now I have not been accused of not complying with the Eskom governance framework. I have not. Up to now I have complied with the Eskom governance framework and I have acted lawfully and I have – my action – I make decisions that I have took and I will explain to you where prudent policy – where prudent action in the interest of Eskom and I have again Eskom on the 15th of March and
10 again this hurts me and it hurt it my wife too Eskom on the 15th of March called a press conference and for the first time – for the very, very first time make an announcement that ...

ADV SELEKA SC: Mr Koko can I make a plea to you with the Chairperson's permission. I am going to run out time.- we are going to run out of time.

CHAIRPERSON: No, no actually I know you are right Mr Seleka because I interrupted you while you were giving an answer to his question.

MR KOKO: Yes, yes.

20 **CHAIRPERSON:** So I am responsible for this deviation.

MR KOKO: It is fine but let me finish the sentence now.

CHAIRPERSON: Ja.

MR KOKO: Eskom makes an announcement and it is for the very first time Eskom performance was the best in Koko's time since 2010.

CHAIRPERSON: Ja.

MR KOKO: So the challenge you have ...

CHAIRPERSON: Have you told me the challenge?

MR KOKO: Having done

CHAIRPERSON: Mr Koko.

MR KOKO: But here is the point Chair.

CHAIRPERSON: Ja.

MR KOKO: The answer to – to that is – the ..

10 **CHAIRPERSON:** I want you to take you back to his question.

MR KOKO: A – ja – a contract is placed and we call it a 45 number – 45 number please keep that in mind.

CHAIRPERSON: You mentioned that before.

MR KOKO: Yes.

CHAIRPERSON: Yes.

MR KOKO: It is an Eskom jargon to simply say that there is a legitimate contract between me and you quoted 45 number. Then a contract manager is appointed, work gets done, when work is completed a completion certificate ...

20 **CHAIRPERSON:** Yes you – you explained that again. I think let us go back to what was your question?

MR KOKO: No I will answer you – I am answering that because I am not in the loop.

CHAIRPERSON: Yes.

MR KOKO: He has asked me for something.

CHAIRPERSON: But I remember you explaining exactly that.

MR KOKO: Yes. I could have stopped it. I am not in the loop.

CHAIRPERSON: I think you must say there was nothing I could do to stop it.

MR KOKO: There was nothing I could do.

CHAIRPERSON: Ja.

MR KOKO: Because I am not in...

10 **CHAIRPERSON:** If he suggests that there was something you could do he will put it to you.

MR KOKO: Ja – and if I – to the contrary Chair I imposed myself I would have acting out – be acting irregularly.

CHAIRPERSON: Okay.

MR KOKO: And if something happens then when I say he acted irregularly.

CHAIRPERSON: Ja.

MR KOKO: He pretended to be a smart boy but now look so – I could not.

20 **CHAIRPERSON:** Okay.

MR KOKO: I could not have done the...

CHAIRPERSON: The answer is there is nothing more you could do.

MR KOKO: There is nothing more I could have done other than to say no. I have said no twice. Now I cannot stop

people acting fraudulently and Chair we will come back to this and here Mr Seleka is not going to rush me because the last invoice that was paid for McKinsey that was – that came as a motivation on the 17th of February it was paid on the 21st or the 22nd of February have got a very serious problem to me – very, very serious problem.

CHAIRPERSON: Okay no that is fine.

ADV SELEKA SC: Okay.

CHAIRPERSON: Let us continue. From your side Mr Koko
10 make note of matters that he might not cover in his questions that you would want to address.

MR KOKO: Yes.

CHAIRPERSON: So that later on you can (talking over one another).

MR KOKO: But the answer to that is that ...

CHAIRPERSON: Ja you could not have done anymore.

MR KOKO: I could not have done anything.

CHAIRPERSON: Ja okay.

MR KOKO: Other than to say - simply say no.

20 **CHAIRPERSON:** Ja okay.

ADV SELEKA SC: Okay. Okay. Well your elaboration triggered another question because you were saying you cannot – you cannot stop people from acting fraudulently.

MR KOKO: No, no but I – that was a deliberate choice of words maybe an exaggeration but when we get to the invoice

of the 22nd to the invoice that was paid on the 22nd of February 2017.

ADV SELEKA SC: Yes.

MR KOKO: We will deal with that.

ADV SELEKA SC: Let us go – let us go into that Master Services Agreement. So just to lay the ground the Master Services Agreement you say is one of the things you pride yourself in having drawn to the Chairperson's attention that Eskom should not have concluded that agreement because
10 they needed Treasury approval. Correct?

MR KOKO: That is correct Chair.

ADV SELEKA SC: The last time I asked you a question which led us to the emails of Ms Mothepu because I am going to put this to you so that you can address the Chairperson on that and I could go to the documentation if necessary Chair. I do not know whether Ms Mothepu says you were the lead negotiator but what she shows in her emails is that she not only communicated with you by email but that she actually met with you in regard to aspects set
20 out in the emails. That is one.

Chairperson I think they can give you the file which is Eskom Bundle 14.

CHAIRPERSON: Can they remove the one that ...

ADV SELEKA SC: Yes please.

CHAIRPERSON: Bundle – Bundle 14 I have got already.

ADV SELEKA SC: (d) (a) (b)

CHAIRPERSON: Oh brackets – there are brackets. Bracket (c).

ADV SELEKA SC: (c).

CHAIRPERSON: That is the one.

ADV SELEKA SC: Page – page 811. 811.255.

CHAIRPERSON: Okay I am on that page.

ADV SELEKA SC: You are on that page.

CHAIRPERSON: That is the page that was opened in the
10 morning.

ADV SELEKA SC: Okay Chair. Thank you. So I am – I am just going to paint the picture of Mr Koko and

MR KOKO: 2?

CHAIRPERSON: 255.

ADV SELEKA SC: 255.

MR KOKO: I am there Chair.

ADV SELEKA SC: Ja so the point is this – the point is this Mr Koko that – and we see this more prominently from Mr Aziz Laher’s affidavit that despite what you are saying now
20 about the – this contract the MSA that it lacked National Treasury approval for the appointment on a risk basis. That requirement for National Treasury approval had been drawn to your attention and that you called Mr Aziz Lehar to a meeting and you were asking him: But why are you delaying the conclusion of this agreement? And he

explained to you the reasons and you – which is the National Treasury approval. And you said: Well, you were going to get your own opinion.

MR KOKO: I like your gesture. [laughs]

CHAIRPERSON: Let him finish, Mr Koko.

MR KOKO: [laughs]

CHAIRPERSON: I can see you cannot wait. So. [laughs]
But let Mr Seleka finish first.

MR KOKO: Yes.

10 **ADV SELEKA SC**: And that that surprised him because if an opinion was to be sought it would be Eskom Legal that would source an opinion which they ultimately did. They got an opinion from one of my colleagues, Advocate Kennedy. And he gave an opinion that you needed the National Treasury approval. McKinsey went out of its way to get its own counter-opinion. But leave that aside for a moment.

The fact that this requirement was brought to your attention and nonetheless the Eskom officials
20 including yourself went ahead to purportedly conclude the MSA agreement with McKinsey and formed a Steering Committee which you were part of. You attended meetings of that Steering Committee to deal with the services to be rendered under that master services agreement.

So can you explain to the Chairperson why

despite your knowledge of Treasury's lack of approval would you have become part of that process that purported to conclude the agreement and even manage it in the Steering Committee?

MR KOKO: Chairman, I did not have to be – it did not have to be brought to my attention that we needed(?) National Treasury. To the contrary. It is me when I came back who drove the compliance to the National Treasury. And everyone involved in this project will tell you that the
10 one – all the things that you have made – that make me see red was National Treasury non-compliance and I have different reasons ...[intervenes]

CHAIRPERSON: Non-compliance with National Treasury's ...[intervenes]

MR KOKO: Non ...[intervenes]

CHAIRPERSON: ...instructions or ...[intervenes]

MR KOKO: Ja.

CHAIRPERSON: ...directives?

MR KOKO: Yes, yes.

20 **CHAIRPERSON**: Ja.

MR KOKO: Yes. And there is a particular history with National Treasury. I have a ...[intervenes]

CHAIRPERSON: Which you made you to adopt that approach?

MR KOKO: Which made me adopt that approach.

CHAIRPERSON: Ja.

MR KOKO: And I will never take a risk with them.

CHAIRPERSON: H'm. Okay.

MR KOKO: Of course, I had a specific ...[intervenes]

CHAIRPERSON: Experience.

MR KOKO: ...experience with them.

CHAIRPERSON: Ja.

MR KOKO: Which the people in these meetings
...[intervenes]

10 **CHAIRPERSON:** Did not have.

MR KOKO: ...did not have.

CHAIRPERSON: H'm.

MR KOKO: So. And I did not have to be reminded. I
have – I do not know Mr Lehar. I know of him. I do not
recall a person with that nature in my office discussing
this. So I do not know this meeting he is talking about.
Secondly, I would never – and Eskom processes, if you
want to end up on the wrong side of Eskom, is to go to
lawyers directly yourself. Then I can tell you, you are – it
20 is one way south. So I would never ...[intervenes]

CHAIRPERSON: When you say is to go to lawyers
directly, what is the proper ways? To go through the legal
department?

MR KOKO: There is a Delegation of Authority in Eskom.

CHAIRPERSON: Yes.

MR KOKO: Instructions to external lawyers are given to Eskom Legal.

CHAIRPERSON: Okay.

MR KOKO: The corporate – we have got a Corporate Counsel and the Corporate Counsel at that time was Mr Noah Thulango(?)

CHAIRPERSON: H'm.

MR KOKO: So only Mr Noah Thulango briefed ...[intervenes]

10 **CHAIRPERSON:** Outside lawyers.

MR KOKO: ...outside lawyers.

CHAIRPERSON: H'm.

MR KOKO: The affidavit of Mr Mabelane says Mr Thulango briefed the Eskom lawyers as Mr Mabelane and that is the right way to do it. Mr Thulango – and I do not have his affidavit here – will tell you that he never interacted with me. I never gave him a request to brief external lawyers. I never did. In fact, to the contrary. The people involved are very opinion – say a lot about who did
20 what.

So I do not why I am tracked(?) here because the affidavit of Mr Mabelane tells you exactly how lawyers – how external lawyers were briefed. I could not tell Mr Lehar that I will get my own lawyers. I will be dismissed. It does not work that way.

So I do not remember having a meeting with Mr Lehar giving instructions. I saw Mr Lehar's affidavit for the first time in my disciplinary at Eskom in 2013. And I had to Google his name to check his ...[intervenes]

CHAIRPERSON: 2013 ...[intervenes]

MR KOKO: 2018.

CHAIRPERSON: In 2018.

MR KOKO: 2018, I think ...[intervenes]

CHAIRPERSON: Oh, okay.

10 **MR KOKO:** I had to Google his name to see his face because I do not – I never ever in my 23-years – 24-year life interacted with a person called Mr Lehar. He may have interacted with other, Mr Mabelane but me, never. I had never. I can tell you now. And I would never go to source external opinion about it. As a matter of fact, I did not even know of the legal opinion given by your colleague. I never knew about it at the time. I knew about it, I think the first time I came across it was on the Gupta emails. I even never knew about it.

20 **CHAIRPERSON:** Was your question, Mr Seleka, premised on Mr Koko having had knowledge that there was an opinion which said Treasury's required? It was not premised on that?

ADV SELEKA SC: No.

CHAIRPERSON: Oh, okay alright.

ADV SELEKA SC: No, Chair.

CHAIRPERSON: Okay. Anyway.

ADV SELEKA SC: He ...[intervenes]

CHAIRPERSON: He has given an answer.

ADV SELEKA SC: Yes.

CHAIRPERSON: And if you want to take it further ...[intervenes]

ADV SELEKA SC: Yes-no ...[intervenes]

CHAIRPERSON: ...you may, ja.

10 **ADV SELEKA SC:** Indeed, Chair. Because of that answer, Chair. Before we go to the Steering Committee, let us deal with this answer. Chair, in that same file, look at the very beginning of that file.

CHAIRPERSON: The very beginning of the file?

ADV SELEKA SC: The very beginning of this file, Mr Koko. Eskom Bundle ...[intervenes]

CHAIRPERSON: 14.

ADV SELEKA SC: 14.

MR KOKO: Page?

20 **ADV SELEKA SC:** That will be page – right at the beginning.

MR KOKO: I must keep my hand here?

ADV SELEKA SC: Ja, you can do that. That is – you will find in there an affidavit on page 702.235.

MR KOKO: [No audible reply]

ADV SELEKA SC: Right at the beginning. The first ...[intervenes]

MR KOKO: Ja.

ADV SELEKA SC: You ...[intervenes]

CHAIRPERSON: The first is Dr Weiss' statement.

ADV SELEKA SC: Is that ...[intervenes]

CHAIRPERSON: Page 685.

ADV SELEKA SC: Then it means seven – sorry, Chair. 702.235.

10 **MR KOKO:** [Speaker not close to microphone – unclear]

ADV SELEKA SC: Point 235.

CHAIRPERSON: 702.35?

ADV SELEKA SC: 235.

CHAIRPERSON: 235?

ADV SELEKA SC: Point 235, yes.

CHAIRPERSON: Okay. Yes, that is the affidavit of Mr Abdul Aziz Laher.

ADV SELEKA SC: Laher.

CHAIRPERSON: Yes ...[intervenes]

20 **ADV SELEKA SC:** And in paragraph 1.1, he says:

“I am an adult male employed by Eskom Holdings, the Senior Manager heading of the Group Compliance Office based on the Corporate Head Office at Megawatt Park...”

Chairperson, then – Mr Koko also – please turn

to – and I am trying to cut to the chase. Please turn to page 702.264.

MR KOKO: [No audible reply]

ADV SELEKA SC: At paragraph 10.30, you see ...[intervenes]

MR KOKO: [Speaker not close to microphone – unclear]

ADV SELEKA SC: Ja, 702.264.

MR KOKO: [Speaker not close to microphone – unclear]

ADV SELEKA SC: Yes. Paragraph 10.30. Chair, he is
10 given the background and Chair will read which leads up to
this. That around that time, between 21 to 30
October 2015, date not certain:

“I was summonsed to Mr Koko’s office where a meeting was in progress involving Mr Koko, Mr Mabelane, Mr Govender, Mr Vicus Sagar and Mr Alexander Weiss, the last two being partners of McKinsey.

Mr Koko asked me to explain why I was holding up his business with my view that the
20 deviation application was required or he used words to that effect and that he wanted the matter to be resolved by the end of the day.

I explained the limitations in the 2014 instruction regarding how consultations could be consultants, could be remunerated and that

the only way forward was a deviation application.

I also mentioned that personally I have no problem with Aerospace Remuneration Model provided the measurement mechanism was objective and reliable or words to that effect, but the... structure had to be found(?).

10 I put it plainly by way of a theoretical example that if McKinsey came up with an idea that would save Eskom billions that they only took two hours to come up with it... 2014... instruction they would only be paid for two hours' work and based on a prescribed hourly rate.

20 I asked McKinsey whether they had a view on whether the contract was in line with... rule since they had experience in the public sector. My impression from the meeting was that Mr Weiss admitted that in its present form the proposed contract could not get around the... instruction.

In any case, McKinsey undertook to prepare the memorandum on compliance with the... requirements.

This was effectively a self-opinion.

Also, Mr Koko undertook to obtain external legal opinion himself on the matter.

I have no objection to the seeking of an external legal opinion.

I stuck to my interpretation of the 2014... instruction but all the other parties present appeared to hold an opposite view regarding the permissible(?) of a risk based remuneration structure or at least ideally wanted it to be used.

10

I said that this could actually be so but only with prior..., National Treasury approval....”

Chair, it goes on, particularly on the opinion he says Mr Koko wanted to have but that is the version he has put up Mr Koko. He seems to know you very well and the meeting that other people were present at.

MR KOKO: Ja. Chair, I do not know this gentleman. I had to Google his name ...[intervenes]

CHAIRPERSON: H’m, h’m.

20 **MR KOKO**: ...to check his face. One. Two, the procedure that gave effect to the National Treasury, if I am not mistaken, I signed it.

ADV SELEKA SC: Say again?

MR KOKO: The ...[intervenes]

CHAIRPERSON: Ja, that document ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: Ja, I think I seem to because I think if it is the one that I am thinking about that we have discussed previously ...[intervenes]

MR KOKO: Yes, Chair.

CHAIRPERSON: ...I think has got your signature.

MR KOKO: Yes. So there is no ...[intervenes]

CHAIRPERSON: It is about the hiring of consultants ...[intervenes]

10 **MR KOKO**: Yes, yes.

CHAIRPERSON: ...at any costs.

MR KOKO: Yes, yes.

CHAIRPERSON: Ja, I think I seem to remember you signed it.

MR KOKO: Yes. So they – he did not need to bring this to my attention because I gave effect to that National Treasury policy. The consulting work of Eskom was under my watch. So I knew the constraints. So. But besides – besides it will be interesting if the Commission has done
20 that, to get from **Mr Thulango [00:14:23]** who actually instructed her. Instructed him because it is him who did that, it is not me.

CHAIRPERSON: That is obtaining the opinion?

MR KOKO: Yes, it is not me.

CHAIRPERSON: Yes.

MR KOKO: I ...[intervenes]

CHAIRPERSON: I wanted to ask you the question to the extent that Mr Laher says you wanted to obtain external legal opinion yourself on the matter. I think you interpreted that as meaning that he would not go through the normal channels but is that – does it have to be like that he is saying? Could it not mean that you meant that you would approach whoever the right person is to obtain the opinion?

10 **MR KOKO**: Certainly, Chair. I think you have got a point.

CHAIRPERSON: Ja.

MR KOKO: You have got a – and you are a hundred percent correct.

CHAIRPERSON: H'm, h'm.

MR KOKO: He may have meant, I will go on my own or I will follow the channels. So let us give him the benefit and say I meant that I will follow the right channels to get ...[indistinct] to get external opinion. The fact is, I did not do it.

20 **CHAIRPERSON**: Ja.

MR KOKO: It was not done by me.

CHAIRPERSON: Ja.

MR KOKO: That is a fact.

CHAIRPERSON: Ja, ja, ja. Okay. No, it is fine.

MR KOKO: The second part is. Look at the date. The

date of the – okay – granting it is 2015.

CHAIRPERSON: Ja.

MR KOKO: So you do not remember the dates well.

CHAIRPERSON: Ja.

MR KOKO: But even that week, is the week that I left this work.

CHAIRPERSON: You had already left as you remember or ...[intervenes]

MR KOKO: My last day was ...[intervenes]

10 **CHAIRPERSON:** ...in the process of leaving?

MR KOKO: The board meeting was on the 21st ...[intervenes]

CHAIRPERSON: Of October?

MR KOKO: ...of October. There was a board meeting and that was my last ...[intervenes]

CHAIRPERSON: Board meeting.

MR KOKO: ...last board meeting and I was ...[intervenes]

CHAIRPERSON: Was that your last day on this job?

MR KOKO: It was my last day on this job.

20 **CHAIRPERSON:** Ja, okay, okay. Well, I guess, depending when, as you say, if he gets the date wrong by a few days it might not make much difference.

MR KOKO: No, it will not make a difference, Chair.

CHAIRPERSON: Ja, ja.

MR KOKO: But all I am saying to you is. I have never in

my duration – Mr Seleka says he knows me well. He does not. I do not know this gentleman.

CHAIRPERSON: H'm.

MR KOKO: I do not know this gentleman. I never interacted with this gentleman.

CHAIRPERSON: Ja.

MR KOKO: I never interacted with this gentleman.

CHAIRPERSON: Well, he says he was involved. He was in an office called Compliance Office or something like
10 that.

ADV SELEKA SC: Senior Manager.

CHAIRPERSON: Ja.

ADV SELEKA SC: Heading up the Group Compliance Office.

CHAIRPERSON: Did you not deal regularly, from time to time, with the MEC(?) ...[intervenes]

MR KOKO: No, no, no.

CHAIRPERSON: You did not?

MR KOKO: No, no, no. I never – it looks senior(?) but it
20 is not senior.

CHAIRPERSON: Ja, okay.

MR KOKO: It looks senior. It is not senior.

CHAIRPERSON: Yes.

MR KOKO: So my direct contact would be the Corporate Counsel.

CHAIRPERSON: Okay.

MR KOKO: But it would be very disrespectful for me to go and talk to a Senior Manager, Corporate Compliance. To be undermining my colleagues.

CHAIRPERSON: Ja.

MR KOKO: No.

CHAIRPERSON: Okay.

MR KOKO: So, ordinarily, if I have a department from legal, I would pick up the phone or walk to mister – to the
10 Corporate Counsel and say this is what I want.

CHAIRPERSON: Ja.

MR KOKO: And typically the Corporate Counsel is an advocate. Very senior lawyer. He will not deal with me. He will seek to advise me first. You know, this is – Mr Koko, this is my first step at what you want to achieve. That is how it will typically work but I will not go to the level of a Senior Manager and talk to this gentleman. I will not do it.

CHAIRPERSON: H'm. Of course, he gives a lot of detail
20 here. You – in regard to the meeting, you say you do not remember having this meeting but in regard to knowing him, you seem to be quite clear that you did not know him.

MR KOKO: No.

CHAIRPERSON: But with regard to the meeting, the way you put it seems to say: Look, I cannot remember it but I

cannot completely exclude the possibility that maybe the meeting did happen but with regard to him I am clear that I do not ...[intervenes]

MR KOKO: Certainly. The names that are mentioned here, they were very important to my work with the exception of Mr Sagar. Mr Sagar came in very late at Eskom. In fact, I met him on a few occasions but other names I – you know, for lack of a better word, I would call them my – they were my brain(?) trust. If you understand?

10 **CHAIRPERSON**: H'm.

MR KOKO: If I wanted to place on a complex ...[intervenes]

CHAIRPERSON: Issue.

MR KOKO: ...issue.

CHAIRPERSON: Ja.

MR KOKO: I will ...[intervenes]

CHAIRPERSON: Contact.

MR KOKO: These people would typically be the people ...[intervenes]

20 **CHAIRPERSON**: Ja.

MR KOKO: ...that I would interact with.

CHAIRPERSON: Ja, okay.

MR KOKO: So I – that is why I cannot say I never had such a meeting with these people because in a week with the exception of Mr Sagar, these people I would meet

three, four times.

CHAIRPERSON: Ja, okay alright.

ADV SELEKA SC: Yes, Mr Koko, I seem to recall
...[intervenes]

CHAIRPERSON: We have gone beyond one o'clock.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: It is ten past.

ADV SELEKA SC: I will hold my peace, Chair.

CHAIRPERSON: [laughs]

10 **ADV SELEKA SC:** I will hold my peace.

CHAIRPERSON: Okay quickly.

ADV SELEKA SC: No.

CHAIRPERSON: Oh, you will hold it?

ADV SELEKA SC: Ja, I will hold it.

CHAIRPERSON: Okay alright. Okay let us take the lunch
break. We will resume at ten past two. We adjourn.

ADV SELEKA SC: Thank you, Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chair.

MR KOKO: Chair, before Mr Seleka starts I just want to
say that I – it is not my nature, I am in no way undermining
Mr Seleka. I may come across that way, I am apologising.

CHAIRPERSON: Okay.

MR KOKO: There are certain topics I just feel very passionate about.

CHAIRPERSON: Okay.

MR KOKO: It is not in my nature to...

CHAIRPERSON: Yes.

MR KOKO: I did not intend to come across that way.

CHAIRPERSON: Okay, okay.

MR KOKO: Chairman, I also made reference to the
10 documents that counsel has that I would like you to have.

CHAIRPERSON: Ja.

MR KOKO: I am not sure how we are going to forward that.

CHAIRPERSON: Let me leave it to your counsel, he will know the right time he would like – one way, of course, is that they can be given to the legal team who must see where they need to be slotted at and obviously at the right time you will wish to refer to them and by then they must be in some bundle.

20 **MR KOKO:** Yes.

CHAIRPERSON: Ja, ja. Okay, alright.

ADV SELEKA SC: Thank you, Chair.

ADV BARRIE SC: Chair, if I may, I am not sure exactly what the document is that Mr Koko is referring to. I suspect it has something to do with the payments that were

made to Trillian, but I am not sure.

MR KOKO: Okay, Chair, I referred to them, I will take my counsel through them, it is the minutes of the board, 22 July 2015 and the minutes of the BTC of 26 February 2015.

CHAIRPERSON: Okay.

ADV BARRIE SC: Yes.

CHAIRPERSON: Okay, no that is fine.

ADV BARRIE SC: Thank you, Chair.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** May we just finalise on this issue, Mr Koko, because, Chair, I know we are at Eskom bundle 14(c) but I would like to just quickly refer to 14(d) just to emphasise the point. This is an application, 14(d), it is an application by Eskom against Trillian and McKinsey.

CHAIRPERSON: Will somebody just check ...[intervenes]

ADV SELEKA SC: Just help Mr Koko. 14(d) page 1161. Is it 14(d)?

MR KOKO: Got it, Chair.

20 **ADV SELEKA SC:** Only a simple point. Chair, this is an affidavit in an application by Eskom against McKinsey and Trillian, this is when Eskom was reviewing the decision for those payments made of nearly R1.6 billion to McKinsey and Trillian. Mr Phakamani Hadebe deposed to the affidavit on behalf of Eskom and he was the Acting Group Chief Executive for the applicant, which is Eskom. All I am

drawing your attention to is the paragraph on page 1195. Chair, you will recall we read portions of this affidavit during Mr Singh's testimony. This paragraph 8.2 on page 1195, there too he refers to a meeting and I will read this paragraph. Says:

10 :On 2 September 2015 Mr Aziz Laher, Eskom Group Compliance Manager and PFMA corporate specialist addressed an email to a number of Eskom officials including, amongst others, Mr Martin Weiss, Prish Govender, Mia Obama, Charles Kalima and various parties from Legal and Compliance and Professional Services. In that email Mr Laher specifically recommended that Eskom would need to apply to the National Treasury for approval of the deviation from the National Treasury instructions.”

This email appears – they refer to the attachment or rather the item number in the record bundle, as they call it. And then paragraph 81 says – well, 80.3 says:

20 “Mr Laher raised this issue yet again in an email dated 14 September 2015 appearing at item 50.”

Paragraph 81 says:

“On or about 27 October 2015 Mr Laher was called to a meeting in Mr Koko's office. The meeting was attended by Mr Edwin Mabelane, Eskom's Chief Procurement Officer of Eskom, Mr Prish Govender,

Eskom's then Project Director of Group Capital and two representatives from McKinsey, Mr Vikas Sagar and Dr Alex Weiss."

Essentially then, Chair, the subsequent paragraphs repeat in essence what Mr Laher said in his affidavit. So that aspect, Mr Koko, I just wanted to your attention that it was also captured in this affidavit of Mr Phakamani.

MR KOKO: Certainly and I am aware of it, Chair, and the point I am making is that with the exception of Mr Sagar
10 who was not an Eskom person, he came from Transnet, but I do not know him from a bar of soap. Dr Weiss was based at Megawatt Park. Mr Mabelane was my colleague. So the people that are mentioned, I use the word [indistinct], so I would meet with them and I – that is why I cannot say I have not – this meeting may or did not happen, I cannot rule that out. But what I can say to you – what I can say to you with certainty is that in that meeting, if ever it happened, Mr Laher would not have been there, one.

Two, is that the instructions to bring external legal
20 advices did not ...[intervenes]

CHAIRPERSON: External legal opinion.

MR KOKO: Legal opinion, did not come from me and Mr Thulani [indistinct] who was a corporate counsel at the time did not get an instruction from me. In the contrary, Mr Mabelane in his affidavit goes into a great length about

how external ...[intervenes]

CHAIRPERSON: Opinion was ...[intervenes]

MR KOKO: Opinion was acquired. And in any event, when it was eventually acquired, I never had sight of it until this news came about.

CHAIRPERSON: Okay. Well, Mr Seleka, the other people that are said to have been present at this meeting that are said by Mr Laher as having been present, what have they said if they have been asked to say anything about this
10 meeting that Mr Laher talks about?

ADV SELEKA SC: I do not personally know that they have been asked, Chair. I will ask the investigators whether they have.

CHAIRPERSON: Ja because it is just a question of taking Mr Laher's affidavit and sending a request to them.

ADV SELEKA SC: Yes.

CHAIRPERSON: We draw attention to these paragraphs about this meeting that is alleged to have taken place where you are said to have been present by Mr Laher,
20 please indicate what you have to say about one, whether you were you present [indistinct – dropping voice], what the content of the discussion was.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And including whether Mr Koko said what Mr Laher says he said.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: I will, Chair. Chair, then – ja, we can put this aside, Mr Koko. Can we go back ...[intervenes]

CHAIRPERSON: Because I guess what Mr Hadebe says here does not add anything in substance about that meeting because he was not part of the meeting, he is just repeating what Mr Laher said.

ADV SELEKA SC: Correct, yes.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: No, correct. I know that McKinsey did not oppose this application but Trillian did.

MR KOKO: McKinsey did not oppose, that is correct.

ADV SELEKA SC: Yes but Trillian did.

MR KOKO: Trillian did. But it is of interest, Mr Chair, that the latest affidavit of Dr Weiss, which came in yesterday, clearly says that - who was the lead negotiator, clearly says what my role was in the negotiations and he clearly says between July and October when the
20 negotiations happened, I was not involved. It does say that they met – they gave executives at Eskom feedback, which I confirm.

ADV SELEKA SC: Yes but it should be emphasised – Chair, I have a copy of that affidavit. It came too late to form part of the bundle.

CHAIRPERSON: Ja. Well, I do not need to see it now.

ADV SELEKA SC: Okay.

CHAIRPERSON: Unless you propose to use it.

ADV SELEKA SC: Ja.

CHAIRPERSON: If you propose to use it, yes, I can have it.

ADV SELEKA SC: Yes.

CHAIRPERSON: But if you do not propose to use it, I can see it in the normal course.

10 **ADV SELEKA SC:** Yes. No, I thought, Mr Koko, it should be emphasised that the executives who were informed, which he says were informed, is actually – he specifically mentioned yourself, so that it is not executives unnamed.

MR KOKO: No, he does mention Mr Molefe as well.

CHAIRPERSON: Who were informed of what?

MR KOKO: Of the negotiations. Let me hand it up, Chair, so we can just quickly read through the ...[intervenes]

CHAIRPERSON: Because Mr Koko's point about this affidavit is that it confirms that he did not take part in the
20 negotiations. Is that your understanding of what it says?

ADV SELEKA SC: Ja, what the affidavit says.

CHAIRPERSON: Ja, that is the point he makes about it.

ADV SELEKA SC: Ja, he says:

“I do not recall...”

In regard to Mr Koko.

“Mr Koko was not a member of the Eskom negotiating team. I do not recall him participating in any of the approximately 30 full day negotiating sessions McKinsey held with Eskom during that period.”

He does say in paragraph 7:

10 “McKinsey began discussing the proposed Top Engineers programme with Mr Koko in his capacity as Group Executive for Technology and Commercial and kept him apprised of this and related initiatives during his suspension with the expectation that he would promptly return to this former position and be involved in executive these projects.”

MR KOKO: Ja, Chair.

CHAIRPERSON: Ja.

MR KOKO: Paragraph 8, Chair, he says...

ADV SELEKA SC: Ja, paragraph 8, 7 I read first says.

MR KOKO: Paragraph 7, says:

20 “I had lead negotiations of the turnaround programme which lasted from approximately July 2015 to November 2015. Mr Koko was not a member of the Eskom negotiating team. I do not recall him participating in any of the approximately 30 full days...”

Oh yes, that is what you read.

ADV SELEKA SC: Ja, that is what I read.

MR KOKO: Yes.

CHAIRPERSON: Ja. Well, I am not sure if I need to see it now, otherwise it can be slotted where it should be slotted in the bundles.

MR KOKO: But my point, Chair, and this is - and I apologise again, Mr Seleka, is that here is a leader negotiator of McKinsey saying we met on these dates and this date to do the negotiations and Mr Koko was not part
10 of it. And then you have Ms Mothepu's emails that says Mr Koko and Mr Singh were the lead negotiators for Eskom and they have changed things around and added and subtracted things. I think it is what it is, Chair.

CHAIRPERSON: No, no, if it is important. The only reason I was saying I am not sure that I should be – it should be given to me now is simply because it is clear what you say it says and Mr Seleka confirms that in effect that seems to be what it says on the point.

ADV SELEKA SC: Ja.

20 **CHAIRPERSON:** So the only thing really is to the extent that whether Mr Koko was part of the negotiations or not is important. Other people who are said to have been part of it, their affidavits can be obtained and they can indicate what their recollection is.

ADV SELEKA SC: Yes, Chair. Obviously three

paragraphs are in important there, 7, 8 and 9 and Chair will look at those paragraphs.

CHAIRPERSON: About the issue that Mr Koko raises or what?

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, but you agreed with him that it says what he says it says.

ADV SELEKA SC: Yes but it is preceded by paragraph 7, Chair.

10 **CHAIRPERSON:** Ja, do they qualify what he says?

ADV SELEKA SC: Which 7 says that the discussion began with Mr Koko in regard to the Top Engineers programme and they kept him apprised of this and related initiatives during his suspension which is...

CHAIRPERSON: But that Mr Koko's point is here is a witness who says I was not part of the negotiations. So I am saying to the extent that it is an important issue whether or not he was part of the negotiations, those who were part of the negotiations could be asked to say –
20 because you have Ms Mothepu who says he was and you have Dr Weiss who says he was not so it becomes important to find out what other people say who have been at those meetings.

ADV SELEKA SC: Yes.

MR KOKO: Chair, I think Mr Seleka is raising another

topic on 7 that I must address, if I think I understand it.

CHAIRPERSON: Ja, okay. So all I am simply saying is, let us deal with one issue.

ADV SELEKA SC: Ja.

CHAIRPERSON: Put it out of the way, if there is another one you can deal with it but let us not mix them ...[intervenes]

ADV SELEKA SC: Let us not mix them, Chair.

CHAIRPERSON: End of being confused. So I think it is –
10 as far as the question of Mr Koko being part of the negotiations, we are clear about what Dr Weiss says, we know what Ms Mothepu says, it is a question of what other people who attended those meetings have to say. But then what is the other point?

MR KOKO: But, Chair, there is a documentary evidence that you must also consider, is that the people who were part of the negotiations compiled feedback to the board that we looked at the last time I was here.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Ja.

MR KOKO: On the 6 October.

CHAIRPERSON: Ja.

MR KOKO: That feedback ...[intervenes]

CHAIRPERSON: I remember that document.

MR KOKO: That feedback told you who the board

approved as a negotiator.

CHAIRPERSON: Ja.

MR KOKO: And it also told you who actually took part.

CHAIRPERSON: Actually took part. Yes, no, I remember that.

MR KOKO: We are duty-bound by – at Eskom or [indistinct] bound.

CHAIRPERSON: Ja.

MR KOKO: When the board approves a negotiating team
10 and different people participate, we have to inform the board.

CHAIRPERSON: Ja.

MR KOKO: So that the board can condone litigation(?)

CHAIRPERSON: Ja. I think what obviously this means is these things should be put to Ms Mothepu.

ADV SELEKA SC: Yes.

CHAIRPERSON: To say here is what Dr Weiss says, here is that other document that Mr Koko is referring to.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Are you not mistaken about this and then take it from there and what is the response.

ADV SELEKA SC: Yes. Shall we go back to Eskom bundle 14(c) if it is still in front of you, that affidavit of Mr Laher and I want to finish off properly.

CHAIRPERSON: Yes.

ADV SELEKA SC: Page 702.265.

CHAIRPERSON: Yes, okay, I am there.

ADV SELEKA SC: Ja, paragraph 10.30.10, he says:

“I said that this actually be so but only with prior National Treasury approval.”

10.31:

10 “I immediately after I was excused from the meeting I looked for my boss Mr [indistinct] to inform him what had transpired. He was not immediately available but I saw him later the same day and I explained what happened I also expressed my discomfort with the general tone of the meeting. It appeared to me that management was still strongly intent on pursuing a risk-based remuneration structure for the contract. I also informed him of Mr Koko’s intention to obtain external legal opinion himself which in itself was unusual as the role of a line executive was to request such a service from the head of legal who was the party that would
20 evaluate the request and if it had merit, approve it and make the appointment.”

I think that paragraph, Mr Koko, makes it – it makes the distinction clear which the Chairperson was asking earlier.

CHAIRPERSON: Yes. So think that is right and I think it probably provides an explanation why you took what Mr

Laher said as meaning that you would not go through the normal channels of getting external legal opinion.

MR KOKO: Correct.

CHAIRPERSON: So this explains that what he was talking about is his understanding was that you were going to go outside yourself to get external legal and you would not go through the channels.

MR KOKO: Yes.

CHAIRPERSON: Ja.

10 **MR KOKO**: And it would be, for a person at my position, that would have been grossly irregular.

CHAIRPERSON: Ja. Ja, ja, he also says it would be unusual.

ADV SELEKA SC: Ja.

MR KOKO: Yes.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Then – okay, I am leaving that part, Chair.

20 **CHAIRPERSON**: Ja and maybe for the sake of completeness has it ever happened?

MR KOKO: Has it ever happened that...?

CHAIRPERSON: You obtained external legal opinion directly, therefore without going through legal?

MR KOKO: No, no, no. No, Chairman, I mean I am old enough in Eskom to know what not to do to get my nose

bloodied. This is one of them.

CHAIRPERSON: Yes. And to your knowledge is it something that it would happen from time to time ...[intervenes]

MR KOKO: No.

CHAIRPERSON: That other people – not you, other people would do that?

MR KOKO: No, one of the most powerful positions at Eskom is legal and compliance.

10 **CHAIRPERSON:** Yes, ja.

MR KOKO: And it sits directly at Exco, so...

CHAIRPERSON: You cannot just...

MR KOKO: No, you cannot.

CHAIRPERSON: Okay, alright.

MR KOKO: Besides that – besides the fact that engineers are bad lawyers. No, we do not do it, Chair. It is never ever done.

CHAIRPERSON: Mr Seleka?

20 **ADV SELEKA SC:** Ja, thank you, Chair. He does to into the paragraphs where he shows that it was ultimately the legal department or division of Eskom that sought legal opinion from a senior counsel.

MR KOKO: Very long time ago, Chair, I remember a very big dispute that ended up in court because lawyers were instructed by a division to do work and they did the work

but they were never paid and they even lost at court and it is a very popular case still in Eskom. You instruct the guys directly, you will pay them out of your own pocket.

ADV SELEKA SC: Thank you. Mr Koko, I want to refer to your testimony on the 29 March 2021. Before I finish off on the Master Services agreement, I have printed out the relevant pages and I would like you to be given that and your legal representatives to be given a page and the Chairperson to be given a page, a copy. That is the
10 transcript or an extract from the transcript of 29 March 2021 and specifically from pages 19 and 20 of that transcript.

MR KOKO: I remember that.

ADV SELEKA SC: Yes. Thank you, Mr Koko. At the bottom of the page on page 19, Chairperson, you were asked:

“In relation to McKinsey?”

And Mr Koko says:

20 “In relation to McKinsey we called it Top Engineers programme. That decision was not only inconsistent with National Treasury’s practice note, but was also against the Eskom ...[intervenes]

CHAIRPERSON: I am sorry, where are you reading from now?

ADV SELEKA SC: Page 19,.at the bottom of the page of

the transcript, the extract from the transcript.

CHAIRPERSON: Well, I am expecting you to tell me numbers at the top.

ADV SELEKA SC: Oh.

CHAIRPERSON: So that is why I am looking at the top. Oh, the page number is at the bottom.

ADV SELEKA SC: It is at the bottom, yes.

CHAIRPERSON: Ja, okay, alright.

ADV SELEKA SC: And I started with – against the
10 Chairperson's name:

“In relation to McKinsey...”

CHAIRPERSON: What line because you have got the marginal lines numbers there, 10, 20.

ADV SELEKA SC: It is after 20, it is the second line from the bottom.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Yes. It says:

“Chairperson: In relation to McKinsey.”

At the bottom of the page.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Yes. And then Mr Koko then starts talking:

“In relation to McKinsey we called it Top Engineers programme. That decision was not only inconsistent with the National Treasury's practice

note but was also against the Eskom directive.:

“So his directive...”

The Chairperson: This directive.”

CHAIRPERSON: That must be this directive. You know how they sometimes get this thing wrong when they transcribe.

ADV SELEKA SC: Yes. That is correct.

CHAIRPERSON: Ja, h’m.

ADV SELEKA SC: Let me go to the next big paragraph
10 where Mr Koko is talking. He says:

“So ordinarily, if properly advised, the board would set...”

Or would sit, I suppose.

“...go and sort this matter first with the National Treasury before you come to us. The board would not say we give you a mandate to negotiate without having assurance that indeed National Treasury will indulge and that is the discussion that I had with the Chairman.”

20 Now I stop there, Mr Koko, this is specifically in regard to the SLA.

MR KOKO: This is the SLA, yes.

ADV SELEKA SC: The SLA, yes. The Master Service agreement. So with that in mind, Mr Koko, that is – and I am finalising on this, we need to explain to the

Chairperson because what we see from that feedback report – well, I could firstly refer to an email to you from Mr Prish Govender which I need to get now. But he talks about – Chair, I am going to give you the page reference but let me just build this picture. It is an email of 2 September 2015, he sends you an update of a feedback.

MR KOKO: Ja, I remember it very well.

ADV SELEKA SC: You remember.

MR KOKO: I remember very well and the issues that
10 needs to be resolved.

ADV SELEKA SC: That is correct.

MR KOKO: And one of them was National Treasury.

ADV SELEKA SC: National Treasury, that is correct.

MR KOKO: Yes.

ADV SELEKA SC: One of the issues was exactly National Treasury and then you will have the feedback report, which you mentioned earlier of October 2015 which talks about the BTC having given a mandate to negotiate and now you are giving feedback in that report that you have negotiated
20 and now you want to go ahead, I think to conclude the agreement.

MR KOKO: Correct.

ADV SELEKA SC: With McKinsey. But even at that stage, National Treasury approval ...[intervenes]

MR KOKO: Was not done.

ADV SELEKA SC: Had not been obtained.

MR KOKO: Yes.

ADV SELEKA SC: And matters do not end there, there is that conclusion of the agreement with a letter of acceptance.

MR KOKO: Yes.

ADV SELEKA SC: Well, let me say there is an offer and acceptance, not the conclusion and then there is the steering committee meetings.

10 **MR KOKO:** Yes.

ADV SELEKA SC: In 2016. And you were part of the steering committee meetings.

MR KOKO: Correct.

ADV SELEKA SC: Now having said what you said to the Chairperson in that transcript that if properly advised, the board should have said do not even go to negotiate, try to get Treasury approval first before you embark on this exercise. How do you explain then how did you and your colleagues go about the negotiations forming the steering
20 committee, you writing an offer acceptance letter when you knew there was no ...[intervenes]

MR KOKO: “There was no...” what do you mean?

ADV SELEKA SC: That there was no Treasury approval.

MR KOKO: When Mr Seleka says “you” who is “you”?

ADV SELEKA SC: You, Mr Koko. Let me say you, Mr

Koko.

MR KOKO: Ja I ...[intervenes]

ADV SELEKA SC: Let us leave the other people aside because they are not here.

MR KOKO: Mr Seleka will have to advise you, when we did the design to cost, and my counsel told – gave me a bit of a lecture about how to answer you, so I am struggling now, so when we did the design to cost strategy and it – that design to cost strategy happened after the email Mr
10 Seleka is talking about of the 2nd of September.

ADV SELEKA SC: Yes, let me give the page reference Chair at this juncture, just for the record, or even for the Chairperson, the same Eskom Bundle 14C, page 811.170.

MR KOKO: That is the email, that is the ...[intervenes]

ADV SELEKA SC: Mr Krish Govender ...[intervenes]

MR KOKO: I do not need to go there, I know it.

CHAIRPERSON: Yes.

MR KOKO: So that went to that Krish's email of the 22nd of September, which made it very clear that the National
20 Treasury's approval is not in place. That is one of the reasons that – if not the main reason why I did not - why I had a separate contract for the Corporate Plan, with a fixed rate that is fully compliant with National Treasury requirement.

So the letter that I wrote on the 29th of September,

was fully compliant with National Treasury. Chairman, let me tell you what - give me my experience, which I have not shared with you I would never play with National Treasury they would blow me.

So, and that is why the design to cost of the 29 that came after the 2nd there – the document that you have in front of you of the 2nd of September, first went to my email of the 31st of August to Krish, Mr Singh and Mr Mabalane about colleagues, what is the progress on these
10 negotiations for the MSA? Because on the 22nd of July the Board has given us a go ahead to contract for the Corporate Plan.

So that is why I asked for an update from them because I thought if they come back to me and say, in engineering, we say it's all systems go, the engineers will know what that means. If it's all systems go, I will say sign let us do what the Board ask us to do.

But I could not say sign let us do what the Board wants, because there was a serious condition that was not
20 met. So that is the only thing that I have signed. The next letter that was signed, it was signed an offer letter, was signed on the 17th of December 2015 by Mr Mabalane, you have read it and when you read it, it is encrypted. I cannot just make sense of it. Now, you did not make sense of it now.

That is the letter that Mr Mabalane signed, I was not party to that letter, I had nothing to do with it and that is why I asked when you say sign the letter, on what basis did you do that? The evidence here was that the contract was concluded on the 7th of January and there is enough evidence to suggest that that was not the case. It was back dated; I am actually buying into that story of backdating. Anybody who says it was not backdated is not clued up on that, the evidence speaks for itself.

10 But even then, the only thing that the team and that is Mr Dave Godi and Mr Krish Govender refers to - or the only alleged authority if I can use that is an email between Mr Gory and National Treasury that they used to say we have approval from National Treasury. They used that email.

 Now, it is up to you to read that email and make up your mind whether it gives permission or not but what eventually transpired Chair, with that email notwithstanding there was a general understanding even within the team
20 that actually we do not have. We do not have National Treasury's approval, that email that we standing and people may not be frank enough and this is what I am saying it depends who you talk to get to the truth.

 But once the penny drop that we actually do not have National Treasury approval people look for reasons

why it should not go ahead.

CHAIRPERSON: So in other words, you are saying there were certain people who were very determined that it should go ahead even without National approval.

MR KOKO: No, no that is not what I am saying Chair, I am saying there was a point where – especially in the first meeting, Mr Seleka of the Steering Committee, when we were briefed, we have got National Treasury’s approval, and the documentation is in place and we accepted that
10 but soon after that they - there was a clear...[intervene]

CHAIRPERSON: Understanding that there was no such approval.

MR KOKO: That there was no such approval and I think having that regard of Mr Laher interaction now, I think that push came from bigger, that actually your reliance on the email, does not cut it because the requirement to give a concession from National Treasury is actually onerous.

It even requires the Presidency to do that, so you actually do not have it and there was an understanding
20 within the Steering Committee that actually we do not have and we are in serious breach of National Treasury and at that point I am saying everybody looked for every single reason we can use, that can be used to terminate.

CHAIRPERSON: So you saying the opposite of what I put to you earlier.

MR KOKO: Yes.

CHAIRPERSON: Okay, ja.

MR KOKO: So I am saying...[intervene]

CHAIRPERSON: On the basis that there should have been an approval.

MR KOKO: Yes.

CHAIRPERSON: There is no approval.

MR KOKO: Yes.

CHAIRPERSON: Let us terminate.

10 **MR KOKO:** Yes.

CHAIRPERSON: Okay.

MR KOKO: But, you know, when I listened to some of my colleagues speak, I do not think they have the guts to say actually, there was no approval here and we made a mistake there. I do not think that will be there but I am telling you, what was in my mind at that point.

20 That February, March the writing was on the wall, we need to come out of this, we do not have the necessary approval, we have to come out of this. Of course, other opportunities may have presented themselves but the real issue is - other issues could be managed, Chair. Other issues were within our control.

CHAIRPERSON: Ja.

MR KOKO: But the National Treasury is one, Eskom executives will tell you if it's in the hands of National

Treasury then you in the...[intervene]

CHAIRPERSON: You have to comply.

MR KOKO: You have to comply.

CHAIRPERSON: Ja. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Okay, so by February, March, the writing was on the wall that we need to get out of this and I want to talk about the payments that take you ultimately to the last payments because you wanted to tell the Chairperson about it. Ultimately, various
10 amounts are paid to McKinsey and Trillian the total of which is R1.593billion.

MR KOKO: We normally round it off to 1.6.

ADV SELEKA SC: To 1.6.

MR KOKO: And we say the 600 went to...[intervene]

ADV SELEKA SC: Yes.

MR KOKO: It is actually 599, that is as well 600.

CHAIRPERSON: Well Mr Koko and Mr Seleka the two of you seem to be talking to each other, particularly you Mr Koko you are talking so softly I think I only want Mr Seleka
20 to hear what you saying.

MR KOKO: The total amount that was paid to McKinsey, and Trillian is 1.6 and...[intervene]

CHAIRPERSON: 1.6billion...[intervene]

MR KOKO: Billion rand, yes and a billion rand of that went to McKinsey and R600million of that went to Trillian.

Chair it's a round off fee but the numbers are very close.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: No that is correct. Then Mr Koko let me give you the opportunity then to tell the Chairperson about the last payment of R460million. But this is the question I am going to ask you so that you address the Chairperson, because that payment is made on the 22nd of February 2017 and it came to the BTC for approval.

MR KOKO: Yes, on the 8th of February.

10 **ADV SELEKA SC:** Yes, and at that stage, you were the Acting Group Chief Executive Officer.

MR KOKO: That is correct.

ADV SELEKA SC: Now I am going to ask you, not the question you are expecting because the question you are expecting is the memorandum Suzanne Daniels where Krish Govender and Mr Mabalane, which you refuse to sign.

My question is more on in your capacity as the acting Group CEO why did you not take a further step,
20 which is not just to refuse to sign the memo but to refuse them to make the payment in the light of the writing is on the wall, we should have gotten out of this contract.

MR KOKO: Chair, this is quite important. Eskom has got a delegation of authority and everybody in Eskom acts within the delegations of authority. It is quite important but

I want to - I am going to quickly take you through, I am going to give you days, and you may not write them down, but the transcript will show you and they will tell you what has transpired.

And I think the gossipers, and the people that are on the Koko hunt missed it, including your colleagues at the Pretoria High Court, which is one of the painful things for me, because they have concluded there was a corrupt relationship and I am saying to you, if they had regards to
10 the evidence that you now have, they would have reached a different conclusion.

So, the most important date is the 6th of July 2015. The 6th of July 2015 is the date that the BTC approved via a round robin, the MSA, the negotiations with the MSA. The next important date is a feedback of the 6th of October 2015. That's when we gave the Board the feedback and that is when the Board ratified the deviations from the mandate to the actual result of the negotiations and in that feedback you will see that the requirement for compliance
20 with National Treasury.

That report I signed, I had no other option to sign it was in my role to sign it, it tells you who negotiated it, it tells who was approved to negotiate, and who participated in the negotiations, and it gives you the scope and it puts the cap for risk base to 11.98%, it says 12% where I hear a

rumour that says we did – the price was not even the cap, the cap is also in that BTC submission of 6th October 2015.

Then comes the meeting of June, 21 June 2016. That is the meeting of the BTC that resolved to cancel the MSA.

CHAIRPERSON: Is that in line with the realisation you talked about in March, February, March?

MR KOKO: Yes, Chairman there is other reasons that I
10 added there.

CHAIRPERSON: Yes, no, no that is fine.

MR KOKO: There is other reasons but I can tell you now knowing what I know, other issues Eskom could have resolved.

CHAIRPERSON: Ja.

MR KOKO: But this one they could not resolve and the 21 June 2016, a submission was made to the Board and unbeknown to me, and I had no reason to do the target, nor sign the document.

20 I am mentioning this Chair so that you can base your judgment at the end on evidence and you go look at the document of the 21 June 2016, you will find the team that put it together you will not find my name there, I am not one of them.

The next one...[intervene]

CHAIRPERSON: I am sorry, do you happen to know where that document is to be found in the bundle maybe your junior could check and then they could put that on record.

ADV SELEKA SC: BTC minutes.

MR KOKO: Ja, the meeting the submission to the BTC of 21 June 2016 where it was recommended to the Board to cancel the MSA. You have it nicely set up in your bundle, I think it is Bundle 18 they come in quite nicely. It is one of
10 the nice altogether documents it helped me.

CHAIRPERSON: Ja, well the – this team, well I say this team – the legal team and the investigation team and the Secretariat who put these documents together seem to have impressed quite a few witnesses, including the witnesses who appeared last week.

MR KOKO: Yes, I must tell you when I got it, it was easy for me to follow.

CHAIRPERSON: Ja, no, no that is fine. So your junior could look it up and then he could just mention on record
20 in which bundle, on which page it appears so that when one goes through the transcript one can come across that and go to the bundle, yes, continue, Mr Koko.

MR KOKO: The next Board submission is that submission of the 8th of August 2016 and that was to give the Board feedback that you said we must cancel and we must go and

renegotiate, and they came back to the Board and says we have renegotiated and the settlement amount is R1.8billion.

Again, that submission had nothing to do with me, well I was not part of it, it is not that I did not have nothing to do with it. If I was made part of it, I would have...[intervene]

CHAIRPERSON: You did not take part.

MR KOKO: I did not take part of it.

10 **CHAIRPERSON:** Formulating it, ja.

MR KOKO: I did not take part of it unfortunately, I did not even know about it. If I was consulted on it, I would have probably taking part of it, and I would probably advised but I did not – it ended up at the Board Tender Committee.

The Board Tender Committee did say in that meeting Mr Koko, they mentioned my name, my position, it must form part of the people to renegotiate further the R1.8billion.

20 On the 13th of December the team came back again...[intervene]

CHAIRPERSON: That is 2016.

MR KOKO: 2016, again between the 8th of August and 13th of December I never participated and I never took part in it, the Board came back to – or the team came back to the meeting and gave them feedback and requested a

payment, a further payment of R130million and something.

ADV SELEKA SC: R134million.

MR KOKO: R134million, ja.

ADV SELEKA SC: Is that December?

MR KOKO: That is December, 13 December 2016.

ADV SELEKA SC: That is right.

MR KOKO: Again I was not party to it and the way it works Chair once the Board delegates, you, you may not even be in the meeting, you have to be prompted by the
10 Secretariat that in your absence, the Board delegated this to you. Otherwise, you will never know and I did not end the team leader.

The project manager must set up meetings, get involved, and then you apply your mind, that never happened.

Then come the next meeting of 17 - of 8 February 2017. There was not even a submission there, Mr Krish Govender and Ms Suzanne Daniels went to present the final settlement of R460million. There was not even a
20 submission there, I sent Mr Saleka - my counsel, I gave the recordings of that meeting to my attorney to send them to you.

CHAIRPERSON: Is that the BTC meeting?

MR KOKO: Yes, it was the BTC meeting.

CHAIRPERSON: Okay.

MR KOKO: Yes.

CHAIRPERSON: Oh, you say you have got the audios?

MR KOKO: Yes, I made sure that my attorney sent them to Mr Seleka.

CHAIRPERSON: Ja.

ADV SELEKA SC: I believe it was being sent yesterday
Chair.

MR KOKO: No, no it is very old stuff. The yesterday's one was different.

10 **ADV SELEKA SC:** Oh but it is - well, I do not know that, which one was being sent because I have not - I have not had a chance to look.

MR KOKO: The audio of the meeting of the 8th of February 2017.

CHAIRPERSON: Apart from the audio is there a transcript of the audio?

MR KOKO: No, Chair.

CHAIRPERSON: There is no transcript of the audio.

MR KOKO: No, no.

20 **CHAIRPERSON:** Okay, if the contents are important of the audio I would like them to be transcribed, so that one can have the audio but also one can have the transcript.

MR KOKO: Chairman it is very important that - I actually tried to get them transcribed but we did not do a good job in transcribing them and then I gave up, I got the transcript

but they are not for your level. [Laughing] I did not want to upset you.

CHAIRPERSON: Okay, so the legal team if that can be arranged so that there is a transcript.

ADV SELEKA SC: Yes.

CHAIRPERSON: You know I want to avoid going to an audio unless there is a dispute about what is in the transcript, a transcript would be more convenient.

ADV SELEKA SC: Yes, no we will do that.

10 **MR KOKO:** Chair, the reason I went for the audio is again people coming here to mislead you and it saddens me that when that happens unless I have a document or an audio to prove them wrong then I look the corrupt party. So the Eskom went to Court and said Mr Koko negotiated the conclusion of the settlement agreement. That is the Eskom version in Court on the basis of which the Judges made the conclusion that I have a corrupt relationship with Mr Salim Essa.

20 But I have just taken you through a document that shows that I never took part into these negotiations, including the conclusions of it and the affidavit of the lead negotiator of McKinsey says so but the important part is that the person making these allegations is actually the one who made the submissions, Ms Daniels.

She is the one who says Mr Koko this, Mr Koko

that, Mr Koko concluded that but that audio tells you exactly who negotiate - who presented to the BTC, it is none other than Ms Daniels and Mr Govender. If I did not have that audio, I still be the – I will still look the bad one but in that meeting Ms Daniels does an interesting part.

CHAIRPERSON: Well I wanted to say Mr Koko a few minutes ago, you said unless you have a document to just prove what other witnesses say you would look the corrupt one and I wanted to say, if I was nodding, I was not
10 nodding that you look the corrupt one if you do not produce a document.

I was just acknowledging that I hear what you are saying.

MR KOKO: Oh. [laughing]

CHAIRPERSON: So I do not want anybody later on if there is a review saying, let us watch what the Chair – how – what the Chairman did, look he was nodding so he thought I was the corrupt one. [laughing]

MR KOKO: You agreed Chair but the important part Chair,
20 in that audio...[intervene]

ADV SELEKA SC: So sorry, Mr Koko are you talking about the meeting of December now?

MR KOKO: No, no 8 February 2017.

ADV SELEKA SC: Oh, okay that is BTC meeting.

MR KOKO: That is BTC meeting.

ADV SELEKA SC: Yes, carry on.

CHAIRPERSON: Yes, you may continue.

MR KOKO: She says to the Commission; to the BTC the settlement agreement has been audited.

CHAIRPERSON: Has been audited?

MR KOKO: Yes, it is the outcome...[intervene]

CHAIRPERSON: What is that supposed to mean?

MR KOKO: It is an outcome of an audit process. When we know at that time, the auditors were not even
10 appointed, were not even on the job.

CHAIRPERSON: But what would it mean ordinarily to say a settlement agreement is audited, was being audited?

MR KOKO: Well it means you had a third party independent person...[intervene]

CHAIRPERSON: Who has looked at it and satisfied.

MR KOKO: Who has looked at it and satisfied.

CHAIRPERSON: Oh, okay.

CHAIRPERSON: It does not have to be an auditor.

20 **MR KOKO:** No, it does not have to be but it must be a – in engineering we said it must be a competent person.

CHAIRPERSON: Ja.

MR KOKO: If it is a legal matter the competent person must be a senior counsel.

CHAIRPERSON: Must be a lawyer, ja.

MR KOKO: If it is an accounting matters, I apologies – if it is an accounting matter the competent person must have a relevant qualification, if it is an engineering matter the competent person must be a professionally registered engineer with so much experience.

CHAIRPERSON: Okay, that is what she was - in the context of a settlement agreement that probably meant it had been looked at by, and the competent person?

MR KOKO: That would have been a legal person, the
10 competent person would have been a legal person.

CHAIRPERSON: Ja.

MR KOKO: But that was forced Chair and in hindsight, a person making false representation and even denying that he was part of that meeting and only change his mind when he is confronted by the audios. I mean, she went to the Parliamentary inquiry and rubbish me, without telling them that I actually are the one who presented and motivated to the Board to get this R460million paid,

Chair, there is a bigger problem and I said to
20 counsel outside, if the Chair does not see these documents, but this one he must see. Mr Seleka I am coming to your answer.

ADV SELEKA SC: I am glad you sensed that.

MR KOKO: Your answer is quite simple.

ADV SELEKA SC: Yes.

MR KOKO: The delegations of authority...[intervene]

ADV SELEKA SC: Just face the Chairperson.

MR KOKO: The delegations of authority of Eskom deliberately excludes a CE from being involved in commercial process.

CHAIRPERSON: Okay.

MR KOKO: It is by design.

CHAIRPERSON: Okay, so that is why you would not have given any instruction.

10 **MR KOKO:** That is why I could not.

CHAIRPERSON: Okay.

MR KOKO: You will see that there is a Board Resolution, the Board is above the CE.

CHAIRPERSON: Yes.

MR KOKO: There is a Board resolution so the matter has served at the Board, the Board has resolved. So now...[intervene]

CHAIRPERSON: You cannot, with such a higher level.

20 **MR KOKO:** Is at a high level and be suspended again for defying the Board, ja, and I do not want to go there but Chair, the...[intervene]

CHAIRPERSON: Of course, as a Group CEO, acting Group CEO, you would be entitled, if you thought the Board was doing something wrong. To say to them, but I know you have made this resolution but I just want to

check whether you are aware that you should not make it because of - you should not have made it because of A, B, C, D.

Were you aware of these things? If they say, we were aware they go ahead, there is nothing you can do but as Group CEO I do not think that you can allow the Board to do something that you know is wrong, and not raise a voice.

MR KOKO: Chair I have done that even when I was a
10 junior.

CHAIRPERSON: Ja, okay.

MR KOKO: When I received instructions from the Board then I think, the Board is not authorised to do and they have done that after that and I have done this specifically pertains to the case we are talking about.

CHAIRPERSON: Yes, okay.

MR KOKO: I have done that and I would like my counsel Mr Barry, if you can give Chair the document of the – that memo of the 17th of October.

20 **ADV BARRY:** Chair, if I may, let me overlook what is relevant here, the one contains copies of the Trillian invoices and the other is a covering note, to Mr Koko of a document that you will recognise.

These documents emanated from and the disciplinary inquiry bundle relating to Ms Daniels. I'm

talking about the letter document relating to Ms Daniels, disciplinary inquiry. So there is actually two documents and just give in the one the important one.

CHAIRPERSON: Just hang on to them, I want to receive them in the right way. Now, if they are obviously important, if you are going to - maybe I should see them now if you are going to elaborate but if you will deal with them, maybe more fully at some stage in the future, then what should be done - I would like them to go into a proper
10 file so that we can allocate them the exhibit number and everything properly because if they just get handed up now it is just for seeing and not...[intervene]

ADV BARRY: Chair, it is our experience that if we hand documents up to you here that it actually does find their way into the bundles, but we will make sure that this document you make it available electronically and however, but it is important that if you see it now, but understand Mr Koko it was referenced in confidence.

MR KOKO: We can take it back.

20 **CHAIRPERSON:** I can have a look at it now there is no problem but I just want to make sure that they find their way into a bundle that will be among the bundles that I will consider.

ADV BARRY: We will make very sure of it.

CHAIRPERSON: Ja, okay alright then I can have

a...[intervene]

ADV BARRY: There are four copies of each, so one for you and then for Mr Koko.

MR KOKO: Chairman, the document you have is one of the painful moments for me in this process. That you know, I tweet a lot and when I become very abrasive of people who have no personal knowledge of what I am dealing with and you - one of the - you are - our - I look forward to sharing this document and then you will understand the pain

10 I am going through.

CHAIRPERSON: The one you are referring to in particular is it the settlement agreement or the other document? There are two or are they part of the same?

MR KOKO: The one is the - the first one is the settlement agreement.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Koko you were referring the Chairperson to a memo of 17 October I do not know which year.

20 **MR KOKO:** 2017.

ADV SELEKA SC: 2017. Can we deal with that first? Is that fine?

MR KOKO: That is the one I am talking about.

ADV SELEKA SC: That is the one?

MR KOKO: Yes.

ADV SELEKA SC: Okay.

MR KOKO: Chair you will see that this is a document it is has got a covering note to the Group Chief Executive.

CHAIRPERSON: I am sorry are you talking about the memo that is just underneath the settlement agreement page?

MR KOKO: Yes, yes so it is the final settlement.

CHAIRPERSON: So that is a memo from Mr Mabelane to you when you were interim Group Chief Executive.

MR KOKO: Correct.

10 **CHAIRPERSON:** Which is dated 17 February 2017.

MR KOKO: Correct.

CHAIRPERSON: Okay I think Mr Seleka said 17 October if I am not mistaken. So 17 February.

MR KOKO: 17 February 2017.

ADV SELEKA SC: Yes, no I – this – well.

CHAIRPERSON: Oh you were talking about another document.

ADV SELEKA SC: It should be corrected because I heard Mr Koko say October.

20 **MR KOKO:** I apologise it is 17 February.

ADV SELEKA SC: February ja.

MR KOKO: 2017.

CHAIRPERSON: Ja okay.

MR KOKO: Chair I received this memo from Ms Daniels contrary to her protestations and you will see what that my

counsel says we have got – we got this fairly recently from your commission in bundle – from your team’s bundle but this document was part of the disciplinary hearing of Ms Daniels. And you will see it is the – it says received by – you see the date.

CHAIRPERSON: On what page?

MR KOKO: On the very first page. It has got handwritten.

CHAIRPERSON: I do not see received by – on the settlement page?

10 **MR KOKO:** Yes the first page it is written in the top right corner C201.

CHAIRPERSON: Yes I can see that.

MR KOKO: At the bottom – bottom right it says received by the Chief Executive.

CHAIRPERSON: Oh received 23 February 2017 Chief Executive yes.

MR KOKO: So – so this document was received by my office on the 23rd of February.

CHAIRPERSON: Yes.

20 **MR KOKO:** And you will see the notes I make – handwritten notes.

CHAIRPERSON: Yes.

MR KOKO: On the 25th of February 2017. In the – I make notes there who is delegated by the BTC to implement the MSA?

CHAIRPERSON: That is your handwriting?

MR KOKO: That is my handwriting.

CHAIRPERSON: Yes.

MR KOKO: But now Chair if...

CHAIRPERSON: And the signature that comes immediately before.

MR KOKO: That is mine.

CHAIRPERSON: Your signature.

MR KOKO: That is mine.

10 **CHAIRPERSON**: And that is on 25 February 2017.

MR KOKO: That is mine.

CHAIRPERSON: Yes. Okay. Continue.

MR KOKO: Now Chair I would not write this sentence if I was delegated and if I negotiated the – this settlement – I would not. And then the bottom line I am sending – I am writing a note to my PA because now it go – when we going...

CHAIRPERSON: Is that Prish?

MR KOKO: No, no when I see the document it is my in-tray.

20 If I go through my in-tray and nobody's in the – so I just make notes.

CHAIRPERSON: Ja.

MR KOKO: So now this note will be read

CHAIRPERSON: By your PA.

MR KOKO: By my Professional Assistant.

CHAIRPERSON: Ja.

MR KOKO: So I am saying to Prish let us have a discussion on the 1st of March 2017.

CHAIRPERSON: Oh okay. Oh you also wrote – that is your handwriting there.

MR KOKO: Ja.

CHAIRPERSON: It say please Prish please let us discuss and then you got 1.3.217.

MR KOKO: Correct.

10 **CHAIRPERSON:** That is the when you want the discussion to happen?

MR KOKO: Yes.

CHAIRPERSON: And that is your signature after discuss.

MR KOKO: Correct.

CHAIRPERSON: Okay alright and Prish – is Prish Govender?

MR KOKO: Prish Govender is a Project Manager.

CHAIRPERSON: Yes okay.

20 **MR KOKO:** Chair if you go to the last sentence – last page of 203.

CHAIRPERSON: Which would be the second page of the memo?

MR KOKO: Yes.

CHAIRPERSON: Okay.

MR KOKO: You see the signatures are all there and they

are not dated.

CHAIRPERSON: Yes.

MR KOKO: They are not dated.

CHAIRPERSON: Yes they are not dated.

MR KOKO: Yes.

CHAIRPERSON: And yours is not there.

MR KOKO: And mine is not there. But Chair what is important and Mr Seleka knows that the invoice – this payment was done on the 22nd.

10 **CHAIRPERSON**: The day after you had – oh before you received it?

MR KOKO: Before I received this.

CHAIRPERSON: Because you received this on the 23rd of February.

MR KOKO: Correct.

CHAIRPERSON: You say the payment was made the day before.

MR KOKO: It was already done.

CHAIRPERSON: Yes. Okay.

20 **MR KOKO**: And let us look at what the team was asking me to approve.

CHAIRPERSON: Yes.

MR KOKO: You – if you go to – to the recommendation C203 says:

“To settle the outstanding amount payable to

McKinsey and BEE partner of R460 million to conclude the termination agreement.”

So the team is asking me to give them approval to pay R460 million – that was already paid and the same person who brought this to me goes to Parliament and come to this commission he says Mr Koko is the one who negotiated this settlement. Chair this is what I go through.

CHAIRPERSON: So you say:

1. You did not sign this.

10 **MR KOKO:** Yes.

CHAIRPERSON: Memorandum which – which had been compiled by – well it does not – it says supported by – it does not say who compiled it. Is it – I thought that ...

MR KOKO: Normally it will come and say compiled by.

CHAIRPERSON: They normally say who compiled – yes.

MR KOKO: But I can ...

CHAIRPERSON: That is unusual.

MR KOKO: This is unusual ja.

CHAIRPERSON: Yes.

20 **MR KOKO:** Normally to – normally to say.

CHAIRPERSON: It is like nobody wants to know that he or she is the one who compiled it.

MR KOKO: Yes. And this is another anomaly here. Normally it will say compiled by.

CHAIRPERSON: Ja. Recommended.

MR KOKO: Recommended by.

CHAIRPERSON: And then approved by.

MR KOKO: And approved by.

CHAIRPERSON: Yes. So this one says supported by.

MR KOKO: Yes.

CHAIRPERSON: Prish Govener. Supported by Edwin Mabelane. Supported by Suzanne Daniels. Approved and then of course your signature is not there.

MR KOKO: Yes.

10 **CHAIRPERSON**: But it does not say who compiled it. But on the first page of the memo it says it is from Mr Edwin Mabelane and ...

MR KOKO: No it is from Prish Govender.

CHAIRPERSON: Hm.

MR KOKO: The note says Prish Govender.

ADV SELEKA SC: But the memo itself.

MR KOKO: Yes the memo says Mr Mabelane.

ADV SELEKA SC: Yes.

CHAIRPERSON: Well I am saying if you look at C202.

20 **MR KOKO**: Yes I agree – I agree with you Chair.

CHAIRPERSON: Yes it is a memo that is addressed to you and purports to come from Mr Edwin Mabelane.

MR KOKO: Correct Chair.

CHAIRPERSON: Ja. Ja.

MR KOKO: Yes.

CHAIRPERSON: So – so I guess it is odd that he should sign that he it was supported by him rather than it was from him.

MR KOKO: Yes.

CHAIRPERSON: Because I – I – ja okay.

MR KOKO: Now Chair now the – the invoice I have also attached – the next document is an invoice for this and you will – I have put all the McKinsey invoices but the one that is relevant – yes is the one dated 21st February – the last one
10 – the very last one. R176million.

CHAIRPERSON: Yes now that is the other small bundle that – is an invoice from Trillian and it is addressed to Mr Edwin Mabelane at Eskom and it is dated 15 February 2017 and it is for professional services Management Consulting for the following Eskom initiatives procurement 00:09:43 energy phase, generation and it is R154 677 525,69 plus VAT then it comes to with VAT it comes to R176 332 379.29. Ja you want to talk about this one?

MR KOKO: This one – This invoice was received on the 21st
20 and was paid on the 22nd.

CHAIRPERSON: It was received by Eskom on the 21st?

MR KOKO: Yes.

CHAIRPERSON: Of February 2017 and was?

MR KOKO: Paid.

CHAIRPERSON: On the 22nd?

MR KOKO: On the 22nd.

CHAIRPERSON: Okay. You – you want to tell me where it was – where it shows – where is proof that it was paid on the 22nd or is that not in this document?

MR KOKO: Yes Chair I do not have 00:10:57 but I - it is on the Eskom court papers they say it the receipt.

CHAIRPERSON: Ja okay. Okay.

MR KOKO: Now Chair the point I am making to you and the invoice come on the 22nd – 21st get – take on the 22nd on the
10 23rd I receive an – I do not know what you call it – 00:11:22 that says give us permission to pay what has already been paid without being told that it is paid. I arrange a meeting on the 1st of March which never take place. Now Ms Daniels who is the contact person between – I never had contact with Mr Mabelane on this topic on this invoice. I had contact with Ms Daniels.

CHAIRPERSON: Sorry you never had contact with whom?

MR KOKO: Mr Mabelane.

CHAIRPERSON: About this?

20 **MR KOKO:** About the invoices I had contact with Mr Daniels.

CHAIRPERSON: Ja.

MR KOKO: I never had contact with Mr Govender. I had contact with Ms

CHAIRPERSON: Daniels.

MR KOKO: With Ms Daniels.

CHAIRPERSON: Okay.

MR KOKO: And she is the one who goes around and tells people how corrupt I was without telling the commission the machinisation[?] that has been happening here and that is the pain I go through Chair. And that is why I am saying forget what Mabongane says, forget what OUTA says, forget what Open Secret says, forget what Mothepu says the documents are here in front of you they speak for
10 themselves.

Finally Chair I want to take this – if you look at the document of the invoice you cannot read it I think it is small but I put it there by deliberate because when I talk about Managing Contract Insep – sep tells you who did what. Sep is an audit trail for you. Once you take this invoice you going to Sep and you will say oh this is the person who created the order, this is the person who did goods received, this is the person who released the payment. And if you want to know how that invoice would be done – was done
20 and you are not targeting a person by now you should have the affidavits of the people who are on this invoice and I am not on this invoice. So when the Judge when three full – when a full bench of the Pretoria High Court says when Mr Koko received invoices he paid them with alacrity. I do not remember – I do not even know how to spell it there.

CHAIRPERSON: Ja.

MR KOKO: It is not supported by facts. It is not supported by evidence and Chair the only people who could have given the courts this evidence is Eskom. They chose not to give Eskom – the court this evidence because they (inaudible). They are on the hunt to make the court think that Mr Koko is a bad, corrupt fellow and they put them – there Eskom had all these documents before them. Mr Bakamane does not depose the Eskom affidavit. But apparently he never had
10 personal knowledge of what he was disposing of so he did not know what he was telling the courts. But the people who briefed him had this all this – all these documents. They could have said to the courts actually this is how these payments were made and the court would have reached a different conclusion.

CHAIRPERSON: Well these documents you do have them Mr Seleka in the bundles?

ADV SELEKA SC: Yes the memo is contained in Mr Koko's bundle.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: This memo dated just for the record dated 17 February 2017 is in Eskom Bundle 15 at page 363 marked Annexure MMK35.

CHAIRPERSON: Ja.

ADV SELEKA SC: But it does not have the covering note.

CHAIRPERSON: It does not have the covering note?

ADV SELEKA SC: Yes it does not have the covering note.

CHAIRPERSON: Okay.

ADV SELEKA SC: And then the – the invoices

CHAIRPERSON: Well before you go to the invoices I may – I may be mistaken but I do not remember Ms Daniels being questioned on this memo was she?

ADV SELEKA SC: No she was Chair.

CHAIRPERSON: She was questioned?

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Did she explain why Mr Koko's signature is not there?

ADV SELEKA SC: Yes.

CHAIRPERSON: But hers and the other people's were there?

ADV SELEKA SC: Yes.

CHAIRPERSON: Do you remember what is 00:15:42.

ADV SELEKA SC: Yes she said Mr Koko refused to sign.

CHAIRPERSON: Oh okay.

20 **ADV SELEKA SC:** Yes that comes way back.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: And in fact that payment had taken place the day before was that – was that also put to her?

ADV SELEKA SC: No as I say we did not have this covering

note.

CHAIRPERSON: Ja. Oh you did not have this invoice – this – okay.

ADV SELEKA SC: Ja because the memo is dated the 17th of February.

CHAIRPERSON: Yes.

ADV SELEKA SC: And she was also uncertain about when did she receive the memo. We knew the date of payment at least from the investigators.

10 **CHAIRPERSON**: Ja.

ADV SELEKA SC: But we did not know when did Mr Koko receive it.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay alright. So you say you did not have the invoices?

ADV SELEKA SC: The covering note.

CHAIRPERSON: You did not have the covering note.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON**: The covering note to the memorandum?

ADV SELEKA SC: To the memorandum.

CHAIRPERSON: And then on the invoices you did not have the invoices or you did have them or you do not know yet?

ADV SELEKA SC: There is one invoice I know is in the bundles. Oh my junior says all of them are in the bundle

except for the first page.

CHAIRPERSON: Ja.

ADV SELEKA SC: Of the – of the batch that Mr Koko has handed up.

CHAIRPERSON: Ja.

ADV SELEKA SC: They are all in Eskom Bundle 14(c).
Sorry Chair let me –

CHAIRPERSON: No that is fine. I just wanted to check what you – you have.

10 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Yes. Mr Koko going back to the covering note I see the – the last note you made that Prish please tell – please let us discuss. Is the date there 1.3 – 1/3/17?

CHAIRPERSON: I am sorry Mr Seleka.

ADV SELEKA SC: Yes.

CHAIRPERSON: No I am thinking about the issue of documents that Mr Koko brings up from time to time. Maybe what should happen is that ahead of – of him giving evidence
20 obviously from your side you would know what is to be covered and he would know what is to be covered.

ADV SELEKA SC: Yes.

CHAIRPERSON: In terms of scope. If he has any documents that he would like to be handed up maybe Mr Koko those could be sent to – to Mr Seleka in advance to

say you would like these documents to be part of the bundle and ahead of the hearing they can be put in a – in a file or they would be slotted in the right place but what would happen is as he questions you and you give your evidence at the right time reference can be made to the documents you want to refer to but they would only also already be in a bundle and they can be admitted there and then. So then it is much more orderly.

MR KOKO: Understood Chair.

10 **CHAIRPERSON**: Than if they are handed up.

MR KOKO: I understand Chair.

CHAIRPERSON: Ja let us do it that way. Ja.

MR KOKO: I apologise Chair.

CHAIRPERSON: Ja, no, no problem. Okay alright continue Mr Seleka.

ADV SELEKA SC: Okay I think you said yes to that date Mr – 1/3/17.

MR KOKO: Correct.

20 **ADV SELEKA SC**: Now that is 1 March 2017 can you recall the reason why at that stage you would have wanted to speak to Mr Govender?

MR KOKO: First – my first question is there. Who is delegated to deal with? It is a very important part for me. Because the – in fact I – I knew then Chair what I was going to ask this person. Why are you doing this? Why?

CHAIRPERSON: Because you are not delegated.

MR KOKO: The person who is ...

CHAIRPERSON: Oh who is delegated.

MR KOKO: Ja.

CHAIRPERSON: Ja.

MR KOKO: You – who is this BEE partner? Remember the ques – and that was the most important part for me. I knew who the BEE partner here is – they are referring to. I – I had no doubt about...

10 **CHAIRPERSON:** Hang on I think the two of you are – are leaving me behind. Where were you reading from just now Mr Seleka?

ADV SELEKA SC: Oh on the covering note Chair.

CHAIRPERSON: Oh the same documents.

ADV SELEKA SC: Yes covering note but Mr Koko is more knowledgeable and he gets...

CHAIRPERSON: Ja but what was your question to him?

ADV SELEKA SC: At the last note the handwritten note is Prish please let us discuss.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: And the date below that is 1//3/17.

CHAIRPERSON: Ja.

ADV SELEKA SC: Which is 1 March 2017.

CHAIRPERSON: Ja.

ADV SELEKA SC: So I asked Mr Koko the – whether that is

correct he says yes and then my question was can he recall at that stage which is 1 March 2017 what is it that he wanted to discuss with Mr Govender. And Mr Koko let me

CHAIRPERSON: Oh ja.

ADV SELEKA SC: Let me add to that because there is gap between your first note – the date of your first note which is 25 February 2017 and 1 March 2017.

MR KOKO: Yes.

ADV SELEKA SC: If you could explain the gap?

10 **MR KOKO:** And that gap is probably driven by my diary and it also tells you I had no urgency. This was not an...

CHAIRPERSON: So urgent.

MR KOKO: It was not an urgent matter for me. At Eskom we deal with urgent issues Chief decisions and life stops when it is urgent. But the fact that I put these dates here it tell you ...

CHAIRPERSON: Ja there was no urgency as far as you were concerned.

MR KOKO: There was no urgency.

20 **CHAIRPERSON:** On this one.

MR KOKO: On this one this thing can wait.

CHAIRPERSON: Ja.

MR KOKO: Ask Prish to come see me.

CHAIRPERSON: Ja in a week's time.

MR KOKO: On this date and I made this note there – the

first note Mr Seleka would have been my 00:22:37 just to remind me on that discussions I will have.

CHAIRPERSON: Oh the first one.

MR KOKO: Ja the first one would be my ...

CHAIRPERSON: Who is delegated by the BTC to implement the MSA.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: And when I get that person I am asking him this
10 BEE person even though it is not written I know who he is because he came to me first previously and I said no. So how are you going to pay this person?

CHAIRPERSON: Okay no I think it is the – that part that was confusing me.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I thought maybe his reference to the paid to the BEE person or that you are talking about.

MR KOKO: No, no Chair if you – if you go to – if you go to – let us stick with the top right corner C203.

20 **CHAIRPERSON**: Yes.

MR KOKO: He say we are going to pay McKinsey and ordinarily it will stop there.

CHAIRPERSON: Oh okay. So it is – so a final settlement – oh to settle – the recommendation is to settle the outstanding amount payable to McKinsey and the BEE

partner. Oh so what you are now raising is ...

MR KOKO: Ordinarily.

CHAIRPERSON: Showing that.

MR KOKO: Ordinarily it will stop at McKinsey.

CHAIRPERSON: Ja.

MR KOKO: Because that is our contracting partner.

CHAIRPERSON: Yes.

MR KOKO: That is the person who was settling.

CHAIRPERSON: And the payment must go to that – to
10 McKinsey.

MR KOKO: And the payment must go to them.

CHAIRPERSON: And – and if they are to pay a BEE partner
that is their own business.

MR KOKO: They can pay that BEE partner.

CHAIRPERSON: Ja okay. So here – but here it says to pay
McKinsey and the BEE partner.

MR KOKO: Yes and that is a problem.

CHAIRPERSON: Ja. Yes.

MR KOKO: And that was the problem I saw there.

20 **CHAIRPERSON**: And you said at the meeting with Mr
Govender you were going to ask how the BEE partner was
going to be paid?

MR KOKO: And why is he there in the first place.

CHAIRPERSON: And why is he mentioned – why is he
mentioned there?

MR KOKO: Yes.

CHAIRPERSON: Yes. Okay. Okay. But you – you obviously have quite something to say about this. Why do you think the BEE partner is – or the reference to BEE partner is there?

MR KOKO: No Chair it – because it confronted me before but not only did it confront me before with Ms Goodson but I had met Mr Essa and Mr Sagar as well when we discussed the payment. And the process of payment was an issue. And I made it clear to them all the time that we can only pay
10 McKinsey on the work that was done and approved by McKinsey. McKinsey can employ whoever they want to employ but ...

CHAIRPERSON: Ja no, no I think – I think I have just realised something. You see both you and Mr Singh get questioned on some of the transactions are the same that you get questioned on I think and – and I seemed to think that something that I now realise must have been said by Mr Singh I thought you had also said the same thing because in regard to – to payment of ..

20 **MR KOKO:** No Chair I do not subscribe to payment of Trillian being – I do not support that.

CHAIRPERSON: Yes that is exactly what I want – what I am realising is that what you are clarifying now is that you do not go along with that.

MR KOKO: No, no.

CHAIRPERSON: Yes because Mr Singh was – you probably were watching when I was – when we were questioning him on that. So for you the position was payment was to go to the main contractor that is McKinsey. If they had a BEE partner as Eskom would have said they should have that is their business how they pay their BEE partner. Eskom was not going to pay the BEE partner directly. Is that right?

MR KOKO: Chairman that was my response on the 10th of February 2016 when I had a meeting with Ms Goodson that
10 is that interesting meeting that we had. And it was my – it was also my response in the workshop that happened immediately after that on the 10th of – with 00:27:28 Mr Salim Essa and either Mr Mabelane or Mr Mabela who accompanied me to the thing. So it is – Chairman it is not something we can debate it Eskom's rules are clear that – but I do not want to ...

CHAIRPERSON: Actually now I remember that Mr Singh testified that there were – there was a policy both at Transnet and at Eskom if I remember well which authorise
20 the payment of BEE partners directly.

ADV SELEKA SC: To sub-contractors yes.

CHAIRPERSON: Ja am I right that is what he said?

ADV SELEKA SC: That is what he said about Eskom Chair.

CHAIRPERSON: Yes and I said we should have that.

ADV SELEKA SC: Ja and that is – sorry.

CHAIRPERSON: We have not got that or we are still waiting for it or we know that it is not going to come?

ADV SELEKA SC: No that is what I indicated earlier Chair that we received it in the wee hours of this morning. It is a letter from an Eskom official.

CHAIRPERSON: It has got the policy?

ADV SELEKA SC: It is a letter from an Eskom official.

CHAIRPERSON: Ja.

ADV SELEKA SC: Who says we are asking her to do that in
10 an affidavit that there is no such a policy.

CHAIRPERSON: Okay. Okay.

ADV SELEKA SC: That looked at version 2, 3 and 4 of the policy but the policy does not have a provision that authorises Eskom to make payment directly to sub-contractors.

CHAIRPERSON: Yes okay.

MR KOKO: But Chair I – it is your show but I would ask you not to waste your time.

ADV SELEKA SC: Ja Mr Koko said it is un-debated it is not
20 a debateable issue.

CHAIRPERSON: No, no but there is a witness who has come here and said there is so it is important that we gather evidence which either supports what he says or refutes what he says.

ADV SELEKA SC: Correct.

CHAIRPERSON: So – so that is what I say. I mean ...

MR KOKO: Ja Chair I genuinely not – then I do not want to comment on other witnesses.

CHAIRPERSON: Ja.

MR KOKO: To back Eskom so I will not but I just think that my former colleague was mistaken.

CHAIRPERSON: Yes okay. Okay.

MR KOKO: That is – I – that policy Chair should be in the document called 321024.

10 **CHAIRPERSON:** Yes to which he also referred I think.

MR KOKO: Ja so it is not ...[intervenes]

CHAIRPERSON: If it is not ...[intervenes]

MR KOKO: If it is not there I think she was – I think he was mistaken.

CHAIRPERSON: Yes.

MR KOKO: I think he was mistaken.

CHAIRPERSON: Yes. Well... [laughs]

MR KOKO: That is the best – I think that is how far I can take it, Chair.

20 **CHAIRPERSON:** No, no I realise that Mr Koko ...[intervenes]

MR KOKO: There is a distinction.

CHAIRPERSON: Ja, you ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: You ...[intervenes]

MR KOKO: But

CHAIRPERSON: You confine yourself to that.

MR KOKO: Ja.

CHAIRPERSON: Ja.

MR KOKO: Just to conclude Mr Seleka. The purpose for the meeting of the 1st of March, I knew what I wanted to discuss ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...with Mr Govender who was the Project
10 Manager. I was very clear. But also, I was in an issue. Go to the minutes of... Oh, ja. The second part I wanted to discuss Mr Seleka and that question was rhetorical. If you go to the minutes of the 8th of August 2016, you will see in there that I was one of the persons delegated by PTC to conclude this contract.

CHAIRPERSON: Yes, okay.

MR KOKO: I was – I knew that and my thought was that: Hang on. I was in that meeting when you guys made a presentation. And the board delegated to me. But this has
20 never come to me and now I must approve R 460 million. You may have done a good job. I am not query that.

CHAIRPERSON: Ja.

MR KOKO: But truly, I deserve much better level of involvement.

CHAIRPERSON: H'm.

MR KOKO: And I think this is the only reason why this document came.

CHAIRPERSON: Just repeat that. I think, come closer to the mic.

MR KOKO: I think this is the only reason why this document came to me because they knew that I was one of the delegators.

CHAIRPERSON: You mean, the reason – that is the reason why it came to you late?

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

CHAIRPERSON: After payment had been made?

MR KOKO: Yes.

CHAIRPERSON: Yes.

MR KOKO: They realised ...[intervenes]

CHAIRPERSON: Because they realised that you would not approve?

MR KOKO: Well, they realised two things. That they would have difficulty and two, in terms of the board they had to consult with me. It is misconduct if they do not do.

20 And now that it is done, let us do it after the facts and we hope that he does not have the presence of minds or he agrees with us, he just signs and then he give – back and it is... [Speaker not clear]

CHAIRPERSON: Of course, would they... Well, before payment could be made, somebody must have approved it

and ...[intervenes]

MR KOKO: And that somebody is supposed to be me in terms of the board.

CHAIRPERSON: Ja. Now, who – the question is, who approved it? And if that person was not the right person, why was payment effected?

MR KOKO: Ja. Chairman, now you are going exactly to what I have been telling you all along.

CHAIRPERSON: H'm.

10 **MR KOKO**: Managing contract...

CHAIRPERSON: Ja.

MR KOKO: You will not take more than an hour to get your answer. And that is why we call in the investigators because it is easy. You go to Eskom, you give them the appropriate number, they are going to SAP(?). They will draw out the document that you will see that is not legible and this document will tell you exactly who was involved and that person must give you the authority he relied on to produce this document.

20 **CHAIRPERSON**: Yes, yes.

MR KOKO: And the only reason Chairman I think that that has not been happening is because it will lead them the people who have always condemned me. It will lead them to a different target but they are fixated on me and that is why they do not want to do anything that will lead them to

the other people. It is quite simple Chair.

We should not – I should not be sitting here explaining these invoices. I did not participate. I had nothing to do with that. I should not be here. I should not be the person whose name arose out of North Gauteng High Court. I should not be the one. But these things are – you know, it hunt, we want this guy. Show us anything that we can get that we can get him.

When Mr Seleka went through the McKinsey
10 invoices and I got very upset, if you remember and I even used an unfortunate word that you are *twisting* these things. It is because I thought you... Mr Seleka, these emails, these seven emails we are spending the whole day doing have got nothing to do with the MSA. Ever. Absolutely nothing to do with the MSA.

I am wondering why we are spending the whole day trying to link me to them because they do not. And I am pleased that McKinsey has come out yesterday to say actually they do not. But we should not have spent the
20 whole day, previous day. Now we are running at town on seven invoices – seven emails that have nothing to do with the MSA except that you – it is a hunt.

CHAIRPERSON: Well, those questions that I am asking Mr Seleka, are they answers in terms of what you have got there. The affidavits have got the information. Who

approved this payment? Because before payment was made somebody must have approved. And if the person who approved, was the person who approved authorised to approve?

Mr Koko says he was the delegated person. And what explanation is there for that approval to have been made if there is an approval? Or did the payment get made without approval? And what is the explanation? And was the explanation from Mr Suzanne Daniels and
10 Mr Mabelane...

Who was the other? Mr Govender in the memo of 17 February 2017 for seeking Mr Koko's approval after the payment had been made? Were they aware that payment was made or was effected on the 22nd of February? So those questions.

MR KOKO: Chair, you know, SIU ...[intervenes]

CHAIRPERSON: H'm?

MR KOKO: You know SIU has served me summons that the money is R 600 million. That R 3.8 billion is for me.
20 And we will get into the McKinsey – we will get into – but R 600 million of that are these invoices.

CHAIRPERSON: H'm, h'm.

MR KOKO: And every time when they Tweet ...[indistinct] Zuma(?). So I Tweet back and said: Can you update the nation about the R 3.8 billion?

CHAIRPERSON: [laughs]

MR KOKO: Because they are on – and just on the record. Because I am on TV I have to say they are on a hunt for nothing.

CHAIRPERSON: H'm, h'm.

MR KOKO: I mean, if you look at the documents here, you can see that the only reason SIU and Eskom invoice against me giving – having regards of the evidence that is here is because they want to pin somebody. Somebody –
10 they want to *pin/twist(?)* somebody that says: We are on the hunt and we are resolute. We will even issue invoices – summons even when there are no prospects of success given the evidence that is here. It is sad.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes, Mr Seleka.

ADV SELEKA SC: Yes, Chair. I have just enquired from the investigators. They have – they do not have affidavits from witnesses addressing these questions. Their investigation has, however, uncovered who would have
20 done the authorisation and so on but I think we will have to pursue that with the individuals who ...[intervenes]

CHAIRPERSON: Ja ...[intervenes]

ADV SELEKA SC: ...played the roles.

CHAIRPERSON: Ja, we need to have affidavits from those people.

ADV SELEKA SC: Yes.

CHAIRPERSON: From the people who can answer those questions.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then, the matter is urgent because we do not have time in terms of the time left for the Commission to finish. So it is urgent and they may have to be or some of them, one more, may have to be called to give evidence.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: So. Okay alright.

ADV SELEKA SC: Yes. Chair, that means there are a couple of things. Can I just correct one thing? Mr Koko, the only invoice on which we led evidence was the R 30.6 million and that was in respect of Mr Singh because he received that invoice and we were putting to him that he forwarded the invoice in order for the payment process to take its course.

MR KOKO: That is correct.

20 **ADV SELEKA SC:** Ja. The other invoice, I have not referred to that.

MR KOKO: It is correct.

ADV SELEKA SC: Ja. So I could not have been said to have been mistaken or whether I am twisting something.

MR KOKO: No, no, no Chair. I – Mr Seleka is correct.

He – the only invoice he has referred to is the R 30.6 million invoice. I do not – maybe I am slowing down but I did not – I do not remember saying you dealt with the others. No, I ...[intervenes]

ADV SELEKA SC: Oh.

MR KOKO: If I did, I take it back. All that I said was, we spent the whole day on the 29th of March on the seven invoices - on the seven ...[intervenes]

CHAIRPERSON: Emails.

10 **MR KOKO:** Ja, maybe that is why.

CHAIRPERSON: Well, if it is emails or invoice but ...[intervenes]

MR KOKO: The emails.

CHAIRPERSON: H'm?

MR KOKO: On the emails.

CHAIRPERSON: Ja.

MR KOKO: We spent on the seven ...[intervenes]

CHAIRPERSON: But the emails, were the emails not about the ...[intervenes]

20 **MR KOKO:** MSA.

CHAIRPERSON: ...the emails with Infoportal ...[intervenes]

MR KOKO: No, no, no.

CHAIRPERSON: ...and the travelling?

MR KOKO: No, no, no.

CHAIRPERSON: That was different.

MR KOKO: No, no, no. It was seven invoices on
...[intervenes]

CHAIRPERSON: Seven invoices, okay.

MR KOKO: Seven ...[intervenes]

CHAIRPERSON: Emails.

MR KOKO: ...emails on McKinsey.

CHAIRPERSON: H'm?

MR KOKO: One was at Medupi, one was the – and I know
10 them well, Chair.

CHAIRPERSON: Ja.

MR KOKO: Because I remember them well.

CHAIRPERSON: Ja.

MR KOKO: And that is why I got a little bit upset with
Mr Seleka and say you are twisting some of this because I
knew those – I knew the contents of the emails
...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...and how they arose ...[intervenes]

20 **CHAIRPERSON:** Ja.

MR KOKO: ...and why. And I also knew that they had
nothing to do with the MSA.

CHAIRPERSON: Ja, ja.

MR KOKO: Absolutely nothing to do with the MSA.

CHAIRPERSON: No, no that is fine.

MR KOKO: And my question was that, here we are sitting and looking at those emails that have nothing to do with – and say – and I am just being dragged into it. And I am relieved that McKinsey has clarified that.

CHAIRPERSON: H'm, h'm. No, no that is fine. But I do not know whether this does happen. It may well be that what happens is this. Mr Koko gets given affidavits that are said to implicate him or maybe implicating you. He sits with his lawyers and they prepare responses and that is
10 that, but there are no sessions involving the investigators of the Commission or the Legal Team with Mr Koko with or without his legal team to look at matters and pick up anything like these ahead of ...[intervenes]

MR KOKO: Ja, but Chair let me again apologise upfront. I am hurting. I am hurting. For three years I have heard the same story, twenty times, a hundred times that is false. Rumours that have been become factual. And Mr Seleka may be caught in that crossfire for believing innocently. I think he is not – I think the problem is me.

20 **CHAIRPERSON:** Ja, well. I am just saying, you know, for example, some of the things you raise about certain emails or invoices or whatever, some of the issues you point out, maybe in an affidavit you deal with them in a certain way but in a consultation when you – if you are asked and you deal with them it may be apparent that no this one needs

further investigation before it goes to a hearing or that kind of thing. So I am simply saying I do not know whether that does happen. Maybe it does not happen.

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

CHAIRPERSON: And it might help.

MR KOKO: ...it has not happened and that is for the better Chair. I think we are better off now.

CHAIRPERSON: [laughs] Okay alright.

ADV SELEKA SC: Chair, the practise. That is the
10 general practise.

CHAIRPERSON: Yes.

ADV SELEKA SC: That has not happened in respect of Mr Koko.

CHAIRPERSON: Yes, yes, yes.

ADV SELEKA SC: Ja.

CHAIRPERSON: It would help, I think, as I say, there will be no problem if his counsel is there as well. It would be no problem. It would help because ahead of the hearing the Legal Team would know exactly what he has to say
20 about certain things and it would be able to say: No, these will need to be investigated further before it goes to the hearing because ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...for example, he may be having a point that has not been picked up and so on and so on.

ADV SELEKA SC: Yes.

CHAIRPERSON: So if there is still room to do it that might help.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: I see we are at four o'clock. Let us take an adjournment or you want to close – to ask one or two before we can adjourn and then ...[intervenes]

10 **ADV SELEKA SC:** Yes, let us finish off because I – well, that ...[intervenes]

CHAIRPERSON: Well ...[intervenes]

ADV SELEKA SC: The problem I ...[intervenes]

CHAIRPERSON: I thought we have finished off the topic of ...[intervenes]

ADV SELEKA SC: A topic.

CHAIRPERSON: Yes?

ADV SELEKA SC: That I know ...[intervenes]

20 **MR KOKO:** My counsel gave me instruction – on how to answer you...

ADV SELEKA SC: [laughs]

CHAIRPERSON: [laughs] Okay alright. No, let us take ...[intervenes]

ADV SELEKA SC: Let us take ...[intervenes]

CHAIRPERSON: ...let us take an adjournment. But let us

talk about the way forward. We will take an adjournment and we will come back. How far are we from reaching a point where subject to issues that might still be – have to investigated in terms of your planning? How far are we from reaching a point where you be done with Mr Koko?

ADV SELEKA SC: Ja. The ...[intervenes]

CHAIRPERSON: Is it another day? Is it half a day? Is it an X number of hours or is it...?

ADV SELEKA SC: Ja. Chair, I wish I could give you
10 ...[intervenes]

CHAIRPERSON: I know that is not entirely in your control.

ADV SELEKA SC: Yes. Ja, I thought I was struggling with Mr(?) Matshepo but Mr Koko is on the other side.
[laughs]

CHAIRPERSON: Ja.

ADV SELEKA SC: So ...[intervenes]

MR KOKO: I am going to try to help you, sir.

ADV SELEKA SC: You are going to help?

20 **CHAIRPERSON:** Ja. [laughs]

MR KOKO: [Speaker is not clear] ...finish. I am going to slightly(?) help you, sir.

ADV SELEKA SC: So. I mean, if you look at the issues that we have to cover Chair. If we finish McKinsey now, we will be left with Tegeta issues.

CHAIRPERSON: H'm?

ADV SELEKA SC: Which are also quite extensive.

CHAIRPERSON: Ja.

ADV SELEKA SC: And we will have to touch on the travel agent evidence as well. Ja.

CHAIRPERSON: Well ...[intervenes]

ADV SELEKA SC: So I am thinking. Mr Koko helping me.

MR KOKO: [Speaker not close to microphone – unclear]

CHAIRPERSON: Well, it might not be unreasonable to say
10 Tegeta not more than three hours or is that ...[intervenes]

ADV SELEKA SC: No, that is too short.

CHAIRPERSON: That is too short? Or not more than four hours?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Okay. But certainly we – for you to finish ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...we would not need more than a day.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Ja, ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: It is at the most a day but it could be less.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let me ask Mr Barry. In terms of your

own assessment, when you come to re-examination, what is your estimation at the moment of how much time you might need?

ADV BARRY: We would estimate five hours.

CHAIRPERSON: Really? Five hours?

ADV BARRY: ...measures. We estimate five hours. We will try to take measure in terms of our preparation of documentation to try and shorten that if it is possible.

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

10 **ADV BARRY**: Yes.

CHAIRPERSON: Okay.

ADV BARRY: Unfortunately, I think it is... [Speaker is not clear]

CHAIRPERSON: Ja.

ADV BARRY: ...Mr Koko is here. So there is quite a bit of terrain that we will cover.

CHAIRPERSON: Ja. No, no, no that ...[intervenes]

ADV BARRY: And ...[intervenes]

CHAIRPERSON: But give me an idea.

20 **ADV BARRY**: As you pleases.

CHAIRPERSON: Ja, okay alright. I think we will adjourn now and then we will come back but this evening I would like us to not go beyond six. That is point one. Point two. Tomorrow and Thursday, I set aside for a certain witness and I am told that there might be challenges. Now I

mentioned that only in the event that everybody says we can use tomorrow or part of tomorrow or Thursday or part of Thursday if that other witness, those challenges do not – if those challenges materialise but I think Mr Barry indicates that there would be a problem of availability and I understand because short notice. So it was simply a question of just in case. So if ...[intervenes]

ADV BARRY: Chair, I am so sorry but my client is spoken for.

10 **CHAIRPERSON:** No, no that is fine. That is fair enough.

ADV BARRY: So ...[intervenes]

CHAIRPERSON: No, that is fair enough. But what we – what I think we – I would like us to do is, maybe when we adjourn, is to see whether we can identify some evening sessions that we can look at maybe next week or as soon as possible because maybe weekdays – I mean, weekdays might be problematic. So. But we can talk at the time. We can talk at the time and see what is possible and what is not possible. Okay, let us take tea adjournment.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: We will resume at twenty past ...[intervenes]

ADV SELEKA SC: Chair, just before that.

CHAIRPERSON: H'm?

ADV SELEKA SC: May I indicate to the Chairperson. I

managed to speak to Ms Van Rooyen and the IT expert. They were not able to come at lunch time. They will come at half-past four.

CHAIRPERSON: At half-past four?

ADV SELEKA SC: Half-past four, yes.

CHAIRPERSON: Okay. Well, I think maybe they can hear us. They can hear – as I do not know how much time that discussion would need. I mean, at least if they had said four o'clock because that is when we take an adjournment.

10 They will have to wait a bit. Maybe we will take an adjournment after – because now if we go up to four, then half-past four, that is too long an adjournment.

So they will just have to wait so that then that discussion can take place. We can take a ten minutes break later on. Maybe we should – I should just say, let us say we will take a ten minutes break at five. So – or maybe they can hear me. So they do not have to come immediately. They can be tight in with one another.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Ja. Okay alright. Let us take a ten minutes adjournment.

ADV SELEKA SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chair. Yes, thank you, Mr Koko, you have taken us through those documents. What I wanted to say in regard to the document is that – and particularly the transaction, the MSA, is that from the evidence one sees that there were various role-players at any given moment including the steering committee which would have had some oversight role to play, in regard to the services that are granted – I mean, services, yes, that are rendered under this MSA. So once the writing is on the wall, the bidder from [indistinct], all those who are in the steering committee should take – and I want you to comment on this – should they not take the responsibility to put brakes on this because the agreement lacks the necessary Treasury approval, why should we carry on with it, because it is only terminated in June 2016 which is said to have been concluded in January 2016 and there is this R1.6 billion that gets to be paid in order to addressing the last payment, which is 460, but there were payments prior to that, that were made, and the question is, this steering committee, which seems to have been the interface between Eskom – or let me say the eyes and ears of Eskom. The question is, why did it not do or take steps necessary to safeguard the interests of Eskom?

MR KOKO: Chairman, the steering committee took steps. There is no doubt about that. The only thing that you may

fault the steering committee of having done is to agree – is to terminate and agree on a period of at least six months. That is what they have agreed on. I actually do not think ...[intervenes]

ADV SELEKA SC: Sorry, that is what they...?

MR KOKO: Have agreed on.

CHAIRPERSON: They say they terminated the agreement on six months notice.

10 **MR KOKO:** I think there was a transition, I do not think it was immediately.

ADV SELEKA SC: No, the termination was with immediate effect according to the letter of 16 June 2016. But the transition, Mr Anoj Singh spoke about that.

MR KOKO: Ja.

ADV SELEKA SC: Whether it is a transition or whatever it is.

MR KOKO: Ja, Chair, now remember you are talking to somebody who does not have personal knowledge to it.

CHAIRPERSON: Ja.

20 **MR KOKO:** So please take my answer – my understanding, from where I was, is that there was a transition period ...[intervenes]

CHAIRPERSON: A period of about six months.

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

CHAIRPERSON: After the – after Eskom had given and

told them that they are terminating.

MR KOKO: Yes, yes, yes. That is one thing. The second thing that I think has disappeared and that is because I think we are now – it is in hindsight and we throwing the baby with the bath and about two, three weeks ago I had the time to listen to Dr Alexander Weiss. Chairman, if anybody tells you, and I have heard that evidence, that there was no value created, is lying to you. He is lying to you and I am one of – I will be the first one to defend that

10 the men and women of McKinsey and Eskom created value out of McKinsey. I think at one point they valued it at about R24 billion. Now it is a value I agree with, that the value that McKinsey and Eskom engineers added in that short space of time amounted to – the way I will put it, I will not put at R24 billion, I will say it was a lot, but I will not put it to R24 billion but I have no doubt, and I managed Generation, and Chairman, what I have not given you, you will find it in MMK47, it is an affidavit of a senior general manager who in my area of business was responsible for

20 McKinsey and he again says I was the main person responsible. Mr Koko was not responsible for this but the value at Majuba, it was a case study at Eskom, it is in billions. So I will not agree with anybody who says – and I have heard that, who says the McKinsey/Eskom team did not get value under the MSA. I will not agree with that. I

think that is a different discussion, I am hundred percent behind the team, Anoj, Mr Mabelane, Prish, on the work that they have done, the value – we stopped load shedding, Chairman.

I mean I heard you – and this is one thing I thought I will find an opportunity to talk to you about that says state capture destroyed Eskom. You have no evidence to suggest that. If you look at the Eskom graph of performance, you cannot argue that because of state
10 capture Eskom performance collapsed. To the contrary you can argue that because Mr Molefe and myself and others were fired, Eskom performance collapsed. So you have no –you are going to struggle and you are going to set yourself up to suggest ...[intervenes]

CHAIRPERSON: Mr Koko, you have said that a number of times, so...

MR KOKO: I am going to say it twenty times, it is very important. But, Chair, all that I am saying to you ...[intervenes]

20 **CHAIRPERSON:** I have noted it.

MR KOKO: Ja, all that I am saying is ...[intervenes]

CHAIRPERSON: I have noted it ...[intervenes]

MR KOKO: All that I am saying to you, all I am ...[intervenes]

CHAIRPERSON: I have noted it, you have made – and it

is quite in order for you to make a point, namely when during the time when you were there, Mr Brian Molefe was there and whoever or during the time that you were there, when you talk about yourself alone.

MR KOKO: Yes.

CHAIRPERSON: It is quite in order for you to say if you say because of this and that and that there was poor performance or performance declined, that is not true because during my time this is the performance that I can
10 back up, this is the performance that is known or during the time when it is said that state capture had occurred at Eskom, the irony is that the performance was good. You are entitled to make that point.

MR KOKO: Yes.

CHAIRPERSON: So all I was just saying is I have noted the point, ja.

MR KOKO: I have made this point.

CHAIRPERSON: Ja.

MR KOKO: But just to be direct to Mr Seleka.

20 **CHAIRPERSON:** Ja.

MR KOKO: I think the termination was done at the right time and I may be wrong and you – I may be wrong or you may not be happy with the answer but I thought the transition made sense, it would have been the value of work that was done.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes. Well, I am talking about that in relation to your evidence to the Chairperson that by February/March the writing was on the wall, but the termination only takes place in June 2016. There is that time lapse which is a significant amount of time from February/March to June 2016 and during that time, even thereafter, the steering committee continues to meet.

MR KOKO: Ja. But, Chair, I think this thing – the
10 delegations of authority is to the project manager, it is not to the steering committee. Delegations of authority are very clear. The main role of a steering committee was performance, that was the main role but all the executives that are there and I think there were – at one point that room was full, there were about 15 of us there, all of us are wearing our own – I am wearing the Generation Technology hat, I am looking at that, somebody is looking at the – the Transmission hat is looking at that, does not help the overall – the overall picture is for the project
20 manager. I am not sure if I would agree with you there, I would not agree with you. It looks like - especially, to be exact, especially when McKinsey came back to ask the letter and I speak under the correction, that letter must have been around the last week of March. 28, 30 March.

ADV SELEKA SC: What letter?

MR KOKO: The letter where McKinsey said we have done a due diligence and we do not support – we will not do business with McKinsey. I think that was around ...[intervenes]

ADV SELEKA SC: 30 March.

CHAIRPERSON: With Trillian, you mean.

MR KOKO: With Trillian, yes.

CHAIRPERSON: Ja.

MR KOKO: I think it must have been, to be exact, it is
10 probably 29 March, if I can be right.

ADV SELEKA SC: Yes, around there.

MR KOKO: And that is the time that really you can put on focus and say between the 29 March to the date when it was cancelled, I do not remember, maybe [indistinct]. I can only say that where it became very obvious that we really have to terminate is when we got that letter from McKinsey on the 29 March because then – like I said, to repeat myself, Chair, without being a nonsense, nonsensical, is that the writing on the wall was there
20 around February when it became obviously that we do not have National Treasury support and the letter of the 29, 30 March 2016, I think that would have killed the cat.

ADV SELEKA SC: Yes but that letter is completely unrelated to the requirement for National Treasury.

MR KOKO: Most certainly.

ADV SELEKA SC: Ja.

MR KOKO: Most certainly.

ADV SELEKA SC: So what I am saying to you is it cannot be linked to Eskom. When Eskom becomes aware, we do not have National Treasury approval.

MR KOKO: Chair, I will not quibble with that.

ADV SELEKA SC: Yes.

MR KOKO: I think that is right, except that all what I am simply saying is that the letter of the 30th or 29 March 2016
10 just compounds the problem.

ADV SELEKA SC: Why does it compound because McKinsey is free to subcontract whoever.

MR KOKO: And they – and I was with them on their side because from day one we should not be telling McKinsey go there, we should not be telling that except that now we are having so much work, so much we generated without complying to the 30% from the board and there is no end in sight. Now we have to go back to the board and say you gave us an authority at least in six on the – in October
20 2015 to contract with this gentleman and now 50%, we are now in March and we still have not done that. It just creates more compliance issues.

ADV SELEKA SC: Okay, I did not want to be rude ...[intervenes]

MR KOKO: Look, I am not going to – the two are not

linked.

ADV SELEKA SC: Yes.

MR KOKO: That is not what I am...

ADV SELEKA SC: Okay.

MR KOKO: That is not what I am arguing.

ADV SELEKA SC: Yes, yes.

MR KOKO: I am simply saying we are now getting into more compliance issues.

ADV SELEKA SC: yes.

10 **MR KOKO:** So now somebody has to go to the board and say in October 2015 you said I must comply with this guy and that is an overnight compliance, now I am sitting in March and I have not met one of your conditions precedent. I think that was a condition precedent, it was not a gatekeeper. That is the terms we use, one was a gatekeeper and one was a conditions precedent.

ADV SELEKA SC: Okay. You have taken the Chairperson to the R460 million payment, how you refused to sign that memo. As the Acting CEO and becoming aware that this
20 payment has been made, so now you are the most senior executive. Any steps you took in regard to your subordinates?

MR KOKO: No. No, Chair.

ADV SELEKA SC: Okay.

MR KOKO: No, Chair. I became aware of the payment to

Trillian when I was on suspension, second form of suspension, I read in the newspaper. In fact I fielded questions, one of the questions that I got from our then communications specialist that you have paid Trillian money and I responded overnight, I said never, we have never paid Trillian, we never contracted with Trillian. It turned out to be an embarrassment, it turned to be a lie. It embarrassed the Minister because Eskom said – and in that case Eskom was me, it was me, I was the CE then. I
10 said nobody can tell me I have paid Trillian. I have no contract with Trillian, I have not paid Trillian and only when I was on suspension that I realised we have paid Trillian and it was a big embarrassment because our initial response was that we have never paid and the factual evidence actually came out to say we have paid Trillian. I never had the opportunity to remedy the word. In fact I never returned to work, I eventually resigned.

ADV SELEKA SC: The ...[intervenes]

CHAIRPERSON: I am sorry, so when you saw that in the
20 newspapers would have been in 2017 sometime or...?

MR KOKO: 2017, that would have been 2017.

CHAIRPERSON: Yes, around which month? March?

MR KOKO: Chair, I am going to – I do not want to get into trouble but it would have been after the 15 May.

CHAIRPERSON: Okay, that is fine.

MR KOKO: It would have been after the 15 May.

CHAIRPERSON: Okay. No, that is fine. Yes, Mr Seleka?

ADV SELEKA SC: Thank you.

MR KOKO: And the reason I am saying 15 May it is because I was suspended on the 15 May.

ADV SELEKA SC: Yes.

MR KOKO: Or rather, I took special leave on the 15 May.

CHAIRPERSON: Ja.

MR KOKO: So I was already at home.

10 **CHAIRPERSON:** Okay.

MR KOKO: So I am just using that date.

CHAIRPERSON: No, no, that is fine.

ADV SELEKA SC: But, Mr Koko, that memo you gave us did tell you the payments that had been made prior to that R460 million. So on the first page of the memo, not the covering note, paragraph 2 stated:

20 “Following the negotiation process and both in the committee approval, MSA terminated in July 2016 an amount of 937 630 paid to date on the settlement.”

MR KOKO: Yes.

ADV SELEKA SC: So ...[intervenes]

CHAIRPERSON: I just mention, Mr Seleka, something that highlights the point that I made earlier on about arrangements to be made ahead [inaudible – speaking

simultaneously]

ADV SELEKA SC: Oh, yes.

CHAIRPERSON: Because whoever reads the transcript, now when they read they hear you refer to this memo.

ADV SELEKA SC: Yes.

CHAIRPERSON: The memo does not have an exhibit number, it is not said in what bundle it is, on what page, it is to be found – they would be struggling.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Whereas if we do it the way I suggested.

ADV SELEKA SC: That is right.

CHAIRPERSON: No documents would be referred to before it is in a bundle and can be located in the bundles, ja. So we can continue but I am just illustrating the point that when somebody reads the transcript they want to look at this memo, they will struggle because nobody says in which bundle it is.

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** Ja. But going forward I think we will try and do it that way.

ADV SELEKA SC: Let me, for the record, use it as it is contained in Eskom bundle 15(a) page 363, is the same memo dated 17 February 2017 marked MMK35.

CHAIRPERSON: Yes, in that event – in that event it may well be that this one that has got the covering note.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because I understood you to say that one does not have a covering note.

ADV SELEKA SC: Correct.

CHAIRPERSON: It may well be that it will be appropriate to slot it immediately after that one and then find the right pagination so they are together.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay. Please continue.

10 **MR KOKO:** Chair, to answer Mr Seleka's issue, on the same memo, the first page of the memo, 2(b), that is what you read.

ADV SELEKA SC: Yes.

MR KOKO: There is nothing – I do not see anything wrong there, I do not think anything wrong being paid to McKinsey.

ADV SELEKA SC: No, we are dealing with - what you are saying is when you became aware payments to ...[intervenues]

20 **MR KOKO:** Trillian.

ADV SELEKA SC: You say to Trillian but I am talking payments under the Master Services Agreement.

MR KOKO: Oh no, I quite frankly had no problem with that and I will tell you why, Chair. You know, we have a – if you read 1023 document, contracts are entered into

irregularly but they bind Eskom.

ADV SELEKA SC: But can I – sorry, sorry, Mr Koko, because the question is whether you became aware of this, that the payment was made under the Master Services Agreement upon receipt of this document.

MR KOKO: Yes, yes, this document is here. Sorry, about that.

ADV SELEKA SC: That is all I want to...

MR KOKO: No, no, no....

10 **CHAIRPERSON:** Hang, hang on, you might be talking at cross purposes.

MR KOKO: I think we are.

CHAIRPERSON: He is asking whether at the time you received this memo you became aware of the payment.

MR KOKO: And my answer is yes.

CHAIRPERSON: Oh, okay, alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. So did you receive it – you received it on the – when did you receive it?

20 **MR KOKO:** 23rd of...

CHAIRPERSON: 23rd, okay. Okay, no, that is fine.

ADV SELEKA SC: Yes.

MR KOKO: And just for the record, Chair, there is nothing wrong in McKinsey being paid the money that is said to have been paid, for as long as they have done the job.

CHAIRPERSON: Ja.

MR KOKO: There is nothing wrong.

CHAIRPERSON: And it is at the rate.

MR KOKO: And it is the right rate.

CHAIRPERSON: Ja.

MR KOKO: The answer I was – I thought I was answering when I even gave the date of when I was on special leave was the payment to Trillian.

CHAIRPERSON: To Trillian.

10 **MR KOKO:** Yes.

CHAIRPERSON: Okay, no that is fine.

ADV SELEKA SC: Yes, okay. The other one is a legal point which I do not want to trouble you with which is – you are saying you do not see a problem payment to McKinsey, is that notwithstanding that the agreement would not in fact have come into force because of lack or the want of Treasury approval?

MR KOKO: No, not at...

ADV SELEKA SC: Not at that level?

20 **MR KOKO:** Not that – no, no, no, remember that McKinsey was on the job. At a point in time it had a contract that we were working on. We know now that ...[intervenes]

CHAIRPERSON: The contract was without Treasury approval.

MR KOKO: We know that now but at that point all documentations, including the email we are referring to , where Mr Seleka must refer you to, he has got it is his bundle. I saw it on his bundle, 14, I think. So he [indistinct – dropping voice]

ADV SELEKA SC: What is that?

CHAIRPERSON: Do not speak away from the mic.

MR KOKO: So the email from Mr Solly Tshitangano who was then the Chief Procurement Officer in the Treasury
10 department writing to Dave Gorey and it is that email that was interpreted to be the authority to sign – to put the contract into effect.

CHAIRPERSON: To be the approval of Treasury.

MR KOKO: Yes, yes.

CHAIRPERSON: Ja.

MR KOKO: So everybody on these discussions, when they talk about National Treasury you will see they will always tell you refer to that email which I only had sight of during this process. But I heard of it, I knew about it, but I
20 had not ...[intervenes]

CHAIRPERSON: But I think Mr Seleka may be asking the question as of now when you say you do not have a problem with ...[intervenes]

MR KOKO: No, no, no, no, no.

CHAIRPERSON: Whether as you speak now you still say

you have no problem or you are saying at that time you would not have had a problem.

MR KOKO: No, Chair. No, Chair, I think I need to explain myself properly.

CHAIRPERSON: Ja.

ADV SELEKA SC: Before you answer let me clarify the Chairperson's question.

CHAIRPERSON: Oh, yes, ja.

ADV SELEKA SC: Because, Chair, I am saying to you, Mr
10 Koko, even then – because if the writing was on the wall in February/March 2016, this letter comes to you in February of the following year, which is 2017.

MR KOKO: Ja.

ADV SELEKA SC: When you would have had a full year of knowing that but we have a problem with this contract.

MR KOKO: Yes. And, Chair, there is nothing wrong with that.

CHAIRPERSON: Ja, there is nothing with?

MR KOKO: With the payment.

20 **CHAIRPERSON**: With the payment, right.

MR KOKO: With the payment of a contract that is defective. It is nothing wrong and the Eskom processes are very clear. You have got a defective process but you have committed Eskom. The supplier has done its job, you compensate the supplier for the work he has done. The

defective part of the contract, it is a misconduct on Eskom's side. You deal with your Eskom people. Your ...[intervenes]

CHAIRPERSON: Yes, so your answer is Eskom's approach was if the job has been done in circumstances where there was a contract which relevant people thought was in order at the time.

MR KOKO: Yes.

CHAIRPERSON: And you are paying at the rate that has
10 been agreed, that is in order. Any deviation from procedures that should have been followed is a matter to be dealt with separately but as far as Eskom was concerned, would not have been a ground to withhold payment.

MR KOKO: Yes.

CHAIRPERSON: That is what you are saying.

MR KOKO: Exactly. And, Chairman, it is not me saying that.

CHAIRPERSON: Ja, you are saying that was Eskom's
20 approach.

MR KOKO: It is Eskom policy.

CHAIRPERSON: It is Eskom policy.

MR KOKO: And this policy exists.

CHAIRPERSON: Ja, okay.

MR KOKO: And that I can say before I go home.

CHAIRPERSON: You must make sure that it is one of the documents.

MR KOKO: You will not have to wait for – yes, before I go home I will say to you it is 10.34, I will get you to the page.

CHAIRPERSON: Ja. So you say that Eskom's policy was quite clear.

MR KOKO: Yes.

CHAIRPERSON: If work has been done, there was a contract and - I mean, work was done, must be work was
10 done as required or to the satisfaction of Eskom then payment must be done and if payment is done at the right rate that is fine with Eskom, that was company policy.

MR KOKO: Yes, yes.

CHAIRPERSON: Ja, okay.

MR KOKO: But the policy further goes beyond that, it says there has to be consequences.

CHAIRPERSON: Oh, for any unprocedural events.

MR KOKO: Exactly, exactly.

CHAIRPERSON: Ja.

20 **MR KOKO:** For putting Eskom in that position.

CHAIRPERSON: Okay, okay.

MR KOKO: There has to be – you cannot simply say there was a contract.

CHAIRPERSON: Yes.

MR KOKO: Work was done, the supplier is entitled,

therefore I pay – in fact, in fact the policy is very onerous, it says if you put – if you find yourself in that position you cannot decide to pay. You cannot.

CHAIRPERSON: You must report yourself first.

MR KOKO: You must report yourself first.

CHAIRPERSON: Yes.

MR KOKO: Go and report yourself and then the ...[intervenes]

CHAIRPERSON: Somebody senior can take a decision.

10 **MR KOKO**: Somebody must take – you know, you have committed conduct but you have committed Eskom will pay, but I will deal with you.

CHAIRPERSON: Ja, ja, ja.

MR KOKO: The policy is very clear.

CHAIRPERSON: Ja, ja. No, that is fine.

MR KOKO: And that you will get today.

CHAIRPERSON: Ja.

MR KOKO: You will not have to wait or rush other people.

CHAIRPERSON: Ja.

20 **MR KOKO**: I signed that policy into ...[intervenes]

CHAIRPERSON: Ja, so that is why you know it so well.

MR KOKO: That is why, I signed these...

CHAIRPERSON: Mr...?

ADV SELEKA SC: Thank you, Chair. We have traversed the issue of whether or not this agreement was in fact

concluded by the time it was terminated, so I will not go into it because I want to go into your knowledge of – now I want to go into your knowledge of payments to Trillian – I mean – ja, to Trillian because it was under the MSA. Now let us zoom into that Trillian which you were explaining to the Chairperson. Chair and for this reason I would like us to turn to that submission document of 8 August 2016. It is in Eskom bundle 14(c). I think it is the bundle in front us. Page 829.25. Mr Koko, you referred to this earlier.
10 829.25, it is a submission document motivating for the termination.

MR KOKO: 829...?

ADV SELEKA SC: 829.25.

MR KOKO: I am there, Chair.

ADV SELEKA SC: You are there. Thank you.

CHAIRPERSON: Point 25?

ADV SELEKA SC: Yes, Chair. Submission document, executive summary dated 8 August 2016.

ADV BARRIE SC: Pardon me, I am not sure which
20 bundle?

ADV SELEKA SC: Bundle 14, Mr Barrie. 14(c) in your electronic. Well, the electronic is not ...[intervenes]

MR KOKO: Will just be...

ADV SELEKA SC: The page number. Let us go to the page number.

MR KOKO: Ja, 829.25, bundle 14.

ADV SELEKA SC: Thank you, Mr Koko. So the document reads, paragraph 1:

“Title of the submission, feedback on McKinsey top consultant’s program MSA settlement process.”

2:

10 “Resolution required to BTC notes the following. To date the initiatives under the top consultants program MSA have achieved more than 18.6 billion rand of annualised impact for Eskom.”

2.2:

“Applying determination and settlement clause within the MSA, Eskom may need to pay up to 2.84 billion rand inclusive of payment to the BEE partner for the value achieved to date. The BTC approves the following ...”
...[intervenes]

20 **CHAIRPERSON:** Can I stop you there?

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: On your approach Mr Koko, even this submission should not be making any reference to the BEE partner.

ADV SELEKA SC: Yes Chair, except ...[intervenes]

CHAIRPERSON: In terms of payment.

MR KOKO: Exactly.

CHAIRPERSON: Ja.

MR KOKO: Exactly. Exactly, you see and this is one of the ... if you look at the gate of the submissions, it is one of the submissions I gave you.

CHAIRPERSON: Ja, okay.

MR KOKO: That I had no party to it. I had no sight to it.

CHAIRPERSON: Okay.

10 **MR KOKO:** And if you look at the signatures are on page 29, point 32.

CHAIRPERSON: No, that is fine. I just wanted to confirm.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, you may continue Mr Seleka.

ADV SELEKA SC: That is indeed one of the points Chair, and then:

20 “BTC approves the following. The already negotiated lower settlement value of 1.8 billion rand inclusive of payment to the BEE partner. The 1.8 billion rand settlement negotiated will consist of an initial cash payment of 800 million rand to cover the utilisation of the consultants resources to date.”

Then we go to paragraph 2.7. Paragraph 2.7 reads:

“A group chief executive, group chief financial

officer and group executive generation and technology are authorised to negotiate more favourable terms and conditions through the settlement process.”

Now which one were you at that time, in paragraph 2.7? There is three designations.

MR KOKO: Group executive generation and technology.

ADV SELEKA SC: Generation ... did you negotiate favourable terms?

10 **MR KOKO**: No Chair, and this is what I ... this is the point I made earlier, that it is, this is the first meeting where I am delegated. When I write the note to say who did the board, the BTC delegate ...[intervenes]

CHAIRPERSON: Who was delegated by the BTC?

MR KOKO: Who was delegated ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: This is the delegation I am talking to.

CHAIRPERSON: Yes, because you know what the delegation was.

20 **MR KOKO**: Because I know the delegation and I was in this meeting. I think I was in this meeting. Yes, I think I was in this meeting.

ADV SELEKA SC: Alright.

MR KOKO: I was in this meeting.

ADV SELEKA SC: Okay, that is the one point Mr Koko.

The other point is, this meeting authorised payment to the BEE partner.

MR KOKO: This payment authorised 1.8 billion to McKinsey and you see, they put in bracket including the BEE partner, but the payment is to the contracting party.

CHAIRPERSON: Yes, it is ... I think unlike the other memo.

MR KOKO: Yes.

CHAIRPERSON: It is not to McKinsey and BEE partner.

10 **MR KOKO:** Exactly. Exactly.

CHAIRPERSON: This is to McKinsey including.

MR KOKO: Yes.

CHAIRPERSON: Yes. Yes.

MR KOKO: So the payment ...[intervenes]

CHAIRPERSON: In other words what they are saying is, the whatever may be due to the BEE partner, is in this amount.

MR KOKO: So the 30% is met.

CHAIRPERSON: Ja, whereas with the other submission
20 that we were looking at earlier, where it said McKinsey and BEE partner, it seems to me that that could be used by somebody who wants to pay the BEE partner directly.

MR KOKO: But that is what happened Chair.

CHAIRPERSON: To say but it was authorised.

MR KOKO: But that is what happened Chair.

CHAIRPERSON: Ja, so whereas here, it says inclusive.

MR KOKO: Exactly.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Hm ...[intervenes]

CHAIRPERSON: I do not know whether Mr Seleka you are on the same wave length but I am just articulating what the point is that Mr Koko is making.

ADV SELEKA SC: Yes. Chair, at this point ...[intervenes]

MR KOKO: I can tell you now there was no doubt that the
10 monies went to McKinsey.

ADV SELEKA SC: The money?

CHAIRPERSON: The money is?

MR KOKO: Is going to McKinsey.

CHAIRPERSON: Oh, okay.

MR KOKO: There was ...[intervenes]

CHAIRPERSON: No doubt.

MR KOKO: No doubt.

CHAIRPERSON: Okay.

ADV SELEKA SC: Remember ...[intervenes]

20 **CHAIRPERSON:** Mr Seleka, I am sorry. Mr Koko, hang on
Mr Koko. He came in while I was waiting for your answer.
Are we on the same wave length?

ADV SELEKA SC: Chair, ja I see the choice of words is because I have, I know what subsequently happened.

CHAIRPERSON: Yes, yes, ja. Obviously, I mean if you

think differently, you can pursue that. I was just wanting to indicate what my understanding is of the distinction that Mr Koko wanted to make.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because it is curious in the first place Mr Koko, to even say we are paying McKinsey (inclusive of the BEE partner). I do not even know whether they are saying they are paying McKinsey here. If you look, if you
10 read that paragraph 2.1, 2.2 and 2.3 McKinsey is not mentioned.

But inclusive of payment to the BEE, of payment to the BEE partner is expressly mentioned.

CHAIRPERSON: Yes.

ADV SELEKA SC: And the question is if you wanted to pay the main contractor, why do you even bother to mention the subcontractor.

CHAIRPERSON: Yes.

MR KOKO: Ja, but Chair Mr Seleka wants me to own the
20 document that does not belong to me.

ADV SELEKA SC: No, I am answering the Chairperson's question.

CHAIRPERSON: No, no. I think what he is doing, he is saying you might not be the owner of the document and you might not have participated. But you are attaching a

certain meaning or interpretation to a particular part of this, and he is questioning that meaning or interpretation that you attach ...[intervenes]

MR KOKO: Because I was there.

CHAIRPERSON: Remember that I was saying I think this is the point he wants to make.

MR KOKO: Because I was there.

CHAIRPERSON: Yes.

MR KOKO: I was in that meeting.

10 **CHAIRPERSON**: Yes.

MR KOKO: I was in that meeting.

CHAIRPERSON: So in which case you are saying you are not just relying on what has been [indistinct].

MR KOKO: No.

CHAIRPERSON: You are relying also on what transpired in the meeting.

MR KOKO: Not only was I in the meeting, but I was the custodian of the policy in that meeting. I was the person to go ...[intervenes]

20 **CHAIRPERSON**: Yes.

MR KOKO: I was the person in that meeting to hold the board stage to compliance.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes.

CHAIRPERSON: I do not know if that answered your

question, but ...[intervenes]

ADV SELEKA SC: Chairman ...[intervenes]

CHAIRPERSON: Feel free to put it if you want to.

ADV SELEKA SC: Yes, no, no. Correct Chair.

CHAIRPERSON: Mr Koko, you wanted to say something.

MR KOKO: Yes, yes. I wanted to, it is something that Mr Seleka will come back and haunt me on. I was the custodian in 2015, not in 2016.

CHAIRPERSON: Okay, alright.

10 **ADV SELEKA SC:** No. That is the wrong impression. That is a very wrong impression.

MR KOKO: I always tell my counsel you know, Mr Seleka looks for contradictions only when it matters to him. Other people can contradict themselves, it is fine.

ADV SELEKA SC: Ja. But ...[intervenes]

MR KOKO: I just thought I must correct that Chair. It is an important issue.

ADV SELEKA SC: Ja, I mean how many days thereafter? On the 12th of August, payments were then made. One to
20 Trillian, and two ... two to Trillian, one to McKinsey. The amounts are staggering. McKinsey is over 680 million rand. To Trillian two payments are made. One for over 113 million rand and then 122 million rand.

So this meeting and the committee, was it not aware of these payments being made after they were

made?

MR KOKO: No, and I do not see how they could have been aware. I just do not see process wise.

ADV SELEKA SC: So ...[intervenes]

MR KOKO: I do not see how they could have been aware.

ADV SELEKA SC: So does it mean that the BTC and the executives which included you, would have made the sessions and not ensured that whoever implements the decision, come back to account. Give a report how these
10 payments were made, because you see, the other payments in December 2016 and ultimately the one that you have traversed of 460 million in February 2017.

But confine yourself to the 2016 payments.

MR KOKO: The answer is no Chair. The Eskom procedure and delegations of authority does not expect the committee to come back to report to the BTC. The answer is no.

ADV SELEKA SC: Ja, is ...[intervenes]

CHAIRPERSON: Did you say committee?

20 **MR KOKO:** No, Mr Seleka says was there not supposed to be a feedback?

CHAIRPERSON: Ja, ja.

MR KOKO: And the answer is no.

CHAIRPERSON: Yes, yes.

MR KOKO: It is not Eskom policy, otherwise Eskom will

stop working.

CHAIRPERSON: Yes, yes. Is that on the basis that ...[intervenes]

MR KOKO: The volumes Chair ...[intervenes]

CHAIRPERSON: It is assumed that the decision of the BTC or board will be implemented.

MR KOKO: Correct, there is a ...[intervenes]

CHAIRPERSON: And if there is a problem then they can come back?

10 **MR KOKO:** Correct, correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

MR KOKO: Correct.

ADV SELEKA SC: But reporting back, why would it bring Eskom to a standstill?

MR KOKO: Chairman ...[intervenes]

20 **ADV SELEKA SC:** Because all you do is print out the document. This is how we have paid. You send to BTC or the steering committee. It shows the payment's date and who was paid.

MR KOKO: Ja, Chair. It is, that is how people have an impression of how things should happen. So let me give you a practical, Eskom spends close to 160 billion rand a year. That is over 16 billion rands a month, and you can take that to a daily amount.

If all those payments could go back to the board, the board will stop working.

CHAIRPERSON: Obviously you would only take to the board amounts that are above a certain threshold. You would not take the board everything.

MR KOKO: Chair ...[intervenes]

CHAIRPERSON: I mean even with delegation ...[intervenes]

MR KOKO: Chair, so the assumption you are making is
10 that the delegation, the amount of payment of a billion rands are few in between.

CHAIRPERSON: Well, not necessarily. I am simply saying even with the delegations in terms of authorisation of amounts, if a transaction is not more than so much, somebody down there can approve it. If it is above a certain amount, somebody higher or a committee higher.

If it is not everything comes to the CEO or Exco, but once you are talking about amounts that are above a certain amount, then maybe a transaction must be
20 approved by the board. So if one was talking of a situation where the board needs to get a report back, equally it will have to be only in respect of payments that above ...[intervenes]

MR KOKO: Very clear.

CHAIRPERSON: Ja.

MR KOKO: So you cannot spend money that is not authorised. That is first of all. Different procurement tender committees have got levels of authorisation. So this, in this case we are talking about the board tender committee, and the amount that is authorised at that level is 750 million rand.

So in proceeding with your logic, you are suggesting that every transaction that is 750 million rands, should report back that they have paid that amount.

10 **CHAIRPERSON:** But surely, well maybe he is suggesting that I am saying if there were to be a process in terms of which there should be a report there, responding to what you were saying that every month it is I do not know how many billions that are paid by Eskom.

Then if they had to get reports back on all of them. So all I was simply saying that logic would suggest that if there is to be a reporting back, it must be limited to certain amounts.

20 **MR KOKO:** Ja. Chairman, I can tell you now and you can make that recommendation and my, and I may be biased. A normal person who has so much heads on experience is not the person to rely on because he has got a skin in the game.

CHAIRPERSON: Yes, but what ...[intervenes]

MR KOKO: So I just do not think that it is going to be

practical.

CHAIRPERSON: But are you saying that even if, even if the report back to a body such as the BTC or the board was limited to payments of certain amounts, that would not be practical? Or are you saying ...[intervenes]

MR KOKO: It will not be practical. The volume of work going through BTC is in my view just too much.

CHAIRPERSON: It is too much.

MR KOKO: The way it is being managed now and it is not
10 as if it is not being managed.

CHAIRPERSON: Ja, ja.

MR KOKO: We have a what you call assurance and forensics.

CHAIRPERSON: Ja.

MR KOKO: That do audits on projects on the money spent, looking for all these compliance issues. So the money that gets paid.

CHAIRPERSON: Ja.

MR KOKO: There is a full time team of people on a daily
20 basis looking for these payments.

CHAIRPERSON: No, no I think from my side I can understand a situation where the arrangement is you do not need to come back to us and say that this has been done. This payment has been done. You need to come back to us if there is a problem.

MR KOKO: That is how it is done.

CHAIRPERSON: Ja, I can understand that situation.

MR KOKO: That is how it is.

CHAIRPERSON: You might trust your executives.

MR KOKO: Yes.

CHAIRPERSON: And whoever else that ...[intervenes]

MR KOKO: That is how it is.

CHAIRPERSON: If you have said this is fine, they will implement.

10 **MR KOKO:** Yes.

CHAIRPERSON: But if they meet with problems in trying to implement, then they can come back.

MR KOKO: They have to.

CHAIRPERSON: Ja, ja.

MR KOKO: No, they have to. That is how it works.

CHAIRPERSON: Yes.

MR KOKO: That is how it is right now as we speak.

CHAIRPERSON: Ja, okay. Alright.

20 **MR KOKO:** That is how it is as we speak. The way you have just articulated it, that is how it is at Eskom as we speak.

CHAIRPERSON: Ja, no no that is fine. Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr Koko, so are you leaving the Chairperson with a message that these payments, these authorised payments that ultimately went

up to 1.6 billion would have been made without the BTC knowing that payments were made separately.

One to McKinsey, one to Trillian whenever they were made.

MR KOKO: Absolutely. Absolutely. That is exactly what I am saying.

ADV SELEKA SC: And that those who negotiated, or were authorised to negotiate, you say it did not happen, would also have not known that this is how these payments were
10 made.

MR KOKO: The people who negotiate the contracts, are not necessarily the people who manages the contract. The project manager will know and that is how the procedure works, that [indistinct]. No one else will know unless he is told.

But again, it is that procedure Chair and he says he has got an accounts payable policy, and I have also referred you to management, managing contract. There is no way that if you are not in that chain that you will know.
20 There is no way that the senior of Eskom will know.

There is no way. There is no way that even the MD, or the group executive will know. No, the project team will know and that is why we have to hold them accountable. That is why we have to make sure that they are properly trained.

That the right people are managed. I mean take Modupi and Kosile for example. Kosile alone is costing 140 billion rands. When I got to know that there is serious corruption happening there, I could not even prove it myself.

I hear people on the street. I had to ask people just go check this thing. I could not know, but the project manager on site whose assets has been, what is the term Mr Barry?

10 **CHAIRPERSON**: Looted.

MR KOKO: No. What is the term when the asset forfeiture, you need ... this is your assets?

ADV BARRY SC: Seizure.

CHAIRPERSON: Oh, I have been seized.

MR KOKO: Yes, and this much Michael on his assets has been seized today and this ...[intervenes]

CHAIRPERSON: The one you were tight with.

MR KOKO: Come again?

CHAIRPERSON: The one you were tight with.

20 **MR KOKO**: But the point, I am throwing this in Chair, because I have given Mr Seleka the audio visuals of the meeting of 2 March 2017. That is where we had a fall out. Listen to those audios. Listen to them and Ms Daniels came here and told you that the board took a decision to suspend Mr Koko.

Again, I have given to you the audio. She was lying to you. The board was simply saying we have an anonymous report that says Mr Koko is corrupt, go talk to him and Mr Koko is going to suspend, and by the way the people that I was suspending, have got their assets today, frozen and yet I was being suspended for that.

All what I did to Mr Ngobane, is says Mr Ngobane, your body is protecting corruption and if you suspend me, you are going to go down with them. But ...[intervenes]

10 **CHAIRPERSON:** Yes.

MR KOKO: I have given it to Mr Seleka.

CHAIRPERSON: Yes.

MR KOKO: But the point I am making is Chair, is that the way the Eskom processes and procedures are wired, it will be unreasonable for you to expect the board of Eskom then to have known that Trillian was being paid.

CHAIRPERSON: Ja.

MR KOKO: It would be extremely unreasonable.

20 **CHAIRPERSON:** Obviously, if they authorised the payment of Trillian, in circumstances where they should not, that is a different matter.

MR KOKO: Exactly.

CHAIRPERSON: Ja.

MR KOKO: Exactly.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you. Thank you Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Chair, the IT experts are here.

CHAIRPERSON: Oh, ja I see it is ten past, twelve minutes past.

ADV SELEKA SC: Yes.

CHAIRPERSON: I can take, I take it that ten minutes should do.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** For the purposes of this discussion. If you need more than ten minutes, then another arrangement would have to be made.

ADV SELEKA SC: Yes.

CHAIRPERSON: Which may include meeting virtually everyone concerned to discuss.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But I obviously would like a report back in due course, to say this was the outcome of that discussion. So I just say again that the purpose really is for Mr Koko in the presence of his legal team and yourselves, and the specialist, and has Ms Sharon van Rooyen also arrived?

ADV SELEKA SC: Well, she is ... I understood that she is in meetings.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: So she might not be here yet.

CHAIRPERSON: Okay, I think there is somebody else.

ADV SELEKA SC: Yes.

CHAIRPERSON: That is fine. The purposes for Mr Koko to indicate to the investigators and to the specialists, to the experts, exactly what he talked about earlier, which he said should be looked at in terms of the computer ...[intervenes]

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** His own computer, that of Ms Daniels. I cannot remember who else, but everyone and what he is talking about that should be ... that they would be looking for and they would be able to say we have looked for that, we did not find it, or it will not be possible because of A, B, C, D.

Or it will be possible.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or basically that is the purpose, because I want to make sure that we do not have a situation where
20 something has not been looked at that should be looked at. Ja. So let me take, let us take ten minutes break. Then, it is quarter past now.

Let us say twenty past. If within the time when I have to come back you have not, you are not done, then arrangements can be made for you to meet. Six o'clock we

will adjourn today.

ADV SELEKA SC: Yes.

CHAIRPERSON: That might be another opportunity or an arrangement can be made for the meeting to continue at another time.

ADV SELEKA SC: Yes, it will have to be until twenty five past Chair.

CHAIRPERSON: Okay. Ja. Okay. Okay, let us make it 15 minutes and say half past.

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

CHAIRPERSON: Okay, so we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us continue.

ADV SELEKA SC: Yes, thank you, Chair. I think we will give the Chairperson – report back in due course.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Since we have taken the first step.

CHAIRPERSON: Okay, yes.

ADV SELEKA SC: And we need the second step
...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...and then we can give you some

feedback.

CHAIRPERSON: Okay.

ADV SELEKA SC: And take it from there.

CHAIRPERSON: No, that is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: As long as that is dealt with the urgency that it ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...it deserves, ja.

10 **ADV SELEKA SC**: Yes, Chair. Thank you.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chair, we are going to adjourn at six.

CHAIRPERSON: Ja.

ADV SELEKA SC: As Chairperson indicated. Maybe we should quickly deal with the issue of the travel agent.

CHAIRPERSON: Okay. You do not want to continue with what you were – or you are done with the topic you are dealing with?

ADV SELEKA SC: I have come to ...[intervenes]

20 **CHAIRPERSON**: A certain point?

ADV SELEKA SC: I have come to the what I think is the end of the McKinsey/Trillian.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: But I know Mr Koko is coming back. So I did not want to completely shut it down.

CHAIRPERSON: Ja, ja, ja. You are not closing it but ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...at this stage, you ...[intervenes]

ADV SELEKA SC: Indeed.

CHAIRPERSON: ...you think that there might not be anything further but there might be.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: Okay alright.

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

CHAIRPERSON: Okay let us go to that, and then next time you can see if there is anything else outstanding on the McKinsey.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: And then we will go into the bigger one, Tegeta issues.

CHAIRPERSON: Ja, okay.

20 **ADV SELEKA SC:** So that will take us to Eskom Bundle 18.

CHAIRPERSON: Okay.

ADV SELEKA SC: One, eight.

CHAIRPERSON: The documents that were handed up, we do not really have to keep them because they will be put in a file. Is that correct?

ADV SELEKA SC: Yes, Chair. That is correct, Chair.

That is ...[intervenes]

CHAIRPERSON: That would be filed. Okay.

MR KOKO: 18...

CHAIRPERSON: Bundle 18, ja.

ADV SELEKA SC: 18, yes. 18(b).

MR KOKO: [Speaker not close to microphone – unclear]

CHAIRPERSON: Do you need help? Somebody must help Mr Koko.

10 **MR KOKO:** Yes, I got it.

ADV SELEKA SC: The specific page relevant to Mr Koko is 1565.7.

CHAIRPERSON: What is the page number?

ADV SELEKA SC: 1565.7.

CHAIRPERSON: 1565.7.

ADV SELEKA SC: Ja. Mr Koko, this ...[intervenes]

CHAIRPERSON: Do not forget to arrange for these witnesses from Travel Excellence coming to give oral evidence.

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

CHAIRPERSON: Ja.

ADV SELEKA SC: I have, in fact, mentioned that already to them.

CHAIRPERSON: Ja.

ADV SELEKA SC: But Mr Koko, the affidavit starts on

page 1565.1. That is the affidavit of Ms Sameera Suliman, an adult female employed as a Travel Agent working at Double Excellence t/a Travel Excellence. It is paragraph 1 of the affidavit. The next page, page 1565.2, she gives the background. Background to my relationship with mister – or with Ms Alemi Alana. Paragraph 4:

“Both I and Ms Alemi Alana have been working in the travel industry for the last 30-years.

10 At a point and time, both and Ms Alana worked together at a travel agency called Sure Freeway Travel.

I later went on to join the travel agency named Harvey World Travel and Ms Alana left to start-up her own agency....”

Background to Travel Excellence, paragraph 6:

“Travel Excellence is a travel agency which was founded during 2013 by Ms Alana.

The company is solely owned by Ms Alana’s father...”

20 And the name is given, Mr Shariff Husain Alana, who is a Director and effectively a silent partner.

“Due to the nature of the company, no start-up funding was required.

Travel Excellence specialises in the arrangements of flights, hotel accommodation,

transfers, visas, tours and travel insurance around the world.

Travel Excellence does not have its own license with the International Electronic Board Association.

Thus we made use of license operators.

We used Serendipity Tours CC for a consortium of travel agencies to make our bookings.

10 The fact that we do not have an IAT licence means that we cannot issue our own airline tickets.

We are able ...[intervenes]

CHAIRPERSON: Mr Seleka, why are you reading all of that?

ADV SELEKA SC: Yes. I was going to ask the Chairperson ...[intervenes]

CHAIRPERSON: Mr Koko has read ...[intervenes]

ADV SELEKA SC: ...to move on.

20 **CHAIRPERSON:** I have read that.

ADV SELEKA SC: Yes.

CHAIRPERSON: [laughs]

MR KOKO: [Speaker unclear]

CHAIRPERSON: You can go to the real issues.

ADV SELEKA SC: Thank you, Chair.

MR KOKO: Chairman, before we do that. There is a confirmatory affidavit of Ms Alana ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...on this affidavit. Which page is that?

ADV SELEKA SC: The confirmatory ...[intervenes]

CHAIRPERSON: It must be immediately after this one, I think.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or is it before?

10 **ADV SELEKA SC**: Let me see.

CHAIRPERSON: It is at page 1575.

ADV SELEKA SC: Yes, 1575.

MR KOKO: Chair, that is the housekeeping issue.

CHAIRPERSON: H'm?

MR KOKO: The confirmatory affidavit was signed on the 17th of March 2021.

CHAIRPERSON: Yes?

20 **MR KOKO**: And the affidavit of Ms Suliman was signed on the 17th of March 2021. And page 1565.3 has got changes that we have done on the 23rd of March 2021.

ADV SELEKA SC: Is that paragraph 14?

MR KOKO: Paragraph ...[intervenes]

CHAIRPERSON: 1565.3, what paragraph?

MR KOKO: Paragraph 14.

CHAIRPERSON: 14?

MR KOKO: Yes.

CHAIRPERSON: Okay. H'm

MR KOKO: It is not my understanding ...[intervenes]

CHAIRPERSON: Oh, okay. Oh, you say those handwritten...

ADV SELEKA SC: Ja, changes for ...[intervenes]

CHAIRPERSON: Or is it because of the SAP stamp at the top that – is that stamp that the date of that stamp that makes you think this amendment was made on that date?

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

CHAIRPERSON: On 23?

MR KOKO: I can only make the conclusion, Chair.

CHAIRPERSON: Yes, okay.

MR KOKO: H'm.

CHAIRPERSON: Okay.

MR KOKO: And in that case, those changes ...[intervenes]

CHAIRPERSON: Were not ...[intervenes]

MR KOKO: ...were not confirmed by Ms Alana.

20 **CHAIRPERSON**: Yes, ja.

MR KOKO: Yes. And I am inclined to ask for the affidavit ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...that was confirmed by Ms Alana.

CHAIRPERSON: Just repeat that?

MR KOKO: [No audible reply]

CHAIRPERSON: Just repeat that.

MR KOKO: I am inclined to ask for the affidavit that was confirmed by Ms Alana on the 17th of March 2021. Chair, there is a reason I am getting to this.

CHAIRPERSON: Yes. No, no. Obviously, I want to understand that. Yes. Just elaborate. If Ms Suleiman's affidavit deposed to and signed by Ms Suliman after the 17th of March 2021, I could understand the point that says
10 Miss – is it Halima? – could not have confirmed that affidavit because it did not exist. If you say because of the amendment to which you have brought my attention, then Mr Halima could not have confirmed this affidavit because it did not exist. I would say there is a difficulty with that because they are on the same date but if you say Ms Halima did not and could not have confirmed that amendment because it was made after, that I also I understand.

MR KOKO: That is my point, Chair.

20 **CHAIRPERSON:** No, no that I understand. If it is about the amendment, I understand.

MR KOKO: It is about the amendment.

CHAIRPERSON: Ja. No, no I understand that point.

MR KOKO: And I am saying he(?) deposed – he(?) confirmed an affidavit that existed on the

17th of March 2021.

CHAIRPERSON: Ja.

MR KOKO: And ...[intervenes]

CHAIRPERSON: You are saying she has not confirmed the amendment?

MR KOKO: She has not confirmed the amendment.

CHAIRPERSON: Ja. No, no that I do understand.

MR KOKO: And it is material, Chair. And we will get to that. I want to see what she – confirmed.

10 **CHAIRPERSON**: Sorry?

MR KOKO: I want to see in particular what she actually confirmed.

CHAIRPERSON: Yes. Well, on the face of it, I am taking it, but it is not conclusive, I am taking it that she confirmed this affidavit without the amendment.

MR KOKO: Correct.

CHAIRPERSON: So what would be required is for ...[intervenes]

MR KOKO: The affidavit ...[intervenes]

20 **CHAIRPERSON**: ...her to be shown the affidavit after it has been amended and for her to say whether she confirms that in terms, by way of another affidavit whether she confirms that or not. So that would be what is required because she might say: Well, I confirmed that when I saw this affidavit and signed my confirmatory affidavit, this

amendment was not there. Or whatever she says. But if – she can then say whether with the amendment being there, is it true, is it correct. She can then say that.

MR KOKO: Chair, we are going to come back to this.

CHAIRPERSON: Ja.

MR KOKO: Because this is the witnesses. Some – when I started ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...at the beginning, I said to you there has to
10 be consequences to witnesses who come here for the purpose of directing you away from the truth.

CHAIRPERSON: H'm. No, no there is no problem. We – to the extent that you want to come back to it ...[intervenes]

MR KOKO: Yes, I am going to follow ...[intervenes]

CHAIRPERSON: ...you will have to do that.

MR KOKO: I am going to follow the tune of Mr Seleka.

CHAIRPERSON: Ja. Please do not lower your voice because ...[intervenes]

20 **MR KOKO**: I am going to follow the tune of Mr Seleka.

CHAIRPERSON: Ja.

MR KOKO: And let him conclude this trend.

CHAIRPERSON: Ja.

MR KOKO: And then I will come and show you the falsehood of both Ms Alana ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: and Ms Suliman.

CHAIRPERSON: Ja.

MR KOKO: And then I am going to ask you Chair that there has to be consequences.

CHAIRPERSON: H'm, h'm. Ja.

MR KOKO: This cannot continue like this.

CHAIRPERSON: Ja.

MR KOKO: It damages people's reputation. It destroys
10 people completely. Tomorrow's headlines, Salim Essa paid
for Koko's trips.

CHAIRPERSON: No, no that is an important point. But as Mr Seleka asks questions, if there is anything that you want to say as you respond to his questions, is that it substantiates the point you make about this being false, feel free to do that, even if you will come back later.

MR KOKO: No, certainly Chair.

CHAIRPERSON: Ja, okay alright.

MR KOKO: Certainly, Chair. I have watched
20 ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...the Zondo on TV too much.

CHAIRPERSON: [laughs]

MR KOKO: I know what you expect.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you, Chair. So Mr Koko, let us go to where the affidavit deals with you. By the way, Chair, I should say, Mr Koko in response to this preliminary aspect. The original affidavit prior to amendment was forwarded to your teams(?). I think they did, pursuant to that, asked whether we could give the affidavit that Ms Sameera Suliman says she deposed or submitted to the Hawks.

MR KOKO: Okay. So my attorneys have it?

10 **ADV SELEKA SC:** Yes.

MR KOKO: Okay.

ADV SELEKA SC: So the change there, Chair, she is correcting that she was the one who submitted it. She changes it into saying it was Ms Alana who submitted the affidavit.

MR KOKO: So I have provided the investigators of the Commission with the documents I still have in my possession including documentation attached to a previous affidavit that I submitted to the Hawks.

20 **ADV SELEKA SC:** Yes, that is what she has said.

MR KOKO: Yes, and that is what Ms Alana confirmed. Ms Suliman ...[intervenes]

ADV SELEKA SC: No, sorry. No. Remember, Ms Alana confirms the affidavit only insofar as it refers to her. So the original affidavit did not have Ms Alana as the person

who submitted, it had Ms Suliman saying: I submitted to the Hawks.

MR KOKO: Ja-no, no. I understand that.

ADV SELEKA SC: Yes.

MR KOKO: Ja. So Ms Suliman wrote an affidavit that says she submitted an affidavit to the Hawks which she did not do. H'm.

CHAIRPERSON: Well, I was just looking at this

MR KOKO: Chair, this is not material.

10 **CHAIRPERSON**: No, no but that is fine. But I – as you were talking, both of you, I was looking at the sentence. She says:

“I provided the investigators of the Commission with the documents I still have in my possession including documentation attached to a previous affidavit submitted to the Hawks.

Now her previous affidavit submitted to the Hawks... Okay, now I – maybe I understand what she...

20 Okay. You see, the amendment that she has made seeks to make it clear that she is talking about a previous affidavit submitted to the Hawks by Ms Alana after the amendment. That is what comes. That is how I understand it.

MR KOKO: Yes, Chair.

CHAIRPERSON: But without the amendment it seems to that – initially, I thought that the reference to her previous affidavit submitted to the Hawks might not necessarily have meant an affidavit, previous affidavit submitted to the Hawks by her but on reflection, I see that because she – of what she says earlier in the sentence, namely:

“I provided the investigators of the Commission with the documents I still have...”

Okay. Well, maybe ...[intervenes]

10 **MR KOKO:** [Speaker unclear]

CHAIRPERSON: Maybe without the amendment it might still ...[intervenes]

MR KOKO: Chairman, without the amendment it is very clear. She submitted an affidavit to the Hawks...

CHAIRPERSON: Ja.

MR KOKO: I submitted to the Hawks.

CHAIRPERSON: Yes... I... Well, there is – first she says she submitted – she provided the investigators of the Commission with the documents that she still had in her
20 possession ...[intervenes]

MR KOKO: And ...[intervenes]

CHAIRPERSON: And then if you stop there then this problem about the Hawks does not arise.

MR KOKO: Yes.

CHAIRPERSON: But then she includes – she continues:

Including documentation. She is now talking about – she is saying what she – the documents she submitted to the investigators of the Commission included documentation attached to a previous affidavit submitted to the Hawks. Now I was saying. Maybe that wide enough to say it does not necessarily means submitted by her but I was saying, well, maybe on balance it means submitted by her.

MR KOKO: Chair ...[intervenes]

CHAIRPERSON: Maybe for now we do not need to
10 exhaust this.

MR KOKO: Chair, we do not need to do that.

CHAIRPERSON: Ja.

MR KOKO: Either she submitted an affidavit.

CHAIRPERSON: Ja.

MR KOKO: Or Ms Alana submitted an affidavit.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Yes.

MR KOKO: Her changes ...[intervenes]

CHAIRPERSON: Make it clear.

20 **MR KOKO**: ...had – the changes simply says
...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...Ms Alana ...[intervenes]

CHAIRPERSON: Submitted.

MR KOKO: ...submitted.

CHAIRPERSON: Ja.

MR KOKO: I am happy to proceed with that.

CHAIRPERSON: Ja.

MR KOKO: But before Mr Seleka goes to the paragraph she(?) wants to go to, I want to refer you to paragraph 17.

Paragraph 17 says:

“At Travel Excellence I usually dealt with Mr Essa directly.

10 I do not believe Ms Alana ever dealt with him directly...”

And that is – and Ms Alana confirms that that she has never dealt with Mr Salim Essa directly but she deposes of an affidavit, she having not dealt directly with Mr Essa. She thinks she is competent and have knowledge to depose to an affidavit to the Hawks that says Mr Koko – Mr Salim Essa paid for Mr Koko for a trip to Dubai. I find that eye-browsing but I do not want to go into the details.

CHAIRPERSON: Ja-no, that is fine.

MR KOKO: If you get into the ...[intervenes]

20 **CHAIRPERSON:** Ja.

MR KOKO: ...it – as you – you will see these things built up and it is going to pop up.

CHAIRPERSON: Ja.

MR KOKO: Because ...[intervenes]

CHAIRPERSON: No, no that is fine, ja.

MR KOKO: These people are...

CHAIRPERSON: Ja.

MR KOKO: Let's...[intervenes]

CHAIRPERSON: No, that is fine.

MR KOKO: All that I am simply saying is that, she confirmed that she has not had direct dealings with Mr Essa but she then depose – she deemed it proper that not Ms Suliman but her deposes an affidavit to the Hawks dealing with Mr Essa and Mr Koko. So let us carry on,

10 **Chair.** The ...[intervenes]

CHAIRPERSON: Well, of course, on that approach submitted to the Hawks is understood to be Ms Halima means Ms Halima submitted to the Hawks an affidavit deposed to by her. It is just that, once they come here, we can hear more. We can have clarification.

MR KOKO: There is enough ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...there is enough details to interact ...[intervenes]

20 **CHAIRPERSON:** And maybe you know enough ...[intervenes]

MR KOKO: I understand ...[intervenes]

CHAIRPERSON: I am always the last one to know.

MR KOKO: There is enough detail to ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: I am just – you said – I said I will listen to Mr Seleka.

CHAIRPERSON: Ja.

MR KOKO: And then we will come back.

CHAIRPERSON: Ja.

MR KOKO: But you said I must raise these things as I carry ...[intervenes]

CHAIRPERSON: No, that – yes, ja.

MR KOKO: I ...[intervenes]

10 **CHAIRPERSON:** Ja, you will do that. Ja. You see, you need also to, in regard to this – well, in regard to everybody, supply Mr Seleka with as much, shall we call it “ammunition”, for what it is worth, for him to be able to question the witnesses in regard to what your version is before they are allowed to leave. So. And if you give him all the information that you have, you empower him to question them in terms of your version as well.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: H’m.

20 **ADV SELEKA SC:** Chair ...[intervenes]

CHAIRPERSON: Well, I see that it is two minutes...
[laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: ...to six o’clock.

ADV SELEKA SC: Ja, let me ...[intervenes]

MR KOKO: We finish this part.

ADV SELEKA SC: Let me draw ...[intervenes]

MR KOKO: [Speaker unclear]

CHAIRPERSON: Let me hear Mr Seleka first.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Let me just draw this to the Chairperson's attention so that if we adjourn at least the Chair ...[intervenes]

10 **CHAIRPERSON**: Okay, ja.

MR KOKO: ...before we adjourn.

ADV SELEKA SC: Page ...[intervenes]

CHAIRPERSON: Hang on, Mr Koko.

MR KOKO: Ja.

CHAIRPERSON: Ja.

ADV SELEKA SC: The affidavits that Ms Halima Alana submitted to the Hawks, we have it in the bundle. It is page 1287. Now I am listening to Mr Koko saying, you know, in regard to the statement, when Ms Suliman is
20 saying: I do not believe that ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...Alana had direct contact with Salim Essa, Mr Salim Essa. That he seeks to make an issue of it.

CHAIRPERSON: Ja, he says but she is contradicting

herself.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: But I am not sure whether that is correct because if you look at the affidavit Ms Alana made to the Hawks, she does not claim to have dealt directly with Mr Salim Essa. You can see that she writes the affidavit purely based on what she says ...[intervenes]

10 **MR KOKO:** Please take me to that statement. What is the number?

ADV SELEKA SC: Page 1287, it is the same bundle.

MR KOKO: Chair, let us go back. Now ...[intervenes]

CHAIRPERSON: 1287.

MR KOKO: 1287.

ADV SELEKA SC: Yes, where she says:

“I do hereby confirm that Travel Excellence has travel records for Anoj Singh and Matshela Moses Koko...”

MR KOKO: 1287.

20 **CHAIRPERSON:** Yes?

ADV SELEKA SC: And on the face of it, she seems to testify ...[intervenes]

CHAIRPERSON: Based on the records.

ADV SELEKA SC: ...based on the records.

CHAIRPERSON: Okay.

ADV SELEKA SC: The person who claims to
...[intervenes]

CHAIRPERSON: Have personal knowledge.

ADV SELEKA SC: ...I should not say claim.

CHAIRPERSON: Ja.

ADV SELEKA SC: The person who alleges to known
Mr Salim Essa is Ms Suliman.

CHAIRPERSON: Ja.

ADV SELEKA SC: And that is the affidavit that we are
10 dealing with.

MR KOKO: Chair?

CHAIRPERSON: Yes?

MR KOKO: Chair, I want to ...[intervenes]

ADV SELEKA SC: So I said page ...[intervenes]

MR KOKO: No, no, no.

ADV SELEKA SC: 8, Bundle 12.

CHAIRPERSON: 1286. 1286.

ADV SELEKA SC: 1287.

CHAIRPERSON: It starts at 87.

20 **ADV SELEKA SC:** Yes.

ADV SELEKA SC: It is a fairly short affidavit.

CHAIRPERSON: Ja, I see that at paragraph 5 – at 12 – at
page 1288 ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: She says: “I do hereby...”

MR KOKO: Please go to ...[intervenes]

CHAIRPERSON: Hang on, Mr Koko.

CHAIRPERSON: At paragraph 5, I see she says:

“I do hereby confirm that Travel Excellence has travel records for Anoj Singh and Matshela Moses Koko...”

And then proceeds. Where must I go to?

MR KOKO: 1350.

CHAIRPERSON: 1350?

10 **MR KOKO**: [Speaker unclear]

CHAIRPERSON: 1315?

MR KOKO: Yes.

ADV SELEKA SC: Where is ...[intervenes]

CHAIRPERSON: That is not in her affidavit or is that another affidavit?

MR KOKO: No, no the same bundle. Same – Alana

ADV SELEKA SC: Give me the page number?

MR KOKO: 1315.

ADV SELEKA SC: One, three...?

20 **MR KOKO**: One, five.

ADV SELEKA SC: One, five.

MR KOKO: Ja, it is in ...[intervenes]

ADV SELEKA SC: But this is not in her affidavit.

CHAIRPERSON: Ja-no, this ...[intervenes]

MR KOKO: [Speaker unclear]

CHAIRPERSON: It is a receipt. Is that so?

MR KOKO: Yes.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is on the same... Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Now what we – the distinction we are making Mr Koko. It – the affidavit has annexures.

MR KOKO: Yes.

ADV SELEKA SC: And I understand you are referring to
10 an annexure to the affidavit?

MR KOKO: Yes.

ADV SELEKA SC: But we were looking for an allegation in her affidavit where she might be saying: I know Mr Salim Essa or I know Mr Matshela Koko.

CHAIRPERSON: Or I have dealt with.

ADV SELEKA SC: Yes, so I have dealt ...[intervenes]

CHAIRPERSON: But I think Mr Koko, by referring to this page, he is drawing attention to the fact that she signed this ...[intervenes]

20 **MR KOKO:** Exactly.

CHAIRPERSON: This receipt.

MR KOKO: That is exactly ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...of a hundred thousand rand that has got Essa as the person who sent EFT. But it is okay. This

can be dealt with in due course, you know. We do not need to ...[intervenes]

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

CHAIRPERSON: ...this ...[intervenes]

MR KOKO: This same receipt, we will get to it ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...quicker(?) and in the – Ms Suleiman's affidavit.

10 **CHAIRPERSON**: Ja.

MR KOKO: Because it is the same.

CHAIRPERSON: Ja-no, no, that is fine. We will have a look but we ...[intervenes]

ADV SELEKA SC: So that is ...[intervenes]

CHAIRPERSON: We are ...[intervenes]

ADV SELEKA SC: ...on [Speaker unclear – parties intervening each other – unclear]

CHAIRPERSON: Ja. [laughs]

ADV SELEKA SC: [laughs]

20 **MR KOKO**: Chair, can we finish this and then we can – at least this part?

CHAIRPERSON: Which part, Mr Koko?

MR KOKO: The one we are dealing with.

ADV SELEKA SC: [laughs]

MR KOKO: We have to move.

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

MR KOKO: We are instructed. I beg(?) you.

CHAIRPERSON: [laughs] Okay, Mr Koko. You want the trips to be dealt with?

MR KOKO: Yes.

CHAIRPERSON: Or just this one?

MR KOKO: I need the trips to be dealt with.

CHAIRPERSON: H'm?

10 **MR KOKO:** I need the trips to be dealt with. But let us finish this one. We started at least ...[intervenes]

CHAIRPERSON: Well, you see, the – you created a problem because you had something which could have waited until later but you wanted to deal with it now.

MR KOKO: I want to deal with it now.

CHAIRPERSON: [laughs] You see. But we cannot sit for too long.

MR KOKO: Chair ...[intervenes]

20 **CHAIRPERSON:** But I will give you a chance to deal with it when we come back. I will give you a chance. Can I talk to the Legal Teams in my chambers just now about – after we have adjourned about seeing whether in the next few days and next week there might be some evenings where we could continue? But thank you, Mr Koko for availing yourself again. Thank you to everybody. Thank you to the

staff and the technicians. Thank you to you Mr Seleka and your team, everybody. We are going to adjourn. Tomorrow, for the benefit of the public, I am supposed to hear the evidence of Mr Wakeford in relation to BOSASA.

We adjourn.

INQUIRY ADJOURNS TO 5 MAY 2021