COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

05 MAY 2021

DAY 389

Gauteng Transcribers

Recording & Transcriptions

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

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the aforegoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:	05 MAY 2021
TRANSCRIBERS:	B KLINE; Y KLIEM; V FAASEN; D STANIFORTH

Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 05 MAY 2021

CHAIRPERSON: Good morning Mr Notshe, good morning everybody.

ADV NOTSHE SC: Good morning Mr Chairperson.

CHAIRPERSON: Yes. Are you ready?

ADV NOTSHE SC: Chairperson today is scheduled for the evidence of Mr Kevin Wakefield – Mr Wakeford. Mr Wakeford Chair you will remember he applied to cross-examine Mr Agrizzi. Mr Agrizzi had given evidence wherein he referred to Mr Wakeford. On that basis Mr Wakeford applied to cross-examine Mr Agrizzi.

Now Mr Wakeford then was in – is scheduled to testify today in response to the evidence of Mr Agrizzi before he could cross-examine him.

But unhappily Chairperson it – the matter for testimony is not ready today because of two things.

1. The evidence of Mr Agrizzi refers to two other people who are involved – who are alleged to be involved in the activities of Mr Wakeford. That is Mr Radhakrishna and Mr Papadakis. Both those persons have given affidavits but there was a delay in getting those affidavits seen by Mr Agrizzi and responded to by Mr Agrizzi. Mr Agrizzi has now responded to those and now they are ready to be given to Mr Wakeford. We gave them this morning. Mr Wakeford therefore

could not be able to test – to finalise his affidavit before he testifies today. He will finalise it this afternoon and then the matter will be ready to proceed tomorrow.

I must also put on record that ideally it – the affidavit ...

CHAIRPERSON: You are requesting that the matter be adjourned until tomorrow?

ADV NOTSHE SC: We request that the matter be adjourned until tomorrow.

CHAIRPERSON: Ja.

ADV NOTSHE SC: And the –

CHAIRPERSON: You said the matter will be heard tomorrow. I decide when the matter will be heard.

ADV NOTSHE SC: No, no I am sorry – I beg your pardon Chairperson it is a – we are requesting that the matter be adjourned from today to tomorrow to hear the evidence of Mr Kevin Wakeford.

CHAIRPERSON: There was another matter you saying you want to place on record.

ADV NOTSHE SC: And then the issue – the other matter we want to place on record is that Mr Wakeford wanted access to the evidence given by Mr Agrizzi in the inquiry – there is a litigation inquiry that had been held regarding the liquidation of BOSASA.

Apparently Mr Agrizzi testified there and Mr

Wakeford would have loved that evidence to be part of his affidavit.

We have unable to get that but that has also delayed the finalisation of the affidavit. And – but the – that part will not form part of the affidavit that is being finalised this afternoon.

And then the – when I receive the affidavit of Mr Agrizzi – sorry of Mr Wakeford I will then give it to Mr Agrizzi but we will not be able to get the response of Mr Agrizzi before the testimony of Mr Wakeford tomorrow.

So Mr Wakeford will testify without a response from Mr Agrizzi tomorrow. If Chair grants us the permission for the postponement to tomorrow.

CHAIRPERSON: Ja well I – Mr Wakeford is represented let us just get counsel for Mr Wakeford to place himself on record. Good morning – just put on the mic. Just switch it on. Ja press somewhere there?

ADV WILLIS: Yes.

CHAIRPERSON: Ja okay.

ADV WILLIS: Good morning Mr Chairperson.

CHAIRPERSON: Good morning yes.

ADV WILLIS: I did act for Mr Wakeford.

CHAIRPERSON: Yes.

ADV WILLIS: As you know surname Willis for the record.

CHAIRPERSON: Yes.

ADV WILLIS: My attorney Ms Conradie from Maphalla Mokate Conradie .

CHAIRPERSON: Yes.

ADV WILLIS: I confirm everything that Mr Notshe has informed you of Mr Chairman.

CHAIRPERSON: Ja, yes.

ADV WILLIS: In prevailing on you to stand the matter down for one day might I – might I just make the following submissions?

The first is that unfortunately logistically issues and obviously the response of Mr Agrizzi has – has created the situation where we only received information as late as this morning.

We have been waiting for it Mr Notshe and I have been in continued contact. The – the fact is - is that Mr Wakeford would have been ready to give the evidence this morning – he is ready – he is on standby but of course it is for the benefit of this commission and your good self that you have the affidavit.

Because it is an affidavit not merely a statement and it has got to be testified to and certainly as his legal representatives we cannot recommend that he signs off under oath on something when there is other material that we are aware of. That is very unfortunate.

Mr Chairman the fact is and not to labour the issue

and you will recall in relation to Mr Wakeford he was one of those in this commission unfortunately in circumstances at the time did not get his Rule 3.3 Notice.

He has been prejudiced from the outset we are now 28 months down the line he is one of those and not the only one but there are many have breached your rules and directives who has not had his say in the media.

He has obeyed your rules where he has been forced to publish a media statement in denial that is all that it has amounted to and he has waited and abided his time.

One we cannot lose this opportunity for him to give his evidence. We do believe we can be finished tomorrow – we may have to prevail on you to work after hours but it is our intention not to waste more than today in making sure that the matter is properly ripe be heard before you and dealt with by you.

And those circumstances I second Mr Notshe's request that you stand the matter down until tomorrow. It was set aside for the two days – we will lose today but I do believe it can serve the purpose of expediting the proceedings tomorrow and bar an hour or two or three into the evening your days and your commission will not – the days in this commission will not be lost on account of standing it down.

Thank you Mr Chairman.

CHAIRPERSON: No thank you – thank you very much. Thank you. Of course as everybody would know I am very concerned about the need for the commission to use all its available time because there time constraints but I understand the logistical challenges that I have been told about.

Maybe things could have been handled in a different way but I will adjourn the matter until tomorrow. I do have an evening session tomorrow and it may well be that to the extent that it might be thought there might be a need to go into the evening with Mr Wakeford's evidence tomorrow it may well be that we should start earlier than normal so that we try as far as possible not to interfere with the evening session of tomorrow. So I think maybe let us start at half past nine.

ADV NOTSHE SC: Half past nine suites me Chair.

CHAIRPERSON: Ja. Ja. So – so it is fine I am going to adjourn Mr Wakeford's matter then and tomorrow we will – I will hear his evidence – we will start at half past nine.

ADV NOTSHE SC: Thank you – thank you Chair.

CHAIRPERSON: We – for the public we are meant to have an evening session this evening and depending on what arrangements will be made maybe the witness who is supposed to give evidence this evening could start earlier maybe in the afternoon but there will still be another

session of the commission sometime either this afternoon or this evening. Okay we – we adjourn.

ADV NOTSHE SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Hulley, good afternoon everybody.

ADV HULLEY SC: Good afternoon Mr Chair.

CHAIRPERSON: It has been a long time I have not seen you.

ADV HULLEY SC: It has been.

CHAIRPERSON: And in a long time.

ADV HULLEY SC: It has been Mr Chair.

CHAIRPERSON: Yes. Yes. Good afternoon Mr Mabuyakhulu.

MR MABUYAKHULU: Good afternoon Chairman.

CHAIRPERSON: Thank you. Thank you for availing yourself for purposes of the commission. Yes Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair. Mr Chair the proceedings today arise from a – from a directive that is dated 16 April 2021 that was sent to Mr Mabuyakhulu calling upon him to come and testify to deal with matters where the – as to a conflict between himself and two witnesses who have implicated him.

I will take you to that in a short while. If I can in the

meantime as a matter of housekeeping just ask you to consider the bundle LEA27 which is before you Mr Chair. That bundle will largely be the bundle that is required for today's purposes.

The – if I could give some background to how this matter has come before the commission Mr Chair you will recall that two witnesses a certain Mr Trevor White of PricewaterHouse Cooper testified sometime in January of 2020 and a certain Mr – Colonel Piet Du Plooy also testified sometime in February of 2020.

Now they testified about a number of matters some of which is of importance for today's purposes but specifically they testified about a certain Mr Gaston Savoy who was the director and the owner of a number of companies which are referred to as the Intaka Group of Companies amongst the various transactions of that company those companies were responsible for were the sales of certain units to the KwaZulu Natal provincial government via its Department of Local Government in Provincial – oh sorry Local Government and Traditional Affairs.

Arising out of those – out of those transactions there was an – they – Mr Savoy was required to pay over a certain amount of money as a donation – the indication that was given to him was that it would be a donation of R1.053 million that would be paid over to the ANC.

Now what the days' proceedings are concerned with is the question of the R1.053 million and a – which was supposed to – from the evidence that had been led by Mr Trevor White what it showed was that the amount had been paid into the firm of attorneys Khobone and Shezi Attorneys and from that it had been disbursed to various creditors of a certain Mr Sipho Shabalala.

Mr Mabuyakhulu's involvement is in – in this matter relates to the fact that he provided an affidavit at some stage and provided support or the view that Mr Shabalala had in fact paid over that amount of money or paid over an amount of money of R1 million to the ANC

So on the 16th of April of 2021 a directive was sent to him that appears at Bundle – at RR7 page 130 this is part of the Bundle LEA27 in which he was called upon to come and testify at paragraph 1 and in the quotation 1.

> "Before Mr Mabuyakhulu's application for leave to cross-examine Mr White and Colonel Du Plooy can be decided it is necessary for Mr Mabuyakhulu to testify and subject himself questioning via a member of the commission's legal team where after an assessment will be made on exactly what allegations of fact remain in dispute between Mr White and Colonel Du Plooy on the one

hand and Mr Mabuyakhulu on the other."

And then he is instructed:

"Mr Mabuyakhulu is hereby directed to appear before the commission"

And it is given today's date and on the following page he is told:

"To give evidence and be questioned with regard to the matter of R1 million donation dealt with in his affidavit delivered to the commission."

And it is in that context that Mr Mabuyakhulu has been called to come and testify today.

CHAIRPERSON: Yes okay. No that is fine.

ADV DICKSON SC: Mr Chair I am sorry I think I missed being able to state my representation. AJ Dickson SC from Pietermaritzburg. I am instructed by PKH Attorneys and I am representing the witness Michael Mabuyakhulu.

CHAIRPERSON: Well I was not aware that there was legal representative where you aware Mr Hulley?

ADV HULLEY SC: I was aware Mr Chairperson I should have drawn that to your attention.

CHAIRPERSON: Yes.

ADV HULLEY SC: Much earlier my sincere apologies.

CHAIRPERSON: Yes to my attention. Yes okay. Now at least he does appear there. Good – good afternoon Mr

Dickson.

ADV DICKSON SC: Good afternoon Mr Chair nice to see you.

CHAIRPERSON: Yes nice to see you too. Okay so you have just placed on record that you represent Mr Mabuyakhulu.

ADV DICKSON SC: That is correct.

CHAIRPERSON: Yes okay alright. Mr Hulley are you done?

ADV HULLEY SC: I am done with the introduction Mr Chair.

CHAIRPERSON: Done in terms of outlining what?

ADV HULLEY SC: In terms of outlining how the matter comes before the commission.

CHAIRPERSON: Yes.

ADV HULLEY SC: If Mr Mabuyakhulu can be sworn in so that I can take him through the evidence.

CHAIRPERSON: Yes.

ADV HULLEY SC: 00:06:20 to the issues that have raised.

CHAIRPERSON: Okay. Mr Dickson at this stage there is nothing you wish to say otherwise if there is nothing we would have Mr Mabuyakhulu sworn in.

ADV DICKSON SC: Mr Chair I wonder if I could ask for an indulgence.

CHAIRPERSON: Yes.

ADV DICKSON SC: Mr Mabuyakhulu once he is sworn in would like to make an opening statement.

CHAIRPERSON: Ja.

ADV DICKSON SC: It may be on the lengthy side for an opening statement but that will be his evidence as it were and all his contentions that he wishes to make and if he is – if he is permitted to do that then Mr Hulley can ask questions afterwards. If that is in order?

CHAIRPERSON: As I understand it although you refer to it as an opening statement as – what you actually mean is he would like to tell his side of the story.

ADV DICKSON SC: That is correct Mr Chair.

CHAIRPERSON: Is that correct? Yes before he is questioned.

ADV DICKSON SC: That is correct yes.

CHAIRPERSON: Okay no that is alright. Let us – let us have him sworn in first and then I will hear what Mr Hulley – whether Mr Hulley has anything to say about that.

ADV DICKSON SC: Thank you.

CHAIRPERSON: Ja. Okay. Mr Mabuyakhulu the Registrar will administer an oath or affirmation to you at this stage maybe you can unmute yourself and then you will appear – your picture will appear.

MR MABUYAKHULU: Okay.

CHAIRPERSON: Oh I understand Mr Mabuyakhulu you should talk and when you talk – start talking then you will – your picture will appear.

MR MABUYAKHULU: I am hearing the Chairman awaiting to

be 00:08:31.

CHAIRPERSON: Oh okay. Alright okay.

REGISTRAR: Please state your full names for the record.

MR MABUYAKHULU: My full name is Michael Mabuyakhulu.

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

MR MABUYAKHULU: I have no objection.

CHAIRPERSON: Sorry. What is – just repeat.

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

CHAIRPERSON: Oh okay.

MR MABUYAKHULU: I have no objection Chairman.

REGISTRAR: Do you affirm that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, I truly affirm.

MR MABUYAKHULU: I truly affirm.

CHAIRPERSON: Thank you. Thank you.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Mr Hulley do you have anything to say about the request?

ADV HULLEY SC: Mr Chair I have got no difficulty per se as long as Mr Mabuyakhulu of course understands that the purpose of today's' proceedings is very limited. It is not on the question of his overall testimony relating to all the matters that have been raised by Mr White and Colonel Du

Plooy. It relates to a specific and a very narrow – but subject to that I have got no difficulty with it.

CHAIRPERSON: Ja, no, no that is fine. Mr Mabuyakhulu what is your estimate of how much time you need in order to just tell your story – you side of the story?

MR MABUYAKHULU: I only need about fifteen minutes not more than that.

CHAIRPERSON: About fifteen minutes. Fifteen minutes.

MR MABUYAKHULU: Yes Mr Chair.

CHAIRPERSON: No that is fine. I give you this opportunity now. You can go ahead.

MR MABUYAKHULU: Good afternoon Mr Chairman and the commission as a whole. Please allow me Mr Chairman to set out the context of the issues that have resulted in my appearance before this judicial commission.

Its parameters to investigate the existence of state capture, corruption, fraud in the public sector including organs of state.

The first matter Mr Chairman that I wish to place on record is the matter that I have raised in my supplementary affidavit in paragraph 1 to 5.

I place before you Mr Chairman a concern of significant importance. On the 9th of January 2020 the commission informed me that Messrs Trevor Shaun White and Petrus Johannes Du Plooy who mentioned my name in

their evidence and after being served with their respective affidavits that were submitted to this commission I made an application to the commission in terms of Rule 3.3.6.3 to cross-examine the two witnesses on the allegation they had made about me.

Instead of being afforded an opportunity to cross-examine these witnesses based on their testimonies to this commission I have been advised that the Chairman has ruled that before my application is decided I must first give evidence and submit myself to questioning.

I confirm to Chairman that I am appearing before this commission in order to honour that directive as I hereby do.

Mr Chairman I wish to make it clear that I welcome the opportunity to give evidence before this commission. I however Mr Chairman wish to place on record that I would have expected the commission to firstly allow me the opportunity to cross-examine the said two witnesses on aspects of their evidence that I regard not to be based on facts, logic and rationality.

Yet I am now expected to negate the evidence against me before the version of their evidence is even tested by this commission.

The major concern I have here is that I am now giving evidence in denial of unfounded opinions or inferences before showing how following roles unfounded

opinions or inferences are.

I therefore place this concern on record at the outset.

I also wish to point out Mr Chairman that I have been advised that I need to remind that the matter in the – is still before the various courts of the Republic of South Africa where some individuals and companies are currently being prosecuted by the state.

I raise this matter only for the 00:13:01 by this commission. And now we are trying to deal with some of the key issues as I understand them.

Mr Chairman I wish to confirm that I received a letter from my colleague Dr Zwelini Lawrence Mkhize who was the MEC of Finance and Economic Development in West 00:13:19 at the time. In his letter dated the 15th July 2005 Dr Z L Mkhize proposed that he will establish a joint interdepartmental team. They will consider the purchase of the water purification plants that would be installed in the various 00:13:37 municipalities that were highly accepted by the Judge.

So then Zwelini Mkhize further explained that these water purifications plants were to be funded from the 00:13:51 fund that was located in the Department of Finance and Economics. My role here Mr Chairman was to support the proposed work by Dr Zwelini Mkhize for the establishment of the committee headed by the joint HOD's of

the Provincial Treasury and Local Government.

It was this committee that dealt with the procurement issues from the beginning to the end. With the establishment of the committee he has basic authorities had no further role to play in the procurement processes save that may have received a report of those.

The other very important matter Mr Chairman is that we know from the indictment on the interim matter and from the affidavit of one Mr Gaston Savoy the dependent on the R1 053 million was paid into the trust account of Khobone & Shezi Attorneys [?] on the 12th of March 2007.

In his evidence before this commission Mr White presents TSW19 and TSW21 in the bundle of documents where it illustrates how the R1 053 million was dispersed from the Khobone & Shezi Attorneys Trust account.

In regards I am showing in TSW21 Mr White details that 29 payments were made between the period of 19 February 2007 and 21 August 2007. Mr White clearly illustrates that all of the 29 payments were for the benefit of Mr Sipho Shabalala and Ms B N O Shabalala.

And I place on record Mr Chairman that none of the 29 payments that were made were either made directly to me or for my benefit and or for the benefit of the ANC.

What is in dispute there Mr Chairman is the illogical inference or link by the forensic 00:15:54 who showed us

how the whole amount of R1 056 204.98 was paid to various 14 various companies.

What is absurd is the similar terms to connect R1million that was donated in cash to the ANC while myself in my capacity as the Provincial Treasurer of the ANC then by Mr Sipho Shabalala with the fund that Intaka had paid into the Khobone and Shezi trust account.

Mr Trevor White develops a red dotted arrow in which he is attempting to link the amount of R1 million that was received by me for the ANC by joining two small dots on boxes outside of the square in the centre of TSW21 where he shows how the funds were dispersed.

Clearly he has Mr Chairman Mr White needs to explain to this commission how many millions did Intaka pay. We know from Mr Gaston Savoy's affidavit that is before the Pietermaritzburg High Court that only R1 million was paid so where does this other R1 million that Mr Trevor White shows come from?

If Mr White is saying that he is referring to the same funds that were paid by Intaka then my question is how can it be Mr Chairman? We now know for a fact from Mr White himself how the Intaka money was used and for whose benefit.

Where are the facts of Mr White's conclusion and inferences coming from? Where are the facts of logic and

rationality? Mr White should account for his unfounded claims that he made in TSW21.

Just on these aspects alone Mr Chairman I respectfully submit that this commission should grant me the opportunity to cross-examine Mr Trevor White.

The third issue Mr Chairman is the fact that I received a cash donation of R1 million from Mr Sipho Shabalala on or about the 11th of June 2008. I place on record Mr Chairman that the said amount of R1 million was received by me in my capacity as the Provincial Treasurer of the ANC at that time.

I further place on record the contents of my affidavit that I deposed to when I was first approached by the investigators on this matter. That affidavit is the same affidavit that my lawyer submitted to this commission and is now part of the commission's documents of record.

I would also like to further place on record the letter from my lawyers dated the 2nd of February 2010. The third letter records that I was the author – the person to receive the donation on behalf of the ANC.

I further clarify that I authorised the utilisation of the funds for various purposes related to the 00:19:01 ANC Provincial Conference that was held between the 20th and the 22nd of June 2008.

I am intend Chairman as I did back then at the time

like the deceiving to receive a donation was bona fide on my part and as such the donation was received as a legitimate contribution to fund the ANC in KwaZulu Natal.

I further respectfully submit Mr Chairman that the donation that I received from Mr Sipho Shabalala was in response to a call made to ANC member supporters, sympathisers and friends to contribute resources in order to fund ANC activities.

My submission Mr Chairman in this regard 00:19:41

a. It is common cause that the donation I received from Sipho Shabalala was not the funds that Intaka had paid into the Khobone & Shezi trust account. Because Mr Trevor White tells us in TSW21 that those funds were used to pay 14 companies for the benefit of the Shabalala's.
b. It was neither a requirement of the ANC nor necessity that donors needed to reveal the sources of their donated funds at that time. I add for the benefit of this commission Mr Chairman that our legal situation is now different as we all know.
c. The receipt of the R1million was neither unlawful, irregular or the commission of a kind.
d. Accepted in the area I have no knowledge – I have no knowledge of any other source of the R1 million except from Mr Sipho Shabalala.

Let me repeat myself on that one Chairman as stated earlier I have no knowledge of any other source of the R1 million except from Mr Sipho Shabalala.

I place before this commission for noting that the R1 million donation was paid almost ten months after the funds show in TSW21 had been used in its entirety by the 21st August 2007.

Mr Chairman I now deal with the unfounded allegation that there was political interference in the withdrawal of charges against me. Those who made these ridiculous claims Mr Chairman do so for malicious intent.

I wish to submit a 00:21:31 on this matter Mr Chairman state that there was never a need for me to be charged in the first place.

I make no representation to have the charges against me withdrawn.

I wish to bring to the attention of this commission some of the relevant documents. The first is the records filed by the Director of Public Prosecutions in Case No 4962/2013 held in KwaZulu Natal High Court in Pietermaritzburg and attach as marked MN6. The record was filed in terms of the court order in this application. It provides the relevant documentation to the withdrawal of the charges against me and other accused and includes an internal memorandum by Advocate Duniwa which negates 00:22:24 deploys inferences

it shows that the decision to withdraw was taken by a meeting of officials who met in March 2012 and deliberated over two days.

The second document is a memorandum written by Advocate Mpho [?] explaining various decisions made by her in various prosecutions. A copy of the document is attached my 00:22:50. The document has been widely circulated and is in the public domain.

The withdrawal of the charges against me is set out in paragraph b on pages 13 to 16 of that document. Reference is made by therein to the memorandum by Advocate Duniwa which is the same one relate – referred to earlier and included in the record.

I submit Mr Chairman that both 00:23:20 memorandum in which they explained the process that led to the withdrawal of the charges and Advocate 00:23:27 to the then National Director of Public Prosecutions Mr Nxasana and Dr Rama [?] .

I would like therefore to question Colonel Du Plooy regarding the allegations he has been making that the withdrawal of the charges against me was as a result of political interference.

What was this interference? Where did it come from? Who interfered with the NPA process? It would be a big concern Mr Chairman if I had to be denied the opportunity to

cross-examine Colonel Du Plooy on the unfounded allegations that he has made in his affidavit to this commission.

I 00:24:00 Mr Chairman that Colonel Du Plooy's assertions are unjustifiable and unreasonable.

In conclusion Chairman I submit that this commission in about establishing facts and it cannot become a platform for rumour mongering and baseless conjuncture.

Once the facts are established the commission is expected to distil the truth from those facts. It is my respectful submission Chairman that in the quest of establishing the truth from the facts we should seriously [?] those who would waste the precious time and the staff resources of everybody including this commission by 00:24:51 wild goose chase.

It took the release of me Mr Chairman if I end this opening statement without indicating that for the last twelve years I have endured character assassination and had my dignity impugned due to the unfounded allegations that were caused by my unlawful arrest in the Intaka matter.

When you search my name in the Internet I am the referred to as one of those who were arrested in the 00:25:21 case. These resulted in untold reputational damage that I have incurred when I have done nothing – nothing and nothing wrong against the state or anyone.

The statement made by Mr White before this commission on the very painful matter and his repetition of baseless accusations against me only for to further impugn my character. That is why I feel strongly that he should explain his rights on the inconsistencies of his evidence to this commission.

And I hope that our country can at the very least accord the fundamental principle of our constitution that we are all equal before the law and to uphold it is not selective. If we cannot lead by the 00:26:15 of the proverb that says what is good for the goose it is good for the gander. I will leave the experiences to 00:26:24 that we are truly equal before the law.

I am hoping Mr Chairman that this commission will ensure that I too is there to get justice against those who have deliberately dragged my name, dragged me into criminal matter that had nothing to do with me.

At the very least I would expect of this commission the confirmation that the charges have been legitimately withdrawn by the constitution authority as the facts and the truth shows.

On that note Mr Chairman my opening statement ends and thank you for the opportunity Mr Chairman.

CHAIRPERSON: Thank you Mr Mabuyakhulu.

ADV HULLEY SC: Thank you Mr Mabuyakhulu.

CHAIRPERSON: I just want to mention that part of the purpose or if not main – the main purpose is of these proceedings today is to see exactly where the differences are in your version and the version of Mr White and Colonel – is it Du Plooy?

ADV HULLEY SC: Colonel Du Plooy.

CHAIRPERSON: Ja but particularly Mr White and yourself in relation to the – to the donation and so that if leave to cross-examine is granted it is clear what the differences are in the two versions so that is part of the reason and it may well be that from what you have given as your evidence call it opening statement one can see where you stand but Mr Hulley can now put questions.

ADV HULLEY SC: Thank you Mr Chair. Mr Mabuyakhulu just to get some context to what we dealing with before we actually get into the matter.

ADV DICKSON SC: Mr Chairman Sorry.

CHAIRPERSON: Yes Mr Dickson yes.

ADV DICKSON SC: I am sorry.

CHAIRPERSON: Yes.

ADV DICKSON SC: Can I – can I just be of assistance. I do not if this question asked but if I can be of assistance.

CHAIRPERSON: Yes.

ADV DICKSON SC: The witness referred to certain documents and if I could just give you page numbers.

CHAIRPERSON: Yes.

ADV DICKSON SC: Because they have different page numbers in RR7. TSW19 is at page 038 – OR7.

CHAIRPERSON: 038. Oh yes.

ADV DICKSON SC: 038 TSW22 is 039. The record that was referred to as being filed in the Pietermaritzburg High Court case starts at 040 and the statement by Advocate Mpho which was referred to starts at page 073. That is just that..

CHAIRPERSON: Yes.

ADV DICKSON SC: So that we can get our bearings Mr Chair.

CHAIRPERSON: Yes, no, no that is – that is helpful. The last one was 073.

ADV HULLEY SC: Yes.

CHAIRPERSON: Ja, page 73.

ADV HULLEY SC: Yes.

CHAIRPERSON: Okay alright. Thank you. Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Thank you.

ADV HULLEY SC: Thank you, Mr Chair. Mr Mabuyakhulu, from your opening statement I gather that you are confirming, and if I can take you to the two affidavits. You have deposed to an affidavit which appears in Bundle RR7. That is LEA-27, Mr Chair but it appears at page RR7-

MM005. It is in red at the top right-hand corner of the bundle that you have.

CHAIRPERSON: Okay just to make sure we all understand. When we refer to the page numbers, we will just call the number that comes after MM without starting with RR7-MM so that it will make things quicker. You said 05?

ADV HULLEY SC: Page, 005, Thank you, Mr Chair.

CHAIRPERSON: 005.

ADV HULLEY SC: Mr Mabuyakhulu?

MR MABUYAKHULU: I am still looking for it Mr Chairman. Zero, five. Yes, I found it Mr Chairman.

CHAIRPERSON: Yes, okay.

ADV HULLEY SC: And if you look between the tram lines, you will see that it refers to an affidavit of Michael Mabuyakhulu.

CHAIRPERSON: H'm?

ADV HULLEY SC: Do you see that?

MR MABUYAKHULU: [No audible reply]

CHAIRPERSON: Yes. I think he said he has got it. That is 005. Oh, you have got two numbers there mister...

ADV HULLEY SC: The one is the sequence number and that is an application but it is the uppermost number.

CHAIRPERSON: Ja, for the record. We must say that when we refer to page numbers it will be the ...[intervenes]

ADV HULLEY SC: Uppermost ...[intervenes]

CHAIRPERSON: ...come after MM and the upper number and not the lower one.

ADV HULLEY SC: Correct, Chair. Thank you, Mr Chair.

CHAIRPERSON: Okay alright. What you have there Mr Mabuyakhulu is your affidavit. Is that correct?

MR MABUYAKHULU: Yes, Mr Chairman.

CHAIRPERSON: Yes, okay. Mr Hulley.

ADV HULLEY SC: And if you go with me to page 16 of that document.

MR MABUYAKHULU: Page 16. Chairman, yes.

ADV HULLEY SC: That is your signature above the word deponent. Is that correct?

MR MABUYAKHULU: That is right, Mr Chairman.

ADV HULLEY SC: And this was deposed to n the 10th of February of 2020. Is that correct?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And then more recently you have deposed to a second affidavit and if I can take you to that. IT appears at page 32 of the same bundle.

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And it reads between the tramlines: Supplementary Affidavit of Michael Mabuyakhulu. Do you have the same document?

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: And then if you would turn with me to page 37 of the same bundle. Above the word or the words Mr Mabuyakhulu is a signature. Is that your signature?

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: And this purports to be an affidavit that was deposed to by you on the 29th of April of 2021. Is that correct?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: Thank you. So these are the two affidavits that you filed with this Commission. Is that correct?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: Now if you turn back with me to the – one of the annexures to the first affidavit. You will see there is an Annexure MM3 which appears at page 23 of the same bundle.

MR MABUYAKHULU: [No audible reply]

ADV HULLEY SC: Do you have it?

MR MABUYAKHULU: MM, 23. Yes?

ADV HULLEY SC: And if you would turn to me to page 29 of the same – page 29 of the same bundle. That is one document.

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: This purports to be an affidavit and above the word deponent on that last page is a signature.

Is that your signature?

MR MABUYAKHULU: It is my signature, Mr Chairman.

ADV HULLEY SC: And this purports to be an affidavit that was deposed to on the 19th of October of 2010. Is that correct?

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: Thank you. Now if you – and I will get back to that shortly – if you would not mind turning with me to Bundle RR-4.

CHAIRPERSON: Bundle RR-4?

ADV HULLEY SC: That is correct, Mr Chairman.

CHAIRPERSON: That is a different bundle?

ADV HULLEY SC: That is a different bundle.

CHAIRPERSON: H'm?

MR MABUYAKHULU: I do not have that Mr Chairman.

CHAIRPERSON: He says he does not have that one.

ADV HULLEY SC: Well, he ought to have it because certainly made – as I understand it, it was certainly made available to him. That is part of RR-4, it is Mr Trevor(?) White's affidavit together with all the annexures.

MR MABUYAKHULU: I may look for it... [Speaker not clear]

CHAIRPERSON: It will be written on the spine. Is that right?

ADV HULLEY SC: It ought to be written on the spine.

CHAIRPERSON: So look at spine of the files you have.

MR MABUYAKHULU: I have got Chebo White's – Trever(?) White's affidavit but it is not where – it is R after the M and 142.

CHAIRPERSON: In the same bundle or in another bundle? In the same bundle that ...[intervenes]

MR MABUYAKHULU: In the same bundle.

CHAIRPERSON: ...that we were using earlier?

MR MABUYAKHULU: That same bundle... [Speaker not clear] MM-7, MM-1149(?)

CHAIRPERSON: H'm?

MR MABUYAKHULU: The affidavit of Mr Trevor(?) White. [Speaker not clear]

CHAIRPERSON: Let us see. Yes, I see that. Is that the same Mr Hulley? It is ...[intervenes]

ADV HULLEY SC: Perhaps if we can just go to the specific page that he is referring to. If he can just refer me to the page so that I can understand what he is referring to? I imagine that what Mr Mabuyakhulu is referring to Mr Chair is an annexure to the affidavit. Sorry, to the Rule 3.3 Notice.

CHAIRPERSON: H'm. But is it the same affidavit that you are ...[intervenes]

ADV HULLEY SC: It is the same affidavit.

CHAIRPERSON: So we can use this one or can we not?

ADV HULLEY SC: Well ...[intervenes]

CHAIRPERSON: Because if we can stay with the same bundle it makes things easier.

ADV HULLEY SC: As far as possible.

CHAIRPERSON: But if we have to go to another bundle we can go if Mr Mabuyakhulu and his counsel have got the other bundle.

ADV HULLEY SC: Thank you, Mr Chair. It seems to me that it would be necessary – I am not sure if the representatives can actually hear what we are saying but they should made the bundle available because there is a number of documents related to this matter that are only to be found in that bundle and not part of this bundle that we are referring to as RR-7.

CHAIRPERSON: Well, was it sent to them at the same time as the other one?

ADV HULLEY SC: I understand that it was sent through to them and that appears at page 144 of the bundle.

CHAIRPERSON: Yes.

ADV HULLEY SC: Of the present bundle.

CHAIRPERSON: It is ...[intervenes]

ADV DICKSON: Chairman, can I help?

CHAIRPERSON: Ja.

ADV DICKSON: We do have – we have a different role to a witness.

CHAIRPERSON: Yes.

ADV DICKSON: But if we are permitted just to take then RR-4 ...[intervenes]

CHAIRPERSON: Ja.

ADV DICKSON: ...we can take that to him and then we are all on the same page.

CHAIRPERSON: Yes, okay. You may do so.

ADV HULLEY SC: Thank you, Mr Chair.

ADV DICKSON: Thank you, Mr Chairman. Okay so. Yes, he has it.

CHAIRPERSON: Okay he has got it now. Okay fine.

MR MABUYAKHULU: [Speaker not clear]

ADV HULLEY SC: Thank you, Mr Chairman.

CHAIRPERSON: Okay alright.

ADV HULLEY SC: Now, Mr Mabuyakhulu, you referred to ...[intervenes]

CHAIRPERSON: Just indicate what page in that bundle we should go to.

ADV HULLEY SC: Thank you, Mr Chair. The specific document is to be found at page 149(?).

CHAIRPERSON: 1999?

ADV HULLEY SC: Sorry, it should be – that is correct, Mr Chair. Sorry, it would be – and for your purposes Mr Chair, if you can just turn to – it is Bundle RR-4 and then in brackets lower case (d). That is D for Delta. So you

would have four different bundles that are part of RR-4.

CHAIRPERSON: You must just not confuse my registrar. [laughs] Is my bundle not the same as theirs?

ADV HULLEY SC: It ought to be identical.

CHAIRPERSON: Ja.

ADV HULLEY SC: But it is divided in – it is a bundle that is divided into four lever arch files. So it is the fourth of the four lever arch files.

CHAIRPERSON: Well, each lever arch files should be a bundle or a continuation of a bundle. So it should have A, B, C, D or something.

ADV HULLEY SC: Correct. This one is D ...[intervenes]

CHAIRPERSON: So which one must ...[intervenes]

ADV HULLEY SC: D for Delta, Mr Chair.

CHAIRPERSON: Bundle 4(d)?

ADV HULLEY SC: Bundle RR-4 and D, D for Delta.

CHAIRPERSON: Ja, RR-4(d). What page?

ADV HULLEY SC: At page 1999.

CHAIRPERSON: Okay.

MR MABUYAKHULU: [Speaker not clear]

ADV DICKSON: I am sorry, Mr Chair. We just do not have that. We have RR-4... [Speaker not clear] 1359 through to 1404(?).

CHAIRPERSON: H'm.

MR MABUYAKHULU: [Speaker not clear] ...1865.

ADV DICKSON: And we have got another one... [Speaker not clear] ...which goes to 1065(?).

CHAIRPERSON: Ja.

ADV HULLEY SC: Okay ...[intervenes]

ADV DICKSON: We cannot go as far as Mr Hulley's.

CHAIRPERSON: Yes.

ADV HULLEY SC: But to specific. This is an annexure that was attached as Annexure TSW. That is Trevor White's annexures.

CHAIRPERSON: I think maybe what we should do is. Let me adjourn for about ten minutes. You talk to ...[intervenes]

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: ...to Mr Mabuyakhulu's legal team and compare what you have, whether it is the same as what they have and what both of you have and whether both – what you both have is the same as what I have.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: So that when I resume we have – we ...[intervenes]

ADV HULLEY SC: [Indistinct]

CHAIRPERSON: ...everybody has got the same thing.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Okay. I am going to adjourn for that purpose for ten minutes. We adjourn.

MR MABUYAKHULU: Okay. Thank you, Mr Chair. Mr Hulley, can you hear me?

ADV HULLEY SC: I can. How are you?

ADV DICKSON: Okay. Fine, thanks. How are you? Can we ...[intervenes]

ADV HULLEY SC: I cannot complain. I would say ...[intervenes]

ADV DICKSON: [laughs] Can we just sort it out so that at least we have got what the witness needs? What TSW ...[intervenes]

ADV HULLEY SC: [Indistinct]

ADV DICKSON: ...that is not in our RR-7?...

RECORDING PAUSED

INQUIRY RESUMES

CHAIRPERSON: Okay. Has it been sorted out?

ADV DICKSON: Yes, Chair.

CHAIRPERSON: Yes. Okay, okay. Thank you. Please switch on your mic, Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Yes.

ADV HULLEY SC: My apologies, Mr Chair. It seems that I was referring to a document that was not in the chronology that the witness had.

CHAIRPERSON: Yes.

ADV HULLEY SC: So if I can refer to a different page,

same document that I want to refer to but to a different copy of that document in the same bundle. This one would appear at page 1841 of ...[intervenes]

CHAIRPERSON: Yes.

ADV HULLEY SC: ...of bundle – of RR-4.

CHAIRPERSON: Yes, okay. I have got it. Have you got it Mr Mabuyakhulu?

MR MABUYAKHULU: Yes. Mr Chairman ...[indistinct] RR-14-W1801(?). [Speaker not clear]

CHAIRPERSON: That is correct.

ADV HULLEY SC: Thank you, sir.

CHAIRPERSON: Okay alright. Thank you.

ADV HULLEY SC: I am referring to 1841, Mr Mabuyakhulu. I did not catch that quite.

CHAIRPERSON: Ja, he has got it.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: Now you referred during your, what you referred to as an address or an opening statement, you referred to a letter from your attorneys which you said was dated the 2nd of February of 2010. I imagine that you are referring to this document. Is that correct?

MR MABUYAKHULU: [Speaker not clear]

ADV HULLEY SC: A letter from Ngubane & Walls Incorporated.

MR MABUYAKHULU: I want to be sure that – what I have Mr Chairman it is referred to as 1841. That is the one that – and if that is the document, that is the document that I am referring to here that my attorney sent me 2010.

ADV HULLEY SC: Okay. And it is a letter dated 2 February 2010 and it is from Ngubane & Walls Incorporated [00:02:11] and it is addressed to Advocate W O'Brien, the Deputy Director of Public Prosecutions. Is that correct?

MR MABUYAKHULU: Yes, correct Mr Chairman.

ADV HULLEY SC: Very well. And ...[intervenes]

CHAIRPERSON: Maybe Mr Hulley, just for the sake of completeness. Let me indicate that Ms Mgubane(?) and I assume that she is the one who is referred to in the name Ngubane & Wills Incorporated who appears to have been involved in the drafting of the affidavit of Mr Mzila(?) ...[intervenes]

MR MABUYAKHULU: Yes.

CHAIRPERSON: ...was asked to provide the Commission with an affidavit setting out her role in regard to that affidavit. I am not aware that she has submitted such an affidavit but I do not know if you know Mr Hulley?

ADV HULLEY SC: I am not aware of it of the top of my head.

CHAIRPERSON: Yes.

ADV HULLEY SC: It might have been drawn to my attention on a previous occasion but I cannot ...[intervenes]

CHAIRPERSON: Yes.

ADV HULLEY SC: ...on this occasion.

CHAIRPERSON: And Mr Shabalala was also directed to deliver an affidavit in regard to or giving his version in regard to the donation. He has responded through his attorneys and indicated that because he has been charged he – appears that he may prejudice his rights or incriminate himself if he gave the information that the Commission was asking for. The Commission, of course, respects the right or privilege against self-incrimination but I thought I would indicate that he has responded. I am not aware that Ms Mgubane has responded herself. So I just thought ...[intervenes]

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: ...let me mention that so that we are all aware of it.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Okay alright. You may continue Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair. So just to confirm then and I think you have already done so but I want to confirm that this firm of attorneys, Ngubane &

Walls Incorporated [00:05:21] is in fact or was in fact at the time your attorneys. Is that correct?

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: And this letter purports to be a letter that has been addressed to Advocate O'Brien on behalf of the ANC and your behalf. Is that an accurate ...[intervenes]

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: Thank you.

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: Thank you. I will revert to the letter in due course. What I want to understand insofar as the differences between your testimony and that... Sorry. Insofar as the differences between your testimony and that of Mr White is concerned. If I understand your testimony correctly.

You say that an amount of R 1 million was paid to you in cash by Mr Shabalala but that amount that was paid to you, you questioned whether it could be the same amount of one point o five three million rand that was paid or that is referred to by Mr White in his affidavit as having been paid by Intaka into the account of Khobone & Shezi. Is that correct?

MR MABUYAKHULU: I think let me answer in this way, Mr Chairman. I am starting - my starting point is that

Mr White makes the allegations that there could be a connection between the R 1 million donation that I received as the then Provincial Treasurer of the ANC ...[indistinct] of the ANC as R 1 million donation in cash from Mr Shabalala, whom I received ...[indistinct] Chairman, now that the records are clear. Ten months after the so-called Intaka Funds that had been disbursed or that had been paid into the trust account – the attorney's trust account.

CHAIRPERSON: Yes, but I think the question is whether it is a correct understanding of your standpoint via vie Mr White that you are saying there is no basis for him to link the amount – donation that you received from Mr Shabalala to the money that was paid by Intaka Group to the attorneys, Khobone and – it is Khobone and who, Mr Hulley?

ADV HULLEY SC: And Shezi Attorneys.

CHAIRPERSON: And Shezi Attorneys. So the question is whether that is a correct understanding of what your issue is.

MR MABUYAKHULU: [Indistinct]

CHAIRPERSON: That is correct?

MR MABUYAKHULU: ...I am saying there is absolutely no basis or rationality or logic ...[intervenes]

CHAIRPERSON: Ja.

MR MABUYAKHULU: ...or the link of that amount to myself(?) ...[intervenes]

CHAIRPERSON: Yes. And it is in respect of that issue that you wish to be granted leave to cross-examine Mr White?

MR MABUYAKHULU: Absolutely, Mr Chairman.

CHAIRPERSON: Yes. Okay Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair. In other words, you say to the extent that Mr White connects the amount that was paid to you in cash was the amount that was paid into the trust account of Khobone & Shezi by Intaka? You say to that extent you wish to cross-examine him because you do not see ...[intervenes]

MR MABUYAKHULU: [Indistinct]

ADV HULLEY SC: ...a connection between the two amounts?

MR MABUYAKHULU: ...Chairman.

ADV HULLEY SC: Pardon me?

MR MABUYAKHULU: What I am saying, Mr Chairman. What I am saying is Mr Chairman is that I know ...[indistinct] from Mr Trevor White himself who tell that in ...[indistinct] that an amount of R 1 053 000,00 that was paid into the Khobone & Shezi Attorney's trust account that that money was disbursed between the period of 19 February and 21 August 2007 and it was disbursed in its

entirety. This is Mr White's affidavit that says that and also ...[indistinct] W-21.

I am saying, therefore, it is clear that Mr White himself does not explain the rationality or the logic how bad(?) he says the money that was paid to 29 payments to 14 different companies and was disbursed in its entirety. That the very same amount of money that ...[indistinct] became the same amount of money that Mr Shabalala may have paid to me in cash as a donation to the ANC. [Speaker not clear]

CHAIRPERSON: Ja.

ADV HULLEY SC: We will get back to Mr White's affidavit in a moment and to this issue but I just want to take you to something else before we get back to issue. You will recall that we referred to your affidavit that was deposed to you by in 2010. Can I take you back to that? And that is in the, for your purposes Mr Chair, Bundle LEA-27 and for your purposes, Mr Mabuyakhulu, it is the Bundle RR-7 at page 23.

CHAIRPERSON: Why do we get different references?

ADV HULLEY SC: Because Mr Mabuyakhulu does not know about the LEA-27. He does not have a physical bundle like this with a spine. So your ...[intervenes]

CHAIRPERSON: H'm?

ADV HULLEY SC: So you have got the bundle with the

spine, Mr Chair. So if you look at the spine, you want to see Bundle LEA-27.

CHAIRPERSON: Yes.

ADV HULLEY SC: But he does not have a physical bundle. So that is why ...[intervenes]

CHAIRPERSON: But even though this might not be a physical bundle it could have the same – it could be referred to as bundle ...[intervenes]

ADV HULLEY SC: I will refer to it as Bundle RR-7 then.

CHAIRPERSON: Ja, because if the contents are the same, there is no reason why it should not bear the same reference because when you give me a different reference and you give him a different reference ...[intervenes]

ADV HULLEY SC: It will be confusing.

CHAIRPERSON: ...it will be confusing, yes.

ADV HULLEY SC: Indeed, Mr Chair.

CHAIRPERSON: H'm.

ADV HULLEY SC: So it is Bundle RR-7, Mr Chair.

CHAIRPERSON: Yes, okay.

ADV HULLEY SC: And the specific page is 23.

CHAIRPERSON: I think what you may wish to do if it is not going to cause any problem, is to tell Mr Mabuyakhulu that his bundle that is written whatever the reference is from now on you will refer to it as the same as mine.

ADV HULLEY SC: Yes.

CHAIRPERSON: So he can make a note ...[intervenes]

ADV HULLEY SC: Thank you ...[intervenes]

CHAIRPERSON: ...whatever so that when you refer us to – make a reference to any pages it is the same reference for all of us.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: H'm.

ADV HULLEY SC: Mr Mabuyakhulu, your bundle that we have – that is referred to as RR-7 ...[intervenes]

MR MABUYAKHULU: Yes, Mr Chairman?

ADV HULLEY SC: ...in future, what I will do is, because we have got a physical lever arch file and our lever arch file is LEA-27 marked on it. So when I refer to LEA-27 just bear in mind that is Bundle RR-7.

MR MABUYAKHULU: [Indistinct] [Speaker not clear]

ADV HULLEY SC: LEA. That is Lima, Echo, Alfa ...[intervenes]

MR MABUYAKHULU: A-e-l.

ADV HULLEY SC: No, LEA, Lima, Echo, Alfa, 27.

CHAIRPERSON: So it is like Lea, l-e-a, 27.

MR MABUYAKHULU: Okay.

CHAIRPERSON: H'm.

ADV HULLEY SC: Okay.

MR MABUYAKHULU: Thank you, Mr Chair.

ADV HULLEY SC: Thank you. Now is this the affidavit

that we referred to previously. It is an affidavit which is attached to your affidavit that you have deposed to in this – before this Commission and I have referred to you earlier on. It is an affidavit dated 19 October 2010. What were the circumstances and why did you depose to this affidavit?

CHAIRPERSON: I am sorry. You said we should go to what page in this bundle?

ADV HULLEY SC: Pardon me, Mr Chair. Page 23.

CHAIRPERSON: 23?

ADV HULLEY SC: That is correct.

CHAIRPERSON: Okay I am there. Yes?

MR MABUYAKHULU: I thought what I have done Mr Chairman because there was a legal criminal investigation that was happening during the ...[indistinct] matter.

ADV HULLEY SC: And what – but what was the purpose? Why were you called upon to testify or to depose to an affidavit at all?

MR MABUYAKHULU: I was approached by the states(?) and the investigators who actually asked me to actually clarify what I had knowledge of at the time and then they asked me to depose to an affidavit and I duly complied.

ADV HULLEY SC: And the reason why they got aware that you had knowledge that might be relevant was

because of your letter or rather because of your attorney's of the 2nd of February of 2010. Is that correct?

MR MABUYAKHULU: [No audible reply]

ADV HULLEY SC: In other words, the letter from Ngubane & Walls Incorporated ...[intervenes]

MR MABUYAKHULU: ...my attorney's letter was in... No, Mr Chairman. My attorney's was in response to the request from the investigators and the prosecution for them to actually know what was happening. So all of these issues were at the instance of the investigations and the prosecution.

ADV HULLEY SC: Okay.

CHAIRPERSON: So is the position that, as you understood it, in effect, the investigators wanted to hear your side of the story?

MR MABUYAKHULU: Absolutely, Mr Chairman.

CHAIRPERSON: Okay.

ADV HULLEY SC: And your understanding is that the investigators were investigating the question of the R 1 million donation that have been made or allegedly been made to the ANC. Is that correct?

MR MABUYAKHULU: My understanding Mr Chairman was the investigators were investigating the allegedly money that had been paid and they were actually trying to establish whether there was a link for the donation

received by the ANC and the money paid into the trust account whether there was any link between the two.

ADV HULLEY SC: Now, so when you say a link between the money that had been paid to the ANC, what money are we referring to now? Are we talking about the R 1 million?

MR MABUYAKHULU: I think let us go back for the record, Mr Chairman. I was hoping that counsel would have understood that.

CHAIRPERSON: H'm.

MR MABUYAKHULU: There is an amount of about R 1 053 000,00 that had been paid into the trust account of Khobone & Shezi's trust account by Intaka. And then there is a R 1 million donation that was donated in cash that was received by me in my capacity as the ANC Treasurer on or around the 11th of June 2008 and that the two, as I said earlier, and the Chairman had asked me that question and I have said I am actually saying there is no basis in linking the two, as far as I am concerned.

ADV HULLEY SC: Okay. Now I understand the point that you are making. You are making the amount that the amount that had been paid into the account of Khobone & Shezi was paid in 2007, in March of 2007 to be precise. The amount that was given to you was paid to you in June of 2008. Correct?

CHAIRPERSON: But he also makes the ...[intervenes]

MR MABUYAKHULU: [Indistinct]

CHAIRPERSON: But he also makes the point that in between on Mr White's own version, if I understand him correctly, the amount that came from Khobone & Shezi Attorneys that was sent to Mr Shabalala was used for various purposes by ...[intervenes]

ADV HULLEY SC: He said it was disbursed.

CHAIRPERSON: H'm?

ADV HULLEY SC: He said it was disbursed.

CHAIRPERSON: Disbursed, yes.

ADV HULLEY SC: That is correct.

CHAIRPERSON: Yes. So I think that that is part of ...[intervenes]

ADV HULLEY SC: [Indistinct]

CHAIRPERSON: ...what he says, ja.

ADV HULLEY SC: So the point ...[intervenes]

CHAIRPERSON: Therefore, he says. What is the basis for saying that if that amount was disbursed by Shabalala, it was the basis for saying the amount that I received on behalf of the ANC came from Intaka. I am interpreting your evidence correctly?

MR MABUYAKHULU: You are absolutely correct, Mr Chairman.

CHAIRPERSON: Yes, okay.

ADV HULLEY SC: Thank you very much,

Mr Mabuyakhulu. So I understand the basis of the distinction between the two amounts from your perspective. What I am trying to understand is. When the police were making an enquiry or the Hawks were making enquiries about the link between these two amounts, who told the Hawks or who told the police about the R 1 million that had been paid to you in 2008? Where did they get that from?

MR MABUYAKHULU: I did not know any other witness that may have said that but I know for a fact that when I was approached I did honestly ...[indistinct] that I did receive a donation of R 1 million in cash on or around the 11th of June 2008 and that is actually also confirmed in my affidavits.

ADV HULLEY SC: Okay. So let us consider that question but let us look at the letter of Ngubane & Walls Incorporated which is now – if we can go back to RR-4, Mr Chair at page 1841.

CHAIRPERSON: Yes, Bundle RR-4(d).

ADV HULLEY SC: That is correct, Mr Chairman.

CHAIRPERSON: And page?

ADV HULLEY SC: 1841.

CHAIRPERSON: 1841. That is the letter from Ngubane & Walls Incorporated

ADV HULLEY SC: That is so, Mr Chair. Now let us just read through this letter if we could? It says:

"We refer to our previous correspondence regarding the above and advise that we have consulted with a senior member of our client, the ANC, MEC, Michael Mabuyakhulu who, at the material time, was the Provincial Treasurer of the ANC in KwaZulu-Natal..."

Is it correct that they have consulted with you, your attorneys?

MR MABUYAKHULU: That is correct...

ADV HULLEY SC: They then say:

"We are instructed to convey the following..."

Now is it correct that you gave them instructions to convey anything before we ...[intervenes]

MR MABUYAKHULU: That Mr Chairman to actually act on our behalf.

CHAIRPERSON: Yes. I think you can take it Mr Hulley that if these were his attorneys, what they wrote here was with his instructions unless he indicates otherwise.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: H'm.

ADV HULLEY SC: Now they say over here, paragraph 1:

"In his capacity as the Provincial Treasurer at the time, Mabuyakhulu authorised the receipt of the R 1 million donation from the ANC member, Mr Sipho Shabalala..."

Correct?

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: And then paragraph 2 they say that:

> "He wishes to place on record that such a donation was received in cash and was verified to be R 1 million..."

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: Paragraph 3 that:

> "He, that is Michael Mabuyakhulu, further authorise the funds to be utilised for various purposes related to the Kwazulu-Natal ANC Provincial Conference that was held between the 20th and the 22nd of June of 2008..."

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: Four:

> "That the R 1 million donation given by Mr Sipho Shabalala was used as part of the package of donations received in the run-up to the ANC Kwazulu-Natal Provincial Conference to repay some of the costs of the Provincial Conference..."

Correct?

MR MABUYAKHULU: That is correct, Mr Chairman.

ADV HULLEY SC: And then on the following page at page 1842, paragraph 7 it is said

"Although our client wishes to be helped in this matter, however, we are instructed to place on record that Mr Mabuyakhulu's residence stance and that of the ANC as well that under no circumstances does the organisation wishes to compromise its donors and/or its operations by disclosing information concerning same.

It is safe to say that the particular donation was included in the report to the conference in the Treasurer's report.

Specifically it was included in the globular amount of R 7 227 707,00 listed as a donation in the income statement..."

Correct?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: Now we can accept, of course, that everything that is contained in this document or in this letter is based on instructions that were received from you.

MR MABUYAKHULU: I can confirm that in the strength of the question that counsel has put to me that I do confirm those.

ADV HULLEY SC: Thanks. Now it seems from what I am reading over here and correct me if I am wrong but it seems that the question of the R 1 million being raised and the fact that you had received R 1 million from

Mr Shabalala that that was something that was raised by your attorneys pursuant to instructions that you had given to them.

MR MABUYAKHULU: Well, let me, once again, put it correct Mr Chairman as I have answered earlier. That was all in response to the investigators and the prosecution that wanted to ask us further on this aspect. So we, therefore, actually provided the information to clarify that matter.

ADV HULLEY SC: Now if I understand correctly what the – and please correct me if I am wrong and if this is your understanding as well – the police or the Hawks in particular were investigating a payment of R 1 053 000,00 and they were investigating such a payment that was made in 2007.

MR MABUYAKHULU: [No audible reply]

ADV HULLEY SC: In response to that and in relation to them raising that issue an explanation was given that in fact you received from Mr Shabalala an amount in cash of exactly R 1 million as it is said over here: It was verified to be R 1 million. Do I understand that correctly?

MR MABUYAKHULU: I do(?), Mr Chairman. [Speaker not clear]

ADV HULLEY SC: So what I am saying to you is that they were investigating an amount that was paid over in 2007.

You told them about an amount that was paid in 2008. They were investigating an amount of R 1 053 000,00. You told them about an amount of R 1 million.

MR MABUYAKHULU: [Indistinct] I think the first ...[indistinct]

CHAIRPERSON: Yes?

MR MABUYAKHULU: The first one that when I was asked of – when I had known anything I actually only responded to the fact – to the matter that I had knowledge of the donation and therefore the state itself, as we all know now, knew then because they were actually in the whole investigation, how this other money was different from the other one but the first that I placed on record, I only ...[indistinct] place on record that I had received R 1 million donation that had been verified on behalf of the ANC and it was a structural(?) situation.

ADV HULLEY SC: Look, my point is this. They were investigating the question of a payment of R 1 053 000,00 and they were investigating – and the payment of that amount in 2007. In response to that investigation, they were told that actually you did receive an amount of money and you received an amount that was R 1 million, not R 1 053 000,00 but R 1 million and you did receive it from the – from Mr Shabalala but you did not receive it in 2007, you received it in 2008.

MR MABUYAKHULU: That is actually Mr Chairman that I received money in June 2008 on or about the 11th of June 2008 and that amount of money which I actually said to when I was asked whether there was any money that I received. The question was: Was there any money that you had ever received in your capacity as the Provincial Treasurer of the ANC? I said it is a factual situation that I had received R 1 million in cash which had been verified by ourselves. And that statement, Chairman, which has become common cause that there is not necessarily a link between the two.

ADV HULLEY SC: So if I understand you correctly. They were – they asked you, as you say, whether you had received any money in your capacity as the Treasurer of the ANC at any stage? In other words, you were the Treasurer between 1998 and 2008, in June of 2008, are you saying that their query related to the length and breadth of your period as the Treasurer?

MR MABUYAKHULU: No, their query was: Have you ever received any money from Mr Shabalala? And my response was: Yes, I had received money from Mr Shabalala. And I said the period around which I were able to see that money which both my affidavits and the letters of my attorneys all of them attached to the very factual situation.

ADV HULLEY SC: So the query was specifically in

relation to Mr Shabalala, so are you saying that the only time you received money from Mr Shabalala was this particular occasion on the 11 June of 2008. Is that your testimony?

MR MABUYAKHULU: I am saying that at the time when I was asked and the only time I can ever recollect and I can come out of in my memory would that period that I took money from Mr Shabalala. That is the period that I remember I don't remember any other.

ADV HULLEY SC: Very well. Now if I understand from your affidavits correctly, this amount that you received from Mr Shabalala was paid over to you in cash and you never issued a receipt in respect of that money, is that correct?

MR MABUYAKHULU: That is correct, Chair.

ADV HULLEY SC: And if I understand correctly, you did not enquire from Mr Shabalala as to who the donor was, is that correct?

MR MABUYAKHULU: I did not, Mr Chairman, yes.

CHAIRPERSON: Did you understand Mr Shabalala to be the donor or was there an understanding that it was money that he was just passing on that was being donated by some –that party that he might not have told you about?

MR MABUYAKHULU: I never asked Mr Shabalala whether he was personally the donor or whether the money is

raised from any other person.

CHAIRPERSON: But is the position that he approached you and said he had some money to donate to the ANC?

MR MABUYAKHULU: Yes, that is the position, Mr Chairman.

CHAIRPERSON: Yes.

MR MABUYAKHULU: That position was probably my call which have made to the members, supporters, the friends, sympathisers of the ANC to donate for the activities or funding of activities of the ANC.

CHAIRPERSON: So when he told you that he had money to donate did he at that stage mention how much, how much money he had that he wanted to donate?

MR MABUYAKHULU: He did not mention, Chairman, I only knew when I then received the money. At the time he did not mention.

CHAIRPERSON: Yes. And when he gave you the money, was that in your office, was it in his office, was it in your home or residence or in his home or what was the venue?

MR MABUYAKHULU: We met at the ANC office because [inaudible – speaking simultaneously]

CHAIRPERSON: It was at the ANC office. Yes.

MR MABUYAKHULU: He came to the ANC office and went to my provincial treasurer's office.

CHAIRPERSON: Yes and he was carrying the money as

cash, in cash?

MR MABUYAKHULU: And he brought the money to us in cash and then he received the money.

CHAIRPERSON: Yes. Do you recall how he was carrying it? Was it in a bag, was it in his pockets, was he – how – R1 million is not – how was he carrying it?

MR MABUYAKHULU: The fact, Mr Chairman, although I cannot precisely recall the finer details because I am talking about almost something that happened more than [inaudible – speaking simultaneously]

CHAIRPERSON: 10, 12 years ago.

MR MABUYAKHULU: But definitely it was not in the pockets. That definitely...

CHAIRPERSON: Yes.

MR MABUYAKHULU: But whether it was in one bag, whatever, I cannot remember.

CHAIRPERSON: You cannot remember.

MR MABUYAKHULU: But he was carrying it in some container he had with him so I honestly cannot recall whether it was a bag or a plastic, whatever.

CHAIRPERSON: yes.

MR MABUYAKHULU: I would be misrepresenting myself in that regard.

CHAIRPERSON: Yes. So he gave it to you while you were at ANC offices.

MR MABUYAKHULU: Yes, Mr Chairman.

CHAIRPERSON: Would you as treasurer of the ANC at the time have had an office that you used as treasurer of the ANC at the ANC offices?

MR MABUYAKHULU: I had ...[intervenes]

CHAIRPERSON: Do have your own office?

MR MABUYAKHULU: I was one of the officials, I was one of the top five..

CHAIRPERSON: Yes. You were fulltime actually, is that right? Oh no, you were not fulltime.

MR MABUYAKHULU: But I was one of the top five officials of the ANC.

CHAIRPERSON: Ja, in the province.

MR MABUYAKHULU: In the provincial offices of the ANC.

CHAIRPERSON: Yes.

MR MABUYAKHULU: You can still see them now, right now.

CHAIRPERSON: Yes. Okay and what is the procedure for donations in the ANC? When you receive a donation what is expected of you in terms of processing it and how – who may use it, who may not use it, what do you do with it?

MR MABUYAKHULU: Well, I am not sure, I cannot speak for now, Mr Chairman, because I have been out of the [indistinct] of the ANC.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Since June 2008. I can only speak ...[intervenes]

CHAIRPERSON: About that.

MR MABUYAKHULU: For that particular period when I was treasurer.

CHAIRPERSON: Yes, ja.

MR MABUYAKHULU: [indistinct] of the ANC, empowered, that the treasurer should the one who is doing fundraising. He should see to it that resources of the organisation are maintained. Of course, the one compounding factor in this particular instance, Mr Chairman, was the fact that we were already left with nine days before the provincial conference which was due to take place on the 20th to 22nd June 2008 and hence therefore, we already were swamped by the needs for us to be able to actually pay for conference, the costs associated with the hosting of the conference. Hence we took a decision, I took decision there as provincial treasurer that we would then actually be able to use the money in paying some of the costs that were associated with the preparation of the provincial conference.

CHAIRPERSON: But that is what you did but what was the procedure, the official procedure. Was there not a procedure to the effect that if you receive a donation, for example, you must issue a receipt, you must have it

banked, deposited in the ANC's account before it can be used? Was there not such a procedure?

MR MABUYAKHULU: Well, let me say, Mr Chairman, at the time – I maybe actually speak out of recollection, I cannot all of the exact details but what I knew for myself that I needed to report, for instance, that I have received donation and that was needed to be part of the report that goes to the structures of the movement of the ANC so that I can confirm that money has been received and we can use the money, how we would use the money so that we can properly account, both to the relative committee of the ANC at the time, in particular the provincial executive committee.

CHAIRPERSON: So is your answer that you do not know or you cannot remember what procedure, if any, was in place in the ANC as to what should be done when a member of the ANC or a leader of the ANC receives donations mean for the ANC? Is that what you are saying?

MR MABUYAKHULU: What I am say, I cannot recall the nitty gritties of what procedures may have been there. However, will say, Mr Chairman, I stated that there was an obligation for one to report to the structures once you have been able to received money for donations and that is what I actually duly did, that at the time reporting receiving these disbursements, we then duly reported.

CHAIRPERSON: Yes, Mr Hulley?

ADV HULLEY SC: Thank you, Mr Chair. And when you say that you had to report to the structures, precisely what do you mean, who are the individuals who occupied those or what are the structures and who are the individuals that you have to report to?

MR MABUYAKHULU: We had to the report to the provincial executive committee, the PEC. But in this particular instance because already the PEC term was at its tail end, we had actually then reported as part of the treasurer's report to the provincial conference. Hence in the letter from the attorneys, my lawyers on the 2 October 2010, they clearly indicate that this was also reported as part of the globular monies donation that had been raised that totalled around about 7.2 million.

CHAIRPERSON: Of course you concede, would you not, that it would not be an acceptable way of doing things on behalf of any organisation to say any member who receives donations means for the organisation may begin to use that donation before it is recorded in the books of the organisation even if he is using it for the organisation. Would you not concede that that would not be generally speaking an acceptable way because otherwise if you are going to do that and Mr Dlamini is going to do that, Mr Msomi is going to do that, it is just going to be chaos, you

know, everybody can receive money and they do not submit it to official processes of the organisation in terms of receipt and to make sure there are records. Anything can happen. So it cannot be an acceptable way, generally speaking, would you accept that?

MR MABUYAKHULU: Chairman, I think the truth of the versions now I respectfully wish to raise.

CHAIRPERSON: Yes.

MR MABUYAKHULU: The fact, Chairman, is that at the time I was the authorised person as the provincial treasurer of the ANC to be the one that should actually have authority over the utilisation of the resources of the organisation. Of course I am not saying that it would have been a responsibility entirely for the individual but for the office.

Secondly, Chairman, with the benefit of hindsight we can all make various conclusions of how we could have done this better of differently than this or that one. I think on that point, Mr Chairman, it becomes a matter of saying with the after effects what differently could we have done differently at the time. But, as I say, we did actually even at that time meet what one may say would have been the minimum requirements of ensuring that the report is able to be given to the structures of the organisation. Of course suffice to say with the benefit of hindsight you can come to

any different conclusion that you could have done this differently or that way. Mr Chairman. I think that is open, Mr Chairman.

CHAIRPERSON: Well, part of this is just to determine whether you accept that whatever the position may be, it is not the way one would expect a big organisation, such as the ANC, it is not the way one would expect how it would deal with monies that it receives or even donations – and this is a big amount, you know? I do not know whether you might say well, R1 million is not big in the ANC, so it is not a big amount but it is a big amount, it is unlike somebody maybe who says here is R50 I am donating to the ANC and somebody says go and buy x, y, z. It is a big amount and therefore one would expect that a responsible organisation would have a procedure that says if you received donations on behalf of the organisation, what you are required to do is put the money, get the money deposited into the account of the organisation so that there is a record, an official record that it was received and then it can then be used after that, it was received and put into the bank account and then it can be used after that but at least there is an official receipt. You would accept that, I would imagine?

MR MABUYAKHULU: Yes, yes, I do accept it, Mr Chairman, because at that stage we did receive that, that was a donation.

CHAIRPERSON: Yes.

MR MABUYAKHULU: We do have of course have deposited them so that we can ensure we use them. In this particular case, Mr Chairman, I will only make one caveat though to say [indistinct] because at that particular instance we were facing the pressure of expenditure that needed to be disbursed for the purposes of – for a conference which was nine days away. We may then have responded to that pressure but I think the procedure that the ANC had, the procedure that the ANC had, the procedures that they had before, there was one and I am not saying there was not, and therefore, in that regard, Mr Chairman, that were processes that we actually ordinarily followed.

CHAIRPERSON: Yes. Well, I wanted to say, you know, because when you talk about an organisation such as the ANC, you are not talking about some spaza shop. There would be ...[intervenes]

MR MABUYAKHULU: I would be [indistinct] on that one. And it is not even saying in terms of a million rand, it is a small amount of money.

CHAIRPERSON: Yes.

MR MABUYAKHULU: What I am saying, Chairman, we may have acted with the pressures of the time because of, as I say, that we already had got expenditures that needed

to be paid for the preparations of the impending conference that was that was due to take place on the 20th to the 22nd of June 2008.

CHAIRPERSON: But also when you talk about the pressures of the time the other issue that arises is this is not like a situation where you are Provincial Treasurer of the ANC in Kwazulu-Natal and this donation is being given to you when you are in Limpopo for a weekend or something, it is being given to you at the ANC offices. So why can you not get it received and deposited properly even if there are pressures because it is just the following day or – and it is cash the following day or two days, should be available for the ANC to use. So unlike if you receive it when you are far away and have to travel but you are at the offices where whatever you may need to do is there and should be available. You understand that?

MR MABUYAKHULU: No, no, no, I do understand the Chairman, but as I say at the time one's mind was the base that we needed that to be able to ensure that now that we need to respond to these expenditure pressures we have, let us be able to therefore use the money to be able to pay some of the things already that we are outstanding which actually needed to be paid for upfront so – but the points you are raising, Mr Chairman, I think with the benefit of hindsight it is taken into cognisance, it is [inaudible –

speaking simultaneously]

CHAIRPERSON: Yes, yes. Mr Hulley?

ADV HULLEY SC: Thank you, Mr Chair. Now if I recall correctly, you were the Kwazulu-Natal MEC for Local Government and Traditional Affairs, is that correct?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And you were also the Kwazulu-Natal Provincial Treasurer for the ANC.

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And if I understand correct – well, let me just understand this. What were your qualifications?

MR MABUYAKHULU: In terms of what?

ADV HULLEY SC: Did you have any tertiary qualifications, did you have any professional qualifications?

MR MABUYAKHULU: I do, Mr Chairman.

ADV HULLEY SC: Which is what?

MR MABUYAKHULU: I told an honours degree in management, I also hold a post-graduate Diploma in Business Management and I have a number of certificates which I do not think it is relevant for the purposes of today's proceedings.

ADV HULLEY SC: Now at the time that you were the MEC and at the time that you were the Provincial Treasurer, did you hold these qualifications, the honours in Management

and the post-graduate diploma in management?

MR MABUYAKHULU: I did.

ADV HULLEY SC: So, I mean, you would obviously understand the importance, no doubt, of keeping proper records for financial purposes.

MR MABUYAKHULU: I think the points that the Chair has canvassed with me and I have actually made an observation on that point, Mr Chairman, therefore I respectfully say, Mr Chairman, the points you have raised with me is the same points which I have accepted anyway, with the benefit of hindsight.

CHAIRPERSON: Yes.

ADV HULLEY SC: Well, the only point I am getting to or the only point that I wish to make about this is that it would strike me as not being an issue of hindsight, you had the qualifications at the time when you were doing these things.

MR MABUYAKHULU: Mr Chairman, the point I am raising, without getting into an argument with counsel, Mr Chairman, I have said – I have explained the position at the time and with all due respect, Mr Chairman, I do not think I need to be able to belabour the point once more.

ADV HULLEY SC: Let's – pardon, Chairperson, my apologies.

CHAIRPERSON: Ja, no, no, that is fine, that is fine, that

is fine.

ADV HULLEY SC: Thank you. If we could move on then. Insofar as the - to the extent, as I have confirmed, if I understand correctly, your testimony is that you used the money from the R1 million for the purpose of paying for the expenses for the upcoming ANC conference, the provincial conference that was coming up, is that correct?

MR MABUYAKHULU: That is precisely so, Mr Chairman.

ADV HULLEY SC: And where are the records in relation to those expenses?

MR MABUYAKHULU: They are in the ANC, Chairman, because the ANC would know the expenses. Now treasurer ever takes when you leave office and take the records of the organisation away.

ADV HULLEY SC: Now ...[intervenes]

CHAIRPERSON: Would the position be that when you say they are in the ANC, would the position be that there would be distinct documentation that relates to payments that you made using that donation or is the position that one will never be able to say these payments came from that donation, these other payments came from other donations? What would be the position?

MR MABUYAKHULU: I am not in a position to be able to make those kinds of clear decisions, Chairman, as I appear now. As I say, what one did at the time was to be able to

ensure that in one's report to the council(?) where I stand as the provincial treasurer and I was not elected back into the very committee, it was to report and therefore having reported then of course the organisation would have then been able to deal with those matters going forward but there is those – the details of those would not be within my purview as I speak right now.

CHAIRPERSON: And when – after you had received the donation at the offices of the ANC after Mr Shabalala handed over the cash, did you keep the cash with you until you gave it out to pay or you gave somebody to pay or was the cash kept with somebody else for some time before it was used to make payments?

MR MABUYAKHULU: As I recall, Mr Chairman, today I am now speaking out of memory in terms of having to recall all those finer details, I would say, Chairman, as I recall the money [indistinct] I think one practice in the ANC office, in the safe in the ANC office. But I cannot recall now the details of the actual expenditure because I think I cannot be able to recall that but it was, you know, not – yes, it would not have been me would be sitting down and dealing with this and that and paying that but it is a matter of memory on how it would have been done but I would have actually made resources available for the payment of those pressing expenditure at the time.

CHAIRPERSON: Would that be – would that have been a safe in the ANC where you would have put it after receiving it or when you say – ja, when you say you would have put it – placed it in the ANC ...[intervenes]

MR MABUYAKHULU: As I recall there was a safe but it was – yes, it was not one of those built in, almost vault safe but it was - there was a safe that was there at the time in the office of the ANC.

CHAIRPERSON: And ...[intervenes]

MR MABUYAKHULU: Not only that, it 25.10 when you received it.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Because there was, ja.

CHAIRPERSON: Yes. And you would have kept the key or somebody else would have kept the safe key?

MR MABUYAKHULU: Yes, at the time I would have actually been able to have access to the safe and either [indistinct] or the bookkeeper that would have been the person that I work with but I think I would have actually either had the access to the safe, as my memory – as I recollect.

CHAIRPERSON: And do you have a recollection as to how long you might have kept in the safe before starting to have it used to make payments or authorising somebody to take from it to make payments?

MR MABUYAKHULU: I honestly cannot remember, Mr Chairman.

CHAIRPERSON: Ja.

MR MABUYAKHULU: Except to say – I am saying we were nine days away from the provincial conference and therefore this pressure that we needed to actually be able to ensure that we start paying for some of the very outstanding preparatory expenditure that was required for the conference, so that would have actually been done so how long they would have kept it, I really do not recall, Mr Chairman, but I think, as I say, there was already an existing pressure to ensure that actually we start paying for the conference activities(?).

CHAIRPERSON: And you said you did not issue a receipt to Mr Shabalala when you got the money?

MR MABUYAKHULU: No, no, I did not, Mr Chairman.

CHAIRPERSON: Ja.

MR MABUYAKHULU: That I think – I do not remember issuing, that is why I even went back after the [indistinct] and I could not recall issuing any receipt to Mr Shabalala.

CHAIRPERSON: But did you say you accept or did you say you are not sure whether the policies or procedures of the ANC required you to issue a receipt for a legitimate donation being made by somebody to the organisation?

MR MABUYAKHULU: I said, Mr Chairman, I do not

remember all of that nuances regarding the policies of the time, save to say there was a policy that [indistinct] that required one that you actually needed to be able to report to the structure of the organisation if you received any funds on behalf of the organisation.

CHAIRPERSON: Of course you – at this time you were – you said your term was coming to an end, your term of office as Treasurer, is that right?

MR MABUYAKHULU: Correct, Mr Chairman.

CHAIRPERSON: Yes. Because the conference that you were busy preparing for was a conference where there was going to be an election of office bearers, is that right?

MR MABUYAKHULU: That is correct, Mr Chairman.

CHAIRPERSON: And one would think that you would have over the period of your term of office, over your term of office you would have received many donations from people. Would that be correct?

MR MABUYAKHULU: That is correct, Mr Chairman.

CHAIRPERSON: Yes. And some of those would have been cash or most of them or all of them? Do you recall normally what – how people donated to the ANC. Was it normal to give cash or was it not normal?

MR MABUYAKHULU: Well, it was back then, Mr Chairman, each of the receiving – making donations occurred was a normal feature. Of course, though you

would have others being able to then [indistinct] making money into – making money into the ANC sub-regional account.

CHAIRPERSON: Yes.

MR MABUYAKHULU: But I think it was common that you would actually get people donating in cash back then.

CHAIRPERSON: Yes. And I guess cash even in large amounts such as hundreds of thousands rands or even a million or more? So, in other words, when you say it was common, in terms of amounts it sometimes it was amounts that were in cash or – or what was the position? I just want to see whether R1million in cash ...[intervenes]

MR MABUYAKHULU: I always ...[indistinct – mic off]

CHAIRPERSON: Sorry?

MR MABUYAKHULU: I will simply be speculating Chairman if I say I can recall over what period.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Then I will tell you, and say how much, I would only be speculating ...[intervenes]

CHAIRPERSON: Yes.

MR MABUYAKHULU: I would have thought, yes.

CHAIRPERSON: But in terms of the issuing of receipts in regards to those other cash donations. Where - did you issue receipts in regard to others?

MR MABUYAKHULU: I may have to recall Chairman,

when I say honestly, as I say, I cannot recall whether in all others or with others if there were or that I am saying, some would come in and if they come in without me being there of course the officials that were there would be able to receive information.

But as I say, the requirement is that if they would have been a procedure, I just cannot follow the detail of the procedure of the time but there would have been a procedure that would have been operational at that particular time.

CHAIRPERSON: H'm, Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair, and as the treasurer for the ANC, presumably, one of your responsibilities would have included ensuring that...[intervene]

MR MABUYAKHULU: Sorry, Mr Chairman I am just struggling with the camera here. I am not sure whether my attorney just can assist me before the question is asked, so the camera.

CHAIRPERSON: Oh, you cannot see us or what?

MR MABUYAKHULU: I cannot.

CHAIRPERSON: Oh, okay well, maybe the technicians this side could assist.

MR MABUYAKHULU: If you would allow them to.

CHAIRPERSON: But if they can assist, that's fine they

may do so.

MR MABUYAKHULU: Oh, so I am being advised that it may be probably on the other side, at the Commission side.

CHAIRPERSON: Oh, yes, the technicians will - somebody is talking to the technicians, you must just tell us when you are able to see us, but you can hear us.

MR MABUYAKHULU: I can hear you.

CHAIRPERSON: Yes, okay, maybe what we should do is in the interest of time, is let us continue, even though you do not see us as long as you hear us because we can hear you to and you will let us know when you can see us.

MR MABUYAKHULU: Of course Chairman, I will so.

CHAIRPERSON: Yes, okay, Mr. Hulley.

ADV HULLEY SC: Thank you Mr Chair. Now what I was suggesting, or rather inquiring about is whether amongst your duties as the treasurer was the responsibility to ensure that the annual financial statements were prepared by the relevant auditors for the ANC.

MR MABUYAKHULU: It was, Mr Chairman.

ADV HULLEY SC: Now over the years, that was - you came into office as the ANC Treasurer, KwaZulu Natal Treasurer in 1998, you left office in 2008. So during that period of time, you would have been responsible for ensuring that all the annual financial statements were – or rather the responsibility for the preparation of the financial

statements was handed over to the relevant auditors, is that correct?

MR MABUYAKHULU: That is correct Mr Chairman.

ADV HULLEY SC: And you would obviously appreciate, given your management - your background, as with a postgraduate degree in management, and an honours degree in management. You would appreciate of course, that it would be vital for them to have a record of all documentation to be able to give a fair reflection of the financial statements, correct?

MR MABUYAKHULU: Just repeat the question again?

ADV HULLEY SC: In order for the auditors to conduct a proper audit to prepare annual financial statements and to properly or fairly reflect the affairs – and I am talking specifically the financial affairs of the ANC in KwaZulu Natal, they need proper records for that purpose, correct?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And if they do not have proper records, they cannot present their audit report fairly, is that right?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: Now, if I can once again refer you to...[intervene]

MR MABUYAKHULU: Sorry Mr Hulley before you continue. Chairman I now can see you.

CHAIRPERSON: You can see us, okay, alright, thank you.

MR MABUYAKHULU: Although the picture is not bright.

CHAIRPERSON: Oh, it's not clear oh okay, maybe it is going to improve the technicians hear what we are saying, Mr Mabuyakhulu can see us but the picture is not as clear as it should be, okay alright.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Thank you, of course, the other point Mr Mabuyakhulu would be that if donations are not recorded and there are no official records of the donations in the organisation. The organisation - there might be difficulty in paying tax on those donations, is it not?

MR MABUYAKHULU: Well my understanding, I am not sure Mr Chairman I will ask to be advised on this element. That the ANC was really start as a non-taxpaying organisation at the time.

CHAIRPERSON: Yes.

MR MABUYAKHULU: I am - what the situation may have been done so I think the issue of tax, paying of taxation with regard would not come to being paid but I still would want to take counsel on that aspects.

CHAIRPERSON: Ja, Mr Hulley, you want to take it from there.

ADV HULLEY SC: Thank you, Mr Chair. If you could turn with me to Bundle RR4 at page 1849.

MR MABUYAKHULU: 14?

ADV HULLEY SC: 1849.

MR MABUYAKHULU: Thank you Mr Chairman, I am at 18, RR4 1849.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Yes.

ADV HULLEY SC: Now, these are the financial statements, the ANC's annual financial statements for the year ending 31 March 2009.

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And if I understand correctly, or the auditors who are Manasi and Associates, chartered accountants and auditors. They reflect the income of the ANC - or if you turn with me to page 1853.

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: For the year ending 31 March 2009 to be R7,277,706, do you see that?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: Now, if I understand correctly from the letter from Ngubane Wills Incorporated, that we referred to earlier on in your testimony, the figure of R1million would have been captured in this figure of income, is that correct? It was part of this globular amount. Is that right?

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: And that was based on an instruction.

MR MABUYAKHULU: Even though, let me put a caveat

here as well.

CHAIRPERSON: Yes.

MR MABUYAKHULU: At the time when these financial statements were made, I was no longer provincial treasurer but I think the point raises, I take.

CHAIRPERSON: Okay.

ADV HULLEY SC: And when you give that caveat, I am just trying to understand why you provide the caveat. Are you saying - is there anything about those figures that you disagree with? Obviously, you were not responsible because - you were not responsible for the way in which it was prepared because you were no longer the treasurer. But subject to that, is there something - is there some criticism, as it were, that you have of those financial statements?

MR MABUYAKHULU: No, no, I am just placing for the record for the benefit of the Commission and Chair that at the time when those financial statements were concluded, were finalised, I was no longer treasure, I was no longer in the office of the provincial treasurer.

ADV HULLEY SC: Now I would like us to go back if we could to Bundle LEA27.

MR MABUYAKHULU: Bundle?

ADV HULLEY SC: Bundle LEA27 on both le a 27 and specifically, to the affidavit that you deposed to in 2010, I

would like you to turn to page 28 of that bundle.

MR MABUYAKHULU: Yes, Mr Chairman.

ADV HULLEY SC: Now you say there at paragraph 12.2.

CHAIRPERSON: I am sorry, what is the page number?

ADV HULLEY SC: Pardon me Mr Chair, autumn it is page 28.

CHAIRPERSON: Okay, and the?

ADV HULLEY SC: And it is paragraph 12.2.

CHAIRPERSON: Ja.

ADV HULLEY SC: You say:

> "I seize to be the provincial treasurer of the ANC immediately after the election of the new provincial treasurer during the during June 2008 conference. I therefore was not responsible for the way that these were cheated in the next financial statements, which was prepared sometime after March of the following year. For that reason, I cannot specifically say if the donation was included, in the Treasury Report to the Provincial General Council or in the globular amount of R7,227,707 listed as a donation in the income statement."

Do you see that?

MR MABUYAKHULU: I do see that, Mr Chairman.

CHAIRPERSON: Yes.

ADV HULLEY SC: Now, I am trying to reconcile that, with

what was conveyed by your attorney on your instructions, in paragraph 7, of the letter by Ngubane Wills Incorporated, would you turn your...[intervene]

MR MABUYAKHULU: What I said Mr Chairman, I said earlier, is that I gave the report to conference on information and the issue of that in the actual financial statements would have been treated primarily, when the financial statements were put together would have happened when I was no longer in office.

I think that is a context Chair, is given there in firstly to Well, isn't the position that whatever the auditor's in 12.2.

CHAIRPERSON: Well is it not the position that whatever the auditors would have looked at would have been money that had been receipted in the organisation in terms of what they work with, they would have - they would not have taken into account money that never officially came into the books of the organisation and the accounts of the organisation, is it not?

MR MABUYAKHULU: I do not know how the auditors would have dealt with it in this particular case, however, in my mind Chairman the clear methods here is that there was an expenditure on the items that we have to pay for, for the organisation that were paid for and that those would have been part, not only of the treasurer but that would have

been part of the expenditure writer that management spend on behalf of the organisation.

CHAIRPERSON: So after the money had been spent, would you have taken the trouble to make sure that all the receipts that are related to payments made from this money that you knew had not been officially receipted were preserved and were known to say these receipts relates this donation that will not be reflected in the books of and the account of the organisation, would you have taken trouble to do that or that would not have been done?

MR MABUYAKHULU: Well, Mr Chairman in this particular instance, as I correctly actually indicated to the Chair and the Commission is that the details of capturing expenditure, excuse me post conference would have happened after I vacated office. So the question of, how it would have been treated but as I say, I do not doubt that they would have been reported because expenditure was incurred but I would not be able to simply say, I would have done 1,2,3 when I was no longer in office.

CHAIRPERSON: But what it was talking about prior to the conference, I assume that the money was dispersed as you put it, prior to the actual conference taking place. But maybe you mean that, even during the conference, but if it was used, and since you knew that it had not been officially receipted I can imagine that it would have been

possible to say, you know what, because this money has not been receipted at least we must make sure that receipts that relates to payments that come from it are preserved and put aside.

But I am looking at before the conference started, obviously, after the conference, you might not - you would not have been part of the PEC, I guess or you would not have been part of the top five in the province, there would have been another treasurer.

But I am wondering whether you would not still be concerned to say, you know, there is this money that has been used, and maybe I should even tell the incoming treasurer about this money, and I must make sure that officials, well by officials I mean, the staff in the ANC, who deal with money, they put these receipts aside so that I can account properly for that amount.

MR MABUYAKHULU: There was an official handover process Mr Chairman, to the incoming provincial treasurer.

CHAIRPERSON: Yes.

MR MABUYAKHULU: And as I say there was a process, in fact of actually identifying those expenditure items, because they had been given expense items that were not directly paying for it, the bank account of the ANC at the time had actually been paid through those donations., okay.

And it is a point that I think, that the bookkeeper in his affidavit makes the point that he actually does concede that there were actually payments that were made, and it is not actually done through the account of the ANC but they were done through these donations.

And I think that information ordinarily in terms of major expenditure items, would have been the money incurred for – was of course actually known and available plus it is just a matter - for the only thing for the information of the provincial treasurer but there was of course a handover process that identified all of the donations and other things that is in place.

CHAIRPERSON: Yes, Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair. Now, you have referred to an incoming official, and you refer to a bookkeeper, is this one and the same person or are these two different people?

MR MABUYAKHULU: I am referring to the incoming provincial treasurer as an official of the ANC.

ADV HULLEY SC: Now, who is that person do you recall?

MR MABUYAKHULU: It was Madam Mthandeni Dlungwane who became the provincial treasurer at the time.

ADV HULLEY SC: And who was the bookkeeper that you were referring to, who gave an affidavit or a statement?

MR MABUYAKHULU: The bookkeeper was Mr as to who

ADV HULLEY SC: Mr Who?

CHAIRPERSON: Is it Mr Delani Mzila?

MR MABUYAKHULU: Delani Mzila.

CHAIRPERSON: Oh, Delani Mzila, ja okay.

ADV HULLEY SC: Okay, now can you turn with me if you do not mind to Bundle RR4 that is the letter of Ngubane Wills, and I want you to turn to page 1842.

MR MABUYAKHULU: Ngubane Wills, yes page 142.

CHAIRPERSON: Page 1842, so it is the second page of the letter from Ngubane Wills Incorporated.

ADV HULLEY SC: Correct.

CHAIRPERSON: That we referred to earlier.

ADV HULLEY SC: Now in that letter you see that paragraph or rather they see that paragraph 7 are the instructions from you:

> "Although our client wishes to be helpful in this matter, however, we are instructed to place on record, Mr Mabuyakhulu resolute stance and that of the ANC as well, that under no circumstances does the organisation wish to compromise its donors and or its operations by disclosing information concerning same."

Now let me understand about this policy, when you do not wish to compromise the donors. Is this the identity of the

donors? Is it a secret, not only from the public at large, but also from the other ANC members as well?

MR MABUYAKHULU: Mr Chairman we must speak in terms of, at the time we are speaking of. That is why earlier on in my opening statement, I made the point that at the time, there was absolutely no requirement or no policy that required us to be able to reveal the donors and donors would elect, whether they wanted to be known or not known.

It was a choice the donor had to do and there was absolutely no legal requirement for donors to be made known to anybody other than if there was any insight with the ANC.

ADV HULLEY SC: Yes, I am just trying to understand what was the policy, did the policy include keeping it a secret, also from the rest of the ANC as well? That is my only question, I want to know how far that policy went.

MR MABUYAKHULU: Mr Chairman, it is that if there was a need to know of information within the ANC that information was made available to those who needed to have legitimate reason to know.

CHAIRPERSON: Why was it necessary to make that point in paragraph 7 of that letter? That is now the point that Mr Hulley has asked you about, why was it necessary to make that point in this letter because in this letter, that Mr

Shabalala was the one who were giving you the R1million was disclosed.

So this letter says in paragraph 4, that the R1million donation given by Mr Shabalala was used as part of a package of donations received in the run up to the ANC KZN provincial conference. So the question - and then in paragraph 7 the letter says:

> "Although our client wishes to be helpful in this matter, however, we are instructed to place on record, Mr Mabuyakhulu's resolute stance and that of the ANC as well, that under no circumstances does the organisation wish to compromise its donors and its operations by disclosing information concerning the same."

MR MABUYAKHULU: Well, Mr Chairman, you are speaking to a laymen and when you give instructions you do not see the client that you have to say constructive word for word, such presumption Mr Chairman will be taking that stance to another level.

However, let me give the spirit of the import of that as I understood it, that was just to place on record a matter of principle of how we believed at the time that we needed to have an obligation to also protect the donors that I have indicated earlier Mr Chairman that were instances where the donors did not want to be revealed

and there was absolutely no policy or legal planning for that to happen.

And I guess therefore, what these paragraphs actually attempted to do in paragraph 7 was too makes – and the reason why I say so Mr Chairman is that it is not making specific requests to the matter where you say in paragraph 4 which has been said but it was also just to state for the record here in terms of principle, that is how I read and understand it.

CHAIRPERSON: You see, when I read it seems to me to give rise to an understanding that you and the ANC when Ngubane Wills Incorporated attend to clients did not want to disclose the identity of the donor that is why the letter says both of you were resolute, I think that is the word used if I am not mistaken.

Resolute, that under no circumstances will you disclose the identity disclose or compromise the donors and operation. So one stays - but if you your understanding was that Mr Shabalala was the one who was giving the donation. You had already disclosed him in the letter there would be no need to put this paragraph. But if your understanding was that, Mr Shabalala was not the donor he was just the caveat then one would understand why you would emphasise that point, do you understand the reasoning?

MR MABUYAKHULU: I understand it Chair, but I beg to differ.

CHAIRPERSON: No, no, by all means, but I just want you to - I want to give you a chance to deal with that understanding to say, maybe you say you understand it differently and these are the reasons and you can say, here are the reasons why one should not understand it the way I am understanding it.

MR MABUYAKHULU: Yes, Mr Chairman.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Here is the reason.

CHAIRPERSON: Him.

MR MABUYAKHULU: The point or the first of all, the first point that we make under paragraph 4 as you have correctly mentioned that, who was the donor of R1million? Had we concealed that we would not be able to venture that upfront. So I therefore say Mr Chairman, that statement Mr Chairman had is negated by the fact that under 4 we do state who the donor is. The second element is if you read it under 7 and I respectfully say MR Chairman, is the reading of a laymen is that it is couched in such generalities that it is not specifically talking about the donor, it is talking about donors or each operation which is now in fact a generality that has expressed a presupposition and that is how I actually say Mr Chairman,

my understanding at the time and it is my understanding that was simply to convey a principled position.

But in having been accepted that in this particular case, we had already are able to disclose who the donor was.

CHAIRPERSON: Of course, I must hasten to say you do not say expressly, that Mr Shabalala was the donor. What you do say is the donation was given by him of course, he could give the donation if it came from him, but also he could give the donation if he was simply a caveat. You would accept that, is it not?

MR MABUYAKHULU: Well, I would accept that, Mr Chairman however, the truth that I actually said yes which I want to say it right Mr Chairman, is the fact that I do not know of any other person other than Mr Shabalala and I never asked Mr Shabalala whether this money comes from him or it is raised from anybody else. So I see, so that is the factual situation.

CHAIRPERSON: Of course when you put it like that it – it follows that then you cannot say Mr Shabalala was the donor. All you can say is he gave you the donation but whether he was donating it himself or he was just a conduit you cannot say. Would you agree with that?

MR MABUYAKHULU: Well I agree with that Mr Chairman.

CHAIRPERSON: Yes.

MR MABUYAKHULU: That is why I need 00:00:35 in saying that he will come.

CHAIRPERSON: Yes.

MR MABUYAKHULU: That you received the donation from Shabalala.

CHAIRPERSON: Yes. Yes.

MR MABUYAKHULU: And he cannot go beyond that Mr Chairman.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Conger up something that is not based on any facts or logic.

CHAIRPERSON: Yes. Mr Hulley.

ADV HULLEY SC: Thank you Mr Chairman. Then if we continue with that paragraph 7 you go on to say or at least the attorney's gone to say but save to say that the particular donation was included in the report to the conference in the Treasurer's Report specifically it was included in the Globular amount of R7 227 707.00 listed as donation in the income statement.

Now we know from your affidavit that you gave in October of 2010 you said

> "I cannot specifically say if the donation was included in the Treasurer's Report to the provincial general council or in the globular amount of R7 227 707.00 listed as a donation

in the income statement."

So I am trying to understand the conflict between the instructions that you have given to the attorneys and that the attorneys have conveyed to Ms O'Brien and the statement that you have given in your affidavit they clearly two different statements. In fact they are in direct conflict.

MR MABUYAKHULU: Let me attempt to be able to clarify matters Mr Chairman as I understand them. The first matter there is a report that was presented by myself to conference which the report say that it was included in the report to the conference in the Treasurer's Report.

Now which I gave that report to conference. And the second element is then dealing with why then the report would have been 00:02:35 cause conflict meaning the PEC.

The PEC 00:02:30 conference commercial conference anymore it is a provincial general council that would have taken later – either later in the year or in the following year and therefore that is where the matter I think would have been muddled in the writing.

But I think it is attempting to explain the two things firstly that it would have been part of the report to conference but then because you then dealing with the report of the PEC or the financial statement that are processed after one have left office.

I think that was the issue that even there when you

say that maybe there would have been clarified a little bit more by those who wrote the letter but I think the point of departure is the attempt was to try and distinguish between the provincial conference, the PEC and the treatment of the financial annual financial statements.

CHAIRPERSON: The – so you say that in the Treasurer's Report to conference – to the provincial conference that was this donation was included. Is that right?

MR MABUYAKHULU: Yes if I remember very well Mr Chairman it would have been included as part of the – the sum of the other monies that have been raised because it was not about raising one donation.

CHAIRPERSON: Yes

MR MABUYAKHULU: So I – the letter would have said that it had been part of those monies that were raised. That is where I can simply say whether then the – the – we can argue about whether the actual amount was R7.2 at the time I cannot recall all of that now but I think there was the report to conference that listed by me in the donation bag then I am saying it was part of the global amount of the donation that one have reported to conference.

But reporting to conference is just by one. You then need to then treat it into the subsequent reports which is the PEC – the reports of the PEC and the provincial general council and the financial annual financial statements.

00:04:48 try to clarify the distinction between those elements to some of them occurred when I was no longer in office.

CHAIRPERSON: Yes. So in the Treasurer's Report when you say you think it was included you do not sound very definitive and maybe one should understand that.

But would it – would the report have made it clear that you were talking about a particular donation of R1 million because I think if you just mentioned a globular amount I am not sure that the report can be said to have – to have made it clear that you were reporting that you received some – this donation?

MR MABUYAKHULU: I have the matter of practice Mr Chairman for the benefit and my attorney 00:05:54.

CHAIRPERSON: Ja.

MR MABUYAKHULU: I never went to conference and to – donations from individuals.

CHAIRPERSON: Sorry.

MR MABUYAKHULU: We never did that because the day that – we never went itemised.

CHAIRPERSON: Ja.

MR MABUYAKHULU: In the public records of – made to and from individuals or from companies.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Because that 00:06:12 would have easy lead find its way into the ...

CHAIRPERSON: Ja.

MR MABUYAKHULU: And that is why we also build the 00:06:22 in the globular amount.

CHAIRPERSON: Okay.

MR MABUYAKHULU: Even if you 00:06:25 so we never then identify donor A, donor B, donor C and therefore...

CHAIRPERSON: Yes.

MR MABUYAKHULU: Identify them we would not do that Mr Chairman.

CHAIRPERSON: Yes. Okay so when you say you – it was included is it correct that all that you are saying is the globular amount that conference was told about of donations.

MR MABUYAKHULU: Yes.

CHAIRPERSON: Of donations that were received included it in the calculation.

MR MABUYAKHULU: Yes.

CHAIRPERSON: It was part – it was calculated but there was – there would have been nothing in the report that specifically indicates that there is this particular donation. It would just be part of donations received.

MR MABUYAKHULU: That is how Mr Chairman we always treated donations.

CHAIRPERSON: Ja.

MR MABUYAKHULU: And in my tenure I never actually ever put a report that itemised the donations.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Nor either my predecessor that actually (talking over one another).

CHAIRPERSON: Ja. Yes. Yes. So – so if you had received various donations from different sources including this one you would simply calcu – add them up and then say in the report we received like R100 million donations which one came from whom and how it came nobody would know that. Is that correct in terms of the report?

MR MABUYAKHULU: No Chairman that – we would have received the R100 million and I do not remember ever seeing that.

CHAIRPERSON: Okay let us say R10 million.

MR MABUYAKHULU: What we will do Mr Chairman we would do a 00:08:22 and say but we would then take a report and then we would share that report with the leadership in terms of the finance committee and provincial because at that level you are able to share information.

And I must indicate to you Chairman that there was always positivity around the protection of the donors because if I say some used to express you indicate that they would not want to be made known published and there would be those donors that would make themselves available in that instance we would then be able to ensure that we – we therefore acknowledge them and therefore we actually write

letters to – of acknowledgement to them but that would only happen to those donors that do not have the difficulty but even in those instances we would not see it and then in a meeting with the 3000 or 4000 people and therefore 00:09:30 yourself presenting the Treasurer's financial report which itemises all of the donors because we never did that individually.

CHAIRPERSON: Ja okay alright. Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: We are at twenty – nearly twenty five to eight I think we should try and see whether we can finish by eight.

ADV HULLEY SC: Thank you.

CHAIRPERSON: And of course you need to deal with the – put questions – such questions as you wish to put to Mr Mabuyakhulu in regard to the issue he raises of the leak between the donation given to him by Mr Shabalala and the donation given to Khobone and Shezi Attorneys by Intaka Group.

ADV HULLEY SC: Thank you Mr Chair I will in fact conclude with that.

CHAIRPERSON: Oh okay.

ADV HULLEY SC: Now – so if I understand what you saying correctly the – in essence and I am not saying that this is necessarily what occurred as a fact but the reality is the

validity of an – of the record the Treasurer's Report is dependent entirely upon the integrity of the relevant treasurer. In truth the Treasurer could have received 20 or 30 million more but nobody would know that on the ANC because it is simply not recorded in the books. Everything is given as a globular sum. Would that be a fair statement?

MR MABUYAKHULU: I (speaking over one another) Mr Hulley on that issue Mr Chairman.

CHAIRPERSON: I am sorry.

MR MABUYAKHULU: Even though I do not agree.

CHAIRPERSON: I am sorry I – I ja just start afresh giving your answer Mr Mabuyakhulu. You were speaking softly I could not hear.

MR MABUYAKHULU: I am saying – oh sorry Mr Chairman. I am saying Mr Chairman I do not necessarily agree with the proposition made precisely because that proposition does not recognise the fact that I said Mr Chairman that there structures that will legitimately be taken into conference on the donation made by the organisation and therefore even if you were not actually giving to the whole of the – the structures under the membership would mean many people but you would have actually of course been able to take 00:12:05 confidence your colleagues that you serve with particularly in the provincial executive committee and I am meaning here in the officials as well as in the finance

committee that you would be able to then actually then brief them in that regard.

So it is not necessary that it would be simply if I put it only on the good will of the Treasurer no I do not – I do not necessarily agree with that assertion.

ADV HULLEY SC: Well if I – perhaps I have misunderstood then. My understanding is that when you take them into the – into your conference you would give them – you would give them information of the globular figure of what was received unless I misunderstood that.

So you giving – you telling them that an amount of in this case R7. Odd million was received and that includes all the donors they are not itemised though each donor is not itemised.

MR MABUYAKHULU: Yes for the purposes of the report that would go to the conference you would not be able to actually itemise those donors and we did not do it at the time.

ADV HULLEY SC: I am talking about the reports to the structures – the structures of which you speak.

MR MABUYAKHULU: Sorry.

ADV HULLEY SC: I am talking about the report to the structures – the people that you have taken to your conference.

MR MABUYAKHULU: I am saying Mr Chairman you would of course have the people that you serve within the officials

that you would actually be able to report to them that we are actually working on these matters or we are 00:13:46 these donors because the Treasurer although he is the Treasurer in terms of the constitution 00:13:55 but also he served you together with other officials.

So the point I am raising – making there to the distinction between going to a meeting with a number of comrades or leaders when you could actually then report on the details because those details would easily find their way outside of the ranks of the organisation.

CHAIRPERSON: Ja no I think the – Mr Hulley's question is whether when you tell official let us say the provincial executive committee of the – of which you would have been part whether as Treasurer whether

1. Though they are some of the people that you would tell about that you would tell about this – this kind – about donations number 1 in confidence.
2. Whether when you tell them you would give details or whether you would simply still say you know we have received R7million in terms of all the donations or whether you would give more details.

That is what he is asking – when you speak to those that are your colleagues serving for example in the PEC or the Top 5.

MR MABUYAKHULU: Well I (inaudible).

CHAIRPERSON: Or the Top 5 maybe not the PEC.

MR MABUYAKHULU: Yes Mr Chairman.

CHAIRPERSON: The Top 5 ja.

MR MABUYAKHULU: I am (inaudible) that Mr Chairman.

CHAIRPERSON: Ja.

MR MABUYAKHULU: Of course the sharing information with the Top 5.

CHAIRPERSON: Ja.

MR MABUYAKHULU: But in – not necessarily share that information with a (inaudible) because when you prepare those statements – financial – you will not prepare your report for instance you would have to be able to then tell your Top 5 on grounds those officials that is to report.

So they will be able to indicate some of the things and as I said Chair I said earlier they could then be questioned that even others would ask at that level everyone I think would be in 00:16:14 because of the – the level of – at the Top 5 level let me say it that way they would be therefore entitled to ask questions the way there must be questions of clarify then we would explain to them how are we dealing with these issues of donations.

CHAIRPERSON: Would you disclose the identity of the donors to the Top 5 or you have not disclosed even to them?

MR MABUYAKHULU: (talking over one another) unless there was a question we would not have said it just go there but if the Top 5 wanted to ask who is 00:16:52 in these

donors then – then you would know it Chairman.

CHAIRPERSON: Ja.

MR MABUYAKHULU: Because you would actually be able to do it but we worked on the basis of being able to account to one another but also to report to one another.

CHAIRPERSON: Hm. But that report to the Top 5 would not be in writing or would it – or would it be in writing?

MR MABUYAKHULU: Normally what 00:17:21 happens because these are the official meetings. You would actually be able to then say when you are preparing your report that you are going to be taking then you therefore share that report with the officials.

In that instance and if there are questions it normally would be they would want to – be actually sharing with them what I am going to report on so that everybody then is part of that process of the official would. If they ask questions you then answer on the report. And you can give them no details which ordinarily would not actually be able to give the details to the others.

CHAIRPERSON: So the report that you are talking about that you would share with them is the report that would go to for example conference or to a bigger structure, is that right?

MR MABUYAKHULU: Yes, yes, yes.

CHAIRPERSON: Yes. So – but that report is the one that you said will not have details and will not indicate individual

donations, is that right?

MR MABUYAKHULU: That is right Mr Chairman.

CHAIRPERSON: Yes.

MR MABUYAKHULU: It is (inaudible) that if there are for instance who are the donors that have given us this money amongst the officials then you can share that information.

CHAIRPERSON: Yes.

MR MABUYAKHULU: The officials.

CHAIRPERSON: But that – then that would be verbal is that correct it would not be in writing?

MR MABUYAKHULU: It always will be – will always be actually doing for the basis of verbally because it would be taking either into a confidence.

CHAIRPERSON: Okay alright. Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair. Now if you could turn with me to page 18 – sorry this is Bundle LEA27 again.

CHAIRPERSON: Can I ask this question while you are moving to the other bundle? In the letter from Nkhubane Wills it says – that letter says that you handed the money – the donation to the – to the ANC, is that correct?

MR MABUYAKHULU: Just repeat if for my clarity Mr Chairman.

CHAIRPERSON: Yes. I am – that letter is at page 18421 of Bundle RR4 and I think the particular part is in the second page of the letter. I am – it is the second paragraph on page

1842 – it says:

> "The opposite seems true in this instance. On the one hand we have an individual member who states that he handed over a donation of R1 million to the ANC which he received from a donor and on the other hand we have an organisation which through various officials confirms that it received the donation from the individual concerned."

MR MABUYAKHULU: Well here in the Lacuna here Mr Chairman that was the Lacuna that occurred at the time and I was not responsible for it. When this matter first arose this legal firm acted both for the ANC but also acted for Mr Sipho Shabalala.

Now it was later when we became aware that that ordinarily in our view would have been a conflict of interest and hence you would see that we would not have given an instruction to the extent that would actually be constructed in that particular way. I am just only 00:21:43 for the commission.

CHAIRPERSON: So I guess your – is your answer to my question that it is not true that you handed the money over to the ANC?

MR MABUYAKHULU: I think what the writer might have meant there Chairman they may have meant that Mr

Shabalala handed money to the ANC.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Because I accept on record that I received the money.

CHAIRPERSON: Yes.

MR MABUYAKHULU: So I am not contradicting that version. So I would not have said to the (talking over one another.)

CHAIRPERSON: Oh okay, okay. Let me just see maybe I missed something.

> "On the one hand we have an individual member who states that he handed over a donation of R1million to the ANC which he received from a donor."

Now if the reference to individual member is a reference to Mr Shabalala as you seem to be suggesting then it would mean that what they are saying is that Mr Shabalala handed a donation of R1 million to the ANC which was to you. Okay.

MR MABUYAKHULU: I – sorry Mr Chairman.

CHAIRPERSON: Yes. Which was to you but then they say which he – which he received from a donor. That which he – that he cannot be you if this is to make sense. It would have to mean to be a reference to Mr Shabalala. Okay.

MR MABUYAKHULU: With respect Mr Chairman I am expected to answer on a letter written by lawyers here.

CHAIRPERSON: Yes, no, no but I – I want – I want to – to tell you what I understand this to mean so that you can comment.

Now I initially thought – I initially thought that they were talking about you having handed the money over to the ANC and you – you made the point that probably they meant that Mr Shabalala handed over – handed the money over to the ANC meaning to you, you – that was the – that is what you said.

MR MABUYAKHULU: That is what my – my understanding of the (talking over one another).

CHAIRPERSON: Yes, yes. No, no I accept.

MR MABUYAKHULU: (Inaudible)

CHAIRPERSON: No I accept that you are saying that is your understanding but what I am then saying is on that understanding the reference to he when is says which he received from a donor would have to be Mr Shabalala and in other words they would be saying Mr Shabalala said he received the money from a donor and he handed that money over to the ANC. And of course this – this may become important in terms of what we discussed earlier on.

You remember that we talked about whether Mr Shabalala was just a conduit or whether he was the actual donor and you said well earlier on when we were discussing parts of this letter you said well you disclose – you disclosed

Mr Shabalala as the donor but then I said well maybe it might not mean that.

You know he might not be the donor and then we came to a point where you said you actually do not know whether Mr Shabalala was actually the donor or whether he was just giving you money that had been given to him to pass on to the ANC. You remember with that discussion?

MR MABUYAKHULU: I corrected Mr Chairman and I still concur with your articulation that.

CHAIRPERSON: Ja.

MR MABUYAKHULU: Providing it (inaudible) because I said to the commission I have never asked Mr Shabalala whether he was himself the donor or whether he had raised the money from other people I did not ask that. So I do not have to or cannot vouch for whether Mr Shabalala was therefore the donor for the ANC.

CHAIRPERSON: Ja.

MR MABUYAKHULU: Donation from him. So for the purpose of this commission we received a donation from Mr Shabalala.

CHAIRPERSON: Yes. Yes. No that is – but you also understand you might agree – you might not agree – you might not be able to comment you also understand the approach that says where the letter says which he received from a donor that must refer to Mr Shabalala if the earlier

reference to an individual member is Mr Shabalala. Or you say ay this is too complicated now.

MR MABUYAKHULU: I am saying Mr Chairman what is put to me is a version that I cannot be able to answer so...

CHAIRPERSON: One way or another.

MR MABUYAKHULU: By knowledge – I have no knowledge of such.

CHAIRPERSON: Ja.

MR MABUYAKHULU: And rather leave to those who may have the first comment about it.

CHAIRPERSON: Ja.

MR MABUYAKHULU: I do not have it.

CHAIRPERSON: No that is – that is fine. Mr Hulley.

ADV HULLEY SC: Thank you Mr Chair. In – if you would turn with me in Bundle LEA27 to paragraph 6 on page 24.

MR MABUYAKHULU: On page 24?

ADV HULLEY SC: That is correct – paragraph 6.

MR MABUYAKHULU: Yes Mr Chairman.

ADV HULLEY SC: Now at paragraph 6 say:

> "I recall that Mr Sipho Shabalala was one of those ones who was quick to raise funds on behalf of the ANC. Prior to the conference he informed that he had fund raised and wished to pay funds to the ANC. I do not recall the exact date that he informed me of

this but believe it was approximately two months or so before the provincial conference."

Now we know that the provincial conference was in fact from the 20th to the 22nd of June so that would have mean – meant that we talking about approximately in April of 2008.

"Thereafter I received payment from Mr Shabalala in the amount of R1 million. To the best of my recollection I received the funds from Mr Shabalala on or about the 11th of June of 2008."

The point over here is that as far back as April of 2008 on your understanding Mr Shabalala was already in possession of the R1 million in cash, is that correct?

MR MABUYAKHULU: No I am not saying that Mr Chairman. I said Mr Chairman there was an indication that Mr Shabalala was going to raise the money that part of those were going to actually assist us in the call of raising the money.

Now I only received the money and I did not know how much Mr Shabalala was going to be paying to me until I received the money on or about the 11th of June.

ADV HULLEY SC: Okay now I understand.

CHAIRPERSON: Well what...

ADV HULLEY SC: My point is a different one. My point is

that you say in this paragraph 6 that prior to the conference which we know was approximately two months prior you say he indicated that he had fund raised and that he wished to pay the funds to the ANC. Now it may be that he was talking about a different amount of money but that was not your understanding. Your understanding was that the amount that he subsequently gave you on the 11th of June and the amount that he was referring to two months previously for the same amount, that was your understanding. Correct?

MR MABUYAKHULU: Mr Chairman, he never raised any amount. You are referring at the just infer(?) like he was speaking and talking and saying: We know, Treasurer, that you have made a call for us to be able to support the ANC. And therefore I also want to see what I can do to support... Now I am saying it means almost along those lines that you have indicated but at that stage he did not say there was an amount of so much that was available. No. I only then knew how much Mr Shabalala has raised when he presented to me.

CHAIRPERSON: Well, I think what Mr Hulley is suggesting to you is this. That based on paragraph 6 of your affidavit, you have to say or you had to understand at the time that this donation was not coming from Mr Shabalala's own pocket, it was part of the funds he had

raised for the ANC because in paragraph...

Because I think you say in one of your affidavits that you had made a call or the ANC had made a call to its members and supports to raise funds for it. And he say you say he said to you that he had undertaken to raise funds on behalf of the ANC and says:

> "Prior to the conference, he informed me that he had funds raised and wish to pay funds to the ANC.
>
> I do not recall the exact date that he informed me of this but I believe it was approximately two months or so before the Provincial Conference.
>
> Thereafter, ANC payment from Mr Shabalala in the amount of R 1 million..."

So I think Mr Hulley is suggesting to you that in the light of this when you received that donation from him, you could not have thought that he – it was coming from his pocket. You had to think it was part of the money that he had raised. What do you say to that? Mr Hulley, is that what you ...[intervenes]

ADV HULLEY SC: That is accurate, Mr Chairman.

CHAIRPERSON: Yes, okay.

MR MABUYAKHULU: [Indistinct] ...[intervenes]

CHAIRPERSON: What do you say to that? Yes?

MR MABUYAKHULU: ....in the construction of paragraph 6 it means, of course, under the guidance and advice I would be constructed but the ...[indistinct] the inference(?) that I am making to the Commission is that Mr Shabalala had indicated or intimated to me prior that he was responding to the call that we were making to the ANC members but at that stage Mr Chairman he did not indicate that there was already money, as I recall, recollect.

It may have been not properly captured here that, as I recollect, he did not say that there was money then that are available and the only time I ever knew how much Mr Shabalala was actually handing over is when he actually gave the money to us. [Speaker not clear]

CHAIRPERSON: Yes, but the point is. Based on paragraph 6 of your affidavit, what you are saying is. One, you recall that Mr Shabalala was one of those who had undertaken to raise funds on behalf of the ANC. That is the one point you make, okay?

MR MABUYAKHULU: Yes.

CHAIRPERSON: The second point you make is. Prior to the conference he informed you that he had funds raised. In other words, when he was telling you he had already done the fundraising and he said to you he wishes to pay the funds to the ANC. One, there was a call by the ANC or by yourself on behalf of the ANC to say: Member of the

ANC and those who support the ANC, please, the ANC needs funds. There is going to be a conference. Please donate or raise funds and so on.

And you are saying that you will recall that he was one of those who made the undertaking that I will raise funds on behalf of the ANC. And then you say, having made that undertaking prior to the conference, he then told you: I have actually fundraised for the ANC and I wish to pay funds to the ANC. That is what you say he said to you.

And then you say you do not recall the date when he informed you of this but you believe it was approximately two months or so before the conference. And then you say, thereafter you received payment from Mr Shabalala in the amount of R 1 million. So when one reads this paragraph it seems that it can only mean that the R 1 million was part of other part of the fundraising that he was talking about it was the whole amount that he had fundraised on behalf of the ANC. Would you accept that that is what it means?

MR MABUYAKHULU: Let me start that version, Mr Chairman.

CHAIRPERSON: H'm?

MR MABUYAKHULU: Certainty(?) on the basis that he did not need, Mr Shabalala, that he was going to – the one

who was going to respond to our call and that he himself was going to ensure that he was - a donation that is made available to the ANC.

Now along those lines that is all. Whether that donation came from in or paying from another person, that is the only point Chairman that I would not be able to make but other than that I think the version should be accepted.

CHAIRPERSON: But he would not say he had conducted fundraising if he was donating, taking from his own pocket, is it not?

MR MABUYAKHULU: I ...[intervenes]

CHAIRPERSON: If he would be donating himself, his own money, he would not be fundraising from himself. [laughs]

MR MABUYAKHULU: [Indistinct] only speak with the any ...[indistinct] Shabalala himself but for me, the important thing is that, he might have actually been able to fundraise the money(?) which is the version I accepted Mr Chairman.

CHAIRPERSON: H'm.

MR MABUYAKHULU: I would say that it is not vague(?).

CHAIRPERSON: H'm.

MR MABUYAKHULU: They have raised it from ...[indistinct] The fact of the matter that I never asked him ...[intervenes]

CHAIRPERSON: Ja.

MR MABUYAKHULU: ...the funds.

CHAIRPERSON: Yes, yes, yes. But I think the ...[intervenes]

MR MABUYAKHULU: [Indistinct]

CHAIRPERSON: I think the proposition was simply to say, on this version or on what you say he told you and the sequence of events leading to the payment of the handing over to you of the R 1 million donation, it seems that he was giving you either the total amount of the funds he had raised on behalf of the ANC or part of it. I think that would – that was the proposition, in effect. And therefore that you ...[intervenes]

MR MABUYAKHULU: I can live with that proposition ...[intervenes]

CHAIRPERSON: Yes.

MR MABUYAKHULU: ...save to say that ...[intervenes]

CHAIRPERSON: Ja.

MR MABUYAKHULU: ...I do not know ...[indistinct]. The only person that can say so is Shabalala himself.

CHAIRPERSON: Ja.

MR MABUYAKHULU: But I can live ...[intervenes]

CHAIRPERSON: You can live with it, ja. Mr Hulley.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: We – at half-past ...[intervenes]

ADV HULLEY SC: Yes, I think we can ...[intervenes]

CHAIRPERSON: We must stop at quarter past.

ADV HULLEY SC: Ja, I think we can wrap it up.

CHAIRPERSON: Yes.

ADV HULLEY SC: My understanding ...[intervenes]

CHAIRPERSON: I think if you are able to – it may well be that some further questioning of Mr White is necessary in terms of that diagram.

ADV HULLEY SC: Yes.

CHAIRPERSON: But if you are able to ask questions to Mr Mabuyakhulu in relation to that diagram, I think that is – that will be important because he – for him the issue of the link is quite important and I think it is ...[intervenes]

ADV HULLEY SC: Yes, Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: If I can tell you, I will take you to the diagram in a moment and I will wrap up with the diagram but to be able to explain what Mr White is saying, can I take you to page – to RR-4 at page 1383?

MR MABUYAKHULU: One, eight...?

ADV HULLEY SC: 1383, Bundle RR-4.

MR MABUYAKHULU: Is it RR-4, one...

ADV HULLEY SC: One, three ...[intervenes]

MR MABUYAKHULU: [Indistinct]

ADV HULLEY SC: One, three ...[intervenes]

CHAIRPERSON: One, three, eight, three.

ADV HULLEY SC: ...eight, three. Mr Chair, this is R-4,

Bundle C.

CHAIRPERSON: H'm.

MR MABUYAKHULU: [Indistinct]

ADV HULLEY SC: I beg your pardon?

CHAIRPERSON: One – page 1383, Bundle RR-4. It says Summary of Findings. 1383, Bundle RR-4.

MR MABUYAKHULU: Hey, Mr Chairman, I am trying to find it.

CHAIRPERSON: Have you got the right bundle?

MR MABUYAKHULU: I think I am having Chairman.

CHAIRPERSON: I think this one we might not have used earlier.

ADV HULLEY SC: We have not used it.

CHAIRPERSON: Ja, it is a new bundle that we did not use earlier.

MR MABUYAKHULU: It is one, eight, three...?

CHAIRPERSON: 1383. What page can you find? I will tell you whether you are in the right bundle. What page are you on at the moment?

MR MABUYAKHULU: I am, Chairman, on 1834.

CHAIRPERSON: No, I think you are in the wrong bundle because this one does not have one, eight something. This one – the first document on this bundle is Mr Trevor White's affidavit, TSW-12. Mr Hulley, are you able to assist him with more particulars?

ADV HULLEY SC: So the very first document in this particular bundle which starts with ...[intervenes]

MR MABUYAKHULU: ...337(?) [Speaker not clear]

ADV HULLEY SC: I did not catch that.

CHAIRPERSON: Maybe his legal representatives can help him to find it?

COUNSEL: ...Mr Chairman, I think we have found it.

CHAIRPERSON: Have you found it?

ADV HULLEY SC: 1383.

MR MABUYAKHULU: Yes, Chairman.

CHAIRPERSON: Okay alright. Yes, continue.

ADV HULLEY SC: Thank you, Mr Chair. Mr Mabuyakhulu, look at page 6 – sorry, paragraph 65. If ...[intervenes]

MR MABUYAKHULU: [Speaker not clear]

ADV HULLEY SC: He says:

> "Based on the information explanation provided by Mzila..."

And we do not – we have not looked at that yet, so do not worry about that for present purposes.

> "...regarding the discussion you had with Mabuyakhulu a while after the Provincial Conference about the donations used to fund certain expenses.
>
> It is evident that the receipt of this donation of R 1 million and the creation of an explanation

for the non-accounting therefore was only started after enquiries in May 2008 and that Mabuyakhulu has played a significant role in assisting Shabalala with creating the scenario, no matter how improbable, based on the documents, to support Savoi's explanation that the donation was to the ANC..."

So what he is saying is that your version that you received R 1 million from Mr Shabalala, he is saying in the first instance, there is no evidence to support that, that you actually received R 1 million in cash.

But he says in the second instance, that the reason why you have created that explanation is in order to assist Mr Shabalala to explain that when he received the amounts from Mr Savoi to Intaka that he had in fact paid it back. So you were coming to his assistance.

In a nutshell what he is saying is that he does not accept that you actually received R 1 million in cash from Mr Shabalala. He is saying that is a fabricated story that you did so in order to assist Mr Shabalala.

MR MABUYAKHULU: Mr Chairman, ...[indistinct] ...whatever he sees ...[indistinct] on evidence. And therefore in their evidence, why would I assist Mr Shabalala and for what benefit and for what purpose? I flatly deny Mr Chairman that I was – I ever played any role

in assisting anyone in this instance. All that I reported was the factual situation that I received R 1 million donation.

And I never at any stage ever showed that I acknowledged about the source of the money ...[indistinct] which I do not. And in his own version, which I think it is Mr White himself who can only explain this illogical reason ...[indistinct] he connects that R 1 million which I said I received from Mr Shabalala. And what would I benefit in this particular – part of the scheme or ...[indistinct].

I, therefore, deny Mr Chairman that it is an illogical inference, that is not borne by facts, that is not based on any rationality, that is simply a figment of his imagination.

ADV HULLEY SC: Well, he is not saying that there is a connection between the R 1 053 000,00 that was paid over by Intaka to Shezi's Attorneys. He is – and the amount of R 1 million that was paid to you. He is saying there is no connection between those two amounts. He is saying the second amount does not exist. That you came up with that story in order to assist Mr Shabalala. So he is going to agree that there is no connection but where the two of you differ is on the basis of whether the R 1 million exists at all.

MR MABUYAKHULU: There are two aspects of that Mr Chairman. I place on record, as I have done, that I did

receive R 1 million donation and there was no reason ...[indistinct] factually said I received a donation if I did not. For what purpose? For what intention? Now for him to make this allegation ought to be the one that is actually cross-examined on the basis and the bona fide of these allegations.

So I am actually saying Mr Chairman. I did receive R 1 million for the benefit of the ANC. And there is no reason that I would have created a story that would have placed me into a matter that I really I am not player(?), I have no knowledge and as I said earlier in my opening statement, where I have been dragged into a criminal matter that has absolutely nothing to do with me.

And I said ...[indistinct] my image has been impute, my character both politically and socially has been assassinated. So there is absolutely no logical basis that I would have manufactured something like that if I really ...[indistinct].

ADV HULLEY SC: And if you go over to the following page at page 1384 at paragraph 6. He is now providing a summary of his findings. He says the following ...[intervenes]

CHAIRPERSON: I am sorry, Mr Hulley. Where does Mr White says there is no connection between ...[intervenes]

ADV HULLEY SC: No, that is my inference. I am saying Mr White is saying that this money does not exist.

CHAIRPERSON: Well, you put it as if it comes from him or that is how I understood it but ...[intervenes]

ADV HULLEY SC: So ...[intervenes]

CHAIRPERSON: You see if...[intervenes]

ADV HULLEY SC: So this is Mr White's affidavit.

CHAIRPERSON: Yes, yes. But why do you – what makes you say that there is no connection. That he would ...[intervenes]

ADV HULLEY SC: Well ...[intervenes]

CHAIRPERSON: ...that is there no connection?

ADV HULLEY SC: If I can just read paragraph 6 so you can see the two are connected to each other Mr Chairman?

CHAIRPERSON: Ja?

ADV HULLEY SC: He then says, this is now, as I have said a summary of his findings. He concludes by saying:

> "Mabuyakhulu alleged that he had received R 1 million in cash from Shabalala on behalf of the ANC..."

In brackets he says:

> "And not R 1 053 000,00.
>
> There is no other evidence that the said money was received by the money and I have to date not been provided with a copy of a receipt

issued by the ANC confirming a receipt of R 1 million.

Mabuyakhulu has further not provided any explanation as to why it took 14-months from the date purportedly(?) received R 1 053 000,00 from the Intaka, 12 March 2007 until 11 June 2008 when Mabuyakhulu alleges he received R 1 million from Shabalala.

The latter only occurred after the enquiries were made within the ANC regarding the donation in May 2007 as it was the subject of investigation by the DSO..."

So the way I read those passages, what he is saying is that the R 1 053 000,00 which was paid over in 2007 and this R 1 million over here, if it existed there is not sufficient evidence to show that it existed at all and that is why his question is. He says: There is no evidence that the said money was received by the ANC.

CHAIRPERSON: Well, I understood Mr White to say the opposite. I understood Mr White in his evidence to say the opposite and that is why the whole issue is where it is that he was – he accepted that Mr Mabuyakhulu who received the money but his approach or understanding was. From the Intaka Group ...[intervenes]

ADV HULLEY SC: Yes.

CHAIRPERSON: ...this money was intended for ...[intervenes]

ADV HULLEY SC: Yes.

CHAIRPERSON: ...the ANC, ultimately. And therefore it makes sense that it should be received by the Treasurer of the ANC.

ADV HULLEY SC: Correct, Chair.

CHAIRPERSON: But whether then the Treasurer of the ANC at the time hands the money over to the ANC or not, is another issue but I did not understand him to dispute that the money - that Mr Mabuyakhulu did receive money. As I understand it, Mr White who was linking the money that Mr Mabuyakhulu received with the donation from Intaka Group.

But that is where Mr Mabuyakhulu raises the issue. He says: I do not deny that I have received R 1 million. I have always said that I did receive it. What I am saying is – at least what he is saying here is. What is the basis for linking that amount that I received on behalf of the ANC to the donation made by Intaka Group to Shezi's Attorneys.

ADV HULLEY SC: Yes.

CHAIRPERSON: Ja. That has always been my understanding. It may well be that what should happen

and maybe that is fine because part of the purpose of today's proceedings was to really establish where the disputes of facts are in the two versions. That what should happen is that clarification can be obtained from Mr White urgently and either before the clarification is granted or as soon as possible thereafter, I can decide on Mr Mabuyakhulu's application for leave to cross-examine Mr White.

And of course, what would happen is that at any stage, either before Mr Mabuyakhulu cross-examines Mr White if I grant leave or after – or before he cross-examines him, he could avail himself for further questions in the light of whatever clarification comes from Mr White before he then cross-examines Mr White.

Or maybe, if the explanation or clarification given by Mr White is such that Mr Mabuyakhulu says: Well, then I do not need to cross-examine him in light of the clarification because I did not understand his evidence to be what he is now saying, then we can take it from there.

ADV HULLEY SC: Yes. Thank you, Mr Chair. Mr Chair, if I could just elaborate in the lateness of hour? What Mr White is basing his conclusions on or in part is on the document, the two documents which appear at pages 1843 to 1848. Those are the two affidavits of what

Mr Mabuyakhulu refers to as the bookkeeper, Elani(?) Mzila.

CHAIRPERSON: I am sorry.

ADV HULLEY SC: This is part of Bundle RR-4.

CHAIRPERSON: What pages? One, eight...?

ADV HULLEY SC: 1843.

CHAIRPERSON: Well, you have to – there is one – there is 43 ...[intervenes]

ADV HULLEY SC: This Bundle RR-4. Pardon me, Mr Chair.

CHAIRPERSON: Four only without an Alphabet? This one that I have in front of me is ...[intervenes]

ADV HULLEY SC: This is all part of D.

CHAIRPERSON: H'm?

ADV HULLEY SC: Part of 4 and the bundle of the specific – the specific lever arch file is Bundle D.

CHAIRPERSON: Ja, you – each time you have got to say whether it is 3 or D.

ADV HULLEY SC: Pardon me, Chair.

CHAIRPERSON: Otherwise, one gets confused. Just give me the page numbers again. One, eight...?

ADV HULLEY SC: So it is 1843.

CHAIRPERSON: 1843.

ADV HULLEY SC: And there are two affidavits and they go up to page 1848. So there are two affidavits that are

encapsulated there.

CHAIRPERSON: Ja?

ADV HULLEY SC: And that is what Mr White ...[intervenes]

CHAIRPERSON: Okay let us talk about this one of Mr Elani Mzila which starts at 1843.

ADV HULLEY SC: Correct.

CHAIRPERSON: Are you saying there is something that is said in this affidavit on which you base your understanding that Mr White ...[intervenes]

ADV HULLEY SC: So ...[intervenes]

CHAIRPERSON: ...he is saying that there is no connection between Intaka Group's donation and the money that Mr Mabuyakhulu received?

ADV HULLEY SC: So what he say is, if you read what Mr White is saying. Mr White is saying that the issue of the R 1 million donation arose after. If you read through these two affidavits, the issue of the R 1 million arose after May of 2008 where it became – it came to the knowledge of Mr Mabuyakhulu at the DSO which was the Directorate for Special Operations was investigating, the old Scorpions was investigating the issue. So he arose as part of this is, if one has consideration or has regard to his affidavits. So he is saying that is when it arose.

CHAIRPERSON: Yes, but when it arose, on the face it

could arise at a particular time and still have a connection

ADV HULLEY SC: No, no sure. But what he is saying is. So if you go back to his affidavit. What he says is, as I read the affidavit, my understanding of the affidavit is that he is saying the connection – if there is a connection between those two amounts, then they are going to have to explain how it is that the amount that was paid over in 2007 to Mr Shabalala but only – sorry, to Shezi's Attorneys but was only handed over to the ANC in 2008 and what he saying with reference to these affidavits is that it is clear that the amounts were only handed over in 2008, so that is the ...[intervenes]

CHAIRPERSON: No, that is in terms of when Mr Mabuyakhulu got the money that he got. I think there is no dispute about that.

ADV HULLEY SC: Correct.

CHAIRPERSON: Ja. In terms of when the donation of money was paid to Khobone and Shezi Attorneys by 00.00.36 there is no dispute about that. So that is common cause. So but what I was saying is what is it actually that you use as a basis to say – to support your understanding if Mr White says there is no connection between the money received by Mr Mabuyakhulu and any money donated to the law firm. What is the actual basis for that understanding on your part?

ADV HULLEY SC: So what is said in paragraph 7.1 on page 1846, it says the following:

> "On the 20 to the 22 June 2008, ANC provincial conference was held in Pietermaritzburg, Kwazulu-Natal. A while after the conference I was approached by former Provincial Treasurer, Mr Michael Mabuyakhulu. He asked me whether I had noticed that certain items of the budget for the conference have not been paid by the ANC Provincial Treasurer's office and further informed me that these items had been paid for by donations money."

So that what he gets informed. He then goes on later on in paragraph - under the heading – I am sorry, under paragraph 8 he says at paragraph (c).

> "I was informed by Mr Mabuyakhulu, I have no personal knowledge and details of the donation used to pay for the items not paid for by the office of the KZN. This question can be directed to Mr Mabuyakhulu save for the last paragraph where I explain how the statement was commissioned on the 29 August of 2009."

So what – the point that I am making – and it is not the interpretation that I am – or at least I do not - - I understand Mr White to be basing his interpretation on

these two statements and if one considers what he is saying, he is saying that these two amounts of money, the one that was paid over in 2007 and the amount which has been spoken of in 2008, he says that that amount does not exist because there is no sufficient evidence of it. But what he is saying also is that if that amount was not designed to – sorry, if I can just refer to one further – if I might, Mr Chair.

CHAIRPERSON: No, no, that is fine. No, I do not think you need to go further.

ADV HULLEY SC: Actually, I think paragraph 2 on page 1843 is important, he says:

> "In the course of my duties I confirm that a donation of R1 million was received by the African National Congress from a donor who I am advised was a certain Dr Savoy."

So that is ...[intervenes]

CHAIRPERSON: None of the parts you have read to me seem to me to support the point you make but I think the proper way is let us get Mr White to clarify this.

ADV HULLEY SC: Yes.

CHAIRPERSON: As soon as possible so that - I would see in the meantime whether I can decide Mr Mabuyakhulu's application even before that clarification is given but if not, as soon as possible after he, Mr White,

has clarified I will make – I will decide. Let us leave it on the basis that you understand it in a certain way but the person who was doing the investigation, let him clarify.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: You understand, Mr Mabuyakhulu? Of course what Mr Hulley is saying you would have no problem if that is what Mr White is saying. I imagine because your main point, why you want to cross-examine him is ...[intervenes]

MR MABUYAKHULU: Well, I (indistinct – recording distorted)

CHAIRPERSON: I am sorry. I am saying your main reason ...[intervenes]

MR MABUYAKHULU: The main reason, Mr Chairman is this affidavit. You see, if you have got the TFCW21, which is Mr Hulley's illustration before this Commission, if that indicates as the centre of the square all of the payments. He then makes these very red - dotted red lines with the boxes outside.

Now my question, Mr Chairman, you have money being - we are being told by Mr White himself how the money is being disbursed.

Now clearly, if I received money, we now know from Mr White himself that the money that I received was not the same amount of money and at no stage would I

actually be able to [indistinct] anybody by manufacturing something like this when there is absolutely there no link between the two.

CHAIRPERSON: Ja.

MR MABUYAKHULU: It is his report because it is the truth, he is making it. It is not the other way around as Mr Hulley is saying. He has actually linked ...[intervenes]

CHAIRPERSON: He links it.

MR MABUYAKHULU: Because he linked it, it is the one [inaudible – speaking simultaneously]

CHAIRPERSON: Yes, what page again is that, Mr Mabuyakhulu, you mentioned the page just now, the page where you are looking at, where the diagram is.

MR MABUYAKHULU: That is – I think it is...

CHAIRPERSON: Well, Mr Hulley might know the heart(?) of the diagram.

MR MABUYAKHULU: 439.

CHAIRPERSON: 439?

MR MABUYAKHULU: 039.

CHAIRPERSON: Which bundle first? The one we are currently using?

MR MABUYAKHULU: (indistinct – recording distorted)

ADV HULLEY SC: LAM27, Mr Chair.

CHAIRPERSON: Oh, okay.

MR MABUYAKHULU: And I say, Mr Chairman, it is 07.13 there, you will see that Mr White is making that link through the black dotted line and there are arrows as well as the boxes on top there. The question, how do come into that equation?

CHAIRPERSON: Yes, that is page 39 of bundle RR7 or it starts at page 38, is that right?

ADV HULLEY SC: They are two different documents, Mr Chair.

CHAIRPERSON: Sorry?

ADV HULLEY SC: Those are two different documents.

CHAIRPERSON: Ja, but ...[intervenes]

ADV HULLEY SC: The one is TFW19 at page 38 and the one at page 39 is a different diagram, which is TFW21.

CHAIRPERSON: Yes, but Mr Mabuyakhulu is referring to page 39.

ADV HULLEY SC: Correct.

CHAIRPERSON: Ja.

MR MABUYAKHULU: Yes, that is (indistinct – recording distorted)

CHAIRPERSON: Ja.

MR MABUYAKHULU: That is one of the three ...[intervenes]

CHAIRPERSON: You see, that is my understanding as well, Mr Mabuyakhulu, that in that diagram Mr White

connects the donation by Intaka to Khobone Shezi Attorneys and says it goes to various entities connected with the Shabalalas and then with that broken line says R1 million comes to you. Of course he has got to - the broken line to the ANC as well. But I do not know if there is a key here. Some of the lines are solid, these two are broken. Does he give an indication, Mr Hulley, whether the broken one means...

ADV HULLEY SC: My understanding, which is the one that I have just indicated, was that this broken line is a reference to the version that has been provided to support what Mr Shabalala...

CHAIRPERSON: Yes.

ADV HULLEY SC: So it is not supported, he is not saying that this is the correct version. He is questioning that version.

CHAIRPERSON: He is questioning it?

ADV HULLEY SC: That is my understanding is that he is questioning that version, he is saying – he has given a broken line specifically because it was – it is not part of his case.

CHAIRPERSON: Yes, okay. No, let us leave it at that, let us get him to clarify and including what he says what this means and then once he has provided that clarification then Mr Mabuyakhulu can be furnished with the affidavit,

Mr White's affidavit. If he does it in an affidavit it would be better if he does that, an affidavit but such an affidavit can be obtained within a matter of days.

ADV HULLEY SC: Yes. No, I will consult with him as soon as ...[intervenes]

CHAIRPERSON: Because it is just a brief point.

ADV HULLEY SC: Yes.

CHAIRPERSON: Ja. Okay, let us leave it at that, Mr Mabuyakhulu, let us get clarification from Mr White so that you are questioned on the basis of something that he has clarified but also then I will apply my mind to your application in the meantime.

MR MABUYAKHULU: Thank you, Mr Chairman, let me take this opportunity to thank you for affording me and opportunity.

CHAIRPERSON: Yes.

MR MABUYAKHULU: I say, Mr Chairman, I have been waiting for a long time.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Because innuendos and allegations were made in a matter that I still strongly believe, Chairman, I had no criminal role to play or any wrongdoing whatsoever.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Because I – I therefore welcome

this opportunity, pleased to be able to place on record on my own view that I believe, Mr Chairman, I was brought into a criminal matter that had absolutely nothing to do with me from the beginning.

CHAIRPERSON: Yes, okay. Mr Dickson.

MR MABUYAKHULU: Thank you, Chairman.

CHAIRPERSON: Thank you, Mr Dickson?

ADV DICKSON SC: Yes, thank you very much, Mr Chairman, we will take as you have directed.

CHAIRPERSON: Yes, yes. Okay, no, that is fine.

ADV HULLEY SC: Thank you, Mr Chair.

CHAIRPERSON: Thank you very much to everybody, thank you to Mr Mabuyakhulu and to Mr Dickson. Thank you to you, Mr Hulley and your team and thank you to the staff and the technicians for making it possible for us to sit until this time.

ADV HULLEY SC: Thank you, Chair.

CHAIRPERSON: And we will now adjourn and I indicated during the day that tomorrow I will hear the evidence of Mr Kevin Wakeford in relation to BOSASA. We adjourn.

INQUIRY ADJOURNS TO 6 MAY 2021