

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

13 MAY 2021

DAY 394



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 13 MAY 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Good. Good morning Mr Zwane.

MR ZWANE: Chairperson good morning.

CHAIRPERSON: Good morning. Thank you for availing yourself and thank you to your legal representative for all the cooperation. Thank you. Thank you. Are you ready Mr
10 Seleka?

ADV SELEKA SC: I am Chairperson.

CHAIRPERSON: Okay alright please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR ZWANE: Mosebenzi Joseph Zwane.

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

MR ZWANE: No.

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

MR ZWANE: I truly affirm.

CHAIRPERSON: Thank you. We may proceed.

ADV SELEKA SC: Yes thank you Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you Chairperson Eskom Bundle 19 Mr Zwane's affidavits are found in Exhibit U41 on page 351.

CHAIRPERSON: Yes.

ADV SELEKA SC: Mr Zwane has submitted another affidavit advising the.

CHAIRPERSON: Are we – I see his sworn statement at 201 not 51 – did you say 501?

ADV SELEKA SC: 351 is the first affidavit. It is by a way
10 of reference Chair.

CHAIRPERSON: 351 is the first one.

ADV SELEKA SC: Is the first one.

CHAIRPERSON: Let me see.

ADV SELEKA SC: Or is it – sorry it is the

CHAIRPERSON: Okay well...

ADV SELEKA SC: That is the second one.

CHAIRPERSON: That cannot be the first – ja.

ADV SELEKA SC: Yes that is the second one.

CHAIRPERSON: The first one must be the one at 201.

20 **ADV SELEKA SC:** Yes correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is the second one and Mr Zwane has then submitted another affidavit.

CHAIRPERSON: Ja.

ADV SELEKA SC: Arising from the OUTA report and

questions in relation thereto.

CHAIRPERSON: Ja.

ADV SELEKA SC: That is on page 353.219.

CHAIRPERSON: 353.?

ADV SELEKA SC: 219.

CHAIRPERSON: I guess we must start by admitting that is it not?

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja. Go ahead.

10 **ADV SELEKA SC:** Mr Zwane are you on the same page?

MR ZWANE: I am.

ADV SELEKA SC: 353.219.

MR ZWANE: Yes.

ADV SELEKA SC: It is between the tramlines it is an affidavit Mosebenzi Joseph Zwane in re respond to statement by Benjamin Cecil Clark Theron dated 24 July 2017. You see that.

MR ZWANE: I do.

ADV SELEKA SC: The affidavit runs up to page 353.234. -
20 .234.

MR ZWANE: Yes.

ADV SELEKA SC: You see that. The – there is – do you confirm the signature above deponent that is your signature?

MR ZWANE: Yes I do.

ADV SELEKA SC: The affidavit is dated or deposed to on 10 May 2021 you confirm the contents of the affidavit?

MR ZWANE: Yes I do.

ADV SELEKA SC: That they are true and correct.

MR ZWANE: Yes.

ADV SELEKA SC: Thank you. Chairperson I beg leave to have this affidavit dated 10 May 2021 admitted as Exhibit U41.3 together with the annexures thereto and those annexures Chair they start from page 353.235.

10 **CHAIRPERSON:** Yes. The affidavit of Mr Mosebenzi Joseph Zwane that starts at page 353.219 will together with his annexures be admitted and will be marked as Exhibit U41.3.

ADV SELEKA SC: Thank you Chair. Thank you. Just to recap Mr Zwane's evidence relates to a number of aspects some of which we addressed in his last appearance and we hope to finish off today Mr Zwane. Just in broad light or just to touch on the highlights we dealt with the issues regarding your trips to India which allegedly were
20 sponsored by the Gupta's. We want to finish off on that and then deal with issues relating to Mr Zwane's establish – or the start as he called it his own brainchild which is the Estina Project in the Free State. We will deal with that Mr Zwane. Deal with the issues relating to Estina the evidence of certain witnesses that have already come before the

commission regarding what happened in regard to the project. Look at whether or not the Gupta's were involved in the project. We will also deal with issues relating to your appointment as a MP and ultimately your appointment as the Minister of DMR – Department of Mineral Resources. How you were appointed and what you did as a result thereof. And also deal with the issue regarding the Waterkloof landing of the Gupta airplane in 2013 which from there is the wedding at Sun City. And we will finalise with

10 the closure of bank accounts. Your chairperson should this in the Inter Ministerial Committee and what role you played in regard thereto. So that is – that is in a nutshell.

CHAIRPERSON: No, no that is fine but I wonder whether it would not be convenient to finalise everything connected with emails.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I know the emails will go all over the place. They will – they will touch upon all the items I think you mentioned but it might be convenient to just deal with

20 that – get it out of the way even if after that you can then focus on specific topics.

ADV SELEKA SC: Okay.

CHAIRPERSON: If that is not going to disturb your plan.

ADV SELEKA SC: Yes let us – the emails Chairperson has in mind those ones we were dealing with.

CHAIRPERSON: Ja last time.

ADV SELEKA SC: On the previous occasion.

CHAIRPERSON: Ja. Ja.

ADV SELEKA SC: Okay. So that is fine. That is – Mr Zwane let us then pick it up from the evidence or the affidavit rather of Mr Theron and there we were dealing with the emails in regard to the bookings of the trip or the flight in September 2014 that – that booking was made by Travel Excellence

10 **CHAIRPERSON:** Just tell us first where to find that.

ADV SELEKA SC: Yes. I am going there. That is on page 353.134.

CHAIRPERSON: 253 or 353?

ADV SELEKA SC: 353.134.

CHAIRPERSON: Okay. Ja okay.

ADV SELEKA SC: Mr Zwane you are there as well?

CHAIRPERSON: Have you found the page Mr Zwane?

MR ZWANE: Yes Chair.

CHAIRPERSON: Okay alright.

20 **ADV SELEKA SC:** Ja. Now the allegation in this regard Mr Zwane is – is that details of – of trips that you had arranged by the Gupta's or Mr Ashu Chawla of Sahara Computers and that there were emails exchanged to show that.

Firstly we went to the one of the choir. And maybe I should start with the choir because you have responded to

that one in your affidavit.

MR ZWANE: Huh-ah.

ADV SELEKA SC: Chair I know I have referred you to a page but because the choir issue it has come up maybe I should start with it.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes maybe I should start with it.

CHAIRPERSON: Alright.

ADV SELEKA SC: Because Mr Zwane deals with that in his
10 affidavit. Mr Zwane you know that in your affidavit you do say which is the affidavit we have just submitted – admitted this morning – you do say that you in fact were on the same plane with the choir going to India.

MR ZWANE: Yes I did realise that.

ADV SELEKA SC: Ja. Because that – that is slightly different from in your main affidavit where you say you came to know about the choir being in India when you were already in India and you tried to meet with them.

MR ZWANE: Thank you Chair. Let me deal with that
20 matter.

ADV SELEKA SC: Yes. Please address the Chairperson.

MR ZWANE: I was aware that the choir would be taking a trip. I did say that. I also said I was not involved in terms of the organisation of that trip. I did indicate that I said to the choir I was also going to the – to India around that

month and if it happens that we meet in India and I have time I will make time and come and see them performing. And I should also say Chair I did say I did not become part of the travelling arrangement with the choir.

My name was included in the itinerary of the choir which we dealt with the last time and I said that I do not know how my name was included there because I made my own travel arrangement and contrary to the view that was expressed by Mr Theron that I was paid for by the Gupta's I
 10 now – I was fortunately able during the week which I was given by this commission to get documents that indicates that there was an approval given to me as a MEC to go to India and go and lie with investors there.

I have since also included as an annexure the payment thereof because I was fortunate to get that. And the issue of – the issue that I dealt with earlier on that I was not part of the itinerary of the choir or the people who were arranged for by the choir.

There was a question that was asked to me that was
 20 I part of the lunch that was prepared and in the email of Mr Theron it is indicated that 24 people attended the lunch.

If you minus 24 from 27 which is in the itinerary it will make clear to this commission that the three people that are part of the approval of the trip were not part of that lunch. So I thought I should raise those issues and clarify.

CHAIRPERSON: Of course you – you say you were one of those three.

MR ZWANE: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. Well Mr Zwane on that issue obviously the question arises is if your choir had a lunch at Mr Gupta's house in India how did they know about it?

MR ZWANE: I did – I did explain and clarify that matter last when I was here. I do not own the choir; the choir is not my
10 choir. I have said I did give or lend a hand there and there where they would need my support because I was involved in the formation of the choir as a program of government which was called social cohesion. There were a number of activities that were undertaken under social cohesion. So I may not know the details in terms of how the choir goes about in terms of sourcing funds I did raise that point even last time.

ADV SELEKA SC: Yes, no I am not sure that answers this question. How did the choir know about Mr Tony Gupta and
20 their itinerary including going to Mr Gupta's house for lunch. So if you take that with the fact that it was your i-Pad, your email address it was being used to exchange information in regard to who is going to share a room and who is not going to share a room it seems from the totality of that evidence that you seem to be the connection between the choir –

whether it is your choir or not but it a choir formed – founded by you and others. You seem to be the connection between the choir and Mr Tony Gupta and/or the Sahara Computer people. What is your comment on that?

MR ZWANE: Chair I did indicate last time when I was here that indeed at some point I did lend my gadget to a member of the choir who wanted to send a Gmail. I did say – I did say in my last statement that I was not privy to the contents of that email as it was sent. I deny the assertion that I
10 seem to be a common denominator in this arrangement. I have said earlier on the choir made its own arrangements which I am not privy to and I want to put that statement and repeat it on record here today.

ADV SELEKA SC: So who were the – it is okay you have counted 27 guests and minus 3 you said 24 seems to have attended the lunch at the – at Mr Tony Gupta's house. Who were the other three of which you say are the department's officials?

MR ZWANE: The three was me, Ms Matau [?] and Mr Ashok
20 Narayan.

ADV SELEKA SC: I see.

CHAIRPERSON: By the way who was Ms Matau [?] just remind me?

MR ZWANE: She was an official working in my department Chair.

CHAIRPERSON: Yes.

MR ZWANE: The office manager.

CHAIRPERSON: Office manager.

MR ZWANE: Yes.

CHAIRPERSON: In your office.

MR ZWANE: Yes.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: So that is – that is the one trip. So your
– your...

10 **CHAIRPERSON:** I am sorry.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: So is your version Mr Zwane that the fact that you and the choir travelled in the same flight to India was just a coincidence or you say no it was planned that let us go together but we were going for different purposes and we were not being paid for by the same source. I was being paid for by the Department and I do not know who was paying for the choir.

20 **MR ZWANE:** Chair I planned my trip to India followed all the processes evidence thereof is here and I think in the middle or towards the end of processes I learnt that the choir was going to India that is what I have said even in my affidavit around the same – same time. That is why I said if my program allowed I will take a turn where you are because I am going to India on my work. That is what

transpired Chair.

CHAIRPERSON: Yes but it does not answer my question. My question is whether it was just a coincidence or it was a plan – it was planned that you – you would travel in the same flight with the choir.

MR ZWANE: No it was not – it was not on my side planned Chair.

CHAIRPERSON: Yes. So as far as you are concerned it was a coincidence.

10 **MR ZWANE:** I think so.

CHAIRPERSON: Okay alright. Mr Seleka.

ADV SELEKA SC: Mr Zwane you would have seen the affidavit of Mr Ephraim Dlamini one of the community members in regard to the dairy farm and he says there that to the commission in an affidavit that they had been promised.

CHAIRPERSON: And where is the affidavit?

ADV SELEKA SC: That is on page – Chairperson it starts on page 353.308.

20 **CHAIRPERSON:** 308.

ADV SELEKA SC: Yes. 308 and the paragraph I want to refer to Chair is on page 353.315 paragraph 27.

CHAIRPERSON: Paragraph 27.

ADV SELEKA SC: Paragraph 27.

CHAIRPERSON: On page?

ADV SELEKA SC: 35.

CHAIRPERSON: 315.

ADV SELEKA SC: That is correct Chair.

CHAIRPERSON: Okay got it.

ADV SELEKA SC: So that is Mr Ephraim Marcosini Dlamini. He is one of the farmers and he says and would have been one of the beneficiaries in the project and in paragraph 27 he says:

10 “The committee we selected to interface with
the government on all matters relating to the
dairy project failed to report back to us on
any developments. Having been promised
training in India we heard instead that Mr
Zwane had taken a choir he supported to
India.”

So any comment on that Mr Zwane?

MR ZWANE: No thank Chair. I have read this affidavit by Mr Dlamini. I would have loved if Mr Dlamini was asked by this commission to give evidence in terms of that assertion
20 because to the best of recollection my knowledge and belief there was never a stage where I was present as the MEC of Agriculture and people were promised to go to India – to do what?

ADV SELEKA SC: So the – there would be beneficiaries of the – of the project were not promised any training.

MR ZWANE: The – there was – there were beneficiaries of the project that would have been trained in South Africa mainly because they were farmers who would have known in the course of them doing their business simple facts about farming. It boggles my mind why would we then have taken people to India for a simple training – by whom? Because those would have in the affidavit of Mr Dlamini in issues that we are discussing here who was supposed to train them in India?

10 **CHAIRPERSON**: Ja continue – finish.

MR ZWANE: If there is any evidence to that Chair I will be gladly willing to engage but from where I am seated there was never at any point during my tenure as the MEC of Agriculture where beneficiaries were promised a trip to India.

In fact if you look at witnesses that have come here it took some time before beneficiaries were properly organised into a unit and by the time they would have formed committees and so forth I would have never – I
20 would have actually moved out of that department.

Because this trip was around October in 2012 and if you look at your details in terms of what was happening during that time it was the time where the department was busy still bringing these beneficiaries together trying to get into contracts with them.

So there is – I do not think there is an issue or any matter that was raised of the building training to India that I know of.

CHAIRPERSON: My understanding of what Mr Dlamini is saying is that they as the intended beneficiaries of the projects had been promised training. Now if the training was to take place in India maybe that would not be surprising because the evidence is to the effect that, and I think it is the evidence of Mr Talete(?) is to the effect that
 10 he had undertaken a trip to India, I think he had also gone there with Mr Maria(?)

MR ZWANE: Yes.

CHAIRPERSON: Ja. And as I recall, the – his evidence, the purpose of the trip by him was to go and see how the Indian company, I forget what it was called now ...[intervenes]

MR ZWANE: Paras.

CHAIRPERSON: Paras. How they dealt with what you wanted to do under this project in the Free State because
 20 he said it seemed that there was something to be learnt as to how they dealt with that(?). So he went there and of course as we know, according to his evidence, ultimately that company was part of the project in the Free State, according to his evidence.

There is a suggestion that that company denied

that but let us leave that aside. According to his evidence that was the company was part of the Estina Project and of course people who were brought in to work on the project were from India.

So it would make sense if the position was: You people are going to beneficiaries to this project. Maybe you must go there and see how people, who are beneficiaries there, what they do, what their roles are, get to understand because we want this to be as successful
10 here as it is in India. That is one approach.

Of course, another approach might be, the training would take place in the Free State and people who had the know-how from India could be brought into South Africa. So what do you say to that? Assuming that it is true that they were promised that they would be given training.

MR ZWANE: No, Chair I would not be speculating. I am saying to this Commission ...[intervenes]

CHAIRPERSON: Ja.

20 **MR ZWANE:** I – to the best of my recollection and my knowledge and belief, that was never the case. If that is the case, that Mr Dlamini produced evidence so that the person who promised them can actually be able to answer what was on his mind when he promised these people.

CHAIRPERSON: Okay. Mr Seleka.

ADV SELEKA SC: Yes, thank you Chair. Mr Zwane, you have testified that you knew the Guptas from 2010 when they came for a TNA Breakfast.

MR ZWANE: Yes.

ADV SELEKA SC: To your knowledge, did any member of your choir have in a relationship with the Guptas, because this is now 2012.

MR ZWANE: I would prefer that we do not call this choir my choir.

10 **ADV SELEKA SC:** Yes, that is why I stopped – I stopped myself and calling it your choir.

MR ZWANE: Yes.

ADV SELEKA SC: But I am asking did – to your knowledge ...[intervenes]

CHAIRPERSON: What is the name of the choir? Let us call it by the name.

MR ZWANE: Umsingizane.

CHAIRPERSON: Umsingizane. Ja.

MR ZWANE: Yes.

20 **ADV SELEKA SC:** [laughs] I will have to remember that, Chair.

CHAIRPERSON: Yes ...[intervenes]

MR ZWANE: No, you can just say the choir. I think I will understand.

CHAIRPERSON: Ja, well, Umsingizane is a Zulu word.

MR ZWANE: Yes, Chair.

CHAIRPERSON: It – Umsingizane is ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...part of grass.

ADV SELEKA SC: Oh.

CHAIRPERSON: So... But I do not know whether that is what they had in mind.

ADV SELEKA SC: [laughs]

CHAIRPERSON: It may mean that the choir was intended
10 to be well-grounded, well-rooted. [laughs] Do you know if
connect with what I am saying Mr Zwane or is there
something else?

MR ZWANE: [No audible reply]

CHAIRPERSON: Or maybe it is not Zulu.

MR ZWANE: Chair, I have never called you by your clan
name in this Commission.

CHAIRPERSON: [laughs]

MR ZWANE: But allow me to say [speaking vernacular]

CHAIRPERSON: [laughs]

20 **MR ZWANE:** I would not know how they arrived
...[intervenes]

CHAIRPERSON: That name.

MR ZWANE: ...to that particular name.

CHAIRPERSON: H'm, h'm.

MR ZWANE: As you say, I know that Umsingizane is a

grass.

CHAIRPERSON: Ja, ja.

MR ZWANE: That is normally not eaten by cattle.

CHAIRPERSON: H'm, h'm.

MR ZWANE: It is used to do the Zulu and Sotho lands(?) and hence Sotho.

CHAIRPERSON: H'm, h'm.

MR ZWANE: That is all what I know.

CHAIRPERSON: Yes, ja.

10 **MR ZWANE:** But as to what they had in mind
...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...I would not know.

CHAIRPERSON: Ja, yes.

MR ZWANE: Yes.

CHAIRPERSON: Well, I think you know more Umsingizane than I do. [laughs]

MR ZWANE: [laughs]

CHAIRPERSON: Okay alright.

20 **ADV SELEKA SC:** Yes. My question was. You knew the Guptas since 2010.

CHAIRPERSON: Well, I was going to say. Anyway, this is the only choir we are talking about. So if you forget the name, if you say the choir ...[intervenes]

MR ZWANE: Ja, that is correct.

CHAIRPERSON: ...wel will know which one.

ADV SELEKA SC: Thank you, Chair. Okay you knew them from 2010. We are now in 2012. And the emails are exchanged to your email address. You are saying they are meant for the choir. So to your knowledge, did any of your choir or the choir members have any relation or direct link with the Guptas?

MR ZWANE: The organiser of the choir at that time, I think it was Mr Thomo. In fact, I must say, maybe it will
10 assist the Commission, that the choir was composed of up and coming artists van different areas, as I have said. Different backgrounds and - but seemingly when the choir – after the choir was formed, they then agreed that – they said Mr Thomo would actually be the organiser.

CHAIRPERSON: The organiser or the conductor?

MR ZWANE: Organiser.

CHAIRPERSON: Okay.

MR ZWANE: In terms of whatever events that must come.

CHAIRPERSON: That are connected with the choir.

20 **MR ZWANE:** Yes.

CHAIRPERSON: Okay.

MR ZWANE: I would not know exactly his networks and connections but he did his job very well, I must say. Because, as I have said earlier on, the choir travelled the length and breadth of South Africa and... So to go to your

question. I would not know that information but he was an easy-to-go person.

ADV SELEKA SC: Did you say Tony Wood?

CHAIRPERSON: Thomo.

MR ZWANE: Thomo.

ADV SELEKA SC: Thomo?

MR ZWANE: Yes.

CHAIRPERSON: Ja. He said Mr Thomo would organise.

MR ZWANE: Yes.

10 **ADV SELEKA SC:** Oh. Ja. And... Oh ...[intervenes]

CHAIRPERSON: And Thomo is t-h-o-m-o or -t-o-m-o?

MR ZWANE: T-h-o-m-o.

CHAIRPERSON: T-h-o-m-o, ja.

ADV SELEKA SC: H'm.

CHAIRPERSON: And you remember his name or not?

MR ZWANE: I think his name was Mfanafuthi.

CHAIRPERSON: Mfanafuthi?

MR ZWANE: Yes.

CHAIRPERSON: Okay. [Indistinct] [laughs]

20 **ADV SELEKA SC:** [laughs]

CHAIRPERSON: That is the Zulu version.

MR ZWANE: I am really sorry, Chair. It is not my intention but it is Advocate Seleka who wants to know these details. Unfortunately, they are Zulu names.

CHAIRPERSON: [laughs]

MR ZWANE: I cannot change them.

CHAIRPERSON: You cannot change them. [laughs]

MR ZWANE: No, I cannot change them.

CHAIRPERSON: [laughs] Well, I have – I suspect that he is not the firstborn in his family because when you are given that name, it means that there is a boy or boys ahead of you. [laughs]

MR ZWANE: Ja.

CHAIRPERSON: So the parents say: Oh, it is a boy
10 again!

ADV SELEKA SC: [laughs]

MR ZWANE: Ja, it may happen that the parents were expecting ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...a girl.

CHAIRPERSON: Girl, ja.

MR ZWANE: It is now a boy.

CHAIRPERSON: Ja.

MR ZWANE: So they were disappointed.

20 **CHAIRPERSON**: [laughs]

MR ZWANE: But it is a boy.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay alright.

CHAIRPERSON: Yes.

ADV SELEKA SC: Let us – I was looking at the list of the

names which is on page 353.129, Chairperson. Point 129.

CHAIRPERSON: 353.129?

ADV SELEKA SC: On 129, yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: Which is that list, Mr Zwane, about sharing of the... And those you who would not share. I see under those you are going to share, number 8, there is that surname of Thomo.

MR ZWANE: [No audible reply]

10 **ADV SELEKA SC:** On which page are you?

MR ZWANE: 129. I am there, Chair.

ADV SELEKA SC: Yes.

MR ZWANE: Number?

ADV SELEKA SC: Number 8... those you are sharing.

CHAIRPERSON: Oh, Mr L Thomo. I am saying mister but it does not mister but it is F L Thomo.

ADV SELEKA SC: Yes.

MR ZWANE: Yes.

ADV SELEKA SC: Well, could that be the person?

20 **MR ZWANE:** Yes.

CHAIRPERSON: That should be the person?

MR ZWANE: Yes.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: So the organiser did not have a computer?

MR ZWANE: [No audible reply]

ADV SELEKA SC: How was he going to organise?

MR ZWANE: If you take it back in 2012, a local area like the Free State, there were many youngsters who would have not had the luxury of a computer, Chair.

CHAIRPERSON: H'm. So this is an email from Ashu, whom I take to be Ashu Chawla, simply because there is an Ashu Chawla that is connected with Sahara Computer because his email is ashu@sahara.co.za.

10 So he sends an email on the 13th of October 2012 to nareshkhosla@susindia.com(?) and he says room-sharing but before that, there is an email from mzwane@gmail.com. I think you have accepted that that is your email address. And it is on October 13, 2012 and it is sent – it was sent at 02:46 p.m. And it was sent from your email to Ashok Narayan.

 Okay. No. So that – ja, Ashok Narayan at that address willemse@gmail.com(?) and the subject is Detailed Itinerary. And it says here with rooming list as
20 expected, non-sharing. M J Zwane, T I ...[indistinct], C M Radebe and M E Mokwena, MP Mabaso and MM ...[indistinct] Those are not sharing rooms. And then the rest are sharing rooms.

 And then above that it is an email from Ashok Narayan that is addressed to ashu@sahara and the subject

is, Room Sharing Details. And it is sent from his iPhone as it is being forwarded message.

And then Ashu sends, at the top, sends the room sharing details to nareshkhosla@susindia.com and khoslanarenaresh@hotmail.com, S M Orient(?) Hindu Dara(?) at - of their(?) own(?) group.com and the subject is, Room Sharing. [Speaker is not clear – names and email addresses unclear]

So as I recall you, you said this – the reason
10 why this has got your email address is because a member of the choir needed assistance to send an email and you offered your cell phone. Is that right?

MR ZWANE: Yes, I offered my gadget.

CHAIRPERSON: Ja.

MR ZWANE: Chair, yes, that is correct.

CHAIRPERSON: By the way, I think you said you gave it to an official in your office to help her – help them. Is that right?

MR ZWANE: Yes.

20 **CHAIRPERSON**: So it was sent by an official in your office.

MR ZWANE: Yes

CHAIRPERSON: Or in the department.

MR ZWANE: Yes.

CHAIRPERSON: To Ashok Narayan.

MR ZWANE: Well, as this thing ...[intervenes]

CHAIRPERSON: As this – yes.

MR ZWANE: ...as this thing stands, I remember I did say
in this Commission, Chair ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...that I was not privy ...[intervenes]

CHAIRPERSON: Ja, ja, ja.

MR ZWANE: ...to the information.

CHAIRPERSON: Yes.

10 **MR ZWANE:** I just made my gadget available
...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...for the choir to perform ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...what they needed to perform, yes.

CHAIRPERSON: Yes, yes. So. And you say that you
never told anybody that you were going to be on this trip
and that you would be one of those who would not be
sharing rooms?

20 **MR ZWANE:** There is evidence, Chair, from my side
...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: [Indistinct] ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...that I paid for my trip, my accommodation

and everything.

CHAIRPERSON: Ja.

MR ZWANE: There was no need ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...for the three of us ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...to be put in sharing or not sharing because we were not part ...[intervenes]

CHAIRPERSON: Yes.

10 **MR ZWANE:** ...of the arrangement of ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: ...this itinerary.

CHAIRPERSON: Yes.

MR ZWANE: Yes.

CHAIRPERSON: Ja, no, no. I understand that. I am trying to get to understand how your name came to be here. So you are clear that you never the official who – to whom you gave your gadget that you were going to be part of this trip?

20 **MR ZWANE:** Of the choir?

CHAIRPERSON: Of the choir.

MR ZWANE: No.

CHAIRPERSON: Yes.

MR ZWANE: H'm.

CHAIRPERSON: And you never told them that you should

be put in the list of those who would not be sharing rooms?

MR ZWANE: Yes, Chair.

CHAIRPERSON: So you do not know where they got this from?

MR ZWANE: Chair, I do not know where they got this from. Despite that fact, as Chair has indicated, this email seems to be a copy of the email which was sent, the Gmail which was sent. It is not an original document from my gadget. It is a copy of which I may not be privy in terms of
10 the amendments that were made to that copy.

All what I know is that, at any stage I did not submit my name to the choir for – to this trip. I did say on record, the last time when we were here, that my wild thought was that – because I performed about two songs with the choir, which I said earlier on, they thought maybe I will join them. And I think that is what I can speculate up to this far, Chair. Yes.

CHAIRPERSON: You have a recollection whether on the occasion you gave your gadget to the official, there was a
20 member of the choir who was there in your office at the time or who was going to be with the official who used your gadget?

MR ZWANE: Chair ...[intervenes]

CHAIRPERSON: You cannot remember?

MR ZWANE: That happened a long time ago. Perusing

the information by Mr Theron, to my best recollection, that was on a weekend.

CHAIRPERSON: H'm, h'm.

MR ZWANE: So that I do not come in here and explain why I worked on a weekend.

CHAIRPERSON: Well, you came to the Commission on a public holiday, Mr Zwane. So. [laughs]

MR ZWANE: ...they not be saying when I come here, Chair.

10 **CHAIRPERSON:** Ja.

MR ZWANE: So it was a weekend and if I recall, we had a programme somewhere in Thabo ...[indistinct] and the choir was performing there.

CHAIRPERSON: In that function?

MR ZWANE: In that function ...[intervenes]

CHAIRPERSON: And it was a departmental function?

MR ZWANE: It was a department function.

CHAIRPERSON: Okay.

MR ZWANE: The function, yes.

20 **CHAIRPERSON:** H'm?

MR ZWANE: So I was busy doing something. So I lent the gadget to lend a hand. That is what I know, Chair.

CHAIRPERSON: H'm. Okay. So, would the answer be that there would have been member of the choir with the official or you are not sure?

MR ZWANE: No.

CHAIRPERSON: But you know that they were performing?

MR ZWANE: I have said that is my suspicion.

CHAIRPERSON: Ja.

MR ZWANE: I do not know, Chair. I was not part of this arrangement.

CHAIRPERSON: Okay no that is fine. Mr Seleka.

ADV SELEKA SC: Mr Zwane, you have said that you paid for the trip yourself.

10 **MR ZWANE**: The department.

ADV SELEKA SC: The department paid for the trip. Can you show us where is that proof of payment? You say it is here.

MR ZWANE: In this ...[intervenes]

CHAIRPERSON: Must be attached to your affidavit, is it not?

MR ZWANE: You said it is 319? 219?

ADV SELEKA SC: 219, ja.

MR ZWANE: [No audible reply]

20 **ADV SELEKA SC**: The annexures to that affidavit ...[intervenes]

MR ZWANE: The information that I was given starts from 235.

ADV SELEKA SC: Yes.

MR ZWANE: 236...

ADV SELEKA SC: The information you were given?

MR ZWANE: I requested for this information, Chair.

ADV SELEKA SC: Yes.

MR ZWANE: I am no longer in that department.

CHAIRPERSON: Yes.

MR ZWANE: As I have said the last time when I was here.

CHAIRPERSON: Yes.

MR ZWANE: But give me some time.

CHAIRPERSON: Ja.

10 **MR ZWANE:** So whatever was given to me, I make sure
that I try and help the Commission ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...to understand where I am coming from.

CHAIRPERSON: Yes.

MR ZWANE: Yes. There is a – 241, the approval
...[intervenes]

CHAIRPERSON: Well, maybe – let us do it quickly.

MR ZWANE: Yes.

CHAIRPERSON: At page two – 353.235. What document
20 is that Mr Zwane?

MR ZWANE: [No audible reply]

CHAIRPERSON: Transaction log sheet. Do you know
what it represents? It is written surname in English as
Zwane, M J. A cell number is given and then the date
given is 07/12/12 and the transaction code is given there

and another code and the badge. What document is that and what is it supposed to show?

MR ZWANE: This is the proof, Chair that – I think this document has to do with subsistence(?) and travelling.

CHAIRPERSON: H'm?

MR ZWANE: It is proof that the department for this trip paid for my subsistence and travelling.

CHAIRPERSON: Well, what – that date of 7 December 2012, what does it represent? It is a date for
10 what? Do you know?

MR ZWANE: I think this – my – let me say, Chair. The documents, as they are, we normally do not get to that ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...level of detail ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...as ...[intervenes]

CHAIRPERSON: MEC's.

MR ZWANE: ...MEC's.

20 **CHAIRPERSON**: Ja.

MR ZWANE: And this Commission makes – need to get to those details. I may not be spot on.

CHAIRPERSON: Ja.

MR ZWANE: But my suspicion is that this transaction log sheet was delayed and was only fit in after some time when

I was even back from my trip to India.

CHAIRPERSON: Yes.

MR ZWANE: Ja.

CHAIRPERSON: Well, the reason we have to ask is because you attached them to your affidavit. So that is why we have to ask you what do they represent.

MR ZWANE: Yes.

CHAIRPERSON: Let us go to page 353.236. What does that document represents? It says, in the heading,
10 Subsistence and Travelling Plan. Name file – initials: Zwane, M J. Personnel number is given. Claim description. SMT. And then next to that is written India. Period start, 15 October 2012. Period end date, 23 October 2012. Are those dates the dates for your trip? Did you leave on the 15th of October 2012 and came back on the 23rd of October 2012?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Okay. And there is reference to advance taken and then there is an amount and that is – what is
20 written there is 729504. And then next to that, there is something handwritten and it is like divide by three and 30(a)(?). And then on that column, there is 729504 and the total is 729504. Is that the amount you claimed for SNT that is R 729 504,00?

MR ZWANE: This – I think this is the amount, Chair.

CHAIRPERSON: Ja.

MR ZWANE: To the best of my knowledge, is that, this is – there is a formula of calculating this amount that will include the currency of the country where you are going ...[intervenes]

CHAIRPERSON: H'm?

MR ZWANE: ...compared to the currency of the country where you are departing from. So ...[intervenes]

CHAIRPERSON: Yes but do you know whether the amount
10 is what are indicating here or is it perhaps seven thousand two hundred and ninety-five Rand four cents or is it seven hundred and twenty-nine thousand five hundred and four Rand?

MR ZWANE: No, Chair. Let me not speculate.

CHAIRPERSON: Well, you must remember [laughs] you SNT claim for what ten days or whatever could have gone up to seven hundred and twenty-nine thousand Rand?

MR ZWANE: I think it is seven thousand.

CHAIRPERSON: Seven thousand?

20 **MR ZWANE:** Two hundred and ninety-five.

CHAIRPERSON: H'm.

MR ZWANE: Yes.

CHAIRPERSON: And four cents.

MR ZWANE: Yes, Chair.

CHAIRPERSON: Ja. Okay, okay. Alright. And I see that

it is stamped 6 December 2012. And you simply have signed on the 16th of November 2012 ...[indistinct] signed also. Yes. Mr Seleka, do you want to say – ask any questions...?

ADV SELEKA SC: Yes. Mr Zwane, I see that at the top of that page – oh, that is point 236, ja. That one the period start date is indicated to be 15 October 2013 and the period end is 23 October 2012. Do you see that? Period starts ...[intervenes]

10 **MR ZWANE:** Yes, yes, I see that.

ADV SELEKA SC: But the allegation regarding the India trip is said to have taken place on the 13 October 2012 which will be two days before this date there.

CHAIRPERSON: Maybe for the sake of completeness, Mr Seleka, you can also just check when the choir came back.

ADV SELEKA SC: Yes, the choir, according to the itinerary the choir came back on the 22 October.

CHAIRPERSON: Yes.

ADV SELEKA SC: Which is a day before the 23rd.

20 **CHAIRPERSON:** Yes. Mr Zwane?

MR ZWANE: What must I answer, Chair?

CHAIRPERSON: The first question is that according to this document that we just dealt with namely the one at page 353.236 your trips to – you left on the 15th or the SNT claim relates to a period starting from the 15 October 2012

and ending on 23 October 2012 whereas Mr Seleka says the choir left on the 13 October two days before this and I think that question is being asked in the context of the fact that you – it is your evidence that you did travel in the same plane as the choir.

MR ZWANE: The trip indeed was, according to the approval, was meant to take place from the 15th to the 23rd and Chair, I must indicate that I do not have an answer in terms of this question.

10 **CHAIRPERSON:** Ja.

MR ZWANE: This is what I know about – but to the best of my recollection maybe the itinerary of the choir might be the one which is faulty. To the best of my recollection, that is the recollection. I may be wrong, I am happy to...

CHAIRPERSON: Ja.

MR ZWANE: Acknowledge that point. It is – ja.

CHAIRPERSON: Ja, okay. Now but your recollection is that you came back from India on the 23 October.

MR ZWANE: Yes because according to my itinerary I had
20 an engagement of the 22nd.

CHAIRPERSON: Yes.

MR ZWANE: Yes.

CHAIRPERSON: And the choir – Mr Seleka says the choir came back on the 22 October. Is that correct, Mr Seleka?

ADV SELEKA SC: Yes, Chair, I am looking at – maybe Mr

Zwane will help us. Page 353.130 and .131.

MR ZWANE: Yes.

ADV SELEKA SC: That is in regard to the itinerary. You will see against – there are dates there, Mr Zwane, against some of what is written there.

CHAIRPERSON: Yes, I can see that, I do not know if Mr Zwane can see it, 21 October 2017, 17.00 arrival at Mumbai Hotel, pick up intercontinental and relax for the rest of the evening, 22 October, 8 o'clock breakfast at
10 hotel. 9 o'clock checkout – that is now 22nd, checkout from the hotel and proceed for [indistinct] India, lunch outside nearby and going towards an Orbit Mall, shopping and dinner and after that straight proceed for airport to fly back home.

ADV SELEKA SC: Home.

CHAIRPERSON: Luxury [indistinct] required at Mumbai International at 8 a.m. for the whole day [indistinct] and drop at airport at 10.30 p.m. That must be 10.30 p.m. on the 22nd, I think?

20 **ADV SELEKA SC:** I think so, Chair, yes.

CHAIRPERSON: Up to 12 hours and 120 kilometres [indistinct] hour. Well, that – if that – in terms of that itinerary, the choir could not have arrived back on the 22nd. I think.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because they were still going to spend a day there but do we have anything that shows when they actually arrived back?

ADV SELEKA SC: Not in the files.

CHAIRPERSON: And not in – there is nothing that indicates...

ADV SELEKA SC: Well, except for what is attached here, Chair.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Well, it say here at page 353.131:

“After that straight proceed for airport to fly back home.”

ADV SELEKA SC: Yes.

CHAIRPERSON: So if they were going to – if that is on the 22nd, which much be evening, I guess, then they would have arrived in South Africa on the 23rd. A flight from India to South Africa, if you leave in the evening in India, you would arrive on the 23rd, would you not? Mr Zwane, you
20 know you did fly.

MR ZWANE: I think the Chair is correct, yes.

CHAIRPERSON: Yes, yes, yes. I think we must just check, see if there is something concrete about when they arrived.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Of course what this does raise, Mr Zwane, which you obviously appreciate, I think, is it seems that your stay in India was for more or less the same duration as the choir.

MR ZWANE: Yes, Chair.

CHAIRPERSON: Ja. So you have a situation where:

1. You are the founder of the choir or one of the founders, whatever the position is, you have an association with the choir. That is something.
- 10 2. There is an email made from your gadget which lists you as one of the people going on this trip with the choir. You say it is done by an official from your department.
3. You are in the same flight as them to India.
4. You stay with – you stay in India for more or less the same period as them and you – and if you came back on the 23rd and if this information at page 353.131 is correct, it looks like the planning for the choir was for them to arrive back in South Africa on the 23rd as
20 well.

Whether they actually arrived back on the 23rd at this stage we do not know but the planning was that they should arrive back in South Africa on the 23rd. Now the planning of your own trip must have been that you should arrived back about the 23rd as well unless the planning was that

you were going to come back earlier and something changed and did you recall whether from the beginning the 23rd was the planned day of return on your part or the department's part for your trip?

MR ZWANE: There are two issues here, Chair.

CHAIRPERSON: Ja.

MR ZWANE: I thought earlier on I was asked a question whether the choir travelled on the 13th.

CHAIRPERSON: Oh, yes, yes, ja, yes. Do you want to
10 deal with that?

MR ZWANE: No, I am just saying on this issue
...[intervenes]

CHAIRPERSON: On what I am saying.

MR ZWANE: What the Chairperson is raising.

CHAIRPERSON: Yes, ja, there is a difference.

MR ZWANE: There is a difference there. Number two
...[intervenes]

CHAIRPERSON: No, no, I accept that, that is why I said
almost.

20 **MR ZWANE:** Ja.

CHAIRPERSON: I said it is for almost the same period.

MR ZWANE: Number two, if you look at 241.

CHAIRPERSON: 353.241.

MR ZWANE: 353.241.

CHAIRPERSON: Ja.

MR ZWANE: I had a clear itinerary.

CHAIRPERSON: Let us get there, 241.

MR ZWANE: 2.3, Chair.

CHAIRPERSON: Sorry? 243?

ADV SELEKA SC: 241. It starts on 241, Chair.

CHAIRPERSON: Oh.

MR ZWANE: 241, point 2.3, down there.

CHAIRPERSON: Okay, just say it again, I am getting confused.

10 **MR ZWANE:** The page [intervenes]

CHAIRPERSON: 353 point?

MR ZWANE: 241.

CHAIRPERSON: Okay, I am there.

MR ZWANE: Down there, 2.3.

CHAIRPERSON: Let start – first say this appears to be a letter from Mr M Peter, head of department for Agriculture, addressed to the Premier, Honourable E S Magashule, Free State Provincial Government and the subject is:

20 “Request for approval for MEC of Department for Agriculture and Rural Development Mr M J Zwane, Ms I T Motaung and Ashok Narayan to attend a strategic meeting with the Department of Agriculture and strategic partners in India from the 15 to 23 October 2012.”

Okay, so yes, continue.

MR ZWANE: I am saying 2.3 will give indication to this Commission about my business in India.

CHAIRPERSON: Yes. Yes, yes, 2.3 says – that off that letter says:

“The following meetings have therefore been arranged for the MEC:

1. Minister of Agriculture State of Uttarakhand, Mr Shiveja Singh Rawat on October 16 at Dehradun.
2. Minister of Agriculture State of [indistinct] Mr Vidushi Yadav on October 18 at Agra.
3. Meeting and talk of Pares dairy, October 19, 2012.
4. Minister of Agriculture, State of Maharashtra, Mr R V Patel(?) on October 22 at Mumbai.

And then 4.1 says on page 353.242:

It is recommended that approval be granted by the Honourable Premier for Mr M J Zwane, Ms I t Motaung and Mr Ashok Narayan, to undertake a trip to India from 15 to 23 October 2012.”

- 20 So the point you are making is that from the start your trip was planned to be from 15 October to 23, you would depart on the 15 October and arrive back on the 23 October. You say that was your trip as organised by the department.

MR ZWANE: Yes.

CHAIRPERSON: Okay, alright. But you accept, I guess,

you accept that – you accept the things that I was observing to say – except for saying if the choir left on the 13th, you left on the 15th, but you accept that it is almost the same duration.

MR ZWANE: Yes, I do, Chair.

CHAIRPERSON: Ja. Okay, alright.

ADV SELEKA SC: Yes and Chair on – I mean, on the first one, going out, Mr Zwane, if you flew on the same flight, only date can be correct. Either the 13th or the 15th. So it
10 is neither here nor there which date at this point but the fact that you flew out together, so your trip coincided almost to the letter.

CHAIRPERSON: Ja, almost exactly, ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because you could not have been on the same flight with them to India and be on the same flight with them from South Africa to India again on the 15th. So either your department has got it wrong about the 15th or somebody else who says the choir left on the 13th got it
20 wrong, it is not the 13th, it is the 15th. But in the end it might not matter whether it is the 13th or the 15th if it is accepted, as you do accept, that you were on the same flight to India with the choir and indications are that the choir must have arrived back on the 23rd as well. We are not sure but we suspect based on that itinerary. If the

choir also arrived back on the 23rd then your period of – or the trip with the choir is exactly the same, if that is the position. So you accept that, those facts, except that we are not sure that the choir arrived back on the 23rd but it looks like it, that is what we are saying.

MR ZWANE: I am also not sure whether I was right when I said we travelled together on the 15th.

CHAIRPERSON: Yes. Okay.

MR ZWANE: I think we must change that point.

10 **CHAIRPERSON:** Must change that. Ja, okay.

MR ZWANE: But, Chair, the issue here as raised by Mr Theron was that I travelled together with the choir ...[intervenes]

CHAIRPERSON: At the expense of...

MR ZWANE: At the expense of the Guptas.

CHAIRPERSON: Guptas, ja.

MR ZWANE: That was an issue and I have since in this Commission, I reflected that that is not correct. The issue that we are talking about now, it is beyond my control. In
20 a plane as you go to India or China or anywhere, there are obviously people in that plan which have booked themselves going where they are going. Some are going where you are going and they are from South Africa. I have met a number of people on my various trips whom I know. Where are you going? I am going to China or

Russia. When are you coming back? Maybe there will be a difference of two, three days. That to me is not an issue, I think what I was trying to reflect in this Commission is that the assertions as made by Mr Theron, because I think Mr Theron is the reason why we had to get to this point, I am not correct.

CHAIRPERSON: No, I think, Mr Zwane, the point you make is an important point, namely that you are dealing with the allegation that your trip was paid for by Guptas at
10 all.

MR ZWANE: Yes.

CHAIRPERSON: You are saying I have checked with the department, here are documents that support my version that I was – this was an official trip and it was not paid for by the Guptas, it would have been paid for by the department. But the other aspects, that we have been dealing with, may be related to the issue that you said that you may have been in the plane, the same plane, was just a coincidence, you were not involved in the planning of the
20 choir trip, that it might go to say was it all a coincidence but you are right to say the issue of who paid is an important issue for your trip. Ja.

Okay, alright, let us take the tea adjournment, we will resume at quarter to twelve, it is nearly twenty five to. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you Chair. So, I believe we have exhausted that part, you might have some questions.

CHAIRPERSON: I think we have exhausted this email, ja, let's continue.

ADV SELEKA SC: Very well, Mr Zwane I will go back to Mr Theron's affidavit, which is on page 353.22.

10 **CHAIRPERSON:** Page 353.22.

ADV SELEKA SC: Yes. Okay, so we dealt with .21, we dealt with .21, the allegation in paragraph 30.

MR ZWANE: Can I get the page, sorry?

ADV SELEKA SC: Okay, 353.21

MR ZWANE: Point .21?

ADV SELEKA SC: Yes.

MR ZWANE: And this is Annexure NDZ?

ADV SELEKA SC: No Annexure ...[intervenes]

20 **CHAIRPERSON:** Look at the black numbers, remember to look at the black numbers on the left corner of each page.

MR ZWANE: Okay, okay Chair.

CHAIRPERSON: 353.21, and that is Mr Theron's affidavit as I understand the position.

ADV SELEKA SC: Yes.

MR ZWANE: Point .21?

CHAIRPERSON: Ja, you found it?

MR ZWANE: Okay I found it.

CHAIRPERSON: Okay.

ADV SELEKA SC: So, what we have been dealing with is paragraph 30, paragraph 30?

MR ZWANE: Yes.

ADV SELEKA SC: Of particular concern is the evidence.

10 of a kick-back from the Gupta's to Zwane and other officials in the department who facilitate in the Estina scheme in October 2012, shortly after the launch of the Estina project, Zwane, officials from his department and local gospel choir...[Intervenes]".

CHAIRPERSON: I'm sorry, Mr Seleka, don't forget the question or point you wanted to pursue. Can we go back or no, we don't need to go back?

ADV SELEKA SC: Okay.

CHAIRPERSON: What was the purpose of your trip to India on 15 October to 23 October 2012?

20 **MR ZWANE:** As shown in my itinerary I was going to meet with different Ministers and ...[intervenes].

CHAIRPERSON: It was two Ministers, is that right?

MR ZWANE: Ja, it was two Ministers...[intervenes].

CHAIRPERSON: I think when I looked at that letter from Mr Thabethe to the Premier, it was two Ministers is that

right?

MR ZWANE: Yes.

CHAIRPERSON: Yes, the one was Minister of Agriculture the other one – or they were Ministers of Agriculture from different states?

MR ZWANE: Different states yes.

CHAIRPERSON: Okay but both were Ministers of Agriculture?

MR ZWANE: I should also indicate, Chair, that in that
10 itinerary I was scheduled to go and see the plant in Paras.

CHAIRPERSON: In Paras, yes.

MR ZWANE: Ja.

CHAIRPERSON: Yes.

MR ZWANE: When I was there, I think the CEO of the company was not available.

CHAIRPERSON: H'm.

MR ZWANE: So that trip did not materialise.

CHAIRPERSON: That meeting with the CEO?

MR ZWANE: Ja, ja of Paras.

20 **CHAIRPERSON:** Okay.

MR ZWANE: Did not materialise, that is why consistently in my affidavit I have been saying I've never been to Paras.

CHAIRPERSON: Yes.

MR ZWANE: And I've never been there, but just to

complete the question you have asked, Chair, after the announcement of Mahoma Mobung there were actually a number of projects in that Mahoma Mobung concept.

CHAIRPERSON: H'm.

MR ZWANE: And they were divided in terms of the districts of the province.

CHAIRPERSON: H'm.

MR ZWANE: I can recall, we had vegetable farming, we had fishery, we had meat, we had sheep farming just to
 10 mention, but a few. We will collaborate with any country who shows interest in those projects. So, as I went out, it's not only India, I remember that the fishery was, at some point finally supported by the Chinese and it happened. As to how far it is now, I can't tell, I know that the poultry was also supported by a company called VKB in the Free State and a number of farmers, have, since benefitted out of that project, so that was the aim, Chair, thank you.

CHAIRPERSON: So, was the purpose of the trip,
 20 therefore – of your trip, therefore, to meet with the two Ministers of Agriculture, from different states and to visit the Paras part or head quarters, is that right?

MR ZWANE: Yes, that's right Chair.

CHAIRPERSON: Those are the three important things you were to do while you were in India, as far as the

department was concerned?

MR ZWANE: There were four Chair.

CHAIRPERSON: Okay.

MR ZWANE: I think we are using the fourth one, I can quickly...[intervenes].

CHAIRPERSON: Let's go – where is that letter from Mr Thabethe?

ADV SELEKA SC: 353.241.

CHAIRPERSON: 241?

10 **ADV SELEKA SC:** Yes.

MR ZWANE: There were actually three Ministers I was supposed to meet with Chair.

CHAIRPERSON: Oh, it was three?

MR ZWANE: Yes.

CHAIRPERSON: Okay the one was Mr Rawat, Singh Rawat and the other was Mr Yadav.

MR ZWANE: Yes.

20 **CHAIRPERSON:** And the other was Mr Patel, Mr Patel was on the 22nd, yes. So, on the 16th of October, Mr Rawat, on the 18th of October, Mr Yadav and then on the 22nd of October Mr Patel. Okay and then, Paras was supposed to be on the 19th yes, okay, alright, thank you, Mr Seleka then we can...[intervenes].

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Let me just pursue this...[intervenes].

CHAIRPERSON: We can go back to the – oh you are pursuing something...[intervenes].

ADV SELEKA SC: Let me just...[intervenes].

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Mr Zwane then it means – you say the tour to the Paras plant didn't take place?

MR ZWANE: Yes.

ADV SELEKA SC: So, the 19th became open – the 19th of
10 October became open for you?

MR ZWANE: Yes, it was open for me, yes Chair.

ADV SELEKA SC: Yes, from your itinerary we also see that the 17th, the 20th and the 21st seem to be open for you. So, what – you say yes?

MR ZWANE: Yes, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: And so, on those days which – four days, would you mind telling the Chairperson what would have been your activities, in those days because the
20 itinerary for the choir has those days, maybe you accompanied the choir on those days?

MR ZWANE: No, thanks Advocate Seleka. Chair, I did say, indeed, one or two occasions I did go and watch the choir performing, I did say that in this Commission. Normally if you have meetings back-to-back like this you

have information, you come back, you process it, if there's any issue that you need to follow up, then you have the day to do that follow up so that when you come back and give a report, you have tried your level best to actually give account fruitfully. So, normally those days we'll then deal with, how was the trip, how was the meeting, do we need to make a follow up when we are still here, on any other issue, call back home if you need to call back home and get some more information and provide, yes.

10 **ADV SELEKA SC:** Did you say, you did meet with the choir?

MR ZWANE: I did say last time, Chair when I was here, that I did meet with the choir once or twice, yes.

ADV SELEKA SC: Okay, once or twice. The tour which didn't take place, as you say, to Paras plant what was the purpose for that?

MR ZWANE: Yes, I did indicate that the top official there, I think the CEO was not available, he had some urgent matters to attend to.

20 **ADV SELEKA SC:** Yes, but what was the purpose?

MR ZWANE: The purpose was that, because I was already going to India for these others, check for myself in terms of the report that I got from the officials about the capacity that Paras has, by and large, that was the purpose, Chair.

ADV SELEKA SC: H'm.

CHAIRPERSON: You were going to check Paras capacity to do what?

MR ZWANE: We were informed that Paras had capacity in terms of quantities, milk quantities, it also had a rise in terms of marketing, selling milk and I thought, when I was there, I may as well verify the report that was given to the Executive and myself, in terms of Paras.

CHAIRPERSON: H'm.

10 **MR ZWANE:** That is why I wanted to meet with the top official and just ascertain whether we were in the right direction.

CHAIRPERSON: Do you remember whether Mr Thabethe's trip to India preceded yours or you preceded his?

MR ZWANE: No, Chair I don't remember those details.

CHAIRPERSON: But you do know he did go to India?

MR ZWANE: I know he did go.

CHAIRPERSON: Ja.

20 **MR ZWANE:** Yes.

CHAIRPERSON: Ja, and he – I would imagine when he came back, he would have given you a report?

MR ZWANE: Yes, that's correct.

CHAIRPERSON: Yes, that's if of course it did precede yours...[intervenes].

MR ZWANE: He would have had information...[intervenes].

CHAIRPERSON: He would have got all the information.

MR ZWANE: Even if I was to be the first to go, he would have already had information.

CHAIRPERSON: Yes, yes.

MR ZWANE: About this Paras.

CHAIRPERSON: Yes, so it seems to me, and I want you to comment on this, it seems to me that the Paras meeting
10 wouldn't really have been essential for you if, indeed, your DG or Head of Department had been there because he would be the operations man, he would be the one who would have got all the information, in order to be able to make an assessment whether Paras could be a partner but it may be that, because you were going to be in India anyway, you might have thought, if we are going to have – if my department is going to have a working relationship with Paras I may as well see them so – but in terms of it being essential, it probably wouldn't have been, would you
20 agree or would you not agree?

MR ZWANE: Unfortunately, I don't agree Chair.

CHAIRPERSON: Ja, you think it was very essential?

MR ZWANE: My role is to play oversight.

CHAIRPERSON: Ja.

MR ZWANE: Even on these issues that there is a report

that there is a black file with white papers.

CHAIRPERSON: Ja.

MR ZWANE: As I get a chance to play an oversight.

CHAIRPERSON: Ja.

MR ZWANE: It is important for me to go and see whether this file exists.

CHAIRPERSON: Ja.

MR ZWANE: It is in the condition that I was told it is and those details.

10 **CHAIRPERSON:** Okay.

MR ZWANE: We normally do that in our work as...[intervenes].

CHAIRPERSON: Okay.

MR ZWANE: Yes.

CHAIRPERSON: Mr Seleka, in interrupted you.

ADV SELEKA SC: Thank you Chair. Chair the affidavit of Mr Thabethe is in the Bundle, his trip was, according to him, on the 29th of February 2012 to the 4th of March 2012 so it would have preceded this one in October 2012.

20 **CHAIRPERSON:** Well, if that is so, my recollection is that by October a lot of ground had been covered in terms of this Estina project. So, your meeting wouldn't have been an essential meeting because by then, if my recollection is correct, the decision to partner with Paras had long been made, I may be mistaken, but I'm thinking there was an

agreement that was concluded in June or July, I think there were three contracts. I think the one was July 5 if I'm not mistaken July 5 I know that there was one...[intervenes].

ADV SELEKA SC: June, 7 June 2012.

CHAIRPERSON: 7 June, and so on so, the relevant decisions had long been made if that is the case.

MR ZWANE: Hence I've raised an issue of an oversight, Chair.

CHAIRPERSON: Yes.

10 **MR ZWANE:** Yes.

CHAIRPERSON: Yes, but you can't verify whether they exist when you have already signed an agreement with them, you should verify that before you sign agreements, isn't it?

MR ZWANE: No.

CHAIRPERSON: H'm?

MR ZWANE: Chair, let me just...[intervenes].

CHAIRPERSON: You say, even if they've signed, I want to see.

20 **MR ZWANE:** Let me just make a practical example Chair.

CHAIRPERSON: Ja.

MR ZWANE: In the space where I'm working, the Department of Transport through its entity having acquired a property in the airport in Brazil long before I become the Chairperson there. We normally apply to go on oversight

to go and see this property whether it exists...[intervenes].

CHAIRPERSON: What is happening there?

MR ZWANE: Whether what is on the paper is on the ground.

CHAIRPERSON: H'm.

MR ZWANE: That is normally a known.

CHAIRPERSON: Okay.

MR ZWANE: It's actually better if everything has been signed because you're not seen as a politician running
10 ahead of you in terms of these processes in terms of PFMA that may not need you to be there.

CHAIRPERSON: H'm.

MR ZWANE: In terms of the ...[indistinct], once those processes are done then we can come in and say, indeed there is this there is this, but you said that was there and it's not there.

CHAIRPERSON: Okay.

MR ZWANE: ja.

CHAIRPERSON: Mr Seleka?

20 **ADV SELEKA SC:** Yes, yes Chair the affidavit of Mr Thabethe makes an interesting reading and that's on page 353.340 - .340.

MR ZWANE: .340 okay.

CHAIRPERSON: Yes.

ADV SELEKA SC: From paragraph 9 onwards,

so...[intervenes].

MR ZWANE: Yes, I'm there.

ADV SELEKA SC: He says,

“I then made a request – well India he says is identified as the highest milk producer and there was already a bilateral agreement on Agriculture between South Africa and India. I then made a request to the Premier honourable ES Magashule on recommendations of the former MEC Mosebenzi
10 Zwane to take a trip to India, accompanied by Mr Ashok Narayan and I advised that to the office of the Premier at that time”,

But, in fact he was not at the time, because his appointment was only on the 1st of March, I'll show you the letter. So, the first part, Mr Zwane is that this trip was taken at your recommendation, to India.

MR ZWANE: There was information as I get it here.

ADV SELEKA SC: Yes.

MR ZWANE: About this Paras having this quantities and
20 so forth and so, where did that information come from?

ADV SELEKA SC: But was the trip undertaken at your recommendation?

MR ZWANE: No Chair, I don't remember me recommending – in fact, we don't dictate to officials as to how they do their work especially when it comes to issues

of third parties who are appointed in a process that we are not party to. We normally don't involve ourselves.

ADV SELEKA SC: Ja, but this is contrary to the oversight, you claim, because in this case it's only to go and – go to India look at – you will see as he goes further in his affidavit, is to visit, precisely this company called Paras. So, I think his allegation would be consistent with your position that you would play an oversight role because he's not operating the project, he's only taking a
10 trip to visit this potential company.

MR ZWANE: May I answer Chair?

ADV SELEKA SC: Yes.

MR ZWANE: That is not his role to play, oversight. Oversight is always played by politicians, officials implement. I see nothing wrong about this trip, I must say, if in his mind, he wanted to make sure before he appoints these people that, indeed, what is said about them does exist, he was free to go to India.

CHAIRPERSON: Ja, no, that's fine but the one point
20 which is of interest is that I read his affidavit, paragraph 9 to mean that you were the one who recommended that he undertakes this trip together with Mr Ashok Narayan. Now, if I recall from his evidence, when he was giving evidence, and I may be mistaken, but I seem to think that he said that when you told him about him going with Mr Narayan to

India, that he said, you said, that came from the Premier. I hope I'm not wrong, but he certainly said it was – the fact that he had to go with Narayan who wasn't something that came from him and he seems to have said, you told him, you mentioned it to him, but if my recollection is correct, it seems that you might have got that from the Premier. Does that jog your memory at all?

MR ZWANE: Yes, I do remember vividly what happened there Chair.

10 **CHAIRPERSON:** Ja, ja.

MR ZWANE: And I did, on several occasions painted that picture and you will see in my affidavit, I have been very consistent. I have said to this Commission that there was a practice up until I left Free State, that if you are going on a trip as a department, after all your arrangement there was a section in the – associated with the Premier's department not office, department called International Relations. They would always recommend an official to accompany you who will be conversant, for example, if we
20 go to China, there were people who were trained in Mandarin in China who would be able to take you through tradition and customs in China and be able to interpret the Mandarin, that was the practice. It did not need a Premier to pinpoint an individual, this individual would be recommended to us and when we do our request, which in

this case, will obviously be done by him to the Premier then we...[intervenes].

CHAIRPERSON: So, what you say – I think you say will be done by him, I found it strange that it was done by him in regard to you. I would have thought that if an MEC wanted the Premier's permission to travel overseas the MEC would write to the Premier rather than an official writing to the Premier asking the Premier to release the MEC. I can understand him writing in regard to officials of
10 the department, but I found that a little strange but, maybe you say, no that's how we used to do things.

MR ZWANE: Chair, on the face value it looks strange but the practicalities that puts me here today, if I want to run to the Premier, I wouldn't be able to prove aspersions cast to me by everybody that I travel to India on a trip all paid by the Gupta's, no. so, the paper trail has to be done through correct channels by officials.

CHAIRPERSON: H'm.

MR ZWANE: Once, the MEC has taken a decision that – I
20 think it is prudent for the department to visit here and there, then we get into an official process of requesting and that process, indeed, will be overseen by the HOD.

CHAIRPERSON: H'm.

MR ZWANE: Yes Chair.

CHAIRPERSON: Okay, no, that's fine, Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr Zwane isn't it that Paras was going to team up with Estina to supply services or manage the project at Vrede?

MR ZWANE: I wouldn't have known details in terms of the nitty gritty's because that process is not a process we are involved in, Chair but I know, the information and the report, as it was given, was that Paras was a big dairy company who'd assist the project to the level which we wanted it to be, yes.

10 **CHAIRPERSON:** Well, I see, in Mr Thabethe's affidavit, paragraph 10, you don't need to go there, that he says, on his trip to India with Mr Narayan he did meet with the CEO of Paras Dairy for some reason he said, who's name will be divulged at a later stage and he explained the whole chain of milk production in India. He says there were also staff members of Paras who were further accompanied by the Indian delegation to visit the processing plant and in India I brought back my presentation from the Paras. It is on our return from India, that is paragraph 11,

20 "that I then developed an Executive Council's report carrying recommendations into the concept of a dairy project identified in India as Siyata ...[indistinct] MPPC's. After the Indian trip Mr Narayan went back to the office of the Premier as he was not part of my team save for the sake of

accompanying me to India. The executive council upon receiving the report on recommendations of the MEC from the Department of Agriculture then approved – approval document is ...”

I am just mentioning that that is what I have just ...[indistinct] in other words even though you may not have met the CEO Mr – Mr Thabethe had met the CEO of Paras. Okay.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** Mr Seleka.

ADV SELEKA SC: Yes. Mr Zwane if you say you did not know the details Paras – Paras role of Estina in order to manage the project in October which is about four or five months after the agreement is signed for the purposes of a project which you initiated. Why would you not have known what Paras role is in the project?

MR ZWANE: Chair I am saying the report that we got indicated that Paras had the capacity to deal with the project. That stemmed from interactions that I was not part
20 of because of PFMA but officials will deal with those details in terms of appointing a service provider that is suitable for the project.

Now those details will not be the details that in Paras there is this one and this one and this one it surprises when you are being informed that this is a company that is going

to do work, this is the profile of the company and if you have time then you can play an oversight over what you have been told about the company.

You do not go back and get details as to the nitty gritty's in terms of that company who will be sub-contracted, who will be doing this. Unless there is something that is being raised at a later stage either by Auditor General or Treasurer or somebody saying there is something here then you dig deeper.

10 **CHAIRPERSON:** Mr Seleka.

ADV SELEKA SC: Yes thanks Chair. But I think you can freely tell the Chairperson because your response seems to suggest that it is Paras you were contracting with but it was not. You contracted with Estina a company called Estina. And in paragraph 12 Chair Mr Thebethe explains how Estina comes about.

CHAIRPERSON: Yes that is true.

ADV SELEKA SC: Yes. But you could tell – say to the Chairperson here is Paras in October you go to Paras for a
20 tour to India to tour amongst other Paras – you say that did not happen but you are saying to the Chairperson you were playing an oversight role but this is not a company you contracted with. You should be actually looking at Estina – who is Estina because I want to play an oversight role and hence the reason for my question. What did you understand

Paras to be playing in the project – to be its role in the project? And I am asking you this let me conclude it because then you can address everything. That Paras is said to have denied its involvement in the project.

CHAIRPERSON: Well maybe let us start with this. You accept that no agreement – I just hope I am right now.

ADV SELEKA SC: Yes.

CHAIRPERSON: No agreement was ever concluded between the Department of Agriculture and Paras in regard
10 to the Estina project.

MR ZWANE: Well Chair maybe let me say before we – we get to that point.

CHAIRPERSON: Ja.

MR ZWANE: It is a fact that my HOD together with Ashok Narayan went to India and went to Paras and this is a fact in terms of the report we got. That necessitated me when I was going to India to go and verify what was in the report for the longest time I have been under the impression that Paras is the one that is doing work in Vrede on the project called
20 Vrede Dairy. And until there were issues that were raised by Auditor General I think in mid-2013 I have been operating under that impression. Yes.

CHAIRPERSON: And when you discovered that the Department had never concluded any agreement with Paras what did you do in circumstances where – when were all

along you were under the impression that the department had an agreement with Paras?

MR ZWANE: Chair if I was still in the department and in this case unfortunately I was no longer in the department because I left the department early March.

CHAIRPERSON: 2013.

MR ZWANE: 2013.

CHAIRPERSON: 2013.

MR ZWANE: Yes.

10 **CHAIRPERSON:** Okay but when you discovered was it after you had left the department when you discovered that...

MR ZWANE: The report of the Auditor General was after when I had left.

CHAIRPERSON: Okay alright.

MR ZWANE: And there was subsequently a report I think by Treasury which came at a later stage when I was no longer there. So the remedial actions would have happened even when I was no longer there.

20 I know as well seated here having read all the information that is before me that there were issues in terms of the contract as you earlier have indicated that there was a contract in June which was subsequently

CHAIRPERSON: Replaced by another one in July.

MR ZWANE: Replaced by another one and government was involved at a higher – at the highest level in terms of that

contract which normally is not in the prevue ordinarily of our sects. Yes. In my affidavit the first affidavit I have tried to paint a picture as to the process you iden – you go to the community you identify their needs then you come up with a concept as I have done.

And this concept is tested for a lack of a better word even at the level of the executive after having tested it with the department. And everybody says no this is a concept that we think it is correct and we can try this concept. And
10 then thereafter once this concept has passed it went through the state of the province which was...

CHAIRPERSON: Yes but hang on Mr Zwane we understand that.

MR ZWANE: Yes.

CHAIRPERSON: The question is really relates to Paras.

MR ZWANE: Yes Chair.

CHAIRPERSON: So you have said that you did get to know at some stage that the Department of Agriculture had not concluded any contracts or agreement with Paras but you
20 say you only got to know that after you had left the department.

MR ZWANE: Yes.

CHAIRPERSON: Because you say you left the Department of Agriculture in March 2013.

MR ZWANE: Yes Chair.

CHAIRPERSON: Now did Mr Thabethe the HOD of your department tell you that there was a contract between the department and Paras? Is that where you got the information from or where did you get the information from that the – there was an agreement or contract between the department and Paras?

MR ZWANE: Chair there was information as I indicated earlier that there is a company called Paras in India which has the capacity to undertake the magnitude of the project
10 that we envisaged. And as such officials went to India to verify and they came back and they were happy. Right. And then the work started internally in terms of administration.

CHAIRPERSON: But the question is did Mr Thabethe tell you that the department had concluded an agreement with Paras or did he not tell you? Where did you get the impression from that the – there was an agreement between the Department of Agriculture and Paras?

MR ZWANE: Because normally Chair nobody will be given work without having followed the due processes as we all
20 know that. So that was my impression about Paras.

CHAIRPERSON: Yes but was it your impression or did he tell you as the HOD? Remember that this is somebody that had undertaken a trip to Paras in India.

MR ZWANE: Yes.

CHAIRPERSON: And you knew about that trip. You

obviously approved the trip as the MEC – when I say approved I do not necessarily mean 00:11:51 but I do not think you would have gone there without political approval but – and you say you knew about the trip – you supported the trip. The Premier supported the trip – approved the trip. Now did he say to you we do have an agreement as the department with Paras or did he not say that?

MR ZWANE: I do not remember him saying such Chair.

CHAIRPERSON: Yes. So your impression that there was an
10 agreement between the department and Paras was based on what?

MR ZWANE: My agreement was based on...

CHAIRPERSON: Your impression.

MR ZWANE: My impression was based on the fact that it was a common cause that there should be processes – due processes that are followed in identifying a service provider. And that – those processes are then undertaken by HOD assisted by other officials. And once the HOD has taken all these processes we are ready to move.

20 We do not many a times get to a point where we are shown contracts or are told about contracts being ready. In the report normally what comes is that we are going to be working with Paras which in this case was the case I was told. That is why in October I also wanted to go and play my oversight when I was in India.

That is – that is how far I knew about Paras Chair.

CHAIRPERSON: Did you ever ask Mr Thabethe for the agreement with Paras because you were under the impression that the Department had an agreement with Paras, did you ever ask him to show you the agreement?

MR ZWANE: We do not normally do that if there is nothing untoward or there is a query raised Chair.

CHAIRPERSON: But how are you going to play your oversight if your department has or you understand the
10 department to have contracts with another entity involving millions and millions of rands and you never even want to see this contract?

MR ZWANE: Chair there were a number of contracts that were entered into by the department except this contract. Those contracts were not shown to us not only me and other MEC's what you normally get as a report is that here is a service provider who is going to do these things after processes have been undertaken and if you have any questions you do not raise your question at that particular
20 point or if there is any suspicion you then go deep to say was the due processes followed and how were they – the processes followed? Reading by any suspicion but if there is no suspicion what you normally do is to ensure that what the HOD has undertaken to do is taking place.

CHAIRPERSON: But my questions – you said as MEC you –

your role is play oversight.

MR ZWANE: Yes.

CHAIRPERSON: Over the department over the HOD. You take the trouble of wanting to make this CEO at – of Paras wanting to go to Paras and meet them because you want to even verify whether this Paras exists or whatever you want to verify. One would have thought that if you want to do that the least you would do is let me see the contract that the department has. How do you play oversight in regard to a
10 project where you have no idea what the contract says about the project and the partnership?

MR ZWANE: Let me revert back to my earlier example of a property owned by ACSA in Brazil. If we apply to go and play our oversight in Brazil it has never happened Chair that we normally would get into the details of saying let us see how the contract – how this property was acquired, the contract and so forth. We look at the report in front of us and based on that report we take that report with, we go and play our oversight. If there are issues we pick up there we then come
20 back and say there are these issues give us further information. So normally that is how we – we do things. So it would not have come to me that in this case specifically I must look for a contract before I go there. Because that has not been the norm. I do not think any MEC in the Free State has done that Chair.

CHAIRPERSON: But then you – if you do not do it that way – you do not ask to see the contract when you see the contract you might not need to go through every clause but at least you can look at the main clauses or features there might be a memorandum that explains to you the main features of the contract but at least you see it.

Now when you do not see it and you do not call for the contract the result may be what happened namely in October 2012 you are under the impression that your
10 department has a contract with Paras. You are in India – you want to meet with the CEO of Paras and I suspect you are going to say to the CEO of Paras I know that we have a contract with you and then he would say what are you talking about?

You would feel embarrassed I would imagine. Because you did not have – the department did not have a contract. But then the question that arises is even the trip that Mr Thabethe undertook to India even whatever expenses if any may have been connected with your meeting with him
20 maybe there were not any because you were going to be in India anyway or other meetings they could have been

MR ZWANE: Fruitless.

CHAIRPERSON: Wasteful – fruitless and wasteful expenditure because why are going to India to meet an entity with whom you have no contract? You understand. Whereas

if you asked for the contract you would have been told there – the department would have failed to give you a contract and you would have said but why – what kind of partnership do you say we have with Paras is we do not even have a contract. You would have raised that question is it not?

MR ZWANE: Chair let me answer that question simply.

CHAIRPERSON: Ja.

MR ZWANE: By referring you to page 241 – it is 353.241.

CHAIRPERSON: Yes I am there.

- 10 **MR ZWANE:** As the Chair has read this letter that goes to the Premier and the letter is from the HOD. This letter has an itinerary that points me to Paras in October as the Chair is saying. I mean if my assertion in this commission is not right why would in my itinerary rating by the HOD still write Paras.

CHAIRPERSON: No, no, no nobody says – nobody says you were not – you are saying you were under the impression that the department had a contract with Paras

MR ZWANE: Yes.

- 20 **CHAIRPERSON:** You said you are not in a position to say Mr Thabethe told you that the department had a contract with Paras. Okay. Nobody says your impression – your evidence that you were under that impression is wrong. So nobody is saying your – you were – you did not have that impression. You understand.

So – so I asked you what gave rise to that impression and you may legitimately point to among other things the fact that in the letter that the – Mr Thabethe wrote to the Premier he said you were going to meet – you were going to have a meeting with Paras officials or whoever. There may be other things that he said to you that made you gain that – that gave you that impression.

But what is strange to me is that also Mr Thabethe when he was giving evidence before this commission if I
 10 recall correctly I certainly understood him for quite some time to be saying we were working with Paras. But one was looking for the contract. So where is the contract with Paras? Because we can only see an agreement between the department and Estina and Estina is not Paras.

And then he said if I recall correctly he was under the impression that there was an agreement between Estina and Paras that Estina would be assisted by Paras or something like that.

But the whole project I think was promoted on the
 20 basis that Paras was part of the project but there was nothing in writing that had been signed by Paras with the department to say Paras was part of the project. That is my recollection. Does it accord with your understanding?

MR ZWANE: Chair I think your recollection will come handy with what I have referred to the Chair to.

CHAIRPERSON: Ja.

MR ZWANE: In October already.

CHAIRPERSON: Ja.

MR ZWANE: Paras was still an entity or a service provider according to my knowledge and impression.

CHAIRPERSON: Your understanding.

MR ZWANE: Yes Chair.

CHAIRPERSON: Hm. But now what did you know Estina's role to be in this project as at October 2012? Did you know
10 about Estina at all?

MR ZWANE: No.

CHAIRPERSON: You did not know about Estina?

MR ZWANE: No Sir – no Chair.

CHAIRPERSON: When did you hear about Estina being involved in this project for the first time?

MR ZWANE: Al think there was an issue raised by Treasury if I – if I recall well and Estina – that is why the Vrede Dairy ended up in 00:25:30 the Estina Vrede Dairy. And when asking is Paras Estina then there was information there I
20 think at the level of EXCO if I am not mistaken I cannot recall that these companies were working together.

CHAIRPERSON: So do you recall around about when it was that this...

MR ZWANE: I think it was 20

CHAIRPERSON: Transpired.

MR ZWANE: I think it was 2014.

CHAIRPERSON: Were you still in the department?

MR ZWANE: No I was long gone by then.

CHAIRPERSON: So by the time you left the department in March 2013.

MR ZWANE: Yes.

CHAIRPERSON: You had not heard about Estina being involved in this project.

MR ZWANE: No Chair.

10 **CHAIRPERSON:** Mr Thabethe had never told you about it either in writing or verbally.

MR ZWANE: No Chair not of what I remember. No. That is why in October I was still going to Paras. I would have endeavoured to check where is Estina – what – what does it look like as I play my oversight?

CHAIRPERSON: Well that – this is very strange or interesting but then Mr Zwane you have to concede that there must have been something wrong with how you were performing your oversight function over the department and
20 over the HOD. If for at least a year 2012 because Mr Thabethe went to India to see – to visit Paras in February 2012 you left the department in March 2013. If for a whole year you were under the impression that in regard to this project Paras was the department's partner it had a contract with the department on this project and you had heard

nothing about Estina which was the entity that actually had an agreement with the department then there must something that was terribly wrong with performing oversight functions.

Whatever it is we might not be able to detect that maybe but any oversight where your own HOD – where your department can give you the impression that it has a contract with an entity a involving millions and millions of rands on a certain project when actually it only has a
 10 contract with b and you are – you are not aware of this entity called b then there must something that is not going well. It should not be like that is it not?

MR ZWANE: Chair I think this commission will appreciate that I did take an initiative of playing oversight on the information that was before me. And the evidence is here right in front of the commission.

2. The Chair has just said in terms of his best recollection the HOD when he was here gave an impression that he himself was under that impression that Paras was actually
 20 ...[indistinct – word cut off] provider. Now, Chair, I think I did indicate this previously that this are the people appointed in terms of their knowledge, skills and qualifications to do this work as given to them by law. Now if a report comes to me and I follow the report, and as this Commission can see, that I did attempt to go and meet with

the service provider and it is here in the itinerary, I would not have, honestly, a view that I was not played my oversight.

If at all, the evidence in this Commission was contrary, even in the terms of the ...[indistinct] understanding that no Estina has always been there and I am talking about – but I will agree with the Chair. The Chair is saying, in terms of his own recollection, that is what HOD(?) said in this Commission. And I am saying
10 that is correct. That was also the information given to me.

So I follow that information and a report was given to me and I played my oversight over the ...[indistinct] I am not ...[intervenes]

CHAIRPERSON: Mr Zwane, the proposition is. There must be something terrible wrong in the performance of oversight if it leads to a situation where the MEC of the department thinks the department has a contract with a company in India ...[intervenes]

MR ZWANE: H'm?

20 **CHAIRPERSON:** ...and it turns out, he even wants to go and meet with the CEO of that company in India and it turns out that his department never had a contract with that company, number one. Number two, if it turns out that its – his department had a contract with a local company, Estina, and for a whole year it did not know about.

I am saying there must be something terrible wrong if performance of the oversight function by the MEC does not enable him to discover that. Do you disagree?

MR ZWANE: Yes, I do.

CHAIRPERSON: Yes. Why? You think oversight – the oversight function would be performed quite well if such challenges would arise?

MR ZWANE: I am painting a picture here, Chair, that oversight is played in terms of the information that is
10 placed before you.

CHAIRPERSON: H'm?

MR ZWANE: When you play oversight, you do not go and dig what is not in front of you unless there is an information or somebody has raised an issue in terms of this same report that is in front of you. The report ...[intervenes]

CHAIRPERSON: But you call for information as well.

MR ZWANE: There is ...[intervenes]

CHAIRPERSON: You must just rely on what officials give
20 you. You must have an understanding that will enable you to say: I see what you are giving me but there is something else that you should be giving me that you are not giving me. I want that. Where is this? Where is that? Where is that? Bring it here. That is what you should do. You should not say: This is what the officials give me. I

will only look at what the officials give me. What do you say to that?

MR ZWANE: No, Chair it not like that, unfortunately, in the public sector.

CHAIRPERSON: You say ...[intervenes]

MR ZWANE: You do not ...[intervenes]

CHAIRPERSON: You say it is fine if – are you saying that as an MEC in playing – in performing your oversight function over the department, you must only look at what
10 the officials give you? You must not call for other documents that they might not be giving you which are important or relevant for your oversight function?

MR ZWANE: Once you know that there are documents that are not given to you, once that comes to your knowledge, you will indeed request for that additional information. It is a standard in the departments that in a particular time you must get the report in terms of how things are going. In a particular time, you must then play your oversight based on the report that is placed before
20 you.

Now I am saying to this Commission. Based on the information that was put before me, signed by the HOD about Paras, it is here. I was going to Paras myself in October to play my oversight because at that particular time there was nothing that was suspicious in terms of the

reports. In fact, on the hindsight, if the meeting with Paras I had, had materialised I would have picked it up there that no I am knocking at the wrong door. Yes.

And I would have without any hesitation acted and then I would have then gone to what the Chair is saying: No, bring the documents and let me see the contract. Embarrassed as I would be but I will then, at that point, because there is this issue that has been raised. I know about it. Get to deeper details. But if there is
 10 nothing, normally Chair, we do not ask for something that we do not know.

CHAIRPERSON: Mr Seleka, let me allow you to put questions to mister.

ADV SELEKA SC: Yes.

CHAIRPERSON: I know we are four minutes to one but I think let us adjourn for lunch at quarter past one. Let me give you a chance to...

ADV SELEKA SC: Yes, thank you Chair. Yes, Mr Zwane, a couple of things and I was struck by the fact that you
 20 said the meeting with the CEO of Paras in Indian did not take place but I thought that itinerary of yours would have been arranged on the basis that whoever you were going to see has agreed to see you. It is a prior arrangement. That is why it is then dated. Even the date is there and you would know which day you are seeing who, which day you

are seeing which one. So how come that the CEO was not available?

MR ZWANE: Chair, I did say the CEO was not available. Something urgent had cropped up. I did say that.

ADV SELEKA SC: Okay. Two. In regard to – back to the issues the Chairperson has been dealing with you. Chair, I – we might as well just go into this.

CHAIRPERSON: Ja.

ADV SELEKA SC: [laughs]

10 **CHAIRPERSON**: [laughs] No, that is fine.

ADV SELEKA SC: You see ...[intervenes]

CHAIRPERSON: I am sure, Mr Zwane, you can see this is not – the picture that you emerges is – you are going all the way to India to meet with somebody that you believe is the CEO of the company that the department has an agreement with, actually that is wrong. There is no agreement. But here it is Estina locally. You are not... [laughs] You do not know about them. You do not go and do oversight there. [laughs]

20 **MR ZWANE**: [No audible reply]

CHAIRPERSON: Yes, Mr Seleka.

ADV SELEKA SC: Yes. And Mr Zwane, the evidence of the CFO, Ms Sepathi Dlamini, talks about your call to her. Your telephone call to her ...[intervenes]

MR ZWANE: Okay?

ADV SELEKA SC: ...on the 15th of June 2012. Now this is some two days or three days after your department or Exco has approved the project. You approved on the 12th of June 2012. On the 15th, she receives a call from you, she says. And you wanted to enter – to go to a meeting in regard to the R 30 million prepayment. And guess it was to who in regard to the project? It was to Estina.

MR ZWANE: Can I answer?

10 **ADV SELEKA SC:** Yes, please.

MR ZWANE: Thank you very much, Advocate Seleka.

ADV SELEKA SC: Yes.

MR ZWANE: The information that this Commission should have is that when this project was approved by Exo there were issues, number one, that had to be looked into by the committee, Treasury Committee.

ADV SELEKA SC: Yes, I would like you to deal with that in due course because we are going to come to them.

MR ZWANE: Okay.

20 **ADV SELEKA SC:** But just your comment on you called her, you said to her: Go to a meeting with M – is it MEC or Mr Mohali? And this was in regard to the prepayment of R 30 million to none other than Estina.

MR ZWANE: I may – I am taking a long route. Let me be short.

ADV SELEKA SC: Okay.

MR ZWANE: And get to that particular point. I made a call to the CFO. It was on Friday afternoon. I think she has also said that.

ADV SELEKA SC: Correct, yes.

MR ZWANE: That I was supposed to report. We had Exco on every Wednesday. I am supposed to go back to Exco and report in terms of the work done since the last... And he then raised the issue that Treasury seems to be still
10 busy in terms of what they need to... I then called the MEC of Treasury and asked him: Is there any progress that we will report, because we are both going to that Exco meeting on Wednesday.

The MEC said: No, I am busy with my officials. I am at this place. It would be important if you can make your officials available should they have any questions to clarify in terms of the progress in this project. My call was not specifically a call that was aimed at the releasing(?) of the R 30 million. It was a call that was saying: As we go
20 to Exco, let us know how much we have progressed or there are issues that will enable us to have more time in terms of Treasury. We will have to give that report. That was my call to the CFO.

CHAIRPERSON: So what did you ask the CFO to do?

MR ZWANE: I asked the CFO to join the MEC of Treasury

with his team. He had given me a venue where they were meeting. They were in a meeting when I talked to him. He said: No, fortunately, we are here. We are meeting. So we can look at that issue and if ...[intervenes]

CHAIRPERSON: What issue was that?

MR ZWANE: The progress in terms of what needed to be done by the committee and the department pertaining the project. Let me just, maybe for the sake of viewers. There was an issue of R 84 million that the Treasury Committee
10 had to look into. There was an issue of our R 30 million that our department had said – the Department of Agriculture – it is available.

Now looking at the magnitude of what was needed and Treasury had to look into. We had to go back to Exco and say it is feasible or is not feasible or we need to buy more time in terms of allowing officials to work on this project. That was my call to her to say: Let us not be found wanting because we are the lead department in terms of this project.

20 If Treasury is saying they are ready, they can engage on this matter and resolve, can you please then go to a meeting? Meet with the officials there and the MEC will give me a report on Monday.

CHAIRPERSON: So it was about R 84 million not the R 30 million?

MR ZWANE: Treasury was looking into the feasibility of getting this R 84 million. Thirty ...[intervenes]

CHAIRPERSON: For your department?

MR ZWANE: For the project.

CHAIRPERSON: For the project?

MR ZWANE: Yes.

CHAIRPERSON: Ja. H'm?

MR ZWANE: That email, to the best of my recollection Chair.

10 **CHAIRPERSON**: H'm?

MR ZWANE: The department was required to reprioritise within the department.

CHAIRPERSON: Ja.

MR ZWANE: It is that reprioritisation that would go back to Exco to talk about. It is also about the feasibility of the R 84 million that will bring the whole annual amount of this project to R 140 million.

CHAIRPERSON: H'm, h'm.

MR ZWANE: So my was that, let us not be found wanting
20 on oversight in terms of giving information.

CHAIRPERSON: H'm.

MR ZWANE: That was the essence of the call.

CHAIRPERSON: So the – to your knowledge the meeting to which you were sending the CFO was to discuss money for the Estina Project?

MR ZWANE: I do not know whether to call it Estina or Paras.

CHAIRPERSON: [laughs]

MR ZWANE: It is like the issue of the choir ...[intervenes]

CHAIRPERSON: I have never heard it called Paras Project.

MR ZWANE: Oh, but like – let me accept, Chair.

CHAIRPERSON: Ja.

MR ZWANE: After this discussion ...[intervenes]

10 **CHAIRPERSON:** Or Vrede Dairy Projects. Then you can ...[intervenes]

MR ZWANE: Yes.

CHAIRPERSON: ...it will suffice.

MR ZWANE: Ja.

CHAIRPERSON: Ja.

MR ZWANE: Vrede Dairy Project.

CHAIRPERSON: H'm.

MR ZWANE: That was the arrangements in terms of finances of that project, yes.

20 **CHAIRPERSON:** H'm. But you see, Mr Zwane. Okay, let me ask this question. I take it that you reported regularly to the Executive Council about how this project was going as well as other projects in your department?

MR ZWANE: I take it Chair that the leader of evidence here has just reported that this was a project recently

approved.

CHAIRPERSON: Yes, yes.

MR ZWANE: Yes.

CHAIRPERSON: No, no what I mean. Once it had been approved ...[intervenes]

MR ZWANE: Yes.

CHAIRPERSON: ...going forward up to the time you left the department. I take it that you reported regularly at certain intervals to Exco ...[intervenes]

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

CHAIRPERSON: ...as to how the project was going.

MR ZWANE: Yes.

CHAIRPERSON: Is that right?

MR ZWANE: That is right.

CHAIRPERSON: And would that have been maybe – what? At least once a month or once every three months ...[intervenes]

MR ZWANE: It ...[intervenes]

CHAIRPERSON: Or is that?

20 **MR ZWANE:** It can depend, Chair, in terms of the priority given to the project.

CHAIRPERSON: Ja, okay, okay.

MR ZWANE: This project, as it was approved, there was urgency attached to it.

CHAIRPERSON: Ja.

MR ZWANE: It is there in the minutes of Exco.

CHAIRPERSON: Ja.

MR ZWANE: And once you have that – and it was a reflection(?) project that was also announced in the state of the province of the Premier.

CHAIRPERSON: H'm, h'm.

MR ZWANE: So it will ...[intervenes]

CHAIRPERSON: It was an important project?

MR ZWANE: It will gave that priority that anytime when
10 you are given a task to perform, you must be ready that
you should report ...[intervenes]

CHAIRPERSON: Regularly.

MR ZWANE: Not even regularly. There might be a question: How far are you in terms...?

CHAIRPERSON: H'm, h'm.

MR ZWANE: You should not be found wanting.

CHAIRPERSON: Okay, okay.

MR ZWANE: So that was the drive in terms of this project,
Chair.

20 **CHAIRPERSON:** So in other words. You should be up to
date?

MR ZWANE: You must be up to date.

CHAIRPERSON: Because you can be asked anytime.

MR ZWANE: Anytime.

CHAIRPERSON: Yes.

MR ZWANE: Yes.

CHAIRPERSON: Yes, yes. You see the – it is just difficult to understand how it is possible that on a project that was so important to the province and to Exco and to your department and on which you could be asked anytime, you could be asked questions, you may have to report anytime. How it is possible that throughout the period of February 2012 up to March when you left in 2013(?), you could not have known that there was Estina playing a role
10 in the project unless the head of department made a concerted effort that you should not know about Estina.

MR ZWANE: Chair, maybe I must try and give some more information on that.

CHAIRPERSON: Ja, ja.

MR ZWANE: I think around March/April ...[intervenes]

CHAIRPERSON: 2012?

MR ZWANE: 2012.

CHAIRPERSON: H'm?

MR ZWANE: In my speech, as an MEC now of Department
20 of Agriculture and Rural Development, I tabled this project, not in February. March/April. Right? And once I have tabled – the Premier will come with a helicopter view of what the department will do and that but the department will then give details during their presentation.

This is a project that was announced by the

Premier around March or late February, let us say so. Our department in around April and after April, when the project has been announced by the department, work would start to happen. Then it is May/June going forward.

In fact, if you come from that point, you will see that from April to June(?), it was two months. June to September, four months. November six months. Around April, you see ...[intervenes]

CHAIRPERSON: Months by months?

10 **MR ZWANE:** Yes.

CHAIRPERSON: H'm.

MR ZWANE: The following year. Now, for all intense and purposes, Chair, I did what I could. I do not want to cast suspicions because I do not like that happening to me also but I give what was brought to me and I acted upon it.

CHAIRPERSON: And what was brought to you by – or what was told to you by the HOD, Mr Thabethe, did not include him telling you that the company that the department had a contract with or had an agreement with
20 was Estina? That is not part of what he told you?

MR ZWANE: That is correct, Chair.

CHAIRPERSON: Yes, okay. Mr Seleka, I know I said I was giving you time. Would you like to go? [laughs]

ADV SELEKA SC: [laughs] Ja.

CHAIRPERSON: But ...[intervenes]

ADV SELEKA SC: No problem. As long as I
...[intervenes]

CHAIRPERSON: You have five minutes before we take
the lunch break, ja.

ADV SELEKA SC: My time is your time, Chair. [laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: If you spent it, it is as much as I spent
it, Chair. [laughs]

CHAIRPERSON: [laughs]

10 **ADV SELEKA SC:** Mr Zwane, the – Ms Dlamini is
specifically. Her affidavit is here, Chair. Specifically
towards ...[intervenes]

CHAIRPERSON: Please tell me where to find it?

ADV SELEKA SC: Page 353.398.

CHAIRPERSON: 398, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Continue.

ADV SELEKA SC: She is specifically talking about the
R 30 million in regard to your call to her on the
20 15th of June 2015 – I mean 2012. So you will see on page
353.409 ...[intervenes]

MR ZWANE: Point?

ADV SELEKA SC: Four, zero, nine. Paragraph 9.

MR ZWANE: Four, zero, nine?

ADV SELEKA SC: Yes.

MR ZWANE: Yes, Chair?

ADV SELEKA SC: Paragraph 9. So this whole part, the reference you will see it is only to the R 30 million. 9.1 says:

“On the same day, 15 June 2012, which was a Friday afternoon, I have received urgent instructions from the MEC of Agriculture and Rural Development, i.e. Mr M Zwane, to urgently attend the meeting with MEC of Finance, i.e. Mr M Mohai...”

Is it Mohai?

MR ZWANE: Mohai.

ADV SELEKA SC: Mohai? Is it an I?

MR ZWANE: Yes.

ADV SELEKA SC: I in the end. Thank you.

“I could sense urgency in the instruction given the fact that I had to do it on a Friday in the afternoon and there was also a bank credit transfer document that had to go through Treasury for it to be send to the bank in order of the bank to transfer the payment to the intended beneficiary (Estina) to pay for the project.

The bank credit transfer document comes in the picture where the payment of any amount

above one million had to be made.

This process had started with myself and the Director of Finance in the Department of Agriculture having followed correct process to request payment of R 30 million...”

The next paragraph:

10 “At 15 June 2012, when I was instructed by MEC Zwane to meet with MEC Mohai, the Department of Agriculture had already remitted all the necessary documentation to Treasury so that Treasury could assist in the formal finalisation of the payment of R 30 million, which payment was intended for the beneficiaries...”

I will skip the paragraphs. Let us go to the next page, paragraph 9.6.

“I arrived at Anta Boga Hotel for the meeting...”

So this is meeting in a private hotel?

20 **MR ZWANE**: H’m. Yes, Chair.

ADV SELEKA SC: It is not in the department?

MR ZWANE: We did not have sufficient venues so it was a normal practice in the Free State to do that. It is save to say, this was not my meeting, Chair. Before I cast suspicions or – this was the meeting organised by

Treasury. I just requested my official to join them. I may not know the details.

ADV SELEKA SC: Okay. You take your responsibility for it being outside of your offices of the department?

MR ZWANE: I am just relating that that was a no.

ADV SELEKA SC: Yes, okay.

MR ZWANE: Ja. We used to do that in the Free State.

ADV SELEKA SC: Yes, but – okay. Here is the... Know, she has emphasised she could sense urgency, she could
10 sense urgency and in the subsequent paragraph, she would say the same thing, the urgency from your communication with her and it is specifically in regard to the payment of R 30 million. How did you know that this payment had to be made? One. Two. What was urgent about it? But let us deal with the first part. How did you know this amount had to be paid?

MR ZWANE: Can I respond?

ADV SELEKA SC: Yes.

MR ZWANE: Thank you very much, Chair. I think I had
20 already responded to this question in terms of my call to the CFO. My call was never about the payment of any money to anybody. My call was about the progress that I needed to report back to Exco, as I have said. So that is what I want to put on record to this Commission.

ADV SELEKA SC: Sorry, I am confused. This meeting

Ms Dlamini is talking about, it is about to determine why there is a delay in paying the R 30 million.

MR ZWANE: The meeting is about Treasury and Agriculture preparing any response, should it be needed, in the next meeting. It was the next Wednesday. About two aspects. The reprioritisation of projects within the department itself to the tune of R 30 million.

ADV SELEKA SC: Yes.

MR ZWANE: And the issue of R 84 million.

10 **ADV SELEKA SC**: Yes.

MR ZWANE: My call was about that. It was not about paying anybody. That is not my purview. To the best of my recollection, I have not seek to interfere unless there is somebody who has not been paid within the period that we have said people should be paid in – in respect of this case it was 30-days.

CHAIRPERSON: Well, I see that Ms Dlamini later in her affidavit at page 353.415 ...[intervenes]

MR ZWANE: Chair, can I interject?

20 **CHAIRPERSON**: Okay. [laughs] I think I know why.

MR ZWANE: Yes, thank you.

CHAIRPERSON: Okay, let us take the lunch break. We will resume – it is now nearly twenty past one. We will resume at twenty past two.

MR ZWANE: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you, Chair. The Chair has no follow-up questions?

CHAIRPERSON: I will now let you ask your questions.

ADV SELEKA SC: No, we will finish, Chair. By five o'clock or so we will be finished with Mr Zwane. Mr Zwane,
10 so that is the Estina part and the evidence by Ms Dlamini about a R30 million. I had asked you the question how did you know the 30 million was to be paid. You say no, your call was not about a payment of an amount. You did mention, however, that there was what, reallocation to be made?

MR ZWANE: Re-prioritisation.

ADV SELEKA SC: Reprioritisation. Ja and I thought I could ask you about Ms Fourie, Anna Fourie's evidence particularly in regard to that because in her affidavit to the
20 Commission, which is on page 353.358 we – just go to point 360.

MR ZWANE: 360?

ADV SELEKA SC: Ja, point 60, yes.

CHAIRPERSON: What is point 60, is that 353.60?

ADV SELEKA SC: Correct, Chair, yes, 353.6

...[intervenes]

CHAIRPERSON: Are we moving away from...?

ADV SELEKA SC: Yes, let us go further because the first part, it is a confirmatory of what she did submit as her actual affidavit on page 353.360. So Mr Zwane, she submits this affidavit. She says she had been employed by the Free State Provincial Treasury as the Deputy Director General Finance Governance. That is in paragraph 1. Paragraph 4 says:

10 “Due to my responsibilities related to risk management as well as norms and standards ...[intervenes]

CHAIRPERSON: Hang on one second? You said we should go to 353.60. That is where I am but I do not see a paragraph marked 4.

ADV SELEKA SC: Point 360.

CHAIRPERSON: 353.360?

ADV SELEKA SC: Point 360, yes.

CHAIRPERSON: Okay, alright.

20 **ADV SELEKA SC:** So I have read paragraph 1, she was employed by the Free State Provincial Treasury as the Deputy Director General Finance Governance and then she makes the affidavit, paragraph 3, in her official capacity as the Deputy Director General Finance Governance – Financial Governance.

“Where we now report directly to the head of department.”

Then paragraph 4:

“Due to my responsibilities related to risk management as well as norms and standards I attend to various meetings.”

Paragraph 5 on the next page, she says:

10 “On 15 June 2012 I attended staff function. In the same function the then CEO Mr Kgomongwe was present. While at the staff function, Mr Kgomongwe, requested me to assist the other colleagues within the Free State Provincial Treasury to consider the funds required by the Free State Department of Agriculture. While at the function the then Chief Financial Officer...”

That is Dlamini.

20 “...from Free State Department of Agriculture arrived. When she arrived I and other colleagues had to leave the function earlier and go back to the office. At the office the CFO produced the contract between the Free State Department of Agriculture and Estina as well as a payment document request from the Free State Department of Agriculture for an amount of R30 million. The documents were assessed and certain questions were asked to the

CFO, which some of those questions were related to the contract produced by the CFO. She was unable to answer satisfactorily. After assessing the documents Ms M Maduka, an official responsible for the Provincial Revenue Fund at the time was requested to verify the availability of the funds in the Provincial Revenue bank account. On confirmation of the balance the maximum amount which was available, if the payment should proceed, was only R5 million. There were not enough funds in the Provincial Revenue Fund. We were unable to effect the payment of R30 million.”

Do you have any comment on that, Mr Zwane?

MR ZWANE: No, I do not have. I do not have any comment, Chair.

CHAIRPERSON: Mr Seleka, do you recall whether in terms of the agreement between the department and Estina there was provision to say the prepayment should precede their actual commencement of the work. We have called it prepayment. I do not know whether that is what – that comes from the contract or not. Do you remember what the position was?

ADV SELEKA SC: Yes, I saw in one affidavit, Chair, a reference to a clause in the agreement to the effect that initial transfer payment of R30 million shall be paid into the

account of the implementing agent, Estina (Pty) Ltd.

CHAIRPERSON: But in terms of anything along the lines of it happening before any work was to be done, did you come across anything like that?

ADV SELEKA SC: I will have to – no, I do not know offhand.

CHAIRPERSON: If it comes – ja.

ADV SELEKA SC: Ja, I do not know offhand.

CHAIRPERSON: No, that is fine.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: You see, what I picked up in Ms Dlamini's affidavit, Mr Zwane, I think it is the last page, if I am not mistaken – if you need us to go there we can go there. What she does say is that there was urgency for the project to start or she posed it as kick-start the project. Now I am understand the impression that you also spoke about urgency in regard to the project but I may be mistaken, am I right?

MR ZWANE: Chair, I think the urgency I did say was in
20 fact from the executive committee. In the affidavit of Mr Venter, the minutes of the executive committee, I think it is point 3, it says – it talks about the urgency of this project being implemented. That is what I was mentioning.

CHAIRPERSON: Yes, okay, okay.

MR ZWANE: Ja.

CHAIRPERSON: So I am wondering whether the position is not that this payment of R8 million has to be made before the project could start because if the arrangement or agreement was that it should be paid first, it may be that it was urgent because the other party to the contract, Estina, which you thought was Paras, may have taken the position that we cannot start the project until you make this payment. You understand what I mean?

MR ZWANE: Yes, Chair, I do understand, but I am not
10 privy to ...[intervenes]

CHAIRPERSON: You do not know what the position was.

MR ZWANE: Ja, no, I am not privy to that.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Yes. But I understand you, Mr Zwane, to be saying before the adjournment that you needed to show that you will play your part and you seem to link that to the urgency of the matter.

MR ZWANE: I did say, I needed to be ready for feedback in terms of the decisions taken ...[intervenes]

20 **ADV SELEKA SC:** No, sorry, not you personally, I am talking the department – as I understood you, the department needed to show that it will play its part and that seemed to have been the reason for urgency.

MR ZWANE: I have indicated that both ourselves and Treasury were given tasks and I have indicated those

tasks, Chair, and I also indicated that on our side I did not want us to be found lacking as the Department of Agriculture in terms of what was given us as a task before the next executive committee meeting.

ADV SELEKA SC: Ja, that 30 million is called an initial transfer payment which I have wondered why did the department have to make it because on the evidence of Ms Dlamini – and I will read from her affidavit – apparently, Paras had undertaken to invest R228 million into the
10 project, she says VAT inclusive.

MR ZWANE: So she also talks about Paras.

ADV SELEKA SC: Ja, she says – but this is at the presentation stage, this is prior to the conclusion of the agreement.

MR ZWANE: Yes. No, I was just indicating that seemingly there is consistency in terms of this issue of Paras from the prior presentation but let me answer your question, Chair.

ADV SELEKA SC: Yes.

20 **MR ZWANE:** I think I did ...[intervenes]

ADV SELEKA SC: I did not ask a question but I think you can assume from my statement to you what the question is. Should I or do you want to say something?

MR ZWANE: No, I am ready for the question, Chairperson.

ADV SELEKA SC: Yes, so the question is, why did you need to make an initial payment of 30 million three days after Exco approved the project when allegedly Paras had committed to investing R228 million into the project? Could you not have asked them to start with the payment, a down payment?

MR ZWANE: We, as the department ...[intervenes]

ADV SELEKA SC: Yes.

MR ZWANE: I am sure in this case.

10 **ADV SELEKA SC:** Yes, correct.

MR ZWANE: And it will further cascade down to PFMA in terms of arrangements of payment, arrangements of the process plan when it comes to this project. So the nitty gritty in terms of how this was arranged should actually be the work of the HOD assisted of course by officials like CFO which I have indicated earlier on that I had not seen the contract and those details I am sure would have been contained in the contract.

20 **ADV SELEKA SC:** So you are saying you are not able to say why the R30 million had to be paid within a space of three days after Exco had approved the project?

MR ZWANE: No, I am not able to say why.

ADV SELEKA SC: You are not able to.

MR ZWANE: And why was it supposed to be paid up front.

ADV SELEKA SC: Yes.

MR ZWANE: I am not able to say why.

ADV SELEKA SC: Ja, I am intrigued by that because this project is your initiation, it is a project which one would refer to as your brainchild inspired by your upbringing with your father, you have seen the black farmers who were not making it and you initiated the project with the intention to turn around a situation. You go to the communities, you call meetings, you attend meetings with them in order to introduce the project, in order to identify the beneficiaries
 10 for the project and change their lives and here the process, you actually also sell the idea, as you said, to the other politicians or members of other political parties serving with you at the province. But you seem thereafter, if one listens to your answers, to have dropped the ball.

MR ZWANE: No, Chair, it is not like that. I think there are roles and responsibilities in government which at a particular point I must hand over to the officials. The issues of procurement in the main according to a PFMA are not my purview, it is a purview that is being practised and
 20 monitored by officials. I do get in there if there are issues and those issues are raised with me, I do get - and ask the same officials to do their work. There is no way where you can find me as an MEC dealing with prepayment and stuff like that, it is not my purview. To the best of my recollection I was on the ball and in that process I had to

allow officials to do what is delegated to them in terms of the law and I guess the issue we are talking about here is actually a delegations of officials, it is not my responsibility.

ADV SELEKA SC: Yes, no, I think you were on the ball, Mr Zwane, for you to phone Ms Dlamini on the 15 June 2012, for you to go to India in October 2012, for you to go to the communities not only once or twice but more than that and there is a couple of things we need to ask you on
 10 this because even though you were on the ball, the procurement and appointment of Estina was said to be noncompliant with supply chain management and go the advice from the State Law Advisers, obviously. Do you remember that?

MR ZWANE: I think the question is well apprised in terms of the processes which were followed in the Free State, every contract had to actually be seen by the State Law Adviser before it could be implemented. The to and fro engagements between the department and the department
 20 – in this case the Department of Agriculture and the State Law Adviser's office which actually be an issue of the finalisation of legality in terms of the contract and that falls squarely at the doorstep of the HOD.

ADV SELEKA SC: But you know that the State Law Advisers, when the matter came to them, the contract had

already been signed and they advised that the procurement process was not complied with.

MR ZWANE: I have since saw that during this process as I was forwarded with documentation. Yes, I saw it.

ADV SELEKA SC: Yes. And you have also seen that the only person in Estina was Mr Vasram who was apparently a source manager for Sahara Computers, did not have experience in farming. You comment?

MR ZWANE: Well, you want me to comment in terms of
10 the contract and who was appointed. Let me give you the process.

ADV SELEKA SC: No, I want you to comment on the fact that Estina had this one person, Mr Kamal Vasram, who had no farming experience, who came from Sahara Computers as a sales manager. Did you know that?

MR ZWANE: Chair, I did say up until October 2012 I have always been under the impression that Paras is the implementer of this project, that is why I highlighted this issue now after break that even the CFO seemed to raise
20 that matter consistently about Paras. So I was not aware.

ADV SELEKA SC: But you have since read about it?

MR ZWANE: I have since read about it, yes, that is why I thought in terms of the process this matter should have been corrected.

ADV SELEKA SC: Okay.

MR ZWANE: Once it is detected.

ADV SELEKA SC: Yes.

MR ZWANE: The people responsible should have been held responsible.

ADV SELEKA SC: Accountable.

MR ZWANE: Accountable in terms of what has happened. Yes.

ADV SELEKA SC: Yes because we can cut a long story short. If you say to the Chairperson, Chair, I acknowledge
10 things did not go as they were supposed to. You know, just piggybacking from what you were saying about people should have been held accountable, let me cut a long story short. What do you say because I could go into the details, R184 million was ultimately paid to Estina. You surely have been aware of that? Yes?

MR ZWANE: That is so, Chair, according to the legal prescripts that are clearly tabulated. Should there be anything untoward, there should be somebody who is being held accountable to explain what has happened and so
20 forth and so on. I do acknowledge that fact.

ADV SELEKA SC: Ja. And one could also say saying – or you could take it further because you would have seen that there are allegations and with information showing that part of that R184 million ultimately found its way to Gateway, the Gupta-owned entity. You read that in the

OUTA report?

MR ZWANE: I did read that, yes, Chair.

ADV SELEKA SC: Ja. But there persons who were identified as beneficiaries, I believe some 82 of them, did not benefit from the project. We see that from Mr Ephraim Dlamini's affidavit and from another beneficiary or intended beneficiary – you are going to help me pronouncing his surname.

MR ZWANE: Can I say something?

10 **ADV SELEKA SC:** Is it N-c-o-n-g-w-a-n-e.

CHAIRPERSON: It is Ncongwane.

ADV SELEKA SC: Ja. So what do you say ...[intervenes]

CHAIRPERSON: You wanted to say something, Mr Zwane? Say it?

MR ZWANE: Chair, I think this Commission should have been furnished by an agreement between the department of Free State government and the beneficiaries. As far as I can recall and to the best of my knowledge, the beneficiaries were to benefit from the real activities of
20 Vrede Dairy. That will include the milking parlour, that will include the processing of milk and they will also benefit in the process of completion of the value chain when by-product are also produced in Vrede. So from milking, processing milk and production of by-product, that is the closest where these beneficiaries, as farmers, as owners of

the business will benefit. That is as far as I know. I do not recall at any moment where beneficiaries were to benefit in the establishment of the project. My understanding is that once there is a service provider who will be developing this Vrede Dairy. This service provider accordingly will have to bring materials and all those other things and do – according to the process plan between him or herself with the department and then the service provider will get paid for what they have performed. That

10 is my understanding of this project. I do not know if I am clarifying your concern.

ADV SELEKA SC: Well, I have to put to you what they have said in their affidavits about whether they benefitted at all or not because Mr Ephraim Dlamini goes as far as saying he had a shop in town and Estina would deliver milk next door to him which was a shop owned by a gentleman of Indian origin who did not even speak the local language and he could not even obtain the milk from this project. Your comment?

20 **MR ZWANE:** Chair, on the occasions I went there milk was sold from the dairy parlour. By the time when the parlour was producing this I should indicate in this Commission that I was no longer in the department, so that that is the – but on the few occasions that I went there, milk was sold and I assumed that nobody will be barred

from buying milk there and I would not be able to give you the details in terms of how much people have benefitted because I think when the [indistinct] rewrote her report the process was at the level where milk processing was to be completed. The third layer, which was the production of by-product, up until today has not happened. So there is a possibility, I assume, that – because of the value chain have not - up until today has not happened, so there is a possibility I assume that because of the value chain have

10 not – that people have not benefitted as they were supposed to. I think one issue I am picking up here Chair, I got into the statement of Mr Hlongwane and Dlamini, is an issue of communication in terms of how far is the project, if people have not benefited up to now, what are the hiccups, Because I think that should actually be communicated to them.

ADV SELEKA SC: Well, you say you left the department in March 2013 but you were not far, you still remained in the Free State Provincial Government, is it not?

20 **MR ZWANE:** That is correct, Chair.

ADV SELEKA SC: You were just moved to another department.

MR ZWANE: I was moved to economic development.

ADV SELEKA SC: Yes, and you did come back to agriculture in 2015.

MR ZWANE: For two, three months, yes.

ADV SELEKA SC: Yes, so you were not far, this project was close to your heart.

MR ZWANE: Yes, I was not far, that is true.

ADV SELEKA SC: And I know that you have said in your affidavit the reason why the project did not succeed, is because of - you attribute that to poor management, or is it operations, you say that in your affidavit.

MR ZWANE: That was my view and it is still my view.

10 **ADV SELEKA SC:** It is still your view.

MR ZWANE: Yes.

ADV SELEKA SC: What do you think went wrong because we understand cows, cattle was dying and those who sought to expose the situation, their lives were either endangered, or some of them did lose their lives, allegedly because of people who were said to be sent by you to protect your position.

MR ZWANE: There was no position to protect at that point. I was already not there.

20 **ADV SELEKA SC:** You were already?

MR ZWANE: I was already gone from this department. I was not involved Chair, in the procurement of.

ADV SELEKA SC: Well, to protect you.

MR ZWANE: From what?

ADV SELEKA SC: I do not know, that is the allegation

made that people were sent, maybe from tarnishing your name, you were exposed, what is happening at Vrede Dairy Farm, which is initiated by MEC Zwane, you taint his reputation, so keep your mouth shut.

MR ZWANE: I have read about those allegations, I can say to this Commission , one of the people who had made those allegations has since came back to me, Mr Gadebe and I have tabulated in my affidavit that Mr Gadebe is a former ANC member who went to DA and I do not want to
10 bring people's names here, as they did without any evidence on my name because I respect that part but leaders of a certain party went to Estina Project according to what he is telling me and when they were there, they said they must try and expose whatever they can find, especially tarnish my name.

Now, I asked him, why are you coming to me now when you have gone to the Commission and said what you said, and I did not respond and I did not act. He says what they had been promised has not been fulfilled and I said,
20 no, it is not my purview, I do not want to involve myself there, Chair.

But the fact Chair, is that Mr Gadebe and I think Mr Dlamini made serious allegations in terms of me assassinating people, and I would really appreciate it if those allegations could be tested because I think it is

unfair that such serious allegations can just be made without any evidence. The point is, they are still living, they are in fear and nothing has happened to them after them saying if anybody touches my name then they are sure to be killed.

The people they are raising here, were actually officials of the department, stationed in Vrede so when meetings in terms of this project were called their officials will be there and some councillors of which Mr Gadebe at
 10 some point was one of the councillors. I should put it on record that when this project was proposed, I think the municipality brought evidence to the fact that the municipality council did agree 100% with this project, and he was part. The issue of the cattle which died was a national issue, it was publicised, it is well known.

We went to there as Free State Government to check what was the cause, so it is not an issue that somebody could have tried to shield anything there. If a project is there and something goes wrong there is nothing
 20 to shield but to correct the misnomers, because it is not about me, it is about the community, which must benefit. If the contractor is not doing right, the contractor must be attended to, to correct or remove, it is as simple as that.

CHAIRPERSON: Mr Seleka can I just interrupt you because I do not want to miss that and I am going back to

something we dealt with before lunch, but I do not want to forget it.

I have been looking at the affidavit of Ms Elzabe Cornelia Rockman in the same, in this bundle, it starts at page 353.378. What I am going to raise with you Mr Zwane and then we will go back to what Mr Seleka is dealing with. Is your evidence that you only heard about the involvement of Estina in this project after you had left the Department of Agriculture.

10 You see Ms Rockman says she was the Director General in the office of the Premier from September 2010 until 11 March 2013. Now I am reading from paragraph 5 of her affidavit at page 353.379, and then she says in paragraph 6:

“I was appointed as the MEC, responsible for finance and took the oath of office on 11 March 2013 and held that office until the election of the Premier following the 2014 general elections.”

And then she talks about the Mahoma Mabung framework
20 and Vrede at page 353.380. In paragraph 2.2.2 and 2.2.3 she talks about budget allocations for 2012/2013 financial year on 29 February 2012 and refers to minutes of the meeting of the Executive Council and says at 2.2.3:

“The Executive Council approved a memorandum tabled by the Department of Agriculture and Rural

Development on 13 June 2012 as follows.”

about the Vrede Dairy are supposed to be created theory projects and she says:

“The Executive Council approved the following the recommendations,¹, the implementation of the proposed integrated Vrede Dairy Agri Business Project and 3, supports the sourcing of additional funding of R84million for this current financial year from the province.”

10 And says:

“The Executive Council further agreed that, where possible the department should meet the costs, and will be later refunded and engaged other relevant departments. The matter be further discussed in the Treasury Committee as a matter of urgency. FDC should also play a role especially from the farming point of view.”

Then in 2.2.4 she says;

20 “On 18 June 2012, this is when you were still an MEC for agriculture, I was informed by the Deputy Director General in the office of the Premier, Mr Albertus Venter who was on leave at the time that he had been contacted by Advocate Koenie Detierra[?] in his office regarding contracts pertaining to the Vrede Dairy Project, which had

been presented at the Executive Council meeting of 18 June 2012.”

Do you see that? Do you recall whether contracts were presented, contracts relating to the Vrede Dairy Project were present that at any meetings of the Executive Council?

MR ZWANE: No Chair.

CHAIRPERSON: H’m?

MR ZWANE: I do not recall.

10 **CHAIRPERSON**: You do not recall?

MR ZWANE: Yes, Chair.

CHAIRPERSON: Yes, you see, the interesting thing about this is this, that if contracts were presented at the Executive Council meeting of 13 June 2012, those contracts could only have been between Estina and the department. They could not have been contracts between Estina and Paras and therefore, if you were at that meeting, you would have become aware of Estina at that stage at the latest.

20 **MR ZWANE**: Chair, it was not a norm for a contract to be presented at the executive, at the executive there will be a memo, the short summary of what you want to communicate and in this case, as I look at this, one of the issues that necessitated a memo to the executive it is point number 2:

“Support and sourcing of additional funding of R84 million for this current financial year from the province.”

Why am I saying so, Chair is that this project was already a flagship project, it was not any project. The Premier did talk about it in his State of Province Address, subsequently, I then went to details on this project. I have said around April and then thereafter there starts in earnest the issue of service providers and so forth.

10 **CHAIRPERSON:** Yes, but remember that is not on my question. My question is simply that, do you agree that if contracts relating to Vrede Dairy Project were presented to the Executive Council, then on what you know now, those contracts could only have been between Estina and the department, they would not have been a contract involving Paras. Do you accept that that would have to be the case?

MR ZWANE: No, I think Chair earlier on I did highlight the fact that the two officials excluding myself that is the HOD and the CFO, for a long time have been understanding or
20 having an impression that the department has contract with Paras.

If this was presented earlier on and corrected that this is not Paras this is Estina I think the whole process that we talked about earlier on would not even have taken place, should if I had known that it is Estina.

CHAIRPERSON: You see, Mr Thabetha's evidence, if I recall correctly, was characterised by him talking about Paras being involved and being behind Estina or Paras having some arrangement or relationship with Estina at least at a certain stage he was talking along those lines during his evidence may have formulated what he was saying differently.

But either at certain stage or throughout he was talking about there being a relationship between Estina
10 and Paras but I think at some stage, the question was, was there a contract or agreement between the Department of Agriculture and Paras? And if I recall correctly, none could be sure, there was an agreement between the department and Estina, you see.

So what I am suggesting to you, is that on what you know, now, it seems to me logical that you would agree that if contracts pertaining to the Vrede Dairy Project were presented at a meeting of the Provincial Executive Council on 13 June 2012. That those contracts could not have
20 been or have included any contract between the department and Paras.

On the contrary, they could only have related to the department and Estina. Even though you say it was not normal to present contracts at Eskom meetings, but if indeed they were present on this occasion, for whatever

reason, those could only be relating to Estina logically it seems to me.

MR ZWANE: If what...[intervene]

CHAIRPERSON: Ms Rodman.

MR ZWANE: Mr Thabetha said that there was no contract between Paras and the department my assumption would be that.

CHAIRPERSON: Ja, ja, you see - and then I moved from that page which is 353.381 to the next page in paragraph
10 2.2.5 Ms Rockman says the following. You see, what we were dealing with she said:

“She had been informed by the Deputy Director General in the office of the Premier on 18 June 2012.”

Talking to her about contracts that related to the Vrede Dairy Projects, that Mr Venter said had been presented at the Executive Council meeting of 13 June 2012. Then in the next paragraph, she says:

“During the evening of the same day.”

20 Which must be during the evening of the 18th of June 2012. She says:

“Mr Venter, and that is the Deputy Director General in the office of the Premier, forwarded an email from Advocate Koenie Detierra[?] with an attachment to me in my capacity as Director

General.”

She says:

“The attachment contained, 1, a submission of the Department of Agriculture with the subject, and she quotes, the subject is quoted, to accept the proposal from Estina with regard to the Vrede integrated Dairy Project and to enter into a partnership with Estina assigned by the Chief Director, his services and the chief financial officer
10 on 26 May 2012 and approved by the head of department without a date.”

So, she is saying the Deputy Director General in the office of the Premier that same evening of the 18th of June 2012 sent this document and the document is one signed by the Chief Director, district services of your department and the Chief Financial Officer of your department and approved by the Head of Department of your department.

And when you look at what she quotes there, she says that submission was written to accept the proposal
20 from Estina, okay and then number 2, she also says that Mr Venter sent her a partnership agreement she writes in quotes:

“Partnership agreement between the Department of Agriculture Free State Province, South Africa and Estina Pty Ltd.”

And she give the registration number:

“In relation to the implementation of a Dairy Project at Vrede through a special purpose thereof created to fulfil the stipulated Agri BEE business called Zana Investments Pty Limited trading as Mahoma Mabung Dairy Projects, signed by the managing director [Mr Sanjeev Gautam] of Estina Pty Ltd on the 5th of June 2012 and signed by the head of department on the 7th of June 2012.”

- 10 That is the head of your department who signed that. So, the question that arises is, you remember I said to you earlier on if throughout 2012 or maybe from about mid-2012 to when you left the Department of Agriculture in March 2013 the involvement of Estina was well known within the department in the project and Mr Thabetha had even signed an agreement with them, for you not to have known of the involvement of Estina he must have deliberately withheld that information from you. Do you remember that I said that otherwise, you would have picked
- 20 it from talking or from documents. You understand that, that is what I said, I do not say you agree with it?

MR ZWANE: No, Chair I understand what the Chair is saying.

CHAIRPERSON: Yes, yes, let me finish so that you can deal with everything. What I want to suggest to you is that

here are people in other offices other than the Department of Agriculture.

Mr Venter in the office of the Premier he has documents that come from your department, which talk about Estina being involved.

Here is, Ms Rockman who is Director General, in the office of the Premier is getting documents from Mr Venter talking about Estina in regard to this project.

How would it be possible that you are the only one
10 from whom this information about the involvement of Estina is withheld when everybody else is getting documents that mention Estina.

MR ZWANE: Chair, the approval of my trip to India was approved in the office of the Premier where Ms Rodman is and this approval had Paras, nobody said no wait. It was instant approved, I went to India and if the officials were available there I would have gone when everybody knew.

Coming back to this information Chair, I have read this information I have read even the part of Mr Venter in
20 terms of the to and fro of agreements, where there are no proper contracts and subsequently, a new contract being entered into, I have read that now.

But at the time when these things were happening, it was between officials, my officials who let me to go to India to Paras and the officials of the Premier's department

I now know that Ms Rockman also knew about this issue and this issue big as it is, it should actually gone to Eskom because the next version will be when payment was supposed to be done around June on what was that payment going to be done, if there was no contract.

These are the issues that I am saying, if they were brought to light, I am sure I would have dealt with them. Let me speak on my behalf, I would have dealt with them, yes Chair.

- 10 **CHAIRPERSON:** Yes, but you see, it goes back to what I raised with you earlier on. It should not be just what you are given by officials, you should also be asking for information to make sure that you know that things are under control and particularly if you talk about laying oversight, performing oversight functions but we have dealt with.

- So I wanted to just - let me just mention I think two other parts or documents, you see at page 353.383 paragraph 2.27 Ms Rockman says, let me start at 2.2.6
20 which is at paragraph 353.382 she says;

“I responded to Mr Venter that I had been informed that a meeting of the Treasury Committee was scheduled for 19 June 2012 on the matter of the Vrede Dairy Project. Advocate Detierra[?] issued correspondence to the Chief Executive Officer of

Provincial Treasury addressed to Ms Anna Fourie on 19 June 2012, making reference to a consultation between Provincial Treasury and legal services, legal services being office of the Premier, that took place on 18 June 2012 and suggested among others that, 3, it appears that the procurement process was not followed. The contract may be invalid due to a number of reasons or we suggest that you propose to the Treasury Committee that the agreement and the procurement documents be sent to us for review.”

And then Ms Rockman says after that:

“A copy of the correspondence from Advocate Detierra[?] is attached and marked VR9.”

Then in paragraph 2.2.7 she says:

“Correspondence dated 19 June 2012 with the subject matter “advanced payment for Vrede Project”, from provincial treasury indicate that the Department of Agriculture submitted a request dated 15 June 2012 to provincial treasury for an advance payment to Estina Pty Limited and makes further reference to a different submission dated 19 June 2012 to amend the Department of Agriculture’s projects – agriculture’s project

list to have funding available for the Vrede Dairy project.”

And then I skip there then I go to paragraph 2.2.8 she says there:

10 “A meeting of the treasury committee convened on 19 June 2012. I joined the meeting at a later stage and it was resolved that an ad-hoc technical committee led by the Director General in the office of the Premier that is myself at the time he established to ensure among others that relevant documentation is provided by the Department of Agriculture to the provincial treasury to enable the provincial treasury to consider the application for the advancement – for the advance payment to review the contractual agreement entered into between the Department of Agriculture DARD and Estina Pty Limited and to consider further
20 funding requirements for the project.”

She says:

“I have not been able to obtain the minutes of the treasury committee meeting held on 19 June 2012.”

So you see she is talking about what everybody

seems to have talking about Estina. You see. There is an application for advance payment and the payment is to Estina.

Let me then go I think the last reference I want to make is to paragraph – page 353.384 paragraph 2.2.10 – 2.2.10.

10 “A further process of engagement unfolded between the office of the Premier and the DARD that is your department set out in the correspondence between Advocate K J C Ditira and the head of the DARD that is your department dated 25 June 2012 and 26 June 2012 respectively. Culminating in the reviewed agreement signed on 5 July 2012 by both the head of Department of Agriculture and Estina as well as the supplementary submission to provincial treasury. Copies of the correspondence is attached and marked ER12 and ER13
20 respectively.”

So I just wanted to put that to say you see all over whether it is treasury or the office of the Premier, the DG there is talking about – is aware of Estina. Correspondence refers to Estina. There are contracts in which Estina is a party relating to this project. The Deputy DG in the office of

the Premier is aware of Estina being involved. Mr Thabethe is aware. These documents and this correspondence comes from his department. How is it possible that somehow the MEC whose project this is really does not know about the involvement of Estina?

MR ZWANE: Chairperson I think this issue we have repeated – repeated it for some time now and the simple explanation I have given and I think Chair alluded to it many times Mr Thabethe himself says in this commission according
10 to your recollection that he was under the impression that Paras had something to do with this.

CHAIRPERSON: Ja

MR ZWANE: It is ..

CHAIRPERSON: Ja he said that ja.

MR ZWANE: It is on record. It is not me saying it is – Chair's recollection. The leader of evidence here also says at some point Ms Dlamini paints that particular picture. Right. These are two senior officials in my department It is not – it is not as if everybody including my officials in the
20 department were saying Estina I am the only one who says Paras. I have produced in this commission evidence that I was pointed to Paras late in...

CHAIRPERSON: Let me – let me make sure you understand what I said about what Mr Thabethe said. I said that I might not be putting it accurately but after lunch what I did say to

you is that I am not sure whether throughout he was speaking like this but at some stage he was speaking on the basis that he understood Paras to be behind Estina. So in other words Mr Thabethe never said he did not know about Estina. He knew about Estina but all he was saying is at least at a certain stage that his understanding was that there was some relationship between Estina and Paras but he may at some stage or I may have understood him to – to say this project was really between the Department of Agriculture and
 10 Paras but then there would be a time when you say but where is the contract between Paras and the department? But he never said he did not know about Estina.

MR ZWANE: He did not know.

CHAIRPERSON: He had never said – he acknowledged that Estina was there. So – so you are not even on the same level as him because you are saying you were not aware of Estina at all until after March 2013 whereas he knows the involvement of Estina from beginning to end. It is a question of what was the role of Paras in this whole thing? He does
 20 not say Estina was not known to him.

MR ZWANE: May you please accept Chair my version.

CHAIRPERSON: Ja.

MR ZWANE: Which I have backed up.

CHAIRPERSON: Ja.

MR ZWANE: By my itinerary to India visiting Paras that

indeed I was going to visit Paras.

CHAIRPERSON: Okay you – you are not able to add – it is what you have said

MR ZWANE: Yes.

CHAIRPERSON: Okay alright. Mr Seleka I know I interrupted you but I think – I thought it was important.

MR ZWANE: Ja, ja.

CHAIRPERSON: And also to be fair to Mr Zwane if I pick up something.

10 **MR ZWANE:** Yes.

CHAIRPERSON: To put it to him so that he could comment on it.

MR ZWANE: I appreciate that Chair.

CHAIRPERSON: Yes okay. Mr Seleka.

ADV SELEKA SC: Yes thank you. Thank you Chair in fact Mr Thabethe in his affidavit says that it was Paras which recommended Estina as a local company that will – that will contract with the department. That paragraph 12 I mentioned. So he was clearly aware of Estina and whatever
20 relationship they had with Paras that is where it is evasive – it is unclear what was going on. But then we had this Estina concluding the contract with you led by a man taken from an IT sector – the IT sector who does not have knowledge of farming and you would have seen from his affidavit of Mr Theron that he sends affidavit to Mr Ashu of Sahara

Computers – not affidavit I beg your pardon invoices in order to be paid. And the allegation is that he was then receiving remuneration for the service rendered at this project from the Gupta's. Payments in the emails said pay this invoice from Linkway. You saw that.

MR ZWANE: Yes I saw those allegations Chair.

ADV SELEKA SC: You would not know how he was paid?

MR ZWANE: As I have said earlier on that was not my responsibility as a MEC I would not know.

10 **ADV SELEKA SC:** Did you – did you know whether or not from the out – from the evidence of Ms Dlamini Paras did make the investment of R228 million.

MR ZWANE: I did answer that question Sir. I said Chair I said I do not know.

ADV SELEKA SC: Did you know that they had committed to do that investment?

MR ZWANE: Paras?

ADV SELEKA SC: Yes.

MR ZWANE: On which basis?

20 **ADV SELEKA SC:** I do not know.

MR ZWANE: Chair – no I am...

ADV SELEKA SC: There is a presentation – Ms Dlamini talks about the presentation made through the department. The presentation includes that commitment to make an investment of R228 million by Paras. Are you saying you did

not know about it?

MR ZWANE: I am saying Chairperson it has gone to length in terms of Estina – Estina and read.

ADV SELEKA SC: Ja I am just touching on there are other things we can move on.

MR ZWANE: Yes, no I am saying the issue of Paras is what I have said was the presentation that Paras is going to be doing – to be a service provider that is what I have said. And the details of what will happen between the department
10 and Paras I do not know because I have said earlier on I did not see the contract.

CHAIRPERSON: Were – were you ever told by Mr Thabethe or anybody where the money was going to come from to finance of fund this project?

MR ZWANE: If my memory serves me well Chair there was an understanding that if we reprioritise projects in the department we will be able to get up to R30 million which I have said earlier on is the money that we needed to prioritise that is why I called the CFO. There was another
20 R84 million which was given as a task to the treasury committee to try and find money for that project. That is what I have said. Yes.

CHAIRPERSON: Ja but the question is whether you were ever told by Mr Thabethe where the money would come from to fund this. Did he say it was all going to come from the

department?

MR ZWANE: No in terms of the – in terms of the information and in terms of EXCO meeting there was going to be a shortfall that we know hence the creation of the treasury committee 84 million was to be sourced out if I may use that word from the province other departments and the department was supposed to reprioritise and they 00:13:37.

CHAIRPERSON: Did you get to know or did you know at the time this is 2012 now how much the project was going to
10 cost – what was the estimated cost of the project?

MR ZWANE: I think this project was for three years if I am not mistaken R114 million every year times 3 that was the cost of the project.

CHAIRPERSON: Which was going to be over R300 million.

MR ZWANE: Yes.

CHAIRPERSON: That is right over three years.

MR ZWANE: Yes.

CHAIRPERSON: Now in terms of where that amount of over R300 million was going to come did you have an
20 understanding whether it was going to come- all come from the department including money that may be – that could be contributed from other provincial departments or did you have any under – or what understanding did you have?

MR ZWANE: That – that was exactly my understanding Chair.

CHAIRPERSON: So your understanding was that all the money to fund this project was going to come from the provincial government.

MR ZWANE: Yes.

CHAIRPERSON: Yes. Did you – did Mr Thabethe never tell you that the arrangement or agreement was that the entity that would be involved whether it was Paras or whatever was also going to put in – inject some money into the project – millions of rands into the project?

10 **MR ZWANE:** No I never got that Chair.

CHAIRPERSON: He never told you that

MR ZWANE: No.

CHAIRPERSON: Could you be mistaken about this or you are sure he never told you?

MR ZWANE: Chair well I am recollecting from my memory this project is seven/eight years.

CHAIRPERSON: Ja.

MR ZWANE: I may not be precise.

CHAIRPERSON: Yes.

20 **MR ZWANE:** Yes.

CHAIRPERSON: But you – you do not recall.

MR ZWANE: I do not recall – I do not recall it in this point that is raised I think the whole debate is about this point.

CHAIRPERSON: Ja.

MR ZWANE: Of that I was contributing money ja.

CHAIRPERSON: So Mr Seleka.

ADV SELEKA SC: Yes Chair. So the way I understood Mr Zwane's answer to your question Chair about whether or not he was told where the money will come from my understanding is that in fact he is the one who said go to reprioritise and get the money. So he would have rather the instruction would have come from him to tell them where to find it as opposed to them telling him where we are going to find it.

10 **CHAIRPERSON:** Well let us confirm with him.

ADV SELEKA SC: Is that correct Mr Zwane?

CHAIRPERSON: Is your understanding correct?

MR ZWANE: These are two different issues Chair.

CHAIRPERSON: Ja.

MR ZWANE: The Chair has asked me whether the total cost was going to come from the provincial government.

CHAIRPERSON: Ja.

MR ZWANE: I have said that was my understanding.

ADV SELEKA SC: Yes.

20 **MR ZWANE:** I have said it was my understanding that at least for 2012 we were supposed to go and reprioritise and get to the value of 30 million from our own department and then 84 would then be a responsibility of the treasury committee. I did allude to that fact – to those facts.

CHAIRPERSON: Oh and so the...

ADV SELEKA SC: Yes.

CHAIRPERSON: The balance would come from other departments.

MR ZWANE: In the province.

CHAIRPERSON: In the province.

MR ZWANE: Yes.

CHAIRPERSON: The balance to make 84?

MR ZWANE: No to make 114.

CHAIRPERSON: Oh okay – 30 plus.

10 **MR ZWANE:** 30 plus 84.

CHAIRPERSON: Okay alright. Yes okay.

MR ZWANE: Yes Chair.

ADV SELEKA SC: Ja just my comment related to the 30 million in 2012.

MR ZWANE: There is...

CHAIRPERSON: Do you want to repeat to him what you say about that?

20 **ADV SELEKA SC:** Yes. So Mr Zwane what I am saying is the – because it was the first question the Chairperson asked you about whether they told you where the money would come from and your explanation was in relation to the 30 million and the 84 million.

MR ZWANE: Yes.

ADV SELEKA SC: So I was saying the way I understood you to be saying to the Chairperson is that in respect of those

amounts you instructed them to go reprioritise so that you can get that money. So you told the...

CHAIRPERSON: The 30 million.

ADV SELEKA SC: Yes the 30 million.

CHAIRPERSON: The 30 million ja.

ADV SELEKA SC: Yes. You told them where to find the money and it was them telling you where they are going to find the money.

CHAIRPERSON: That is the Department's officials you are
10 talking about.

ADV SELEKA SC: Correct Chair.

MR ZWANE: Can we go to the place Chair where there is
00:19:07

ADV SELEKA SC: Is my understanding correct.

MR ZWANE: Where there is a EXCO resolution of Mr Nhlabe.

CHAIRPERSON: Ms Rothman.

MR ZWANE: Ms Rothman.

CHAIRPERSON: Oh okay.

20 **MR ZWANE:** I think I am trying to attempt to ...

ADV SELEKA SC: Okay.

CHAIRPERSON: Okay let me see.

ADV SELEKA SC: You want the tables?

MR ZWANE: Ja it is...

CHAIRPERSON: Ms Rothman's

MR ZWANE: It is page 381 - .381.

CHAIRPERSON: .381 okay.

MR ZWANE: Yes.

CHAIRPERSON: Yes.

MR ZWANE: Vrede Integrated Dairy Agri Business.

CHAIRPERSON: What paragraph are you reading from?

MR ZWANE: 3.1

ADV SELEKA SC: Yes.

MR ZWANE: I am reading there.

10 **CHAIRPERSON:** I am sorry 3.1?

ADV SELEKA SC: It is at the top of the page.

CHAIRPERSON: Oh ja okay right.

MR ZWANE: There are actually two 3.1's I was reading at the second one.

ADV SELEKA SC: Okay.

MR ZWANE: That says Vrede Integrated Dairy Agri Business Project propose integration dairy and other elements of production and processing with emphasis of value addition and beneficiation that is me. MEC Agriculture and Rural

20 Development.

“The executive council approved the following recommendation by the department.

The implementation of the proposed agri dairy project supports the sourcing of additional funding of 84 million for the

current financial year.”

I think the question is around here. And this 84 million it says

“Where possible the department should meet the costs and will be later refunded and engage other relevant departments.”

That is EXCO Chair.

“The matter be further discussed in the treasury committee as a matter of urgency.”

10 Now as I understand the leader of evidence is that we as the department was supposed to reprioritise. I did not have a problem with that to put it on record.

CHAIRPERSON: He is saying his impression is that you were the one saying to your officials reprioritise in terms of budget. So is his impression of your evidence correct or not?

MR ZWANE: `No that – that instruction would have come after the EXCO resolution Chair. I will tell you why.

CHAIRPERSON: But coming from you.

20 **MR ZWANE:** It would ...

CHAIRPERSON: Or not coming from you because that is all he is asking.

MR ZWANE: It will come from – the direction is from EXCO.

CHAIRPERSON: Yes.

MR ZWANE: Me and HOD.

CHAIRPERSON: Ja.

MR ZWANE: Were most of the time part of EXCO.

CHAIRPERSON: Yes, ja.

MR ZWANE: HOD after EXCO has taken a decision where he is present should make sure that the decision of EXCO is implemented.

CHAIRPERSON: Yes.

MR ZWANE: They should not wait for me. In case where the HOD was not there I am alone I would go back and ..

10 **CHAIRPERSON:** Convey to him.

MR ZWANE: Convey to the department through the HOD the resolution of the EXCO.

CHAIRPERSON: So can I take it that you – your answer is therefore that

1. You know that EXCO did give an instruction that the department should reprioritise.

2. You are not sure whether you did say to the HOD and the officials of the department that they should reprioritise but if you – if anybody says you did say you

20 can understand that you would have said if necessary because that was the instruction of EXCO.

MR ZWANE: That is what I am saying Chair.

CHAIRPERSON: Okay. Alright.

ADV SELEKA SC: Ja.

CHAIRPERSON: Let me – Mr Seleka I see that in putting in

Ms Rothman's affidavit into this bundle.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: The annexures were not put in.

ADV SELEKA SC: Yes.

CHAIRPERSON: They may prove important. Is it possible for somebody to quickly obtain those annexures because I am keen to look at some of them.

ADV SELEKA SC: Okay.

CHAIRPERSON: I do not know how many there are – I see
10 there is one that says 50 but it is – it may be that they were
excluded because they – it was not thought they might be
material but I think they may be – or at least some of them
maybe quite important.

ADV SELEKA SC: Yes.

CHAIRPERSON: If somebody can try and obtain them while
we are continuing.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: I know it is – these are affidavits that
20 were used in other bundles Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: So we will just obtain that bundle.

CHAIRPERSON: Ja.

ADV SELEKA SC: In the Estina work stream.

CHAIRPERSON: Ja, ja that should be easy to obtain.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Ja if – if then copies can be made that can be slotted into everyone. Now if there are too many it may be that it is necessary to look at them and see what is important.

ADV SELEKA SC: Ja.

CHAIRPERSON: I know what I am looking for so if I am
10 given I can have a look.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright. Let us continue.

ADV SELEKA SC: Yes, no. Just lastly on this point Mr Zwane. The EXCO decides on the 84 million we can see here. The 30 million which is an advance payment is the one which I understood you to have said I told them to reprioritise and get the R30 million. Is that understanding correct because that is what I heard you say earlier?

MR ZWANE: It is not correct Chair.

20 **ADV SELEKA SC:** So you saying it is EXCO that made that decision.

MR ZWANE: The EXCO made a decision that we should go and reprioritise source some funds even if it means us being refunded by other departments. We could reprioritise 30 million in the department not because – not because of the

advance payment. Because of the total whole sum of the project an 84 will then be arranged by the treasury committee.

CHAIRPERSON: But just from that Mr Zwane it seems that this project was being embarked upon without any proper planning – proper and adequate planning in terms of budget because if it had been properly planned and budgeted for you would not be having to reprioritise on the budget that has already been made for projects that had been there
 10 because when you reprioritise what it means as I understand it is some project or some things that had been allocated budget to say they will be done suddenly they will not be done because money is taken away from them in order for this project to be funded. What do you say to the proposition that even that shows that the project had not been the subject of adequate and proper planning including budgetary planning?

MR ZWANE: Chair in terms of the concept of the project it was done in 2011 consultation and everything done and
 20 dusted. In terms of the financial planning on the hindsight as I look on in all these papers that is the picture that is painted by this project.

But let me hasten to say I think on several occasions where we had to sit down and agree maybe in lekgotla by that lekgotla that comes late January early February where

we prepare for the state of the province address.

At that point with a month to go a collective then decides that this project will be more – will give more value rather than these others small projects. Then at that point a decision will be taken for us to support this bigger project that we all agree that it will put moving.

In terms of other planning I agree with the Chair it looks clumsy but there are records to that extent not once – not twice where when we meet in – by the lekgotla there will
10 be a reprioritisation of some sort. Yes.

CHAIRPERSON: But how would you know there would need to be a reprioritisation in circumstances where there are proper grounds of urgency. Why – in other words, as to why the project cannot be subjected to proper and adequate planning first before it is implemented because this was in 2012. The concept had been raised in 2011.

The agreements with – between the department and Estina were concluded in June/July. Let us meet here, already. Why could it not be decided that: Look, let us
20 arrange and have a proper budget for this project. Let it start next year when it has been properly and adequately planned for.

What was so urgent that it could not wait for adequate and proper planning?

MR ZWANE: Can I speculate?

CHAIRPERSON: I do not want you to speculate.

MR ZWANE: Because ...[intervenes]

CHAIRPERSON: What do you – you are the MEC. I want you to be able to say: Well, these were the reasons. But if you do not know them, then you do not know but that is what – because I would imagine that – I would expect you, also, as MEC that even if this was project, so to speak that you started, you came up with the idea.

I would expect that you would want this project
10 to be the subject of proper and adequate planning so that it will be implemented properly and that if the department seemed to be rushing things too much, you would say: Hang on. Hang on. Nobody is going to die if we wait and have proper and adequate planning.

MR ZWANE: In the Leghotla planning, the department will be requested to propose mega projects in the Department of Agriculture. There was an issue, even before I arrived, that the department was doing small projects that do not have the necessary intact. As this Commission has
20 evidence to the fact that everybody that came to this Commission agreed that the concept and the project were brilliant.

We saw this concept at Leghotla, Project Leghotla. Then Leghotla, as a collective, bought in to the idea and saw this project as one of the projects that could

prioritised. That is what happened and that is why the project was first announced in the State of the Province Address and then by us. From our side as a concept we were ready Chair.

In terms of planning, as the Chair is saying, on hindsight looking at what has happened, I take that point but as I have said this is how we used to do things at that point in time, Chair.

CHAIRPERSON: Mr Seleka.

10 **ADV SELEKA SC:** Thank you, Chair. Mr Zwane, an innocent person sitting on Exco not knowing what is happening outside of what gets to be told at Exco, hearing of a project to benefit the immediate community, X amount of money will be paid according to the presentation by this company from India, R 228 million.

Who will support the project? I am surprised you do not know about that intention by Paras to invest R 228 million but your CFO knew about it. She talks about it in her affidavit. You are asking us: On what basis will
20 they make that investment? But it is not – you are asking the wrong people.

So they will support if they hear what is being presented to them and this is what happened. But it seems this project and I am accelerating because there are certain things I want to ask you but let me ...[intervenes]

CHAIRPERSON: Mr Seleka, I know your challenge.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I think we are going to have to find another day for Mr Zwane.

ADV SELEKA SC: Yes.

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: Mr Zwane ...[intervenes]

MR ZWANE: Yes.

10 **CHAIRPERSON:** I am hoping you are not going to say:
Hey, I have come here ...[intervenes]

MR ZWANE: No, Chair.

CHAIRPERSON: Ja.

MR ZWANE: I think honestly the Commission is abusing my generosity.

CHAIRPERSON: H'm?

MR ZWANE: I honestly think so.

CHAIRPERSON: Ja, ja.

MR ZWANE: My organisation and myself have undertaken
20 to help this Commission.

CHAIRPERSON: H'm.

MR ZWANE: And I never failed.

CHAIRPERSON: No, no you have been cooperative.

MR ZWANE: I have cooperated. Chair, to be quite frank.
We started at issues that I was here last for. Now I am just

really beginning to ask myself.

CHAIRPERSON: Ja.

MR ZWANE: What is this Commission looking from me? Because the Commission gives a document an afternoon before I come here. I come entirely come and do my best.

CHAIRPERSON: No, no you cooperate Mr Zwane.

MR ZWANE: Now ...[intervenes]

CHAIRPERSON: You cooperate.

MR ZWANE: ...let me request, Chair.

10 **CHAIRPERSON:** Yes?

MR ZWANE: Cooperation from the Commission.

CHAIRPERSON: Ja.

MR ZWANE: I think this is ...[intervenes]

CHAIRPERSON: Ought to be the last day.

MR ZWANE: Yes, please.

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

MR ZWANE: I take off.

CHAIRPERSON: Ja.

20 **MR ZWANE:** I take days off ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...from my work.

CHAIRPERSON: Ja.

MR ZWANE: And I do not know anymore ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: ...what to say, really.

CHAIRPERSON: Ja.

MR ZWANE: So I will humbly request Chair that let us try and finish.

CHAIRPERSON: Well, look – well, the one thing that is true that Mr Zwane is that you have been cooperating. That cannot be taken away from you. You – even at short notice, you have been cooperative. You are here on a public holiday. So whatever arrangements happen must
10 not detract from the fact that we know you have been cooperating, okay? That is the first point.

The second point is. Know that the Commission would never abuse your cooperation. It would never do that. Three. Your – to the extent that you may wish to finish today, that is also understandable, okay. As you know, I think we said – Mr Seleka said in the morning, we thought today would be the last day also.

But part of the reason why, when there are some issues that have not been dealt with properly, one may
20 think about another day. It is really to be fair to all concerned including you. To say it might not be the best way of dealing with things. To let you go and the issues being decided in circumstances where there is still a need for clarification on certain issues.

So it is in good faith. It is not to abuse. But the

point you make in terms of your cooperation and wishing this day to be the last one are legitimate points. They are legitimate points. It may well be that what we should do is. Let us go up to five because we have another session, evening session.

And what we can explore is whether whatever remains can be obtained from Mr Zwane by way of affidavits or not. Maybe we could explore that. So I just want you to understand Mr Zwane. Nobody wants to abuse
10 your cooperation. Even those who do not cooperate with the Commission, the Commission does not abuse them.

So you have been cooperating. That must go to your credit. So let us continue and see how far we go but the bottom line is, we do not want a situation where when decisions are made about what really the evidence suggest, somebody says or you say: No, but did these people ever hear me say I am no longer available when they want me? I was always prepared to go and be asked whatever questions. Now why did they not asked me about
20 this? I would have clarified it. You know. You see what we are looking at?

But I think let us proceed and then at five let us take it from there. Thought can be given to putting questions to you in writing for you to deal with in an affidavit. Consideration can be given to that.

ADV SELEKA SC: Yes.

MR ZWANE: Can I say something?

CHAIRPERSON: Yes, say something, ja.

MR ZWANE: No, Chair I appreciate that consideration. I am not raising this out of bad faith. I am raising this because it is my experience that most of the time I spent more time with the Commission repeating what I have already said on record. If there is anything in that respect, my expectation is that we will go to that issue, deal with it.

10 **CHAIRPERSON:** Ja.

MR ZWANE: But not repeat the whole section.

CHAIRPERSON: Ja, okay.

MR ZWANE: But I really appreciate the consideration.

CHAIRPERSON: No, that is fine.

MR ZWANE: Thank you.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: Yes. Mr Zwane, it is the nature of the beast. Let us – it is true that there was sole sourcing here? Estina was – there was no competitive appointment?

20 **MR ZWANE:** Okay?

ADV SELEKA SC: You know that?

MR ZWANE: I know it now, Chair.

ADV SELEKA SC: Yes.

MR ZWANE: I know it know.

CHAIRPERSON: Yes, you did not know it then.

MR ZWANE: I did not know it.

CHAIRPERSON: That there was no tender or
...[intervenes]

MR ZWANE: No.

CHAIRPERSON: Okay.

ADV SELEKA SC: And it is true that Estina was appointed
as the sole service provider?

MR ZWANE: Yes, I know that.

ADV SELEKA SC: Yes.

10 **MR ZWANE:** I have read about it.

ADV SELEKA SC: But you knew it then.

MR ZWANE: No.

ADV SELEKA SC: How ...[intervenes]

MR ZWANE: I did not know and to be short about it.
Where there are instances where correct processes will not
be followed, the department through the HOD explains it
the following year when there is the report of the Auditor
General why this has happened, give reasons. So provide
all those reasons. When this report came out, I was no
20 longer there in that department.

ADV SELEKA SC: So in October 2012, five months after
the contract is signed. Who did you think was rendering
services at the farm?

MR ZWANE: I did say Paras, Chair.

ADV SELEKA SC: Yes. And to the extent that you say

the problem with the project lies in the management, poor management. Only one company was managing that project. Is it not?

MR ZWANE: Except on the hindsight, having known all these issues, this project was badly managed.

ADV SELEKA SC: Yes.

MR ZWANE: Yes.

ADV SELEKA SC: But by one company, is it not?

CHAIRPERSON: Well, maybe you should say by whom?

10 **MR ZWANE**: The information I have is Estina as I have gone through.

ADV SELEKA SC: Ja.

MR ZWANE: Ja.

ADV SELEKA SC: Estina badly managed this project?

MR ZWANE: Now what must I say to you?

CHAIRPERSON: Yes, he had said so Mr Seleka.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC**: And... So this is the proposition I wanted to put to you and you can respond. Because having gone through the evidence that we did, at least to the extent that we have done, it seems that Estina for the project – the project may have been established for a purpose other than what was told to government, the Provincial Government.

I have told you about the evidence that shows the non-compliance in the appointment of Estina, the appointment of a company which was run by a person who is not experienced in farming. He is linked to the Guptas. He then sent invoices to Sahara Computers that get paid by a linkway.

The payments that goes to Estina, ultimately, are channelled to the Gupta company, Gateway and the beneficiaries intended to benefit from this company. Even
10 on your version, they have not seen what this project was meant to do for them.

So it seems, given the urgency at which it was appointed, the R 30 million advanced payment, all this was meant to benefit Gupta related entities and/or the Guptas themselves. Your comment on that?

MR ZWANE: Well, my view is that, as I have said, this project was badly managed. Should the management of the project been done well, this project, from where I am sitting, regarded as one of the best projects in agriculture
20 to have happened for the people of the Free State. That is my view.

ADV SELEKA SC: H'm.

CHAIRPERSON: Mr Seleka, just to looking at the question of how much still ...[intervenes]

ADV SELEKA SC: Left.

CHAIRPERSON: ...remaining. If I recall correctly. The main matters on which the Commission wanted to hear Mr Zwane's evidence was on Estina.

ADV SELEKA SC: Yes.

CHAIRPERSON: On his involvement in the trip to Switzerland.

ADV SELEKA SC: Yes.

CHAIRPERSON: And is relationship with the Guptas.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** So was there – we did the trip to Switzerland the last time.

ADV SELEKA SC: Yes.

CHAIRPERSON: We have done Estina. I am not sure there is much left but you might have a better idea on Estina.

ADV SELEKA SC: Ja, there should not be. And then it is his relation with the Guptas.

CHAIRPERSON: Ja.

ADV SELEKA SC: The meetings that ...[intervenes]

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: ...on the face of it ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...the invitations.

CHAIRPERSON: Yes, ja.

ADV SELEKA SC: His appointment as the Minister.

CHAIRPERSON: Yes, ja.

ADV SELEKA SC: How it came about.

CHAIRPERSON: Ja.

ADV SELEKA SC: And then, ultimately, the role he played when the banks closed the Gupta accounts.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja.

CHAIRPERSON: No, no that is fine. Well, we – I think, for example, when the banks closed how his role there.

10 That should not take long.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Certainly, Chair.

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us continue. I am sure we can, whatever we have not covered by five ...[intervenes]

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** We may be able to cover by way of written questions and him answering by way of affidavit.

ADV SELEKA SC: Yes. Indeed, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Indeed.

CHAIRPERSON: You see, Mr Zwane, we are not unreasonable people.

MR ZWANE: Chairperson, I do not call somebody by his
clan name unless I appreciate how he treats me.

CHAIRPERSON: Okay. No, that is fine.

MR ZWANE: And this morning I have called you by your
clan name.

CHAIRPERSON: You did, yes, yes.

MR ZWANE: To be quite frank, Chair.

CHAIRPERSON: H'm?

MR ZWANE: Despite what I have raised, we are have
10 been working very well with you.

CHAIRPERSON: Ja.

MR ZWANE: And I must put it on record. That is why I am
trying to raise ...[intervenes]

CHAIRPERSON: Yes.

MR ZWANE: ...whatever I am ...[intervenes]

CHAIRPERSON: Yes, yes, yes.

MR ZWANE: Yes. Thank you, Chair.

CHAIRPERSON: That is fine.

ADV SELEKA SC: Ja, we might finish. Chairperson, they
20 have got the files containing the affidavit and annexures to
Ms Walkman(?) [00:19:25]

CHAIRPERSON: Okay. No, I think what we do in the light
of what this latest discussion.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us – we can look at that later.

ADV SELEKA SC: Okay.

CHAIRPERSON: And if there are questions, they can be by way of written questions to Mr Zwane.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. So we do not need to look at them now.

ADV SELEKA SC: Ja, it is three lever arch files...

10 **CHAIRPERSON:** Oh, okay.

ADV SELEKA SC: [laughs] [Indistinct]

CHAIRPERSON: Okay. [laughs]

ADV SELEKA SC: Ja.

CHAIRPERSON: H'm?

ADV SELEKA SC: Mr Zwane, then we can go back to the – what seems to be your relation with the Guptas. But you know it seems to come throughout that relationship? But let us look at the trips to India and we can finalise on that. There is one particular. So we go back to the affidavit of

20 ...[intervenes]

CHAIRPERSON: I am sorry, Mr Seleka. I may just say so that your junior can hear me.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: I would, nevertheless, like to see them this evening, the annexures. Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Alright. Let us continue.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Even if my evening might start at eleven.

[laughs]

ADV SELEKA SC: [laughs]

CHAIRPERSON: Okay alright.

ADV SELEKA SC: So let us go back to the affidavit of Mr Theron, page 353.22. So Mr Zwane, there is a heading:
10 Zwane's close association with the Guptas. We went through some of these emails... the information previously which shows the emails exchanged, booking flight to India. And you asked the Chairperson to give you an opportunity to deal with these allegations in an affidavit.

Now the trip to India in December 2013, you attended a wedding with Ashok Narayan, evidence, an executive of the Gupta company, Sahara Systems, members of the Gupta family and Chandrama Prasad Yadav, the farm manager of the Vrede Dairy Farm – Dairy
20 Project. You have answered this from page 353.225, I think. Paragraph 9.1.12. You are going to have you keep finger, Mr Theron's affidavit.

MR ZWANE: 225?

ADV SELEKA SC: 225, yes. Point 225.

MR ZWANE: 224?

ADV SELEKA SC: 225.

MR ZWANE: [No audible reply]

ADV SELEKA SC: No, look for your affidavit.

MR ZWANE: Oh, okay.

ADV SELEKA SC: Yes.

MR ZWANE: I am sorry, Chair.

ADV SELEKA SC: Paragraph 9.1.12.

MR ZWANE: Nine point...?

ADV SELEKA SC: One point 12.

10 **MR ZWANE:** Yes, Chair.

ADV SELEKA SC: Is this where you are dealing with that allegation?

MR ZWANE: Yes, it is.

ADV SELEKA SC: I see that what you deny is.

20 “I deny that at any stage during my tenure as the MEC in the Free State Provincial Government I have attended a wedding of any of the Gupta family and say so with confidence in that I was not friends to the Gupta family to an extent that I would attend their weddings...”

Yes. But I see you did not deny the trip to India in December 2013.

MR ZWANE: 2013 or '14?

ADV SELEKA SC: '13.

MR ZWANE: This is the trip of the travel agents.

ADV SELEKA SC: No, the travel agents is September 2014. It is coming. It is the next one.

MR ZWANE: Okay.

ADV SELEKA SC: So I see that you did not deny the trip to India in December 2013 where you would have travelled, as they say, Mr Ashok Narayan or rather members of the Gupta family and Thom Muglama(?), Prasad Yadav, the farm manager. So that part is not denied?

MR ZWANE: Well, Chair I am going to say that it is not
10 clearly stipulated. That when you read my affidavit, I say I deny that at any stage during my tenure as the MEC in the Free State Provincial Government, I ever attended a wedding of any of the Gupta family. And I say so with confidence in that I was not friends with the Guptas.

ADV SELEKA SC: To an extent that I would attend their weddings. So it is a qualified statement there. So you were friend with them but you were not friends in the extent that you would attend their weddings.

MR ZWANE: Chair, this is the third affidavit. Consistently
20 in all my affidavits. I hear what the leader of evidence is saying and I take note of that. I have been consistent that I have known – actually ...[intervenes]

CHAIRPERSON: Tony Gupta.

MR ZWANE: ...I must not say the Gupta family.

CHAIRPERSON: Ja.

MR ZWANE: I have known Tony and I have explained that I have known Tony because of the paper in the Free State ...[intervenes]

CHAIRPERSON: Ja.

MR ZWANE: And I have said I have not met with him outside the environment of me doing my work in the organisation or in government. That has been my assertion. So I see this qualification and I wish to correct it.

10 **CHAIRPERSON**: H'm. So what you are saying is. You were not friends with him?

MR ZWANE: No, I was not.

CHAIRPERSON: But you interacted with him ...[intervenes]

MR ZWANE: In regards ...[intervenes]

CHAIRPERSON: ...to your work?

MR ZWANE: Yes.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC**: The next allegation. Oh, I am just opening a door for the Chairperson to ask questions. [laughs]

CHAIRPERSON: [laughs] No, just continue. I will ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: I will go – I will come in without the

dropping(?) in if I need to. [laughs]

ADV SELEKA SC: [laughs] As I said, Mr Zwane, keep that page open in Mr Theron's affidavit. The next allegation.

"The trip to Dubai and Delhi in September 2014 which Gupta employees at Sahara arranged and which the Gupta family paid for.

The flight tickets are evidence that Zwane flew to Dubai and then Delhi in the company of
10 Rajesh (Tony) Gupta and Salim Essa and Surya Kant Singhala.

The purpose of this trip is unknown..."

The next page:

"The email records from Sahara Computer's server which evidence the trips and the Gupta family's payment of Zwane's expenses upfront or by refund are attached hereto..."

And it is MJZ-21 and MJZ-22. So it is MJZ on
page 353.134 and point 135. And we went through this
20 which shows the email on page 353.134 from Alima Alana.
alima@travelexcellence.co.za on Thursday,
11 September 2014. The email is addressed to Ashu,
ashu@sahara.co.za and they CC'd Saumur at Travel
Excellence. The subject is E-tickets attachments. Surya
Kant Singhala, 13 September. Zwane, 13 September.

Rajesh Gupta, 13 September. And also the two(?) names that appears ...[intervenes]

CHAIRPERSON: And the date is 11 September 2014 and the time is 05:46 p.m.

ADV SELEKA SC: Correct. Thank you, Chair. And she writes:

“Dear, Ashu ...[intervenes]

CHAIRPERSON: So this is Ashu Bayi not Ashu Chawla.

ADV SELEKA SC: Well, she explains it’s a ...[intervenes]

10 **CHAIRPERSON**: Another name?

ADV SELEKA SC: No, it is not a name, but it is a ...[intervenes]

MR ZWANE: He says it is the meaning of friend.

ADV SELEKA SC: Yes, it means brother.

CHAIRPERSON: Oh, but is the same, it is Ashu Chawla.

MR ZWANE: That is what I have read, Chair.

CHAIRPERSON: Oh, that is what you [inaudible – speaking simultaneously]

20 **MR ZWANE**: This what I have read here is not information [inaudible – speaking simultaneously]

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Ja, it is a sign of respect or affiliation of some sort, ja.

CHAIRPERSON: Oh, okay, okay. Continue?

ADV SELEKA SC: So she says:

“Please see attached E-tickets. Thanking you, warmest regards Halima Allana.”

Then the tickets – ja, Halima Allana, Travel Excellence and the details are set out below. On the next page, Mr Zwane is then those – what is this, your travel itinerary and we can see your name:

“Traveller: Zwane/Mosebenzi Joseph”

And the dates follow. The first one, Saturday 13 September 2014. It is departing from Johannesburg to
10 Dubai, departing at 22.20 and arriving in Dubai at 8.20 on the 14 September 2014 and I am going to just read the next one.

Sunday September 2014 you leave Dubai to go to India on the same day.

The next page, 16 September 2014 you come back from India to Dubai.

The next page 17 September 2014 you move from Dubai to Switzerland.

Next date, 20 September 2014 you move from
20 Switzerland back to Dubai.

And then 21 September 2014 you come from Dubai back to Johannesburg.

Travel Excellence on the face of this arranged this. You send Ms Allana’s affidavit – Halima Allana’s affidavit where she confirms that they have received instructions to

arrange this for you and the two gentlemen mentioned including Mr Salim Essa.

Chair, the affidavit, just for the record, is on page 353.261.5.

CHAIRPERSON: Okay.

ADV SELEKA SC: Of Ms Allana.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Mr Zwane has read it.

CHAIRPERSON: Yes, did you travel from South Africa to
10 Dubai on Saturday 13 September 2015, Mr Zwane?

MR ZWANE: Chair, thank you. Let me just thank the Chair, I think this was a point which made us to adjourn last time.

CHAIRPERSON: Yes, yes.

MR ZWANE: I should indicate, Chair, that the affidavit and her statement, I received that affidavit yesterday afternoon.

CHAIRPERSON: Oh, okay.

MR ZWANE: Yesterday afternoon and then I received the
20 statement this morning but due to my commitment from my party that I will always cooperate with this Commission and to you, Chair, that I took your advice when you say I must try and say something. I have tried and collected all the information, as you can see the information that was not last time, it is here. I would have loved to also had enough

time but due to the predicament that the Chair raised of timeframes of the Commission I thought I should say in this Commission I will give it my best in terms of my recollection but I would have loved a situation where I would have also had a situation where I can prove what I am saying. I will continue to try and source this information even when the Commission ...[intervenes]

CHAIRPERSON: After today.

MR ZWANE: Yes. Chair ...[intervenes]

10 **CHAIRPERSON:** No, that is fine, that is important. To the extent that you are able to respond, do so, but where you feel that you need to go and do some homework, check some records or whatever and maybe file an affidavit to respond, that will be allowed.

MR ZWANE: Yes, Chair.

ADV SELEKA SC: May I say we could only provide it yesterday because we received it yesterday.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Ja.

20 **MR ZWANE:** I am not blaming anybody, Chair.

CHAIRPERSON: Ja, no, no.

MR ZWANE: I am just putting a record.

CHAIRPERSON: Yes, ja.

MR ZWANE: And my willingness to cooperate even under these difficult circumstances to help the Commission.

CHAIRPERSON: No, thank you.

MR ZWANE: Yes.

CHAIRPERSON: Okay.

MR ZWANE: Thank you, Chair. Chair, I know what I have said on these issues, I have reflected on this matter last time because I had committed that I will come back and ignore the issues – let me put the record straight, it was not my intention to contest the emails. That is why I am cooperating today, trying to assist the Commission. The
10 issue was getting some sufficient time which I can see it is not possible even today to try and prepare myself around to be of assistance to this Commission. That is why I am here. I thought I should clarify that.

CHAIRPERSON: No, that is fine, ja.

MR ZWANE: Chair, having said that, having reflected during these few days before I came here, indeed there was a trip I took. I remember the trip which seeks to go – and at this point in time I was in Economic Development. I did meet with investors in Dubai, I did meet with investors
20 in India, I did go to Switzerland, as a business trip, as you can see it was pointed in different directions. I do not wish to contest anybody's affidavit.

What I want to put as a point and fact in this Commission is that throughout my tenure as MEC and the Minister and even in the ANC, when there is a trip that is

undertaken, once that trip is approved, it was a norm that officials will then deal with issues of booking, whether they use travel agent, whether they pay themselves, that was not upon me. So it was my assumption all the time that that has been the norm, hence I was able to prove in the earlier circumstances.

In this case also, that has been an assumption. I want to say to this Commission, under no circumstances I would allowed a situation knowingly where a third party will
 10 be involved to pay my own travel arrangement whether it be in a form of refund or otherwise because the norm and assumption has always been the organisation or the department I am representing should be the one that will always take care of my travelling arrangements. I wish to put that on record, Chair, otherwise I will continue to try and source ...[intervenes]

CHAIRPERSON: Yes, the documents.

MR ZWANE: Information, where I can source information.

CHAIRPERSON: Ja, ja.

20 **MR ZWANE:** I thought I should deal with that in that way.

CHAIRPERSON: No, no, that is fine. I understand you to be saying the trip referred to in this ticket at page 353.135 did take place on the dates given and to the places indicated but you are saying it was an official trip.

MR ZWANE: Yes.

CHAIRPERSON: And as far as your concerned, your knowledge is that – or assumption is that it was paid for by the department.

MR ZWANE: Yes.

CHAIRPERSON: Which was Economic Development at the time.

MR ZWANE: Yes.

CHAIRPERSON: Is that right? And – but you have not had the opportunity of trying to obtain documents that
10 might show the position and you will continue to try and obtain those.

MR ZWANE: I will continue to do so, Chair.

CHAIRPERSON: Yes, yes.

MR ZWANE: And I am saying upon realising this information, as it is here, properly recorded, I had always had an assumption that the department or organisation where I am will be the one that is responsible to undertake those nitty gritty in terms of ensuring that I arrive where I am going.

20 **CHAIRPERSON:** Yes, okay.

MR ZWANE: Thank you, Chair.

CHAIRPERSON: Okay and therefore you are saying you never yourself communicated with these travel agents.

MR ZWANE: No.

CHAIRPERSON: And asked them to make bookings.

MR ZWANE: No, Chair.

CHAIRPERSON: And ...[intervenes]

MR ZWANE: And, Chair, I do not know how – even the method of payment.

CHAIRPERSON: Ja.

MR ZWANE: Who paid this travel agent.

CHAIRPERSON: Ja.

MR ZWANE: Those details that due to time constraints I may not want to bore the Commission with, I thought I
10 should make that presentation in this Commission.

CHAIRPERSON: Ja. Okay, no, that is fine. Arrangements when we stop, we will talk about when you could file – let us have an affidavit that might refer to whatever documents you are going to be able to get because, as you say, you would not get enough time to look at even the affidavit that you got yesterday. So we will talk about that when we stop.

MR ZWANE: I have already enquired, Chair, I must say I will add some information but as I got it this morning and
20 yesterday, to try and close this matter and assist the Commission to know what happened.

ADV SELEKA SC: Yes.

CHAIRPERSON: Thank you, Mr Zwane, that will be helpful. Mr Seleka?

ADV SELEKA SC: Yes, Chair, I was going to just say the

answer, as I see from Mr Zwane's affidavit is that he says:

"It is regrettable that I could not locate the departmental approvals for this trip and my request for those documentations to the department could not yield any positive results and because I am no longer in the Free State province I depend on other people and because of the shortness of time, I also could not lay my hands on these vital documents."

So I understand this to mean that I have tried to locate
10 them, I could not, I have made enquiries with the province, the provincial department, to no success. But I suppose you will continue to deal with it.

CHAIRPERSON: Ja, he will continue to try and see whether documents can be found. I would say from the Commission's side, the Commission should also try and find out. So let us all try and find out what is there that can assist to establish what the position is.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because what he is looking for are
20 documents that may show that this too was an official trip.

ADV SELEKA SC: Yes.

CHAIRPERSON: Like the first one that we talked about in the morning, was an official trip and whether there would be documents that show that it was paid for by the department.

ADV SELEKA SC: Yes.

CHAIRPERSON: And whether now in the light of what we saw in the morning whether there are S & T claim documents that show that her claimed for S & T because it was an official trip.

ADV SELEKA SC: Yes.

CHAIRPERSON: So the legal team must also be in touch with the Economic Development department in the Free State to try and get that – I hope it is still called that
10 because if the name has changed one could get lost as to which one would have those records. Do you know whether it is still called that, Mr Zwane?

MR ZWANE: I think the department it has not changed, Chair, it is called the Department of Economic Development and Environmental affairs.

CHAIRPERSON: Okay alright. So I think you try from your side and the legal team will also try and obtain. But from your side, we will fix the date, try and obtain and you will give us what you have obtained and the legal team,
20 whatever it obtains, it must also share it with you.

MR ZWANE: Thank you, Chair.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. So, Chair, for now I would not go into the details of Ms Allana's affidavit because she then attaches the passports that she has of

the ...[intervenes]

CHAIRPERSON: Ja, you can refer to it, if you want to.

ADV SELEKA SC: Ja.

CHAIRPERSON: What page did you say it is?

ADV SELEKA SC: 353.261.5 but the next page is the – are the important ones.

CHAIRPERSON: 261.5?

ADV SELEKA SC: Yes, 261.5 is the beginning of her affidavit.

10 **MR ZWANE:** Chair...?

CHAIRPERSON: Ja – okay, yes, you refer to what you wish to refer to.

ADV SELEKA SC: So paragraph 7, Mr – well, let us start at 5.

MR ZWANE: You are 261 point?

ADV SELEKA SC: Go to point 6.

MR ZWANE: Point 6?

ADV SELEKA SC: Ja, point 5 is the beginning of the affidavit. Thank you. Paragraph 5 with the heading:

20 “Matters relating to Mr Mosebenzi Joseph Zwane.
I hereby wish to respond to a request from investigators of the Judicial Commission of Inquiry into allegations of state capture who have requested all Travel Excellence records concerning Mr Zwane.”

So, Mr Zwane, let me go paragraph 6. Says:

“I reviewed my email ...[intervenes]

CHAIRPERSON: Well, no, it is fine, read the whole page.

ADV SELEKA SC: Should I read it, Chair.

CHAIRPERSON: Ja, it is important.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Ja, start from the beginning.

ADV SELEKA SC:

10 “I hereby wish to respond to a request from
investigators of the Judicial Commission of Inquiry
into Allegations of State Capture, the Commission,
who have requested all Travel Excellence records
concerning Mr Mosebenzi Zwane with identification
number...”

And the number is given.

20 “I have never met, corresponded with or received
any payments for travel undertaken by Mr Zwane.
All interactions in respect of Mr Zwane’s travel
arrangements were with Mr Salim Essa and Mr Ashu
Chawla.”

ADV SELEKA SC: Or Chawla, is that Chawla?

CHAIRPERSON: Ja, I have been saying Chawla, I think I
have pronouncing it wrongly. It must be Chawla.

ADV SELEKA SC: No, my junior is nodding, Chair,
Chawla.

CHAIRPERSON: Hey? Chawla?

ADV SELEKA SC: My junior says Chawla.

CHAIRPERSON: Oh, okay. No, she must be right.

ADV SELEKA SC: She must be. No, if she is wrong, they chop head.(?). 18.30

CHAIRPERSON: Okay.

ADV SELEKA SC:

6. "I reviewed my email account at Travel Excellence and retrieved an email dated 12 September 2014 which I compiled and sent to Ashu@sahara.co.za. A printout of the email is attached hereto marked annexure HA1. In the aforesaid email I have attached the travel itineraries for the following individuals:

1. Mr Rajesh Kumar Gupta.
2. Mr Essa
3. Mr Zwane
4. Mr Surya Kant Singhala."

7. Mr Essa made the abovementioned travel arrangements and feedback was provided to him via email on 4 September 2014. A printout of the email describing the flight details for Mr R Gupta and Mr Essa is attached hereto as annexure HA5. These tickets were valued at R53 495 per person. A printout of the email describing the flight details for

Mr Zwane is attached as annexure HA6.

8. On 5 September 2014 I issued tickets for Mr R Gupta, Mr Essa and Mr Zwane. I attach hereto a printout of the email as annexure HA7. The printout of a follow-up email to Mr Essa at salimessa@gmail.com and salim@global.co.za for the air tickets of Mr R Gupta and Mr Essa is attached hereto as annexure HA8. An additional follow-up was sent to Mr Essa at salimessa@gmail.com and salim@global.co.za for the ticket of Mr Zwane. A printout of the aforesaid email is attached hereto as annexure HA9.
- 10
9. As a result of the changes made to the air tickets of Mr Gupta and Mr Zwane afterwards for their return flight, an additional R2 500 were invoiced per individual. A printout of the invoice which was issued on 15 September 2014 is attached hereto as annexure HA10.”

Ja, shall I carry on, Chair?

- 20 “The passports are attached, I have referred to in paragraph 13.”

And they are attached including your own, Mr Zwane.

“The payment...”

According to her, in paragraph 12:

“..., was made of R166 290 for those trips, for the

air travel, as mentioned above, was received in Travel Excellence ABSA bank account. I, unfortunately, cannot recall from whom we received the EFT payment. The printout of the bank statement in which the transaction is reflected is attached hereto, as annexure HA14.”

Well, so to the extent that the trips are conceded, the only question is, who paid for them.

CHAIRPERSON: Well, that might not be the only
10 question.

ADV SELEKA SC: Yes.

CHAIRPERSON: The other question is if Ms
...[intervenes]

ADV SELEKA SC: Allana.

CHAIRPERSON: Allalla, Hallana.

ADV SELEKA SC: Allana, Halima Allana.

MR ZWANE: Halima Allana.

CHAIRPERSON: Yes. If she says, as she does, under
oath, that she made these bookings for four people,
20 including you, Mr Zwane, and she says – and there will
say, correctly so, she has never interacted with you. She
says she had never corresponded with you. She says she
has never met you. She says, as I understand her, she got
all this information from Mr Salim Essa. In other words, it
is Mr Salim Essa who said he must make bookings for the

four people, including you, for this trip.

If that is true that Mr Salim Essa asked her to make the bookings which have related to, among others, you, the question is – and if it is accepted, as it should be, that you did travel on this date to the place indicated in the ticket and came back on the day indicated there, how did Mr Salim Essa know this information about your trip or how did Ms Allana know this information so accurately without having spoken to you? You see, those are the questions
 10 that arise and then, of course, the question who paid but apart from who paid, the question – there are these other questions. How did she get to know you were going to travel to Dubai on such and such a day and from Dubai you were going to travel to India? And, actually, that is where you travelled, that is where you went, and how did she know you would come back on the day on which you did come back without speaking to you? She on her side says she got the information from Salim Essa.

So those are the questions that arise. But with
 20 regard to Mr Salim Essa, I think you said last time you did not know him, is that correct? You may have met him once or something or you did not know him at all?

MR ZWANE: Chair, I said – thank you, Chair. Am I to answer one question or all of them?

CHAIRPERSON: If you want to answer all of them you

can answer all of them.

MR ZWANE: Okay, Chair. I did say I did not know Salim. In fact this who affidavit raises an interest also from me. I confirm that I do not know this lady called Halima, I have not spoken to her. I must also confirm in this Commission that I also did not speak to Salim. As I have indicated, the person I knew I was talking to was Thuli(?) but let me also then respond to the issue, how would they have known? Chair, I have said it is my assumption, up to my, including
10 this trip, that once the trip is set, the nitty gritties will be done by the department. The presence of my password, as you see it, in my mind alludes to that fact because it was there, I would ensure that it is available in the department during the course of them doing whatever work they need to do.

I will also want to raise my interest in terms of actually who paid for this trip. I think it is also important for me because my assumption has always been, to the best of my recollection, my belief and my knowledge, that
20 the department will be doing this work and once tickets are here, I will get into the plane and go. So it raises those issues even to me, Chair. I cannot respond how did she know, as a travel agent, yes.

CHAIRPERSON: Ja. And I guess from your point of view if the department asked this travel agent to make a

booking for you then that would have been between the travel agent and the department but, of course, she does not say that, she says it is Salim Essa but if that was the case, that would be the case.

MR ZWANE: That will be the case, Chair.

CHAIRPERSON: Ja, ja, you just do not know, ja.

MR ZWANE: That will be the case, ja. I would not know because those details are not the details that will be followed by me as an MEC.

10 **CHAIRPERSON:** Ja. Okay, alright. Mr Seleka?

ADV SELEKA SC: Yes. Chair, you know, it is one thing to read the affidavit, it is another thing to look at the emails, Mr Zwane, because the emails are striking and ...[intervenes]

CHAIRPERSON: Take us there.

ADV SELEKA SC: Ja.

CHAIRPERSON: Ja, take us there.

ADV SELEKA SC: Let us go to page – well, the first email Chair is point, 261.9, so HA1, page 353, point 261.9, so
20 that's Ms Helana on the 12th of September 2014 writing to Mr Ashu and ...[intervenes]

CHAIRPERSON: Writing to Mr Ashu Chawla?

ADV SELEKA SC: Correct Chair, @sahara.co.za.

CHAIRPERSON: Ja.

ADV SELEKA SC: The attachments ...[intervenes]

CHAIRPERSON: And she says:

“Dear Ashubai,

Please see amended tickets,

Thanking you”

ADV SELEKA SC: Correct.

CHAIRPERSON: Yes.

ADV SELEKA SC: But the attachments again have three names, Ajesh Gupta, Zwane and Suria Singana. Then you turn the page.

10 **CHAIRPERSON:** Maybe let me ask this question, do you know whether Tony Gupta was on the plane, on the same plane as yourself when you went on that trip from South Africa to Dubai? At least you had met him by that time as I understand it.

MR ZWANE: Yes, I knew him very well Chair. I can't remember Chair, I can't remember seeing him. I also cannot deny that he was on the plan, but what I know is what I already communicated to the commission that I did not instruct anybody to do this.

20 **CHAIRPERSON:** Ja, okay. Mr Seleka?

ADV SELEKA SC: Then the next page is the itinerary for Mr Salim Essa

CHAIRPERSON: The next page is page 353.261 what?

ADV SELEKA SC: Point 10.

CHAIRPERSON: Okay.

ADV SELEKA SC: And Mr Rajesh Gupta.

CHAIRPERSON: H'm.

ADV SELEKA SC: But the dates is 13 September, 14 September, 16 September, 17 September, 20 September and 21 September, exactly the same dates that we have seen in your – in respect of the itinerary relating to you Mr Zwane. And I think the places are the same, they're travelling from Jo'burg to Dubai, from Dubai to India, and then from India back to Dubai, when they are in Dubai then
10 they go to Zurich, Switzerland and from Switzerland back to Dubai and ultimately Dubai to Johannesburg, exactly the same trip as yours.

CHAIRPERSON: Let's start with this, you accept that the destinations are the same, the places where you went?

MR ZWANE: Ja, according to this information
...[intervenes]

CHAIRPERSON: Yes according to this.

ADV SELEKA SC: Ja.

CHAIRPERSON: But in terms of your recollection of your
20 own trip as well you have said that from here you went to Dubai, from Dubai you went to India, from India did you go back to Dubai?

MR ZWANE: Yes Chair I think that's the route in terms of
...[intervenes]

CHAIRPERSON: That is the route ja. And do you

remember whether you went to Zurich or not?

MR ZWANE: I remember that I did go to Zurich.

CHAIRPERSON: You did go to Zurich ja. And from Zurich back to Dubai.

MR ZWANE: And back home.

CHAIRPERSON: And then back home from Zurich straight or from Zurich back to Dubai?

MR ZWANE: I think it is from Dubai.

CHAIRPERSON: Oh, first went to Dubai then to South
10 Africa.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay.

MR ZWANE: Chair I wouldn't be asked to speculate, this is a proper speculation and I think let me not waste time.

CHAIRPERSON: No, no, no, that is fine ja, no that's fine, ja.

ADV SELEKA SC: Yes, that's the one, Mr Zwane's one then Chair which we have read, is a duplication of the one we have read earlier.

20 **CHAIRPERSON:** Yes..

ADV SELEKA SC: It is on page 353.261.13, HA3.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is – the route is the same, we have gone through it.

CHAIRPERSON: You have checked it is the same?

ADV SELEKA SC: It's exactly the same Chair.

CHAIRPERSON: Ja, ja. And the flight is it the same flight?

ADV SELEKA SC: That is what I haven't looked at, let's see.

CHAIRPERSON: H'm.

ADV SELEKA: Is flight the equipment, Boeing 77 – okay let's see Mr Zwane, let's see – look at the first one, the 13th of September 2014, so on page – the one of Salim
10 Essa, 261.10, against the entry equipment, okay flight, so we can look at flight, AK762 Emirates, it is the same Chair, AK762 Emirates, departure, the time is the same, 13:50, arrival the time is the same, 23:59, 23:59, you're going from OR Tambo, Johannesburg to Dubai, flying time, it is the same Mr Zwane.

CHAIRPERSON: Okay, okay we can always check and when you have time you will also have a look and to see whether they flew according to this on the same flights as yourself and then you will then deal with the issues in an
20 affidavit that you will file and if you, by then we will have seen some documents which you think are important could be for the Commission you will do so.

MR ZWANE: I will have to get in touch with them, but I no longer have their details as I am no longer Minister of Minerals, so I will do the best that I can Chair.

CHAIRPERSON: No, that is fine, ja, thank you.

MR ZWANE: Thank you.

CHAIRPERSON: I think we must stop here because we have reached five o'clock.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: So the arrangement therefore is that further questions can be put to Mr Zwane in writing and he will respond by way of affidavit but even before he receives any questions he has got some homework to do to see
10 what he can get in terms of documents that throws light on the issues and the legal team will themselves also approach the Economic Department of the Free State Province, to try and see what information the documents can be obtained. Today is the – what is the date today?

ADV SELEKA SC: The 13th.

CHAIRPERSON: 13th.

ADV SELEKA SC: Of May.

CHAIRPERSON: Of May, if we say try and let us have the affidavit by 25 May do you think that will give you enough
20 time Mr Zwane?

MR ZWANE: Chair I will endeavour to do my best.

CHAIRPERSON: You will do your best.

MR ZWANE: Yes, I will collect whatever I can get, yes.

CHAIRPERSON: Ja, or maybe I just say on or before the – Monday is 31 May, 29 will be, 30 will be Sunday,

Saturday will be 29, on or before Friday the 28th, or let me give you more time.

ADV SELEKA SC: No, no that is enough Chair. That is two weeks.

CHAIRPERSON: No, no I am saying that's fine, because you are still going to put questions to him, remember, we will give him that. Your attorney is fine with that?

COUNSEL FOR MR ZWANE: We are okay with that Chair, we should be able to get that ...[indistinct].

10 **CHAIRPERSON:** Yes, okay, we will give you enough time, and – but in the meantime you I think try and make sure you have given him questions by when?

ADV SELEKA SC: We can give the questions by this weekend Chair.

CHAIRPERSON: By this weekend?

ADV SELEKA SC: Yes, because they are already here.

CHAIRPERSON: Oh okay, alright, okay alright, and then he will – the affidavit will deal with everything, okay, alright. Thank you very much Mr Zwane for your
20 cooperation and thank you to your attorney also, Mr Denda for your cooperation, thank you.

MR ZWANE: Chair let me also thank you, I really have learnt a lot interacting with you and your time, I wish that this Commission can bear fruits for the country as we are moving forward and as I have said I will continue to

cooperate with the Commission and give it my best shot, all the best Chair. I know your work is not as easy as we see you on television there, there is a lot that is going on behind the scenes.

Otherwise from my side I want to thank you for the opportunity of giving me to explain my side of the story, I think that goes a long way, and thank you for the opportunity once more, to your leaders of evidence I do not have a complaint, I really want to appreciate that
10 opportunity, thank you Chair.

CHAIRPERSON: Thank you very much Mr Zwane. We will adjourn this day session now for 15 minutes and thereafter we will resume and start the evening session and that will relate to Mr Koko's evidence, is that right?

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja, in regard to Eskom. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Once again good afternoon Mr Seleka, good afternoon everybody.

ADV SELEKA SC: Good evening Chair.

MR KOKO: Good afternoon Chair.

CHAIRPERSON: Good afternoon, are you read?

ADV SELEKA SC: Yes we are ready Chairperson

CHAIRPERSON: Yes.

ADV SELEKA SC: As the Chairperson indicated this evening session is in regard to Mr Koko and I think due to the time lapse we may have to administer the oath or affirmation.

CHAIRPERSON: Yes, please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR KOKO: Matshela Moses Koko.

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

MR KOKO: No.

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

MR KOKO: Yes.

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

20 **MR KOKO:** So help me God.

MATSHELA MOSES KOKO: [duly sworn, states]

CHAIRPERSON: Thank you. Yes, let us continue.

ADV SELEKA SC: Thank you Chairperson. On the last occasion we were about to go into the affidavit of Ms Suleiman in regard to the travel of Mr Koko to Dubai,

before we go there Chair I would like to just touch on certain matters in relation to McKinsey and Trillian and see whether we can come close to finalising on that. I know we have some affidavit outstanding but we probably will have to make a different arrangement in regard to how we deal with those affidavits, and I want to Mr Koko start with Eskom Bundle 14[c] on page 811.112, and I want to explain that because this deals with the requirement of National Treasury approval. Both Mr Koko and Mr Singh Chair have

10 said, have alleged in this email from the official of National Treasury are exactly as – well the version is quite different by Mr Koko and Mr Singh but maybe they will – Mr Koko will explain to you why reference to this email has been made.

That email is an exchange between Mr Dave Gorey of Eskom, this email is the first at the bottom of the page – oh wait, in the middle of the page, there is an email from Dave Gorey ...[intervenes]

COUNSEL FOR MR KOKO: Chair I have not quite heard

20 what the page number is?

CHAIRPERSON: Okay, page 811.112 in Bundle, Eskom Bundle 14. Eskom Bundle 14, page 811.112.

ADV SELEKA SC: So the first email is in the middle of the page, from Mr Dave Gorey to DJ@Eskom.co.za on Thursday the 4th of February 2016 at 3.07pm, it says “sorry

Chair ...[indistinct] cc Mr Charles Kamima, the subject is practice note number SCM3 of 2003, and the email reads:

“Good afternoon Soli,

Thank you for your hospitality this morning. We look forward to schedule productive engagements in the future. As we discussed please confirm to us that practice note number SCM3 of 2003 entitled “appointment of consultants” is currently valid and effective for public entities such as Eskom. We understand that this practice note and others will be incorporated into a new set of regulations once the review process has been completed.

Best regards,

Dave Gorey

Senior Manager : Commercial

Eskom Group Commercial”

And the telephone contacts are given. Mr Koko are you on the same page?

MR KOKO: I am there, I’m there Chair.

20 **ADV SELEKA SC:** Thank you. Then at the top of that is a reply email from Solly.ctangana@treasury.gov.za sent on Thursday the 4th of February 2016 at 17:23 to Dave Gorey, copied in is Mr Charles Kadema, Vukami Indaba, Sindile Nxonjelo, subject re Practice Note numbers SCM3/2003, the email reads:

“Dear Dave,

Practice Note 3/2003 is still applicable until replaced with new instructions after the promulgation of the new Treasury Regulations. The retainer/contingency fee principles are not clearly outlined in the practice note. If you intend applying them you need to do some further work to ensure that you do not compromise the principles of Section 217 of the Constitution and other
10 legislation.

Regards,

Solly”

Thank you Chair. Mr Koko you recall this the email when we were talking about the requirement for National Treasury approval, amongst other things you were making reference to this email.

MR KOKO: That is correct Chair.

ADV SELEKA SC: Can you tell the Chairperson why were you making reference to the email?

20 **MR KOKO:** Chair the letter of award you have it as evidence before this Commission, is dated the 17th of December 2015. We could not have got to that point of the letter of award unless we have met the ...[indistinct] and compliance to National Treasury Regulations are at ...[indistinct] so for – when we had the first steering

committee, I think it was in January, an impression was made ...[intervenes]

CHAIRPERSON: Sorry, before you proceed Mr Koko, the December that you talk about in terms of when the award was made is ...[intervenes]

MR KOKO: It is 2015, one five.

CHAIRPERSON: Okay.

MR KOKO: Right. The impression that was put to us when we had the first steering committee by the project
10 manager was that the National Treasury's compliance is in place as well. We also heard evidence and there are affidavits in this Commission, if I recall one is from Mr Mabelane, i think Mr Singh makes the same statements that the contract was actually concluded in January 2016. At all material times when the question of compliance to National Treasury's product the only reference that was put to the fore is a letter – is an email between Dave Gorey and Mr Solly ...[indistinct] who was then the CPO, Chief Procurement Officer at National Treasury.

20 Now I have never had sight of that until the proceedings in this Commission and it is what it is before you now, and you see that it is dated the 4th, so that's the only reason why I made that statement and I have said to you I am not going to pass a comment or judgment call on this email, except two things; one it came after the fact

and two it is for the lawyers to decide whether this letter gives consent or not but what I can tell you, what I can tell you, is that we came to a realisation sometime in February/March that the National Treasury compliance was not in place so I have no doubt in my mind that certainly I, Matshela Koko, and members of the steering committee and there were ...[indistinct] to us there Chair and one of the problems I have in the proceedings there I seem to be the spokesperson of the Steering Committee and by the way I need to make this clear that the delegations from the Board was not to the Steering Committee, so you cannot hold the Steering Committee collectively accountable, that is not how Corporate works, but in any event all that I am saying is this letter when I ...[indistinct] was to say to you the people involved when they say we have National Treasury Compliance they all refer to this letter, but it is up to you to make our judgment call whether this letter gives compliance or not, but what I am putting to you is that around February/March I think I used, the term that I used something like the writing was on the wall.

ADV SELEKA SC: Yes, the writing was on the wall.

CHAIRPERSON: Ja, the writing was on the wall was mentioned around February/March or something.

MR KOKO: Yes I think I made ...[intervenes]

CHAIRPERSON: Or March/April.

MR KOKO: Yes, February/March the writing was on the wall and I do not recall any dissent that the writing was not on the wall, in other words there was no compliance to National Treasury Regulations and this letter cannot be relied upon. That is as far as I can put it Chair, I had not seen this letter at that time, I came to know about this letter I think sometime in the Parliamentary file.

ADV SELEKA SC: Ja, I wouldn't know.

MR KOKO: That's I think either towards Eskom
 10 Parliamentary file, it was part of the bundle that Ms Daniels put together, that's when I came to be aware of this, but Chair we are playing around in circles, the writing was on the wall, there was no National Treasury compliance at that, at least around February/March and when the letter of award of 17 December 2015 was signed and when the date of the 7th of January is referred to.

ADV SELEKA SC: Yes, no that certainly expedites the proceedings, I only wanted to refer – to bring it to the Chairperson's attention because it had been mentioned but
 20 Chair as Mr Koko says insofar as he is concerned the point doesn't need to be belaboured, he has given you what he understands is let – this email exchanged comes he says after the fact, the contract had been concluded without having obtained initial Treasury approval. It is the significance of that step which is under scrutiny Mr Koko,

the significance of that step and – because in terms of the Act wherever the Act is referred to ...[intervenes]

CHAIRPERSON: That appears on ...[intervenes]

ADV SELEKA SC: It appears ...[indistinct] the Public Finance Management Act section 1 says:

10 “Reference to the Act includes regulations and instructions issued by the National Treasury so that if you fail to comply with the instruction or the regulations it is a failure to comply with the legislative profession.”

The failure leads to the contract being a nullity, being a nullity because there is no prior compliance. So that contract then becomes enforceable against a government department or an SOE, a State Owned Entity, and that is significant because what Mr Singh – I am not sure about you in regard to the payments, why they were met, is that Eskom had an obligation to make those payments. Is that your position as well?

20 **MR KOKO:** Chair when I was here I promised to send you a policy of Eskom, and I said you will not wait long, and I did exactly that. I have sent it to ...[indistinct].

CHAIRPERSON: Oh okay, well I recently asked them whether they have got what I simply called the document that should tell me who had what responsibilities or obligations in the processing of invoices and they assured

me that they have got that. So that may or may not necessarily be what you are talking about but I am just saying I have just been calling on that, but I think they have got everything now, or is it – Mr Seleka?

ADV SELEKA SC: No we do Chair.

CHAIRPERSON: You do ja.

ADV SELEKA SC: We do I have ...[intervenes]

CHAIRPERSON: Okay do let me have copies, I don't know if they are already here in advance because I do
10 want to look at those documents.

MR KOKO: Yes and Chair I am happy to go to it to show you that it is not the – it is wrong to say because the contract, the entering into a contract adds problems, in other words because it needs, for lack of a better word, let's say because it is an irregular contract therefore you are not – you can't pay the contractor.

CHAIRPERSON: There is no contract?

MR KOKO: You ...[indistinct]

CHAIRPERSON: Oh, that you can't pay ja.

20 **MR KOKO:** You will be wrong to reach that contract.,

CHAIRPERSON: Ja, you made the point last time I think, at least the approach of Eskom is that if there is a contract but there was some irregularity as long as the outside, the other party has ...[intervenes]

MR KOKO: Acted *bona fides*.

CHAIRPERSON: ...satisfactorily then they should be paid and then Eskom can deal internally with its own officials who may not have done what they were supposed to do.

MR KOKO: Exactly, and I have also made – I have selected the page, I also quoted ...[indistinct].

CHAIRPERSON: Okay, okay.

MR KOKO: It is called an edification policy.

CHAIRPERSON: Ja.

MR KOKO: You have to report yourself, you have to go
10 and plead poverty ...[intervenes]

CHAIRPERSON: Why people, what is the [laughing]

MR KOKO: You have to go and say I am guilty
...[intervenes]

CHAIRPERSON: You must go and say ...[indistinct] and they decide how to deal with you?

MR KOKO: And they decide how to deal with you but – and it is written in black and white.

CHAIRPERSON: Ja.

MR KOKO: It says, if I may quote:

20 “The procurement and tender committee cannot withhold payment to a supplier because of internal governance process.”

CHAIRPERSON: Okay, I think it might be – that might be a very fair approach in the sense that if the other party to the contract acted in good faith then – and it has done its

party, it has performed the work, they get paid because sometimes when just because of some irregularity and sometimes no matter how small the irregularity then a party refuses to pay yet the other party has performed, maybe spent money to perform as well, it can be quite unfair sometimes.

MR KOKO: Ja, I am simply saying to you Chair it is not the gospel of Moses, it is what Eskom framework says, unless the other party did not act in good faith, in other
10 words unless the other party was part of ...[intervenes]

CHAIRPERSON: Was party to the irregularity.

MR KOKO: Was party to the irregularity then there's a problem.

CHAIRPERSON: Ja, no, no, that is fine. Well Mr – we will let Mr Seleka ...[intervenes]

MR KOKO: Chair I can ...[indistinct]

CHAIRPERSON: Oh he is going to deal with it now.

ADV SELEKA SC: Chair I have it.

CHAIRPERSON: Ja okay.

20 **ADV SELEKA SC:** But as we go into it Chair, and this is a legal matter, ...[intervenes]

CHAIRPERSON: You can reach for the file if you want to.

ADV SELEKA SC: I have it ...[indistinct] I will do that.

CHAIRPERSON: Okay, okay, right.

MR KOKO: It is bundle, that is MK49, in Bundle 15.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes I will give you the reference.

CHAIRPERSON: Yes, yes okay.

ADV SELEKA SC: Chair as we do that I just want to underscore that by just – and I appreciate Mr Koko is not a lawyer, irregularity is one thing, unlawfulness is another. Here this contract is not just irregular, this contract is unlawful and unenforceable, for want of compliance with a legislative requirement.

10 **CHAIRPERSON:** H'm.

ADV SELEKA SC: Now let's go to what Mr Koko is drawing to your attention. It is in Eskom Bundle 15[b], and that is on page 613. So this is – the document is Eskom Procurement and Supply Management Procedure.

MR KOKO: Give me the page?

ADV SELEKA SC: Page 613, but Chair you have to read that in context with where the paragraph starts.

CHAIRPERSON: But let's start with what is it that we are looking for, because if Mr Koko says this policy says in fact
20 the mere fact that a contract is irregular doesn't mean that Eskom must withhold payment to the other particular contract even though the other particular contract has acted in good faith and has performed to the satisfaction of Eskom, unless you say no that is not what it says, I don't need to look at it now, I can look at it later.

ADV SELEKA SC: Okay.

CHAIRPERSON: And he goes on to say he says Eskom must pay if the other party has acted in good faith and they have performed their side of the bargain to Eskom's satisfaction, so if that is uncontested we don't need to really go there, I can look at it later, but if it's contested then I will look at it.

ADV SELEKA SC: The paragraph is qualified Chair.

CHAIRPERSON: Yes.

10 **ADV SELEKA SC:** It is heavily qualified.

CHAIRPERSON: Okay.

ADV SELEKA SC: Let's go to it, straight to it, because ...[intervenes]

CHAIRPERSON: Is that ...[indistinct]?

MR KOKO: Yes, 2.6.7, paragraph ...[intervenes]

ADV SELEKA SC: 2.6.7, we're looking ...[intervenes]

MR KOKO: Paragraph 8.

ADV SELEKA SC: The bullet point, the third bullet point.

CHAIRPERSON: Okay.

20 **ADV SELEKA SC:** So this says, and Chair look at the heading, "Condonation of Irregular Procurement".

CHAIRPERSON: Ja.

ADV SELEKA SC: Now I have made a distinction between an irregularity and a nullity.

CHAIRPERSON: H'm.

ADV SELEKA SC: Because here is the irregularity in the procurement, it is a process related defect.

CHAIRPERSON: H'm.

ADV SELEKA SC: It is not a substance related defect.

CHAIRPERSON: Well an irregularity I guess depending on the circumstances could go to process, it could go to substance, it would depend, I don't know here, but I don't think all irregularities just go to procedure or process, I think some might go to process.

10 **ADV SELEKA SC:** Some might go to substance, the one ...[intervenes]

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja, then you have whenever an Eskom employee procures assets, goods or services by any means without adherence to the approved procurement framework, now that is important Chair, and that is why I am emphasizing here is procedure.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** The condonation process must be followed in order to give effect to the irregular procurement and enable payment to the supplier.

CHAIRPERSON: Yes. So there needs to be condonation first, then there could be payment?

ADV SELEKA SC: Yes, then there could be payment, and let me skip the first two, they are important those bullet

points, but let me skip them, it says:

“the irregular procurement must be dealt with as follows involving three separate but simultaneous steps.”

CHAIRPERSON: Well if you say they are important maybe we should ...[intervenes]

ADV SELEKA SC: We should read them?

CHAIRPERSON: Ja.

ADV SELEKA SC: The first one is:

10 “a disciplinary/remedial process.”

CHAIRPERSON: The irregular procurement must be dealt with as follows, involving three separate but simultaneous steps.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, continue.

ADV SELEKA SC: One, or bullet one.

20 “A disciplinary/remedial process where the employee who committed an act of financial misconduct may be disciplined according to the approved HR/IR policies and procedures. This is in compliance with the PFMA requirement or the effecting of disciplinary action if irregularities have occurred within the execution of procurement.”

Bullet point 2 says:

“An internal governance process due to a deviation

from the approved procurement framework all conditions must be launched by the PTC Secretariat with the [Risk & Governance Trends Analysis and Commercial Risk Control Departments].”

Mr Koko can you help us with what does PTC stand for?

MR KOKO: Procurement Tender Committee.

ADV SELEKA SC: Procurement and Tender Committee, thank you. With Group Technology and – wait – all conditions must be lodged with the Procurement Tender
 10 Committee Secretariat with the Risk & Governance Trends Analysis and Commercial Risk Control Departments within Group Technology and Commercial. Where a risk assessment must be conducted in consultation with the line management of the defaulting employee, in order to determine the risks faced by Eskom as a result of the procurement irregularity and any specific actions that need to be taken in order to rectify or prevent the irregularity from reoccurring. The R & G, which is Risk & Governance Department, will follow up with the relevant line managers
 20 on the status of the corrective, preventative or disciplinary processes to be taken within the agreed timeframes and will report thereon via the Senior Manager Risk and Governance to the Group Commercial and Management Committee, appear from their office and Group & Divisional Executives.

And bullet point 3 Chair is the one Mr Koko is referring to. A payment process to the supplier which reads:

“The relevant procurement tender committee is required to approve the payment to the supplier against a valid invoice and to the extent that Eskom has a valid contractual obligation to pay for the assets, goods or services delivered. Unless otherwise advised by the Eskom Legal Department
10 a Procurement Tender Committee is not committed to unduly delay or withhold payment due to a supplier based on internal governance issues.”

So that is why I am saying is heavily qualified Chair.

CHAIRPERSON: What are you relying on to say that? What qualifies it?

ADV SELEKA SC: It reads - the relevant PTC is required to approve the payment to the supplier against number one there must be a valid invoice and number two to the extent that Eskom has a valid contractual obligation to pay. If
20 their contract is a nullity Chair it is unenforceable against the SOE and then you have another issue here, unless ...

CHAIRPERSON: Unless?

ADV SELEKA SC: Unless otherwise advised by the Eskom Legal Department which means you also need them to be made aware of the – in this case the irregularity in

order to give advice one way or the other. Then the ultimate step ...[intervenes]

CHAIRPERSON: The qualification you are talking about the one based on that part of the page where it says to the extent that Eskom – that says it is required to approve the payment to supply against a valid invoice and to the extent that Eskom has a valid contractual obligation to pay for the excess goods or services.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** And of course – ja – is it – that is the one.

ADV SELEKA SC: Yes that is the – that is...

CHAIRPERSON: Yes. But ...

ADV SELEKA SC: And then unless otherwise.

CHAIRPERSON: Well – well you see ordinarily is the position not that between two contracting parties if there has been non-compliance with something in terms of a contract or non-compliance with whatever else in certain circumstances the party who otherwise would be able to rely on the non-compliance not to perform his or her part can
20 waive that for whatever reasons or condone that – that would be within their – their power. If they want to take the point they take the point and of course there can be litigation after that.

And of course if the one party has already performed then issues of unjust enrichment and all of those things at

common law would arise but in recent times is the position not that we have seen particularly with regard to contracts, tenders and so on involving government departments and SOE's where even if the contractors declared by court to be unlawful the court would nevertheless say what would be just and equitable in the circumstances.

You might recall the cash pay master contract and the decision of the constitutional court in regard to that.

So where it is accepted it the contract was unlawful
 10 but nevertheless to say at a practical level if we just say it was unlawful that is the end of everything it might work out an injustice on the other party or on a party as in the case of the cash pay master services that related to social grants it could affect innocent people you know.

So the court says it was unlawful but for a certain period of time we will un – accept – we will allow this unlawful contract to be continued with and for – to be dealt with as if it was lawful. So one has those things.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But those are legal issues.

ADV SELEKA SC: Yes.

CHAIRPERSON: Those are legal issues.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Which one maybe could leave until later.

ADV SELEKA SC: Yes.

CHAIRPERSON: But from your side you can obviously as you – what you believe you want to pursue – to explore all options – all I am simply saying is...

ADV SELEKA SC: Yes.

CHAIRPERSON: The – it may be that to the extent that Eskom may have taken the approach that just because there is an irregularity does not mean we will never pay. We will check whether the other party has acted in good faith. We will check whether the other party has performed its part to
10 our satisfaction and if it acted in good faith and it has performed its part of the deal in good faith to our satisfaction we will pay and deal with our own employees or officials in terms of the irregularity as a way of being fair because we have benefitted from their services. So – so – but I think maybe something that can be looked at.

ADV SELEKA SC: Yes.

CHAIRPERSON: At – at later but you might wish to say something before we move on.

ADV SELEKA SC: Yes. Chair just to say in this matter the
20 matter did come to court and Chair is correct in other matters where third parties are involved you may want to say well look you will affect an adversely innocent third parties just carry on with this contract.

In this case when it – when the matter went to court to review McKinsey and Regiments were all – Trillian were

ordered to repay the money. In fact McKinsey offered to pay the money before the judgment was out. Trillian was fighting it that very ultimately ordered to pay.

So in this case the money they were ordered to repay and issues of unjustified enrichment did not arise. But that is because Chair there is a distinction where you fail to follow your own internal processes and the party you contracting with does not know that. That is the Chair quant rule situation where well your directors represented to me
10 they have got the approval – well they complied with internal processes you cannot tell me otherwise after I have contracted with you.

But when it is a matter of law and as the Chair says we can deal with that in due course. It is a different matter and in particular in this case where..

CHAIRPERSON: Deal with it some other time.

ADV SELEKA SC: Yes.

CHAIRPERSON: But generally speaking my impression is that if you are supposed to follow a procedure or if the
20 procedure was legally binding and you do not follow it that should result in a negative. If it is a procedure where that was not legally binding that might be different. So – but let us move on.

ADV SELEKA SC: Yes.

CHAIRPERSON: And – but you can then explore whatever

you wish to explore.

ADV SELEKA SC: Yes Chair

MR KOKO: But Chair I have to comment.

ADV SELEKA SC: Yes please comment.

CHAIRPERSON: Mr Koko you do not – you cannot resist.

MR KOKO: This interaction is about me you must – you cannot – I may not be there Chair when you – when you deal with it at the end (talking over one another).

CHAIRPERSON: No, no, no your counsel will be able to
10 make an input.

MR KOKO: But I need to say.

CHAIRPERSON: But – ja – say something. Ja say something ja.

MR KOKO: Because of all the people that will be deciding I was the only one who was there.

CHAIRPERSON: Ja.

MR KOKO: So at least you need to consider.

CHAIRPERSON: No, no you can say something.

MR KOKO: My position. At all material times up until
20 November in my mind – up until ...

CHAIRPERSON: 2015.

MR KOKO: 2015 February/March

CHAIRPERSON: Ja.

MR KOKO: At all material ...

CHAIRPERSON: March – February/March 2016 yes.

MR KOKO: 2016. The contract was lawful and there was no issue. Post March the issues of compliance came. There is two issues. One was National Treasury which was a gate keeper and there was condition precedent that relates to the 30% in 00:09:36. And remember now I was not involved hands on and I – and I can tell you now and I have to say this because I think I see where Mr Seleka is going. Mr Seleka is trying to – is going to a point where he is saying you knew about the payment you did nothing and therefore
10 you are complicit.

CHAIRPERSON: You must wait until he says so otherwise you could spend a lot of time on the – only to find that he is (talking over one another).

MR KOKO: I accept that.

CHAIRPERSON: But when he does say you can deal with it.

MR KOKO: But all what I want you to know is that all these issues were ventilated at the board – at the BTC and

CHAIRPERSON: 2015

MR KOKO: Not 2015 but certainly 20

20 **CHAIRPERSON:** 2016

MR KOKO: 2016. I have given you a date already.

CHAIRPERSON: Ja okay.

MR KOKO: 13 December, 8 August and 21 June.

CHAIRPERSON: Ja.

MR KOKO: 2016.

CHAIRPERSON: Okay.

MR KOKO: All these payments and were condoned for the for lack of a better word at the board and I had nothing to do with them. Just – I just want you to know that.

CHAIRPERSON: Ja no that is fine. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Just before I go there.

ADV BARRIE SC: Chair may I say something?

CHAIRPERSON: Yes.

ADV BARRIE SC: This issue relates to the validity of the
10 MS.

CHAIRPERSON: Ja.

ADV BARRIE SC: And the reason that it was regular related to provision of public law and that is the irregularity and the law on that is with respect very clear is that until it is set aside that administrative act which in this case was in conclusion of the contract remains valid and the court may set it aside and then of course things are what would be equitable under the circumstances or even although it was irregular and hence unlawful but until the – it reaches that
20 stage it cannot simply be regarded as a nullity and that simply arises from the presumption in administrative law of regularity is it needs to be set aside so it is actually quite a number of complex issues of law that arises in this particular context in the enrichments sphere as well.

CHAIRPERSON: Ja.

ADV BARRIE SC: But I just wanted to make that point,.

CHAIRPERSON: No that is fine. That is fine. Okay let us continue Mr Seleka.

ADV SELEKA SC: Thank you Chair. Then I wish to refer Mr Koko to page – on the same bundle 14 (c) 811.

MR KOKO: Not – thought you were in Bundle 15 – can I put the 15 away?

ADV SELEKA SC: Ja that you can put aside. The one about the supply chain management – yes. Go back to 14(c) page

10 811.170

MR KOKO: Page 48.11.1.

ADV SELEKA SC: Page 811

MR KOKO: Yes.

ADV SELEKA SC: .170. Chair I wish to be fairly quick on this.

MR KOKO: I am there.

ADV SELEKA SC: Yes.

CHAIRPERSON: Page 811.8170.

ADV SELEKA SC: .170

20 **CHAIRPERSON:** I am sorry 811.170

ADV SELEKA SC: Yes.

CHAIRPERSON: Of Eskom Bundle 14.

ADV SELEKA SC: Yes (c).

CHAIRPERSON: Have you got it.

MR KOKO: I am there Chair.

CHAIRPERSON: Okay.

MR KOKO: I am very familiar with this document.

CHAIRPERSON: Okay.

ADV SELEKA SC: So this is an email from Mr Prish Govender Wednesday 2 September 2015. It is addressed to Mr Koko he has copied in is Mr Singh and Edwin Mabelane – Subject is Feedback on McKinsey negotiations the attachment is feedback on the negotiations. Final pack pdf and he writes:

10 “Hi Matshela please find attached the above
for your attention.”

Now this is September 2015 before the letter of acceptance is signed by Mr Edwin Mabelane in December.

20 “So please find attached above for your
attention the first three pages is a cover
letter from myself providing an executive
update. Section 3 of the cover letter kindly
requests your intervention to resolve certain
key issues. Kind Regards Prish Govender
Program Director Group Capital Division, GM
Commodity Sourcing acting Group
Technology and Commercial Division.”

Mr Koko was Mr Govender reporting to you?

MR KOKO: No Sir.

ADV SELEKA SC: Is he is the same department as you but

in a different division?

MR KOKO: No Sir.

ADV SELEKA SC: Please explain his designation.

MR KOKO: Commodity sourcing was – it is in Group Commercial.

ADV SELEKA SC: Yes.

MR KOKO: Group Commercial was in Finance.

ADV SELEKA SC: Group Tech – Group Technology and Commercial. So what was your position at the time again?

10 **MR KOKO:** I was the Group Executive Technology and Commercial Chair. When I was with suspension Group Commercial and Technology was split. The name was kept but Commercial when I came back on the 20th of July the Commercial part was into – was 00:15:31 into Commercial. So Mr Govender reported to Mr Anoj Singh.

ADV SELEKA SC: Group Technology Commercial is that – is that position your explaining consistent with the feedback of October you gave.

MR KOKO: That is correct Chair.

20 **ADV SELEKA SC:** Is that correct. Oh Chair I just want to – you signed the feedback is 22 October..

MR KOKO: I signed it on the 6th of October 2015.

ADV SELEKA SC: And your position was Group Executive Group Technology and Commercial.

MR KOKO: That is correct Chair and the point that I am

making that you will find in Eskom is that at that point when I came back Group Commercial and Technology was in transition of being split but I was in the office so I carried the office but the commercial part of the Group Technology was in Commercial – was in the CFO. The sort – the cutting happened effectively on the 23rd of October 2015.

ADV SELEKA SC: So – so in September you were still in that position.

MR KOKO: Yes.

10 **ADV SELEKA SC:** So Mr Prish Govender is in Group Technology and Commercial Division.

MR KOKO: Yes.

ADV SELEKA SC: Which is where you were the GE.

MR KOKO: Yes.

ADV SELEKA SC: You are saying he reported to you.

MR KOKO: No.

ADV SELEKA SC: Even in September

MR KOKO: Yes.

ADV SELEKA SC: Who reported to you – Edwin Mabelane?

20 **MR KOKO:** No Chair. Edwin Mabelane was an acting in my position.

CHAIRPERSON: When you came back.

MR KOKO: When I was on suspension. That is when the re – if you look – if you read Mr Mabelane's affidavit he deals with this topic I think quite nicely. That in my absence a

restructuring of the commercial division started and the second 00:18:05 were migrated to the CFO. When I came back that process was unfolding. I deal with the topic in my main affidavit. So even though he was in my box but the reporting line was in the CFO until the 23rd of October when it was finally formalised.

ADV SELEKA SC: Are you talking about Mr Edwin Mabelane now?

MR KOKO: Correct. No, no I am saying you asked about Mr
10 Mabelane I said Mr Mabelane was acting when I was on leave.

ADV SELEKA SC: Ja but I am talking in September 2015.

MR KOKO: When I was in September 2015 Chair or not even in September 2015 – in June in July 20th 2015 the restructuring commenced and the commercial people even though they were in my box they were officially reporting to the CFO and that process of restructuring was finalised and concluded

CHAIRPERSON: On the 23rd October.

20 **MR KOKO:** On the 3rd of October when the – they did not only report there but they took..

CHAIRPERSON: They moved out of your...

MR KOKO: They moved out of my ...

CHAIRPERSON: Oh out of your life.

MR KOKO: Out of my life completely. Yes. So – so in – at

this point we had a transition period.

CHAIRPERSON: Ja.

MR KOKO: That – but the understanding was very clear commercial in the CFO and that happened before I came back from suspension.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: So the covering letter is on the next page.

CHAIRPERSON: So – I am sorry just to – to get final
10 clarification. Would that mean that those people who were reporting to the finance department or the CFO when – during the restructuring. Does that mean that before your suspension they were reporting to you.

MR KOKO: They were reporting to me.

CHAIRPERSON: Okay.

MR KOKO: They were reporting to me before my suspension.

CHAIRPERSON: So something happened while you were on suspension.

20 **MR KOKO:** Correct.

CHAIRPERSON: They began restructuring.

MR KOKO: Correct.

CHAIRPERSON: When you came back some of the people that had been reporting to you before suspension were now reporting to the CFO and that restructuring continued until

the 23rd when it was completed.

MR KOKO: Indeed Sir.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: The – this covering letter he refers to is on the next page 811.171 and he said:

“Section 3 of the cover letter kindly requests your intervention to resolve certain key issues.”

The letter is dated 2 September 2015 and he
10 addresses to you:

“Dear Mr Koko. Title is Feedback McKinsey negotiations Top Engineers Program the current status.”

Now I am not going to read all that – let me go to what he says requires your intervention which is on the next page Key 811.179 he said Section 3. Section 3 says:

“Summary of key items to date requiring EXCO intervention.”

3.1 says:

20 “Eskom legal is of the view that an application for deviation from National Treasury guidelines on the use of consulting needs to be submitted. This deviation is based on the fact that the guidelines is not specific on a risk based approached to

contracting. The teams currently finalising the application with the office of the acting CEO.”

Did you make any intervention in regard to that Mr Koko?

MR KOKO: No Chair. Chair no I did nothing. I did nothing. I am giving you a straight answer but I want to follow up.

CHAIRPERSON: For a straight question.

MR KOKO: Ja. Every time I give you – my counsel gives
10 me a lecture on how to answer he said I must not waste time.

CHAIRPERSON: No.

MR KOKO: My counsel tells me answer the Chair and then you can go. So the answer is no.

CHAIRPERSON: Ja no that is fine.

MR KOKO: Chair the – this document is preceded by an email of the 31st of August 2015 and it is on page 811.168 – there is two pages.

CHAIRPERSON: Point 168?

20 **MR KOKO:** 8.68. 811.168.

CHAIRPERSON: Okay. Yes.

MR KOKO: And you know Chair my apologies to abuse you but Ms Mothepu says I was – I used the term I was the main negotiator. That is not the term she used. I went back.

CHAIRPERSON: Okay.

MR KOKO: She used a term I was central.

CHAIRPERSON: Oh okay.

MR KOKO: She was central.

CHAIRPERSON: Ja okay.

MR KOKO: That is the term she used.

ADV SELEKA SC: Yes, no I did say I cannot recall.

MR KOKO: Yes.

ADV SELEKA SC: Main negotiator.

MR KOKO: Yes and I was saying to you she was wrong
10 because if you look at this email on page 168 a person who
is central to the negotiations would not write to the
negotiating team. Remember now I am writing to the team
that is appointed by the board tender committee.

CHAIRPERSON: Yes I remember you made the point last
time.

MR KOKO: Right. So what I am saying to you is the basis
of this letter – of this email was because it was up – it was
after the meeting of the board of the 22nd of July 2015 where
the board says go and put a corporate plan contract to deal
20 with the design to cost. And the basis of this email was to
check on the progress that the team is making. If the team
came to me and says it is all systems go I would have not
set up a separate contract with fixed rate that is fully
compliant with the National Treasury. I would have said to
them sign because I have got this urgency.

CHAIRPERSON: Okay.

MR KOKO: Once they came with this lot of interventions, I decided I am not getting involved here. The team has – they have been appointed by the board, they have been given the mandate they must live within the authority. If they need any intervention, the intervention can only come from the authority that gave them not me – I left them and went to do a separate contract that I signed and initialised on the 29th of September 2015 that was eventually signed in 2016 a year
10 later by Mr Mabelane. So I did nothing Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Well...

CHAIRPERSON: Mr Seleka

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Just remind me what are the topics that still remain to be dealt with in Mr Koko's evidence?

ADV SELEKA SC: Yes.

CHAIRPERSON: At the moment it is transactions that you are dealing with.

20 **ADV SELEKA SC:** The transactions.

CHAIRPERSON: Ja.

ADV SELEKA SC: We are trying to finalise McKinsey Trillian. The other transactions will be in relation to Tegeta.

CHAIRPERSON: Ja.

ADV SELEKA SC: And I – well the plan was before we to

get to Tegeta because it is quite heavy we could get out of the way the travel to Dubai.

CHAIRPERSON: Ja. Ja. No that is fine I just wanted to have an idea.

ADV SELEKA SC: Ja.

CHAIRPERSON: So we are busy with McKinsey.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then there is the issue of the travelling.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: And then it is Tegeta.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Okay. No that is alright. Continue.

ADV SELEKA SC: Ja we – we will also briefly touch on – associated with the travel Mr Koko links or otherwise or relations or otherwise with the Gupta's

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: Alright.

20 **ADV SELEKA SC:** Ja Mr Koko okay – the thing is I ask you one question you answer it by giving ...

MR KOKO: I gave you direct answers.

CHAIRPERSON: Well Mr Koko is following his counsel's advice.

MR KOKO: I give a direct answer Sir – I did nothing.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. Because there is a problem with this agreement you say you signed as well and I do not want to go there because we did go into it when you first appeared.

MR KOKO: Chair I have answered the question.

ADV SELEKA SC: Ja thank you. Thank you. The Chairperson for the Chairperson's benefit Mr Koko if you did nothing is it not surprising because as you told the
10 Chairperson last time you signed what I have now seen is called the position paper which adopts the treasury regulations of 2013/2014. It came into effect on the 1st of January 2014.

MR KOKO: I confirm I signed that.

ADV SELEKA SC: Yes. In August 2014 you signed it.

MR KOKO: I confirm I did that.

ADV SELEKA SC: And that is the cost containment and you appoint consultants on the basis of the fee, correct?

MR KOKO: I confirm that.

20 **ADV SELEKA SC:** I would have thought in September 2015 which is the year later when Mr Prish Govender says to you we need your intervention on Section 3 and the first foremost item on that section.

CHAIRPERSON: On Instruction 3 or Section3.?

ADV SELEKA SC: He said Section 3.

CHAIRPERSON: Okay.

MR KOKO: Compliance with National Treasury.

ADV SELEKA SC: Yes.

MR KOKO: Chair I am very familiar with this document – I know it very well.

CHAIRPERSON: Sorry.

MR KOKO: I am very familiar with this document.

CHAIRPERSON: Ja. No, no, no the one thing that I have noticed is that you read Mr Koko – you read these
10 documents and you know where – what is what.

ADV SELEKA SC: And he watches Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: And he watches. Ja I would have thought that being familiar with that specific issue he was raising in 3.1 you would have done something – so I am surprised when you say you did not – you did nothing.

MR KOKO: Ja.

ADV SELEKA SC: So if you do not have an answer to that that is okay. I am just expressing myself.

20 **MR KOKO:** No, no. I do. Chair it is not surprising at all.

ADV SELEKA SC: Ja.

MR KOKO: My first day when I came to work I sent an email to Mr Ngubane.

CHAIRPERSON: 20 July

MR KOKO: 20 July and I told him we need to comply to the

cost containment the requirement of National Treasury or we get a – an approval from National Treasury.

CHAIRPERSON: You said you sent an email to?

MR KOKO: Mr Ngubane.

CHAIRPERSON: The Chairman.

MR KOKO: That is the email – one of the emails that he denies that I discussed it with him.

CHAIRPERSON: Ja okay.

MR KOKO: And I also told him that Mr Ngubane once he
10 understood what we need to do he was very clear to Ms Daniels, comply or we will get the approval from Mr Treasury. At all material times, that is what directed me. Guys, you know the rules. You comply or you get... You get national consult... division. There is... So I did not have to get(?) anything. You know the rules, chaps. You must comply or you must go to Mr Treasury. Mr Treasury must agree with you but you cannot simply not comply. And I have no other interventions to do and the board, as a matter of fact and that is what I told Dr Ngubane, the board
20 has no authority to let you carry on without complying. Ja, look at this. There is nothing you could have done. It is as simple as that.

CHAIRPERSON: So is your answer that: I did not do – that you did not do anything because you had already clear to them what they were supposed to ...[intervenes]

MR KOKO: Exactly.

CHAIRPERSON: Ja.

MR KOKO: They knew my position.

CHAIRPERSON: Ja, okay.

MR KOKO: They knew exactly what ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...answer will get for me.

CHAIRPERSON: H'm. Okay.

ADV SELEKA SC: Yes, I remember those emails which
10 you say are to Dr Ngubane, which he has denied, but I do
not recall in any of those emails that you are saying you
need Treasury approval.

MR KOKO: Chair, go to my transcript. I do not think we
should waste your time. My transcripts are very clear of
my discussion with Dr Ngubane. It was all about National
Treasury's compliance.

CHAIRPERSON: Remember you were saying, when you
were giving evidence at some stage, that you raised I think
the issue with him and you said you listened to you very
20 attentively ...[intervenes]

MR KOKO: Exactly.

CHAIRPERSON: And once he saw your point, he ran with
it.

MR KOKO: It was on this point, exactly.

CHAIRPERSON: Okay.

MR KOKO: So we are wasting your time if you put... The transcript will show this.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Chair?

CHAIRPERSON: H'm?

ADV SELEKA SC: This matter was decided by BTC. Dr Ngubane was not a BTC. So ...[intervenes]

CHAIRPERSON: But that does not necessarily mean he did not send an email to him or ...[intervenes]

10 **ADV SELEKA SC:** ...discuss with him.

CHAIRPERSON: Or discussed with him as the chairperson of the whole board.

ADV SELEKA SC: I... Yes, I have the emails which Mr Koko sends out to Dr Ngubane.

CHAIRPERSON: Yes.

ADV SELEKA SC: I have opened to them. Maybe Mr Koko should check and tell us which one says to Dr Ngubane you need Treasury approval ...[intervenes]

MR KOKO: No, Chair ...[intervenes]

20 **ADV SELEKA SC:** ...for the MSA.

CHAIRPERSON: H'm.

MR KOKO: Chair, I make a proposition to you that of all the emails I have sent to Dr Ngubane, I am happy to deal with them one by one, explain to you why I sent to them.

CHAIRPERSON: Yes.

MR KOKO: Sent those emails through to him. You gave us that opportunity. I took that opportunity to deal with two of them. Both of them on that latch(?) the MSA. And I told you that the reason I sent this Dr Ngubane is because the board was carried away giving the cost constraints at the time to go with the risk approach which started in my time before I was expanded. And I told Dr Ngubane that you cannot proceed on this line until or and unless you have National Treasury's approval. The transcript will deal with
10 that straightforward.

CHAIRPERSON: What you may wish to do Mr Seleka ...[intervenes]

ADV SELEKA SC: Yes, Chair.

MR KOKO: I mean, it is quite simple here, Chair.

CHAIRPERSON: Ja, ...[intervenes]

MR KOKO: Mr Seleka's assistants are just quick. They can just go to the transcripts

CHAIRPERSON: what you may wish to do if there is an issue about what Mr Koko may have said or did not say in
20 his evidence about his discussion with Mr Ngubane or the email would be that maybe your junior look it up, check that. If necessary, Mr Koko is coming back on Monday, is it not?

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes. That can be ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: ...clarified on Monday.

ADV SELEKA SC: Yes.

CHAIRPERSON: Or even by way of a written
...[intervenes]

MR KOKO: Chair, when I come on Monday we will deal with this. It will disappear quickly because I know what I said.

CHAIRPERSON: Ja, okay alright.

10 **MR KOKO:** Yes.

CHAIRPERSON: So maybe your junior can make a note and it can be sorted out on Monday. In the meantime, she can look it up.

ADV SELEKA SC: [Indistinct] [Speaker moves away from microphone – unclear] That is fine, Chair ...[intervenes]

CHAIRPERSON: So that we make progress, ka.

ADV SELEKA SC: We will also – ja, let me not say upfront but... Then Chair, let me – maybe this might be the last or... Mr Koko, let us go to page 829.36 ...[intervenes]

20 **CHAIRPERSON:** What is the page?

ADV SELEKA SC: Six... Page - I mean, 829.36. I
...[intervenes]

MR KOKO: I am there, Chair.

ADV SELEKA SC: Yes. I listened last time, Mr Koko, when you were saying there was a payment to be made in

terms of this agreement.

MR KOKO: [Indistinct] [Speaker is not clear.]

ADV SELEKA SC: That is right.

MR KOKO: Yes.

ADV SELEKA SC: The people are saying there was no figure but there was an amount to be paid. Is my recollection correct?

MR KOKO: No, your recollection ...[intervenes]

ADV SELEKA SC: Not correct?

10 **MR KOKO**: Your recollection is not correct.

ADV SELEKA SC: Okay.

MR KOKO: So ...[intervenes]

ADV SELEKA SC: I have not asked the question yet, except those that you have answered. Now in this document, we have seen that your feedback to the BTC is that the value of the contract is zero, correct?

MR KOKO: No, Chair.

ADV SELEKA SC: Well ...[intervenes]

MR KOKO: The value of the contract ...[intervenes]

20 **ADV SELEKA SC**: Let me read to you then.

MR KOKO: The value of the contract is zero and it has got an upfront payment of R 475 million. That R 475 million, if I recollect, will be deducted out of future invoices. That R 475 million was not in the original mandate and it was... If you read the minutes and I hope

we will go to it now, now that we are in it. You will see the meeting clearly says that the R 475 million is rectified because it was not in the original mandate.

ADV SELEKA SC: Yes, let us go to paragraph – the introduction on page 829.36. It says:

10 “In accordance with the mandate approved by the Board Tender Committee via Round Robin on 6 July 2015 to negotiate with McKinsey to develop the current Top Engineers Programme...”

And it goes on and on. The next paragraph says:

20 “The mandate provided as follows.
The mandate to negotiate with McKinsey and to develop the current Top Engineers Programme into an internal consulting unit that can provide broad class management consulting services, capable of resolving emerging company wide risks by driving the saving and unlocking cash, is hereby approved, subject to the following:

1.1 The contract value will be zero rand as this initiative is self-funding and the project duration is limited to a maximum of three years...”

It is repeated somewhere else in the document.

MR KOKO: Chair, the mandate that was given on the 6th of July 2015, this is the mandate that was given and that is why the... had to be rectified.

CHAIRPERSON: So you say when the mandate was originally given, the value was zero?

MR KOKO: yes.

CHAIRPERSON: But later on, there was this amount of R 475 million ...[intervenes]

10 **MR KOKO**: Yes.

CHAIRPERSON: ...and that was ratified later?

MR KOKO: Yes. And the minutes say so.

CHAIRPERSON: Ye.

MR KOKO: I hope Mr Seleka will take you through the minutes.

CHAIRPERSON: H'm.

ADV SELEKA SC: Chair, let us see how that comes about.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC**: Because it is not ratification of anything.

CHAIRPERSON: H'm?

ADV SELEKA SC: On page 829.39 because that repeatedly says the contract is zero because it is self-funding. It is risk based. Then on page 829.39, you have

two columns. The second two columns and on the right side of it where it starts with:

“McKinsey has not accepted initial position concerning project setup costs and expenses payment all having been paid from real-life savings.

McKinsey would require project setup and fees from value packages as a down payment as McKinsey is of the view that they will be exposed to a higher ...[intervenes]

10

CHAIRPERSON: Whereabout are you reading from it – point 39?

MR KOKO: The second column. 329 there. The second column on the right.

CHAIRPERSON: The one starting with ...[intervenes]

MR KOKO: McKinsey.

CHAIRPERSON: ...McKinsey has not accepted.

MR KOKO: Yes.

ADV SELEKA SC: That is correct, Chair.

20 **CHAIRPERSON:** Oh, okay alright. Okay continue.

ADV SELEKA SC: And the second one is:

“McKinsey would require project setup and fees for value packages as down payment as McKinsey is of the view that they will be exposed to a higher than acceptable cash-flow

risk.

This risk would not be acceptable to McKinsey as a company.

McKinsey has, therefore, proposed.

They receive down payments in view of project setup costs as consulting fees for each work stream, that they will... pay after the commencement of each work packages.

10 The down payments will be paid equally over a predetermined duration of 6 or 12-months depending on the individual work stream...”

And it talks about the size and duration of the down payments will depend on the nature and scope of work of each individual work stream. The – then I – well, let me go to the last bullet point in that block, Chair. It says:

20 “The proposed setup costs plus consulting fees to be paid as a down payment for the procurement stream is R 15 million payable after commencement of each work package at equal tranches of R 8.3 million over a 6-month period.

If McKinsey defaults, immediately initiates a refund process... will have the right to call up the bank guarantee thus ensuring that the

principle of zero rand value contract is maintained...”

And it is as a result of that, is it correct Mr Koko that ...[intervenes]

CHAIRPERSON: Is maintained for Eskom, hey?

ADV SELEKA SC: Is maintained for Eskom.

CHAIRPERSON: H’m.

ADV SELEKA SC: “There will, however, be a timing

10 “difference from cash-flow perspective in terms of realising the zero rand value principle...”

It is correct, Mr Koko, then is it that it is as a result of McKinsey’s insistence that the down payment of R 475 million was arrived at?

MR KOKO: [Indistinct] [Speaker unclear]

ADV SELEKA SC: Say again?

CHAIRPERSON: Well, remember what your counsel said? Straight answer. Yes or no?

MR KOKO: Yes, this is what it says.

CHAIRPERSON: Okay, alright. [laughs]

20 **MR KOKO:** But Chair now that I have answered the answer yes.

CHAIRPERSON: Ja.

MR KOKO: Look at the table.

CHAIRPERSON: Ja.

MR KOKO: On the left-hand side ...[intervenes]

CHAIRPERSON: H'm?

MR KOKO: It has got a title that says approved mandate objector(?) ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: You will find that on 327.

CHAIRPERSON: Ja.

MR KOKO: And on the right-hand side it says results achieved.

CHAIRPERSON: H'm.

10 **MR KOKO:** The team is doing a wonderful thing there, Chair... [Speaker unclear]

CHAIRPERSON: H'm.

MR KOKO: This is what we came to tell you on the 6th of July. This is what we achieved.

CHAIRPERSON: H'm.

ADV SELEKA SC: Yes. The ...[intervenes]

MR KOKO: And Chair... [Speaker unclear]

CHAIRPERSON: Ja.

20 **MR KOKO:** This is what we asked. This is what we achieved. Condone or rectify the deviations. It is up to the Board Tender Committee to say we do not accept or we accept. Now that I have answered the answer yes, I am also giving you information that will benefit you.

CHAIRPERSON: Ja.

MR KOKO: There is nothing wrong.

CHAIRPERSON: Ja-no, that is fine.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: On the next page, Chair, which deals with recommendation.

CHAIRPERSON: Is that point 40?

ADV SELEKA SC: Point 43.

CHAIRPERSON: H'm?

ADV SELEKA SC: Paragraph 5 – paragraph 3. First it
10 says: Financial Evaluation of Negotiated Contract Price.

CHAIRPERSON: I am sorry, I am sorry. I thought you were already reading on page – point 40, were you not?

ADV SELEKA SC: 40?

CHAIRPERSON: You... reading there yet.

ADV SELEKA SC: Oh, yes.

CHAIRPERSON: H'm?

ADV SELEKA SC: Yes. No, I have finished the part I wanted to read there, Chair.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: It is just that you said on the next page. So ...[intervenes]

ADV SELEKA SC: I am sorry.

CHAIRPERSON: ...for me that was the page we were on.

ADV SELEKA SC: Sorry, Chair.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Let us go to page 829.43.

CHAIRPERSON: H'm?

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Yes?

ADV SELEKA SC: And you have paragraph 3, Financial Evaluation of Negotiated Contract Price. And it reads:

10 “Due to the fact that the contract value will be zero rand... is self-funding, Eskom’s financial evaluation was usually not done.

 However, the proposed down payment necessitated that the financial evaluation be done.

 The process is currently in the process(sic) and a financial report will be submitted ...[intervenes]

CHAIRPERSON: The process is currently in progress.

ADV SELEKA SC: In progress.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** Thank you, Chair.

 “...and the financial report will be submitted to the members at the meeting...”

 Was that done Mr Koko?

MR KOKO: I cannot recall, Chair.

ADV SELEKA SC: Then paragraph 4, Recommendation:

“To ratify minor differences between negotiated outcomes and approved mandate parameters Eskom in sub-clause 4.1 to 4.4...”

And that aspect deals with the down payment of R 475 million. Was that down payment made to McKinsey?

MR KOKO: I do not know Chair. The project manager will know. Chair, I consistently have told you that this Commission has got the wrong person answering these questions but I do not know. All that I - all that I am happy
10 with and all what I power(?) over(?) is that the team played open cards to the decision maker and the decision maker made the decision with the eyes wide open and if the – if the money was paid, it was approved.

CHAIRPERSON: Okay. Now, Mr Seleka, I thought you were not so convinced that there was ratification as Mr Koko said. So I thought you were taken us or are we on our way there?

MR KOKO: Chair, there was ratification.

ADV SELEKA SC: Well ...[intervenes]

20 **CHAIRPERSON**: Ja, I know you have said that but I ...[intervenes]

MR KOKO: Because the minutes says so

CHAIRPERSON: But I thought Mr Koko was saying – was kind of questioning whether the ratification was for that or something like that.

ADV SELEKA SC: Well ...[intervenes]

CHAIRPERSON: Well, the way you lost me, it looks I may have misunderstood you Mr Seleka.

ADV SELEKA SC: No. Chair, he ...[intervenes]

CHAIRPERSON: The ratification of 475?

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: H'm.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** He says ...[intervenes]

CHAIRPERSON: You remember whether you were questioning that or not?

ADV SELEKA SC: No, I was not questioning that. I was questioning how the amount came about.

CHAIRPERSON: Oh.

ADV SELEKA SC: The down payment came about.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Sorry, Chairperson.

CHAIRPERSON: For the sake of completeness. Can you
20 tell me – can you show me Mr Koko where the ratification is?

MR KOKO: Mr Seleka must take us to the minutes of the ...[intervenes]

CHAIRPERSON: Of the BTC?

MR KOKO: Yes. It says – it is very clear. I can tell you.

CHAIRPERSON: Look, if you do not find it immediately, it is fine. I thought you might just ...[intervenes]

MR KOKO: No, Chair. Mr Seleka, must take us there. If I am there, I would know it.

CHAIRPERSON: Ja, there are minutes that I see at page 830 but that must be the board because I see it was checked by Dr Ngubane. No, it is fine. We can find it ...[intervenes]

MR KOKO: Chair, I have got the minutes on my computer.
10 So during the break I can take them out and give you.

CHAIRPERSON: Okay no that is fine.

MR KOKO: But I can tell you.

CHAIRPERSON: Ja.

MR KOKO: I stand by this submission.

CHAIRPERSON: Ja.

MR KOKO: And this submission is complied in all aspects. And I remember, I cannot tell you how the ratification came about because I was not part of the Negotiating Team.

20 **CHAIRPERSON:** Ja.

MR KOKO: That I have no knowledge of.

CHAIRPERSON: Ja.

MR KOKO: But what I am happy with, however it came about it was transparent to the BTC and the BTC approved it and in the event that it was paid, which I will not know, it

was paid lawfully.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Sorry, just give me the date of the BTC meeting?

MR KOKO: 21 October 2015.

CHAIRPERSON: Okay.

ADV SELEKA SC: Page reference?

CHAIRPERSON: Let us continue then. If he has found it, you can have a look quickly.

10 **ADV SELEKA SC:** Oh it is not the minutes. It just an extract.

CHAIRPERSON: Ja, do not worry. We will find them the minutes ...[intervenes]

MR KOKO: But even the extracts of the minutes also.

CHAIRPERSON: Ja.

MR KOKO: I have read them before.

CHAIRPERSON: H'm. Okay let us continue. We will see after the break.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Mr Koko, there is also something I was looking for here which I am not immediately finding which is that you also recommended additions to the project.

MR KOKO: I also recommended additions to the project. Chair, that is the affidavit ...[intervenes]

ADV SELEKA SC: Not you personally but ...[intervenes]

MR KOKO: You cannot say you. Eskom has got 44 000 employees.

ADV SELEKA SC: No, Mr Koko. The people who signed the recommendation is – are here. Charles Kalema ...[intervenes]

MR KOKO: Yes.

ADV SELEKA SC: ...Govender, Mandla Nobinga(?) if I am pronouncing it correctly. And then Matshela Koko.

10 **MR KOKO:** Yes. But Chair, Eskom a delegation to authority. What does the Group Executive signs for? It signs for compliance. It does not sign for... He cannot be. So he cannot be. He is not a specialist. [Speaker unclear]

ADV SELEKA SC: Yes.

MR KOKO: So you cannot bring a transaction that is – that has got to do with – let me give you an example of Eskom Treasury where you say because Mr Koko signed therefore he signed for National Treasury. He cannot.

CHAIRPERSON: Well, Mr Koko ...[intervenes]

20 **MR KOKO:** I think ...[intervenes]

CHAIRPERSON: I do not know what exactly you are talking about but to the extent that you are talking about this document that we are dealing with and the fact that you signed it at page 829.44. There is nothing I see on this document or even next to your signature that suggests

that you signed it or any reason other different from the reason why the others signed it. Because the last paragraph is 4 and the heading to 4 is Recommendation and it says:

“To ratify minor differences between negotiated outcomes and approved mandate parameters is contained in sub-clause 4.1 to 4.4...”

So as I read it, it says it is a recommendation for
10 the ratification of the so-called minor differences and that seems to suggest to me that all of these people who have signed here are saying to whatever authority this document is directed at: We are recommending that you ratify these minor differences. That is how I read it.

MR KOKO: Chairman.

CHAIRPERSON: Ja?

MR KOKO: Fortunately, on this transaction ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: I can live with that.

20 **CHAIRPERSON**: H'm?

MR KOKO: Fortunately ...[intervenes]

CHAIRPERSON: You have no problem with that?

MR KOKO: On this transaction.

CHAIRPERSON: Ja.

MR KOKO: I have no problem with that.

CHAIRPERSON: Yes, okay.

MR KOKO: Fortunately, but ...[intervenes]

CHAIRPERSON: Okay.

MR KOKO: But your understanding is not right. Upon this document... ...[intervenes]

CHAIRPERSON: But you see what you are saying may well be so if you say not necessarily in terms of what is written in this document but in – on the basis of what is written in Eskom policies or regulations.

10 **MR KOKO**: Exactly, Chair.

CHAIRPERSON: To say, in terms of those internal documents, when I was the Group Executive signs any document such as this, I am not signing to say I go along with what they are saying in substance.

MR KOKO: Exactly.

CHAIRPERSON: I am signing to say there has been compliance with A, B, C.

MR KOKO: Exactly, Chair.

CHAIRPERSON: Which, of course, I will not know.

20 **MR KOKO**: Exactly, Chair.

CHAIRPERSON: Ja.

MR KOKO: So I am saying to you.

CHAIRPERSON: Ja, h'm.

MR KOKO: The Group Executive Technology and Commercial at that point held the position of the Chief

Procurement Officer who is an official at the Board Tender Committee who is accepted to sign every single document that serves before the Board Tender Committee to be compliant with the requirements of the Board Tender Committee. It is impossible for him to be an expert on everything.

CHAIRPERSON: No, no. I understand I think what should happen in that situation is that something should be written to indicate that that is what you are signing for
10 because in the absence of that, one read this and says:
Oh, Mr Koko was recommending this as well.

MR KOKO: Exactly, Chair.

CHAIRPERSON: Ja.

MR KOKO: But all... It is not done that way.

CHAIRPERSON: Ja.

MR KOKO: And I do hope in defence of my colleagues that are still there, the documents get revised and written that way. The 32-10-34 has got a requirement of who signs for what. So if you go into the 32-10-34 it will tell you
20 ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...who signs and why he signs.

CHAIRPERSON: H'm. Okay.

MR KOKO: So... But this – I mean, I have signed many of these documents which says there you signed to say

everything is correct. So it is impossible. So let me give you an example. I am not a nuclear scientist. When the nuclear scientist in Eskom goes to the... committee, I must sign to make sure that all the governance processes have been done.

CHAIRPERSON: Ja.

MR KOKO: But in any event, Chair. In this document that is before you ...[intervenes]

CHAIRPERSON: Ja.

10 **MR KOKO:** ...I am happy to have signed for it.

CHAIRPERSON: Okay no that is fine.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: So the recommendations then have that 4.4 as well above the signatures or just before the people signing. The SOE format Service Level Agreement, format of contract can be approved with its associated conditions. And then that condition included Clause 22 about you will do nothing until you have received Treasury
20 approval. You remember the clause?

MR KOKO: Yes.

CHAIRPERSON: Just repeat that Mr Seleka.

ADV SELEKA SC: It included a clause twenty
...[intervenes]

CHAIRPERSON: Repeat from the question, from the

beginning. I have missed it.

ADV SELEKA SC: Okay. So 4.4 reads:

“The SLA, Service Level Agreement, which is one of the recommendations format of contracting, be approved with its associated conditions...”

CHAIRPERSON: H’m?

ADV SELEKA SC: And that SLA included, it was 22, in terms of which Eskom undertook that it will do nothing –
10 and I am paraphrasing – until it has received Treasury approval.

MR KOKO: In other words, the gatekeeper to this contract is compliant to National Treasury Regulations. So. And this is normal, Chair, the – because it is a bespoke(?) contract, the Board Tender Committee has to agree to it with the necessary conditions. So this is – I understood exactly what that meant when I signed it.

ADV SELEKA SC: Yes. Thank you. Then lastly is 4.5 which says:

20 “That recommended that the Generation, Primary Energy and Claims Management Value Packages as contained in Appendix 7, 8 and 9 be accepted and included as part of this transaction...”

So those packages, you were recommending that

they be added to the original proposal when they were not there initially.

MR KOKO: Correct, Chair.

ADV SELEKA SC: Is that not consistent with Ms Matshepo's evidence?

MR KOKO: No, Ms Matshepo's evidence is nonsense, man.

ADV SELEKA SC: That you and Mr Anoj added to the original proposal that had been made by McKinsey and
10 Regiments ...[intervenes]

MR KOKO: Chair ...[intervenes]

ADV SELEKA SC: ...or Trillian.

MR KOKO: Chair, this is where you have to demand paperwork. This is where Mr Seleka has to show and tell. Ms Matshepo's emails are after this... December. Ms Matshepo says... after – in November/December and then comes in and says we have added, it is after this Chair, it is not that type of evidence. If you become pedantic and you just follow paperwork, Ms Mothepu is
20 going to be exposed and she needs to come and explain to you why she says I have changed and added items when the additions served on her to the board on the 6 October and she refers to the November and December.

And in any event, Chair, in any event, Ms Mothepu, and here is one issue that makes her argument fall. One

of the things that she says I added was master – vendor procurement, which is not part of 4.5. Vendor procurement is not part of Generation, vendor procurement is not part of [indistinct], vendor procurement is not part of claims management.

So the things that she says I have added, two of them, Duvha insurance and master vending are not part of 4.5. She was blatantly lying to you. Now you need to understand, given the documents here because the
 10 documents are telling you something different and we will get to other witnesses. I mean, I received a document, an affidavit from witness 3, that all of a sudden she says I did not know Mr Koko in 2013 but I saw him and recognised him. Why would somebody who does not know me, saw me seemingly. The evidence before you, Chair, that you must go, when you sit on your own, making your report, must just look at the documents and the evidence.

Duvha insurance, master services, is not part of this 4.5. That is the evidence before you.

20 **CHAIRPERSON:** Mr Seleka?

ADV SELEKA SC: Yes, thank you, Chair. Ms Mothepu – I will read from the affidavit, it is one of the bundles, but Chair, paragraph 14 – bundle 14, let me read. It says:

“From October 2015 my team was introduced to [indistinct] Matshela Koko, Prish Govender, Andre

Pillay and Edwin Mabelane.”

She has you actually written twice.

“Each initiative steering team would meet regularly with designated Eskom representatives at Megawatt Park.”

And 27:

“Matshela Koko and Anoj Singh added initiatives that were not provisionally on the proposal. This were online vending and Duvha insurance claim and
10 rebuild Hitachi insurance settlement.”

MR KOKO: Chair, I am saying to you all the three – and I am glad Mr Seleka and God is with Moses, I always say so, I have got nothing to do with 4.5.

ADV SELEKA SC: So the claims management, there the package is.

MR KOKO: The claims management is Medupi and Kusile, it is building – it is the issue that is on the headline of Maake. They now raise it is Maake saying - before we finish this, before you finish your report, all your witnesses
20 that are star witnesses will be behind bars soon, but anyway. The claim management is Group Capital, it is Maake, it is all the claims in Medupi and Kusile, it is purely Kusile and Medupi and Ingula(?).

ADV SELEKA SC: So are you saying to the Chairperson what Ms Mosilo is saying here as initiatives added, online

vending, Duvha insurance, rebuild Hitachi, were they in the proposal or were they not in the proposal?

MR KOKO: Chair, I am saying to you what is in the proposal is here. What is in the proposal I signed off on it on the 6 August 2015. It served on the board on the 21 October 2015. There is no vendor management here, there is no Duvha systems here. There is no rebuilding of Duvha boilers here. It is things that are added, are tabulated, Chair, you will find them, they are here, they are detailed
10 and they are not added by me, they are added by negotiating team that negotiated them.

ADV SELEKA SC: Okay, so the answer is, no they are not in the proposal.

MR KOKO: Yes.

ADV SELEKA SC: They would not have been part of the MSA.

MR KOKO: Yes.

ADV SELEKA SC: Chairperson, can we go to bundle 16(b) just to finish off on this point?

20 **CHAIRPERSON:** Okay.

MR KOKO: Can I take this away?

ADV SELEKA SC: Ja, just keep it there. 16(b), this is Mr Anoj's bundle. Did I say 16(b)? Ja, so Mr Singh has provided a supplementary affidavit to the Commission. The affidavit starts on page 1016 but I want – I would like you

to go to page 1018, paragraph 11 with the heading:

“Top consultants programme steering committee meeting.”

MR KOKO: I am there, Chair.

ADV SELEKA SC: Is the Chairperson there?

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair. The paragraph 11 reads:

10 “The first Top Consultants Programme Steering Committee meeting was held on 9 February 2016. I attach hereto the PowerPoint presentation as AS5 which was presented on the day setting out *inter alia*:

1. An overview of the MSA.
2. Steering committee terms of reference.
3. Role and responsibility of steering committee.

1 of 2 and 2 of 2 and then 11.4:

“Programme steering and leadership.”

Turn the page:

20 5. The contract currently includes work packages.
6: Work packages initiative proposal and Steerco approvals.”

Now we go to AS5 which is from page 1108 of Eskom bundle 16. So that is the presentation he has provided to the Commission which he said was made through the

Steerco on the 9 February 2016. On the first page, Chair, you see:

“Steering committee meeting agenda.”

You have:

1. Opening and welcome by the Chairman, safety briefing introductions and apologies.
2. Overall description of the mechanics of the contract.”

And there is valid points there:

10 “High level MSA overview, description of the work packages, approval by steering committee.”

And it goes on 3, to deal with the packages. The next page you see members of Steerco. Mr Anoj Singh, their passport photos are there. Mr Anoj Singh is there, the Group CFO, Mr Matshela Koko, Generation.

CHAIRPERSON: Well, the Matshela Koko who appears in that picture does not look very much like the one in front of me.

MR KOKO: It is the same person, Chair, I can confirm.

ADV SELEKA SC: Ja, let us continue.

20 **CHAIRPERSON:** The fault must be with whoever took the picture. Yes.

ADV SELEKA SC: Ja, the rest of the Eskom team is there. Well, ja, those who constituted Steerco and then you have other members from McKinsey and Trillian. Ms Mothepu is also there. Then the agenda is repeated. You

turn the page, Chairperson:

“MSA overview, three year contract, 100% performance-based.”

And, Mr Koko, when I read the three year contract this may – you may or may not be able to comment, it reminds me what Ms Goodson’s evidence in her affidavit that she was told when she joined Trillian in – I think when she joined, in November or December 2015, the activity started there in 2016 that the operations of Trillian are for this
10 dispensation and the dispensation she was told about was a three year period. I thought what a coincidence with this contract being for three years.

MR KOKO: Chair, I have no personal knowledge of the discussions Ms Mothepu had with other people.

ADV SELEKA SC: Ja. Then on the next page, Chair, you have the block talking of:

“Role and responsibilities of steering committee”

And they give you the roles and responsibilities.

1 of 2 and again 2 of 2. Turn the page, Chair to
20 1112:

“Programme steering leadership”

Then you have the steering committee members’ names set out and then under that you have the various packages or initiatives to which the work will relate.

So one is procurement with Mr Edwin Mabelane, as

the first name.

Two is Primary Energy, the first name Luis Mboweni.

Three is Generation and the first name there is Mr Matshela Koko.

Claims is Abram Masango, finance is Anoj Singh.

Mr Koko, so those are the various packages within the MSA.

MR KOKO: Yes and, Mr Chair, I do not want to get
10 emotional and get upset, this – where is – if you take this
as a basis, and really it upsets me now, if you take this as
a basis of what was presented on the 9 February – and I
have a very vague memory of it, it lists the packages. So
if you say Master Services you will see that it cannot fit in
where my name is. It cannot. And if any witness come and
say Mr Koko caused a change or added a topic and that
topic is vendor management or insurance, then you come
here, but it does not fit here. It actually fits in finance
which is what I have always been saying and you will see –
20 look at Ms Mothepu's name. Look at it, Chair, it is under
number 5, it is 1, 2, 3, 4, 5. Do see that? My name is not
there. So she could not have negotiated with me on issues
that under number 5. She is not on number 3 which is
where I would be.

Any package that you add under Generation will

have to be authorised by me. Any package that gets done under finance, where she is, will have to be financed by others and, Chair, once again, once again, I am begging you to just follow the evidence. I have told you that I had a very soft spot for her, I liked her, I like how she carried herself, she had difficulty talking to people in Eskom and I would assist her. If she want to talk to people in Treasury I would pick up the phone and say talk to this young lady. If she want to talk to people in insurance, I would assist

10 her. That is the – I actually tried to play a mentoring role to her but the record speaks for itself, Chair, just focus on the records, forget the gossip. Do not be like Ms Thuli Madonsela who took the gossip. The documents are here, let us stay with the documents.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Ja.

ADV BARRIE SC: Chairman, may I ...[intervenes]

MR KOKO: I apologise, Sir, but I am very emotional because I have been through this hundred times.

20 **CHAIRPERSON:** Mr Barry?

ADV BARRIE SC: The updated version of the bundle 16 has not been sent to us, so we do not have these documents. I did not want to interrupt but they can even be sent to us electronically or emailed to use right now, that is fine, but our bundle stops at page 792 and that was

at the end of March, so we were not given access to the updated bundle. It can just be sent to us even as we sit here.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Chair, I do not believe that is correct because I have asked for this bundle after it was updated to be sent to Mr Ndou. He is nodding his head. Yes [inaudible – speaking simultaneously]

CHAIRPERSON: He is nodding?

10 **ADV SELEKA SC:** Because I was copied in the email that went to him, witnessed his statement.

MR KOKO: Chair, which Mr ...[intervenes]

CHAIRPERSON: I am sorry.

MR KOKO: I think Mr Seleka is right.

ADV SELEKA SC: Yes.

MR KOKO: I remember seeing these document from Mr Ndou.

CHAIRPERSON: Is that so?

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

20 **CHAIRPERSON:** Okay, maybe they were not passed on to Mr Barrie. Ja.

MR KOKO: I think so, Chair.

CHAIRPERSON: Okay, okay, so maybe that is what happened.

MR KOKO: Mr Ndou is right.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Witness 3 ...[intervenes]

MR KOKO: Prof Lourens, I have seen the document.

ADV SELEKA SC: Ja and Prof Lourens because they asked for it.

MR KOKO: Mr Ndou sent them to me.

CHAIRPERSON: Yes, okay, alright.

ADV SELEKA SC: Yes, Mr Koko, the Chair will look at the emails from Ms Mothepu because Ms Mothepu testifies
10 about the emails that she sent to you. I do not think they can be called gossip. The emails say:

“Thank you for meeting with me.”

And go on to say this is what is being – needs to be discussed and then, in some of them, arranges that we should have a meeting.

MR KOKO: And there is no confirmation those meetings took place, to discuss those specific topics, Chair.

ADV SELEKA SC: Yes, but wait, that is not the point.

MR KOKO: What is the point?

20 **ADV SELEKA SC:** What I am saying to you is this. The Chairperson will look at the emails which is not gossip, it is emails that has been sent one, to you – I mean, one, to your PA that copied you and the others are sent directly to you and she is thanking you for having met with you and she also arranges to have a meeting. And she testifies to

the extent of those emails, nothing more, nothing less.

MR KOKO: The Chairman will also look at the transcript that Ms Mothepu says I gave her an Indian man to work with on these topics and this Indian man turns to be my professional assistant who is a black lady. So the Chairman must also take into account that she lied to you. And, Chair, you must also take into account that I responded to none of those emails. I could not respond to any of them because they are not in my scope.

10 **CHAIRPERSON:** Hang on one second, what I wanted to try and remember...

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Is whether, Mr Koko, you accepted that you received those emails but did not respond or whether you disputed that they were sent to you.

MR KOKO: Chair, I cannot even remember receiving those emails.

CHAIRPERSON: Yes.

MR KOKO: I cannot remember receiving those emails and
20 even if I received them I would not have acted on them because they were outside my competency.

CHAIRPERSON: Well, except that if she says she met with you when you know – when you knew you did not meet with her you could respond and say what are you talking about, I never met with you.

MR KOKO: Chair, that is what I am saying to you, I have said it categorically that I have never met Ms Mothepu to discuss the issues that are on those emails.

CHAIRPERSON: Ja.

MR KOKO: I have never, I could not. The best I could do is to refer her to the people that are dealing with those topics.

CHAIRPERSON: But the point that I am putting to you is that if you knew that you did not meet with her and you
10 receive an email from her saying that she met with you and discussed those topics with you that would be all the more reason why, if you did receive such an email from her, it would be necessary to write back and say what are you talking about? I never met with you.

MR KOKO: No, let me tell you a story and let me tell you the fact.

CHAIRPERSON: Ja.

MR KOKO: By the 23rd – all those emails, without fail, are after the 23 October when I was out of that official office.
20 New person was in that office to deal with whatever comes in that office. When you are Deputy Chief Justice and you get promoted, the new Deputy Chief Justice comes in to deal with whatever comes into there.

CHAIRPERSON: No, no, except, of course, that if there are matters that are raised that happened while I was there

and he or she was to verify whether that is actually the position, that person can ask me or refer and say I want to respond this but it happened during your time, what is the position? And then I can say I never had a meeting with that person. That part you understand?

MR KOKO: Chair, nobody came to me to say have you had a discussion with Ms Mothepu? I do not remember getting her emails. I have never responded to her emails. The bulk part of my interactions with her was to help her to
 10 meet people in Eskom, to introduce her to people, to drink coffee with her and other people that were assisting, but I would never deal with insurance, for example. That insurance claim is finance.

CHAIRPERSON: No, no...[intervenes]

MR KOKO: The Group Executive Generation has no competency in insurance. The Group Executive for Generation has no competency in Master Vending. He may know something to do, but it is not his competency.

CHAIRPERSON: But is the position not that even though
 20 you may have moved out of one position or department to another you still use the same email address and therefore the emails would still have come to you if they were sent to you?

MR KOKO: Oh, Chair, I have come to accept – I have come to appreciate why people continued to send me

emails on the issues that I have dealt with in my previous position as a Group Executive Commercial. I now have come to peace with that because I had signed the contract, I had signed the contract. I had signed the corporate plan contract. So people for whatever reason may have not been – may have not accepted that I am out of the role that enabled me to sign those contracts and they probably thought that I have an influence when I was out.

CHAIRPERSON: Mr Seleka?

10 **ADV SELEKA SC:** Chair and I did not want to go into this matter but it is important to see what Ms Mothepu writes in the email because it is not about I am pursuing the matter with Mr Koko when he has already left his office or his position as – whichever position it was. A person who writes – and these emails, we read them, you know, previously. But here is the one of 30 November 2015. She says:

20 “Good day, Matshela, I hope this email finds you well and it was a pleasure meeting you last week. I had a chat with Eric Wood regarding additional financial initiatives that need to be included as part of our balance sheet optimization and cash unlocking.” But that first line that I had pleasure meeting you last week is what we are talking about.

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

ADV SELEKA SC: Which is not gossip.

MR KOKO: I have never denied meeting Ms Mothepu. But if Mr Seleka reads that I have met her to discuss the financial issues that she refers to later is wrong. I have met Ms Mothepu. I have enjoyed interacting with her but to say you have met her to discuss the issues that she raised later, Mr Seleka is wrong.

ADV SELEKA SC: It is not me, there is nothing wrong or right about ...[intervenes]

10 **MR KOKO:** Mr Seleka ...[intervenes]

CHAIRPERSON: Yes, well, yes, if the emails say that is what you met to discuss on a particular occasion it would be the author of the emails.

MR KOKO: No but read it again, Mr Seleka, read that email again.

ADV SELEKA SC: Well, let me read the other one, 5 December 2015.

MR KOKO: No, Chair.

ADV SELEKA SC: And it reads:

20 "Hi Matshela ...[intervenes]

CHAIRPERSON: I am sorry. Do you want him to read the previous one?

MR KOKO: Yes.

CHAIRPERSON: Because you want to listen to it properly?

MR KOKO: Yes.

CHAIRPERSON: Read it, Mr Seleka.

ADV SELEKA SC: Let me read it. I say:

10 “I hope this email finds you well and it was a
pleasure meeting you last week. I had a chat with
Eric Wood regarding additional financial initiatives
that need to be included as part our balance sheet
optimization and cash unlocking financial initiatives
stream. These include the sale and lease-back on
the optic fibre network, prepaid electricity vending,
EFC disposal, Hitachi claims, replacement of
boilers and Duvha insurance claim. We are
currently compiling a business case for these
initiatives and require some information from you
and your team. We would like to set up time early
this week with yourself and your team to source the
information in order to complete the business case
by the end of the week.”

20 **MR KOKO:** Where in that letter does it say she discussed
those things with me? Where in that email does it she
discussed those things with me?

CHAIRPERSON: Well, Mr Seleka, I think he wanted to
refer, as I understand it, to refer to the fact that she says
she met with you.

MR KOKO: She met ...[intervenes]

CHAIRPERSON: But I think he wants to go to another one, I do not know whether that is the one.

MR KOKO: No, no, no, but Chair, there is nowhere in that email where Ms Mothepu says she discussed those issues with me. She says she met me last week, she discussed these issues with others. She did not discuss with me.

CHAIRPERSON: Ja, okay.

MR KOKO: So let that be very clear. She met with me, she discussed these issues with others, not with me
10 because she could not have discussed them with me.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Ja, Chair. Mr Eric Wood or Dr Eric Wood, we know is at Trillian, he is Ms Mosilo's boss. She has gone back after meeting with you to discuss the additional financial initiatives that need to be included and she is saying to you we need more information and they would like time early this week to set up – time early this week with yourself and your team to source the information in order to complete the business cases by the end of the
20 week.

MR KOKO: Excellent and elsewhere – elsewhere, even on Twitter, in her book, she has written a book, she said Mr Koko never gave me audience.

ADV SELEKA SC: Never what?

CHAIRPERSON: Never gave me?

MR KOKO: Audience on these topics. She said Mr Wood had to phone her when she was on her sickbed to say go and wait on Mr Koko's door and when Mr Koko and found me on the door, Mr Koko told me who told you to come here, you are brave. That is her evidence, that is a fact. That is her [indistinct].

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Well, did Ms Mothepu say that she
10 discussed the topics that Mr Koko says were never
discussed with him? Did she say in her evidence or any
email she discussed those topics with him? Let us get that
clear.

ADV SELEKA SC: No, I will recall ...[intervenes]

MR KOKO: the answer is no. The answer is no. Mr
Seleka is not going you a direct answer, the answer is no.

CHAIRPERSON: Yes, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Chair, I have not – I
have not looked at this recently, because I was prepared to
20 ...[intervenes]

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: it is not that type of evidence. If you
become pedantic and you just follow paperwork, Ms
Mothepu is going to be exposed and she needs to come
and explain to you why she says I have changed and added

items when the additions served on her to the board on the 6 October and she refers to the November and December.

And in any event, Chair, in any event, Ms Mothepu, and here is one issue that makes her argument fall. One of the things that she says I added was master – vendor procurement, which is not part of 4.5. Vendor procurement is not part of Generation, vendor procurement is not part of [indistinct], vendor procurement is not part of claims management.

10 So the things that she says I have added, two of them, Duvha insurance and master vending are not part of 4.5. She was blatantly lying to you. Now you need to understand, given the documents here because the documents are telling you something different and we will get to other witnesses. I mean, I received a document, an affidavit from witness 3, that all of a sudden she says I did not know Mr Koko in 2013 but I saw him and recognised him. Why would somebody who does not know me, saw me seemingly. The evidence before you, Chair, that you must
20 go, when you sit on your own, making your report, must just look at the documents and the evidence.

Duvha insurance, master services, is not part of this 4.5. That is the evidence before you.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes, thank you, Chair. Ms Mothepu – I

will read from the affidavit, it is one of the bundles, but Chair, paragraph 14 – bundle 14, let me read. It says:

“From October 2015 my team was introduced to [indistinct] Matshela Koko, Prish Govender, Andre Pillay and Edwin Mabelane.”

She has you actually written twice.

“Each initiative steering team would meet regularly with designated Eskom representatives at Megawatt Park.”

10 And 27:

“Matshela Koko and Anoj Singh added initiatives that were not provisionally on the proposal. This were online vending and Duvha insurance claim and rebuild Hitachi insurance settlement.”

MR KOKO: Chair, I am saying to you all the three – and I am glad Mr Seleka and God is with Moses, I always say so, I have got nothing to do with 4.5.

ADV SELEKA SC: So the claims management, there the package is.

20 **MR KOKO:** The claims management is Medupi and Kusile, it is building – it is the issue that is on the headline of Maake. They now raise it is Maake saying - before we finish this, before you finish your report, all your witnesses that are star witnesses will be behind bars soon, but anyway. The claim management is Group Capital, it is

Maake, it is all the claims in Medupi and Kusile, it is purely Kusile and Medupi and Ingula(?).

ADV SELEKA SC: So are you saying to the Chairperson what Ms Mosilo is saying here as initiatives added, online vending, Duvha insurance, rebuild Hitachi, were they in the proposal or were they not in the proposal?

MR KOKO: Chair, I am saying to you what is in the proposal is here. What is in the proposal I signed off on it on the 6 August 2015. It served on the board on the 21
10 October 2015. There is no vendor management here, there is no Duvha systems here. There is no rebuilding of Duvha boilers here. It is things that are added, are tabulated, Chair, you will find them, they are here, they are detailed and they are not added by me, they are added by negotiating team that negotiated them.

ADV SELEKA SC: Okay, so the answer is, no they are not in the proposal.

MR KOKO: Yes.

ADV SELEKA SC: They would not have been part of the
20 MSA.

MR KOKO: Yes.

ADV SELEKA SC: Chairperson, can we go to bundle 16(b) just to finish off on this point?

CHAIRPERSON: Okay.

MR KOKO: Can I take this away?

ADV SELEKA SC: Ja, just keep it there. 16(b), this is Mr Anoj's bundle. Did I say 16(b)? Ja, so Mr Singh has provided a supplementary affidavit to the Commission. The affidavit starts on page 1016 but I want – I would like you to go to page 1018, paragraph 11 with the heading:

“Top consultants programme steering committee meeting.”

MR KOKO: I am there, Chair.

ADV SELEKA SC: Is the Chairperson there?

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Thank you, Chair. The paragraph 11 reads:

“The first Top Consultants Programme Steering Committee meeting was held on 9 February 2016. I attach hereto the PowerPoint presentation as AS5 which was presented on the day setting out *inter alia*:

4. An overview of the MSA.

5. Steering committee terms of reference.

20 6. Role and responsibility of steering committee.

1 of 2 and 2 of 2 and then 11.4:

“Programme steering and leadership.”

Turn the page:

6. The contract currently includes work packages.

6: Work packages initiative proposal and Steerco

approvals.”

Now we go to AS5 which is from page 1108 of Eskom bundle 16. So that is the presentation he has provided to the Commission which he said was made through the Steerco on the 9 February 2016. On the first page, Chair, you see:

“Steering committee meeting agenda.”

You have:

3. Opening and welcome by the Chairman, safety
10 briefing introductions and apologies.
4. Overall description of the mechanics of the contract.”

And there is valid points there:

“High level MSA overview, description of the work packages, approval by steering committee.”

And it goes on 3, to deal with the packages. The next page you see members of Steerco. Mr Anoj Singh, their passport photos are there. Mr Anoj Singh is there, the Group CFO, Mr Matshela Koko, Generation.

CHAIRPERSON: Well, the Matshela Koko who appears in
20 that picture does not look very much like the one in front of me.

MR KOKO: It is the same person, Chair, I can confirm.

ADV SELEKA SC: Ja, let us continue.

CHAIRPERSON: The fault must be with whoever took the picture. Yes.

ADV SELEKA SC: Ja, the rest of the Eskom team is there. Well, ja, those who constituted Steerco and then you have other members from McKinsey and Trillian. Ms Mothepu is also there. Then the agenda is repeated. You turn the page, Chairperson:

“MSA overview, three year contract, 100% performance-based.”

And, Mr Koko, when I read the three year contract this may – you may or may not be able to comment, it reminds me
10 what Ms Goodson’s evidence in her affidavit that she was told when she joined Trillian in – I think when she joined, in November or December 2015, the activity started there in 2016 that the operations of Trillian are for this dispensation and the dispensation she was told about was a three year period. I thought what a coincidence with this contract being for three years.

MR KOKO: Chair, I have no personal knowledge of the discussions Ms Mothepu had with other people.

ADV SELEKA SC: Ja. Then on the next page, Chair, you
20 have the block talking of:

“Role and responsibilities of steering committee”

And they give you the roles and responsibilities.

1 of 2 and again 2 of 2. Turn the page, Chair to
1112:

“Programme steering leadership”

Then you have the steering committee members' names set out and then under that you have the various packages or initiatives to which the work will relate.

So one is procurement with Mr Edwin Mabelane, as the first name.

Two is Primary Energy, the first name Luis Mboweni.

Three is Generation and the first name there is Mr Matshela Koko.

10 Claims is Abram Masango, finance is Anoj Singh.
Mr Koko, so those are the various packages within the MSA.

MR KOKO: Yes and, Mr Chair, I do not want to get emotional and get upset, this – where is – if you take this as a basis, and really it upsets me now, if you take this as a basis of what was presented on the 9 February – and I have a very vague memory of it, it lists the packages. So if you say Master Services you will see that it cannot fit in where my name is. It cannot. And if any witness come and
20 say Mr Koko caused a change or added a topic and that topic is vendor management or insurance, then you come here, but it does not fit here. It actually fits in finance which is what I have always been saying and you will see – look at Ms Mothepu's name. Look at it, Chair, it is under number 5, it is 1, 2, 3, 4, 5. Do see that? My name is not

there. So she could not have negotiated with me on issues that under number 5. She is not on number 3 which is where I would be.

Any package that you add under Generation will have to be authorised by me. Any package that gets done under finance, where she is, will have to be financed by others and, Chair, once again, once again, I am begging you to just follow the evidence. I have told you that I had a very soft spot for her, I liked her, I like how she carried
 10 herself, she had difficulty talking to people in Eskom and I would assist her. If she want to talk to people in Treasury I would pick up the phone and say talk to this young lady. If she want to talk to people in insurance, I would assist her. That is the – I actually tried to play a mentoring role to her but the record speaks for itself, Chair, just focus on the records, forget the gossip. Do not be like Ms Thuli Madonsela who took the gossip. The documents are here, let us stay with the documents.

CHAIRPERSON: Mr Seleka?

20 **ADV SELEKA SC:** Ja.

ADV BARRIE SC: Chairman, may I ...[intervenes]

MR KOKO: I apologise, Sir, but I am very emotional because I have been through this hundred times.

CHAIRPERSON: Mr Barry?

ADV BARRIE SC: The updated version of the bundle 16

has not been sent to us, so we do not have these documents. I did not want to interrupt but they can even be sent to us electronically or emailed to use right now, that is fine, but our bundle stops at page 792 and that was at the end of March, so we were not given access to the updated bundle. It can just be sent to us even as we sit here.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Chair, I do not believe that is correct
10 because I have asked for this bundle after it was updated to be sent to Mr Ndou. He is nodding his head. Yes [inaudible – speaking simultaneously]

CHAIRPERSON: He is nodding?

ADV SELEKA SC: Because I was copied in the email that went to him, witnessed his statement.

MR KOKO: Chair, which Mr ...[intervenes]

CHAIRPERSON: I am sorry.

MR KOKO: I think Mr Seleka is right.

ADV SELEKA SC: Yes.

20 **MR KOKO:** I remember seeing these document from Mr Ndou.

CHAIRPERSON: Is that so?

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

CHAIRPERSON: Okay, maybe they were not passed on to Mr Barrie. Ja.

MR KOKO: I think so, Chair.

CHAIRPERSON: Okay, okay, so maybe that is what happened.

MR KOKO: Mr Ndou is right.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Witness 3 ...[intervenes]

MR KOKO: Prof Lourens, I have seen the document.

ADV SELEKA SC: Ja and Prof Lourens because they asked for it.

10 **MR KOKO:** Mr Ndou sent them to me.

CHAIRPERSON: Yes, okay, alright.

ADV SELEKA SC: Yes, Mr Koko, the Chair will look at the emails from Ms Mothepu because Ms Mothepu testifies about the emails that she sent to you. I do not think they can be called gossip. The emails say:

“Thank you for meeting with me.”

And go on to say this is what is being – needs to be discussed and then, in some of them, arranges that we should have a meeting.

20 **MR KOKO:** And there is no confirmation those meetings took place, to discuss those specific topics, Chair.

ADV SELEKA SC: Yes, but wait, that is not the point.

MR KOKO: What is the point?

ADV SELEKA SC: What I am saying to you is this. The Chairperson will look at the emails which is not gossip, it

is emails that has been sent one, to you – I mean, one, to your PA that copied you and the others are sent directly to you and she is thanking you for having met with you and she also arranges to have a meeting. And she testifies to the extent of those emails, nothing more, nothing less.

MR KOKO: The Chairman will also look at the transcript that Ms Mothepu says I gave her an Indian man to work with on these topics and this Indian man turns to be my professional assistant who is a black lady. So the
10 Chairman must also take into account that she lied to you. And, Chair, you must also take into account that I responded to none of those emails. I could not respond to any of them because they are not in my scope.

CHAIRPERSON: Hang on one second, what I wanted to try and remember...

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Is whether, Mr Koko, you accepted that you received those emails but did not respond or whether you disputed that they were sent to you.

20 **MR KOKO:** Chair, I cannot even remember receiving those emails.

CHAIRPERSON: Yes.

MR KOKO: I cannot remember receiving those emails and even if I received them I would not have acted on them because they were outside my competency.

CHAIRPERSON: Well, except that if she says she met with you when you know – when you knew you did not meet with her you could respond and say what are you talking about, I never met with you.

MR KOKO: Chair, that is what I am saying to you, I have said it categorically that I have never met Ms Mothepu to discuss the issues that are on those emails.

CHAIRPERSON: Ja.

MR KOKO: I have never, I could not. The best I could do
10 is to refer her to the people that are dealing with those topics.

CHAIRPERSON: But the point that I am putting to you is that if you knew that you did not meet with her and you receive an email from her saying that she met with you and discussed those topics with you that would be all the more reason why, if you did receive such an email from her, it would be necessary to write back and say what are you talking about? I never met with you.

MR KOKO: No, let me tell you a story and let me tell you
20 the fact.

CHAIRPERSON: Ja.

MR KOKO: By the 23rd – all those emails, without fail, are after the 23 October when I was out of that official office. New person was in that office to deal with whatever comes in that office. When you are Deputy Chief Justice and you

get promoted, the new Deputy Chief Justice comes in to deal with whatever comes into there.

CHAIRPERSON: No, no, except, of course, that if there are matters that are raised that happened while I was there and he or she was to verify whether that is actually the position, that person can ask me or refer and say I want to respond this but it happened during your time, what is the position? And then I can say I never had a meeting with that person. That part you understand?

10 **MR KOKO:** Chair, nobody came to me to say have you had a discussion with Ms Mothepu? I do not remember getting her emails. I have never responded to her emails. The bulk part of my interactions with her was to help her to meet people in Eskom, to introduce her to people, to drink coffee with her and other people that were assisting, but I would never deal with insurance, for example. That insurance claim is finance.

CHAIRPERSON: No, no...[intervenes]

MR KOKO: The Group Executive Generation has no
20 competency in insurance. The Group Executive for Generation has no competency in Master Vending. He may know something to do, but it is not his competency.

CHAIRPERSON: But is the position not that even though you may have moved out of one position or department to another you still use the same email address and therefore

the emails would still have come to you if they were sent to you?

MR KOKO: Oh, Chair, I have come to accept – I have come to appreciate why people continued to send me emails on the issues that I have dealt with in my previous position as a Group Executive Commercial. I now have come to peace with that because I had signed the contract, I had signed the contract. I had signed the corporate plan contract. So people for whatever reason may have not
 10 been – may have not accepted that I am out of the role that enabled me to sign those contracts and they probably thought that I have an influence when I was out.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Chair and I did not want to go into this matter but it is important to see what Ms Mothepu writes in the email because it is not about I am pursuing the matter with Mr Koko when he has already left his office or his position as – whichever position it was. A person who writes – and these emails, we read them, you know,
 20 previously. But here is the one of 30 November 2015. She says:

“Good day, Matshela, I hope this email finds you well and it was a pleasure meeting you last week. I had a chat with Eric Wood regarding additional financial initiatives that need to be included as part

our balance sheet optimization and cash unlocking.”

But that first line that I had pleasure meeting you last week is what we are talking about.

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

ADV SELEKA SC: Which is not gossip.

MR KOKO: I have never denied meeting Ms Mothepu. But if Mr Seleka reads that I have met her to discuss the financial issues that she refers to later is wrong. I have met Ms Mothepu. I have enjoyed interacting with her but
10 to say you have met her to discuss the issues that she raised later, Mr Seleka is wrong.

ADV SELEKA SC: It is not me, there is nothing wrong or right about ...[intervenes]

MR KOKO: Mr Seleka ...[intervenes]

CHAIRPERSON: Yes, well, yes, if the emails say that is what you met to discuss on a particular occasion it would be the author of the emails.

MR KOKO: No but read it again, Mr Seleka, read that email again.

20 **ADV SELEKA SC:** Well, let me read the other one, 5 December 2015.

MR KOKO: No, Chair.

ADV SELEKA SC: And it reads:

“Hi Matshela ...[intervenes]

CHAIRPERSON: I am sorry. Do you want him to read the

previous one?

MR KOKO: Yes.

CHAIRPERSON: Because you want to listen to it properly?

MR KOKO: Yes.

CHAIRPERSON: Read it, Mr Seleka.

ADV SELEKA SC: Let me read it. I say:

10 “I hope this email finds you well and it was a
 pleasure meeting you last week. I had a chat with
 Eric Wood regarding additional financial initiatives
 that need to be included as part our balance sheet
 optimization and cash unlocking financial initiatives
 stream. These include the sale and lease-back on
 the optic fibre network, prepaid electricity vending,
 EFC disposal, Hitachi claims, replacement of
 boilers and Duvha insurance claim. We are
 currently compiling a business case for these
 initiatives and require some information from you
 and your team. We would like to set up time early
20 this week with yourself and your team to source the
 information in order to complete the business case
 by the end of the week.”

MR KOKO: Where in that letter does it say she discussed those things with me? Where in that email does it she discussed those things with me?

CHAIRPERSON: Well, Mr Seleka, I think he wanted to refer, as I understand it, to refer to the fact that she says she met with you.

MR KOKO: She met ...[intervenes]

CHAIRPERSON: But I think he wants to go to another one, I do not know whether that is the one.

MR KOKO: No, no, no, but Chair, there is nowhere in that email where Ms Mothepu says she discussed those issues with me. She says she met me last week, she discussed
10 these issues with others. She did not discuss with me.

CHAIRPERSON: Ja, okay.

MR KOKO: So let that be very clear. She met with me, she discussed these issues with others, not with me because she could not have discussed them with me.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Ja, Chair. Mr Eric Wood or Dr Eric Wood, we know is at Trillian, he is Ms Mosilo's boss. She has gone back after meeting with you to discuss the additional financial initiatives that need to be included and
20 she is saying to you we need more information and they would like time early this week to set up – time early this week with yourself and your team to source the information in order to complete the business cases by the end of the week.

MR KOKO: Excellent and elsewhere – elsewhere, even on

Twitter, in her book, she has written a book, she said Mr Koko never gave me audience.

ADV SELEKA SC: Never what?

CHAIRPERSON: Never gave me?

MR KOKO: Audience on these topics. She said Mr Wood had to phone her when she was on her sickbed to say go and wait on Mr Koko's door and when Mr Koko and found me on the door, Mr Koko told me who told you to come here, you are brave. That is her evidence, that is a fact.

10 That is her version Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Well, did Ms Mothepu say that she discussed the topics that Mr Koko says were never discussed with him? Did she say in her evidence or any email she discussed those topics with him? Let us get that clear.

ADV SELEKA SC: No, I will recall ...[intervenes]

MR KOKO: the answer is no. The answer is no. Mr
20 Seleka is not going you a direct answer, the answer is no.

CHAIRPERSON: Yes, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Chair, I have not – I have not looked at this recently because I was prepared to ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: So I wouldn't hold his hand, I would hold his hand ...[intervenes]

CHAIRPERSON: No that is fine, because I am trying to make sure we don't spend too much time on something that might not be an issue.

ADV SELEKA SC: Yes.

MR KOKO: The answer is no Chair, and I know ...[indistinct] the answer is no. In fact she said to me, her own writing that Mr Koko refused to ...[indistinct] to
10 discuss this thing.

CHAIRPERSON: Ja.

MR KOKO: And when I forced myself on him and waited Mr Koko told me you are brave.

CHAIRPERSON: H'm okay. Mr Seleka?

ADV SELEKA SC: So I will read this other one Chair which is on the 5th of December 2015 ...[intervenes]

CHAIRPERSON: Ja, but if it doesn't say what is in issue why do you read it, because as I understand it, one, Mr Koko doesn't deny that he had interactions with Ms
20 Matshepo and that they even met.

ADV SELEKA SC: Yes.

CHAIRPERSON: All he is saying the two of them never discussed this specific, those particular issues, so if whatever email doesn't say they discussed those issues, I am not sure whether you need to read it.

MR KOKO: Chair there's no such an email.

CHAIRPERSON: H'm.

MR KOKO: I can tell you now there is no such an email.

CHAIRPERSON: Ja. Mr Seleka?

ADV SELEKA SC: Yes, okay, my junior has opened up to something, this email suggests, can I read it into the record Chair, that's all ...[intervenes]

CHAIRPERSON: Tell me first what it says before ...[intervenes]

10 **ADV SELEKA SC:** It says, it attaches a financial – what is this, attached please find the financial stream initiative for your review and comment.

CHAIRPERSON: It is addressed to Mr Koko?

ADV SELEKA SC: It is addressed to Mr Koko Chair.

CHAIRPERSON: Okay tell us where to find it and ...[intervenes]

ADV SELEKA SC: Yes, and she says "I am available on my mobile phone ...[intervenes]

CHAIRPERSON: Where do you find it first? What
20 bundle?

ADV SELEKA SC: SM Bundle 14.

CHAIRPERSON: Ja, and what page?

ADV SELEKA SC: [c] on page 811.256.

MR KOKO: Bundle?

ADV SELEKA SC: 14[c].

MR KOKO: 811?

CHAIRPERSON: 811.256

ADV SELEKA SC: .256.

CHAIRPERSON: Well it is an email from Masilo Matshepo to Mr Kokomm@eskom.co.za Mr Eric Wood is copied, the subject is Eskom initiatives, the email was 5 December 2015, ten past nine in the morning:

“Hi Matshela

Attached please find the financial stream initiatives
10 for your review and comment. I am available on my
mobile phone should you wish to contact me and
can come to the office should you wish to discuss.”

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, of course it doesn't say there discussed, but it clearly is an email that from her side she contemplates could be a subject of a discussion if Mr Koko wished that.

ADV SELEKA SC: Yes. Pause there Chair, just pause there Mr Koko, the transcript which my junior has just
20 opened, her evidence on the 14th of January 2021 on page 185 you – the Chairperson is asking she is talking about these emails and the next page, on the next page and the Chairperson when you say on the next page you mean 588.150, she says yes. So the previous email I sent at nine minutes past eight I had time to go to meet with Mr

Matshela Koko. He had made up the itinerary views and so I sent him the updated proposal at the same day, the 7th of December this time at 12:33, so it reads, and then she reads, 7 December.

CHAIRPERSON: So that is a different email?

ADV SELEKA SC: That's another yes, it will be ...[intervenes]

CHAIRPERSON: It must be different because this one is five to seven.

10 **ADV SELEKA SC:** Correct.

CHAIRPERSON: Ja, but do we know whether that one of the 5th talks about discussing, that they discussed those topics?

ADV SELEKA SC: The one of the 5th?

CHAIRPERSON: Of the 7th.

ADV SELEKA SC: Of the 7th, okay, Chair let me read what she says.

CHAIRPERSON: Ja.

ADV SELEKA SC: She says ...[intervenes]

20 **MR KOKO:** We read the email.

ADV SELEKA SC: She says yes ...[intervenes]

CHAIRPERSON: I think they might not have that intent, this is where – ja.

ADV SELEKA SC: Because we were taking it with chronology of the email.

CHAIRPERSON: Ja.

ADV SELEKA SC: She says yes so the previous email I sent at nine minutes past, so let's check, we can check the ...[intervenes]

CHAIRPERSON: That's not the one of the 5th of December because that's ten past nine.

ADV SELEKA SC: It's ten past nine. And then she says I had time to go to meet with Mr Matshela Koko.

CHAIRPERSON: H'm.

10 **ADV SELEKA SC:** He had made updates and reviews.

CHAIRPERSON: He had made?

ADV SELEKA SC: He had made updates and reviews.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: And so I sent him the updated proposal at the same day, the 7th of December, this time at 12:33, so it seems to me there are two emails on the same day.

CHAIRPERSON: Ja, that is the one I was asking about ja.

ADV SELEKA SC: Yes.

20 **MR KOKO:** And is it not convenient that they update it later, not before you.

CHAIRPERSON: H'm.

ADV SELEKA SC: They are here to, they attach even in the email of the 5th Abbie, yes there are annexures ...[intervenes]

MR KOKO: Is it ...[indistinct]?

ADV SELEKA SC: I don't know who ...[intervenes]

MR KOKO: Maybe it should show ...[intervenes]

CHAIRPERSON: Ja, no, no, that's – but Mr Koko we talk about ones that he is alleged to have made.

MR KOKO: Yes.

CHAIRPERSON: Okay, have you got the 7th December one.

ADV SELEKA SC: Let me go there Chair. But then Chair in that evidence or oral testimony there is Mr Koko who is
10 saying I am not giving you a direct answer, you ask whether did they meet to discuss this, there's the answer.

MR KOKO: No Chair.

ADV SELEKA SC: He said no, Ms Matshepo – I don't have to speak for her, because I couldn't remember what she said.

CHAIRPERSON: Okay, let's look at the – in the ...[intervenes]

ADV SELEKA SC: It is on ...[intervenes]

CHAIRPERSON: ...email.

20 **ADV SELEKA SC:** ...page 811.278.

CHAIRPERSON: 278?

ADV SELEKA SC: 278. And it is eight minutes past nine that email. Again to Mr Koko.

CHAIRPERSON: Yes.

ADV SELEKA SC: Monday 7 December 2015 at 809, she

said emailing from Matshepo@regiments, kokomm@eskom.co.za updates proposal, Eskom cash unlocking and balance sheet optimisation initiative 7 December.

“Good morning Matshela

Attached please find the update proposal for your consideration.

Kind regards,”

And then the document follows Chair.

10 **CHAIRPERSON:** And that of course is an update from Trillian.

ADV SELEKA SC: Correct.

CHAIRPERSON: Or Regiments.

ADV SELEKA SC: Or Regiments.

CHAIRPERSON: Whatever.

ADV SELEKA SC: Yes.

CHAIRPERSON: And not one made by Mr Koko.

ADV SELEKA SC: No Chair, well ...[intervenes]

MR KOKO: Chair you will not find that any update
20 ...[intervenes]

CHAIRPERSON: Hang on don't speak at the same time. Mr Seleka.

ADV SELEKA SC: Yes, yes, this is from one side Chair.

CHAIRPERSON: Yes, from Ms Matshepo's side?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay Mr Koko?

MR KOKO: Chair in my language, I don't if Mr Seleka speaks the same language, but in my language we talk about [speaking in vernacular].

CHAIRPERSON: H'm.

MR KOKO: Which don't stink, I am telling you again ...[intervenes]

CHAIRPERSON: What does it mean?

MR KOKO: I am going to ...[intervenes]

10 **CHAIRPERSON:** You can't translate it.

MR KOKO: I am going to have to difficulty if I translate it.

CHAIRPERSON: Okay [laughing] but the actual ...[intervenes]

MR KOKO: What I am saying to you is Chair, and I am saying it again, there is no email where Ms Matshepo says it is discussed with me, there will be no email where I have made updates on any document that Ms Matshepo has put to you. Let me read to you what Ms Matshepo says.

20 **CHAIRPERSON:** No before that, here is an email that maybe ...[indistinct] to what Mr Seleka seems to be looking for, same bundle, page 811.303, it is an email from Ms Matshepo to you Mr Koko, subject is updated proposal and there are attachments and she says:

“Dear Matshela,

Attached please find the updated financial proposal

document for this afternoon's meeting at 14h00."

Now I don't know whether that's a meeting between the two of you she is talking about or another meeting?

MR KOKO: Excellent, when you probed that did this meeting happen she said no. She didn't say she met me at ...[indistinct] she didn't say so.

CHAIRPERSON: But I think to say the least what some of the emails suggest is that she wanted to discuss ...[intervenes]

10 **MR KOKO:** She did, she is not doubt she did, let me give you, let me read you what she said. Let me read you what Ms Matshepo says.

CHAIRPERSON: Ja, reading from what?

MR KOKO: I am reading from her book.

CHAIRPERSON: [laughing]

MR KOKO: No but it is very important Chair because it tells you her mindset.

CHAIRPERSON: Okay just read ...[intervenes]

MR KOKO: No, no, no Chair ...[intervenes]

20 **CHAIRPERSON:** Just read it.

MR KOKO:

"One December morning I woke up with chronic sinus infections, so bad that I was coughing my blood, by GP booked me off on sick leave and I sent Eric Wood a message explaining how ill I was and

that I would not be coming to the office. He was having none of it, he told me to drive to Megawatt Park and wait in the executive reception area to ensure Matshela Koko reads our MSA proposal. I have previously sent ... [listen to this] ... I have previously sent the document to Matshela and unsuccessfully tried to get an appointment with him, so I dragged myself out of bed, showered and drove to Eskom where I waited Matshela's arrival. I
 10 greeted him and he told me why are you there, young lady you are brave."

CHAIRPERSON: Ja, okay.

MR KOKO: Now she sent, whatever she sent, she writes whatever she writes.

CHAIRPERSON: Ja, but you say there was no discussion ...[intervenes] .

MR KOKO: There was no discussion ...[intervenes]

CHAIRPERSON: On the topics.

MR KOKO: ...of the topics.

20 **CHAIRPERSON:** Okay.

MR KOKO: And you will not find an email that says as we discussed or as we ...[indistinct]

CHAIRPERSON: Ja, ja. Okay, we have finished two hours, let's take a ten minutes adjournment and then depending on what you have Mr Seleka maybe we should

make progress and move on.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

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

CHAIRPERSON: When we come back.

ADV SELEKA SC: Or shall I do when we come back?

CHAIRPERSON: What did you want to ...[intervenes]

ADV SELEKA SC: I wanted to answer your question as to whether the meeting did take place.

10 **CHAIRPERSON:** Yes, ja.

ADV SELEKA SC: This one, because her evidence is here Chair, what Mr Koko is reading is about 1 December, we are now on the 7th of December.

CHAIRPERSON: H'm.

ADV SELEKA SC: Then I ask him now the email – the email – the email Ms Matshepo on – I gave the page ...[intervenes]

CHAIRPERSON: Just repeat what transcript this is on, so it can be checked.

20 **ADV SELEKA SC:** It is – the date is again the 14th of January 2021, the page is 187.

CHAIRPERSON: Right.

ADV SELEKA SC: And I am reading from the top of the page.

CHAIRPERSON: Ja.

ADV SELEKA SC:

“Now the email Ms Matshepo on page [and I use the number] dated 7 December 2015 at 12:33.”

I think it is this one:

“...at 12:33 to Mr Koko it alluded to a meeting in the afternoon at 14h00. Did that meeting take place?”

And Ms Matshepo answers:

“Yes that meeting takes place, that is how it is tied down.”

10 If you go to page 588.75, then she says you must go to that page. It says:

“Remember I said Hi Matshela, and Edwin as per your request as in. I say yes and during that meeting at two o'clock we sat with your technical team and provided – and they provided the ...[indistinct] information if you see that after that two o'clock meeting we met with the team hence we worked, we worked through the night and up until almost eight thirty in the evening in the – then I
20 don't know what they typed there ...[indistinct]
...[intervenes]

CHAIRPERSON: Ja, when ...[intervenes]

MR KOKO: Does she say she met with me at two or she met with my team at two?

CHAIRPERSON: You remember when I read that email I

said when she talked about the meeting at two I said I don't know whether she meant a meeting with Mr Koko or with somebody else.

ADV SELEKA SC: Yes.

CHAIRPERSON: But is it true that from her evidence it appears that she met with the technical team?

MR KOKO: She met with the technical team, she didn't meet with me.

CHAIRPERSON: Is that correct Mr Seleka?

10 **ADV SELEKA SC:** Yes she says we met with the technical team, let me see ...[intervenes]

CHAIRPERSON: Okay let's take the adjournment and then I think when we come back let's try and make some progress.

ADV SELEKA SC: Ja, I will go back to my plan Chair, thank you.

CHAIRPERSON: Ja, okay. We will adjourn for ten minutes.

We adjourn.

20 **REGISTRAR:** All rise.

INQUIRY AJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let's continue.

ADV SELEKA SC: Thank you Chair, so we can leave aside that before I raise the emails of Ms Matshepo.

CHAIRPERSON: Which ones are we putting aside?

ADV SELEKA SC: The one with the emails of Ms Matshepo, I think it is 14[c] ...[intervenes]

MR KOKO: 14[c].

ADV SELEKA SC: [c] ja. Mr Koko I just want to go back to the presentation ...[intervenes]

CHAIRPERSON: So we just need to do the best we can to make progress, tomorrow we must finish, not tomorrow Monday

10 **ADV SELEKA SC:** Monday yes.

CHAIRPERSON: On Monday, Mr Koko is still looking for the right file, in fact bundle 16?

ADV SELEKA SC: 16[b] yes. Just one item ...[indistinct] Mr Koko ...[intervenes]

MR KOKO: 16?

CHAIRPERSON: 16[b]. What about this one that you have got this side of your desk, is it not that one? Will somebody help ...[intervenes]

MR KOKO: Registrar I do need help.

20 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Ja, let's go to page 11.17 So Mr Koko at the bottom of 11.17 the next block which is approval – IL to approval of fixed grants contracts Kemden, the executive sponsor there is indicated as yourself, minimise R/L cost of fixed priced contracts for uncontracted volumes

at Kemden and your name appears in the next one so I am going to go through them then you can explain them to the Chairperson. Fixed price contracts Grootvlei, you also appear there a executive sponsor, fixed price contracts Arnot, you also are the executive sponsor, next page Dutuka Kemden ...[intervenes]

CHAIRPERSON: Please remind Mr Seleka what is the point about all of these?

ADV SELEKA SC: It is for Mr Koko to explain Chair, he is
10 there as the executive sponsor in what on the face of it seems to be issues relating to the price of the contract, which would suggest the financial part of the contract.

CHAIRPERSON: And ...[indistinct] if he was involved in it and then what?

ADV SELEKA SC: If he – well Mr Koko has said to the Chairperson my involvement was just generation and I was dealing with generation, the finances were not my part ...[intervenes]

CHAIRPERSON: And of course he was not in the finance
20 department.

ADV SELEKA SC: Of course he was not.

CHAIRPERSON: You would need the finance department for that.

ADV SELEKA SC: Yes.

CHAIRPERSON: You need people in that department.

ADV SELEKA SC: Yes.

CHAIRPERSON: Why would you accept if he says I wasn't involved in finance?

ADV SELEKA SC: Yes, let me add the last one Chair then we can finish, page 11.23, that block at the top, number 5, finance, must have vending agent as Eskom lead is Matshela Koko and at the end you have conclusion of the Duvah insurance claim and Eskom lead again is yourself Mr Koko. And in particular there's ...[intervenes]

10 **CHAIRPERSON:** So what is the point about them?

ADV SELEKA SC: Yes there is Duvah insurance, Mr Koko said he is not part of the Master Services Agreement.

CHAIRPERSON: Ja.

ADV SELEKA SC: Remember Ms Masiva said it was added, it wasn't in the original, it was added by Messrs Singh and Mr Koko as some of the new initiatives and Mr Koko said it was not but here we see it in the presentation, one, and number two it falls under finance and Mr Koko features there, maybe you can explain that to the

20 Chairperson and we move along.

MR KOKO: Chair Mr Seleka has been talking about Kemden and other parts, they are all generation, Rand per ton generation, Rand per ton is the biggest contributor of generation ...[indistinct] cost, it is in the authority of Group Generation, Group Executive Generation, and it was clear

cut, black and white so there is no ...[intervenes]

CHAIRPERSON: No issue there.

MR KOKO: There is on issue there.

ADV SELEKA SC: So you were negotiation the point of price there?

MR KOKO: Where?

ADV SELEKA SC: In those Kemden?

MR KOKO: No, so the – before you got into it, it talks about Rand per ton, now Rand per ton is a contributor to
10 kilowatt, cents per kilowatt ...[indistinct] generated so you start at the top, it says reduce your production costs, what is the biggest single item you need to reduce to meet your production costs it is your coal cost, and how do you that Chair? It is what we call, and I deal with this elegantly, nicely in my main affidavit. We talk about spatching on married order, so the most – the cheapest generation units must be available so that you dispatch them first before you dispatch the most expensive generation, and your rand per ton helps, I deal with that nicely in my main affidavit
20 and I even give you a cable of how we reduce a rand per ton of coal but increasing the EAF and dispatching the units on merit order. ...[Indistinct] it is just we want liquidity Chair there, it is clear cut. The ambiguity is on page 11.23, you see it in a finance light my name should not arise there because this is the CFO's slide and I don't

remember how the discussion here unfolded or transpired, it would be interesting to see what the minutes says because all what you see in this box it is in the CFO box and only the CFO has the competency to deal with it, nobody else.

CHAIRPERSON: There would be no need for another group executive?

MR POPO: No.

CHAIRPERSON: Ja.

10 **MR POPO:** No the people that will be here will be the subordinates of the CFO.

CHAIRPERSON: Of the CFO?

MR POPO: Yes.

CHAIRPERSON: And you are not one of them?

MR POPO: And I am not one of them, so I don't even ...[intervenes]

CHAIRPERSON: They are finance people, you are not a finance person.

MR POPO: They are, they are finance people and let me
20 tell you those who normally at Eskom your ...[indistinct]
finance is at your biggest risk and I always get the right people to support me, no Chair I had nothing to do with that, I had nothing to do with it.

CHAIRPERSON: Yes Mr Seleka.

ADV SELEKA SC: Yes of course that is one aspect of it

Mr Koko that ...[intervenes]

CHAIRPERSON: Mr Seleka I come back to my point, reference to these pages is meant to prove what point, or is relevant to what point?

ADV SELEKA SC: Chairperson the bigger picture is this, the stakeholder This stakeholder which is allocating responsibilities to each other on the 9th of February 2016 has gone ahead to do this meeting in respect of this contract when they know that there is no National Treasury
10 approval.

CHAIRPERSON: H'm.

ADV SELEKA SC: Ms Matshepo in addition to that says Duvah insurance was added, and there is the Duvah insurance claim which Mr Koko earlier said it wasn't part of the Master Service Agreement.

CHAIRPERSON: H'm.

ADV SELEKA SC: But we see it in the presentation which Mr Anoj Singh has provided to the Commission as evidence.

20 **CHAIRPERSON:** H'm.

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

CHAIRPERSON: But why didn't you go straight to the one at 11.23 which has got as I understand it the – that ...[indistinct] because we have been going through almost page by page and if the issue is that this Duvah issue that

is at 11.23.

ADV SELEKA SC: Yes Chair it shows two things that page, well there's a multi-faceted issues about this, because I was pursuing – I was pursuing one particular issue in regard to Mr Koko's involvement, even in this area of finance which according to the presentation he was there, he has given you his version and then what Ms Masilo said was one of the aspects or initiatives added, but we have come to the end of it.

10 **CHAIRPERSON:** Yes, you see to the extent that you were saying this committee made certain decisions or was discussions certain issues knowing that there had been no approval from National Treasury that I understand, but that shouldn't take long because the – Mr Koko doesn't dispute that there was no approval from National Treasury.

ADV SELEKA SC: Yes.

CHAIRPERSON: So but the one about the Duvah what is the point about it, other than according to Ms Matshepo it was added, was it – was ...[indistinct] why should we
20 spend so much time trying to establish whether Mr Koko was involved in any discussions concerning it?

ADV SELEKA SC: Yes, Chair I read the paragraph in Matshepo, where she said what she says, Mr Koko denies that, I heard that ...[intervenes]

CHAIRPERSON: Yes but you don't to follow spend too

much time on everything Mr Koko denies because some of it might not be important, so that is why I am asking what is the significance of this Duvah element and whether Mr Koko discussed it, was involved in any discussions on it, where does it take us?

ADV SELEKA SC: Well Chair I have to test the correctness or otherwise of a witness either version or a denial of a particular aspect.

CHAIRPERSON: No, no I understand that, all I am simply
 10 saying is if it is nothing important we shouldn't spend too much time on it, let's spend time on what you know is important, so that is why I am asking, I was asking why – what is the significance of whether or not Mr Koko was involved in discussions of the Duvah issue.

ADV SELEKA SC: I haven't answered the Chairperson's question?

CHAIRPERSON: No, no I haven't heard why it is significant other than putting one witness version to another.

20 **ADV SELEKA SC:** Ja, with Mr Koko Chair it is one follows the broader picture that Mr Koko goes into certain details and unless one goes into these details you are going to leave them hanging. So ...[intervenes]

CHAIRPERSON: Ja, but we can leave them hanging if they are not important, what would not be right is to leave

hanging those that are important. Those that are not important we can leave them hanging otherwise when we have four hours we can spend three hours on those that are not important instead of spending three hours on the important ones. So I am just checking because I am not sure that I appreciate why you are spending so much time on it.

ADV SELEKA SC: No Chair I am done on it, it is the bigger picture, but I am done with it.

10 **CHAIRPERSON:** Okay, alright.

ADV SELEKA SC: The bigger picture is the process engaged in the negotiation of the MSA, the team that was involved and how each one of them plays a role in the negotiation of the MSA, that was the bigger picture. Now we have attempted to go into the details, of course as you say well you don't need to address everything that Mr Koko says but I have tended to go there to show whether something is correct or not correct.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** And ...[intervenes]

CHAIRPERSON: No let us identify those important issues and then let's spend time on those.

ADV SELEKA SC: Ja.

CHAIRPERSON: Because we don't have time.

ADV SELEKA SC: Ja, correct Chair, that is correct.

CHAIRPERSON: Okay let us continue.

MR KOKO: Chair I will provide you with the chapter and verse of the board meetings on the Master Agreement.

CHAIRPERSON: H'm.

MR KOKO: I did tell you as one of the discussions I had with the Chairman and I did tell you that they wanted to appoint Blue Labels as a Master Vendor by ...[indistinct] I have since acquired the minutes of the board meetings and I will provide them to you and you will see where the truth
10 lies. It is far away from where ...[indistinct] so by God's grace thanks to my name being Moses I have found them, so I will present them to you, I am going to do that.

CHAIRPERSON: Okay no that is fine.

MR KOKO: Secondly the – by the time of this meeting we were all under the impression that there was National Treasury's approval at this stage.

CHAIRPERSON: But this would have been 2015?

MR KOKO: This is 2015 ...[indistinct]

ADV SELEKA SC: No that is 2016.

20 **CHAIRPERSON:** 2016.

MR KOKO: 2016, the 9th of February, at this stage ...[intervenes]

CHAIRPERSON: So it was before the writing was on the wall?

MR KOKO: It was before the writing was on the wall.

CHAIRPERSON: Okay.

MR KOKO: This was before the writing was on the wall.

CHAIRPERSON: Okay, alright. So – yes let's
...[intervenes]

MR KOKO: So remember the letter or the email from National Treasury is dated the 4th of February, 4th of February 2016, that is the email that I said you look at it and you will make your own judgment on it, this meeting was on the 9th.

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

MR KOKO: So I am going to say to you that on this meeting probably the team made a reference to that email communication that we have approval from Treasury.

CHAIRPERSON: That's fine. Mr Seleka?

ADV SELEKA SC: Ja.

CHAIRPERSON: Let's continue.

ADV SELEKA SC: You see it is something like this Chair, I have the evidence to show that he signed Eskom position paper in August 2015 already.

20 **MR KOKO:** But how different is that?

CHAIRPERSON: Hang on, hang on, now Mr Seleka just go according to your plan. If you were going to reach that issue sometime later you will deal with it when you reach it.

ADV SELEKA SC: We already addressed it Chair, it is

going back to it.

MR KOKO: No, no Chair.

CHAIRPERSON: Okay [laughing]

ADV SELEKA SC: We did ...[intervenes]

MR KOKO: Because then we have got to address it again because it ...[intervenes]

CHAIRPERSON: Okay, okay, alright ...[intervenes]

MR KOKO: Then if we have done it then we must do it again, because ...[intervenes]

10 **CHAIRPERSON:** Okay this is what we must do, let's continue now, tomorrow when – not tomorrow – Monday before we start the two of you will have reflected on exactly that and then if there is something to be cleared it can be cleared when we start on Monday, okay, let's continue.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: But in terms of the way forward what you still need to deal with Mr Seleka just tell me what those matters are and then so that maybe you can tell me what
20 exactly is important to be covered.

ADV SELEKA SC: We can traverse two aspects, as I was saying to Mr Koko during the break, his travel to Dubai and witness to his evidence in regard to what he says he saw Mr Koko at Saxonwold. What then remains Chair is the issue of Tegeta which we can deal with on Monday.

MR KOKO: Ja.

CHAIRPERSON: Okay, continue then.

ADV SELEKA SC: Thank you Chair. So let's deal with the travel agent Mr Koko, which is in Bundle 18[d]. Chair so we move, we take away Eskom Bundle 14. [d] page 1565.7.

MR KOKO: 15?

ADV SELEKA SC: 65.7

MR KOKO: I am there Chair.

10 **ADV SELEKA SC:** Is the Chairperson there? Thank you Chair. I will simply read from the affidavit. Travel arrangements for Matshela Koko, paragraph 23:

“During December 2015 I received ...[intervenes]

CHAIRPERSON: Well isn't the position that Mr Koko has addressed these in an affidavit?

ADV SELEKA SC: No.

CHAIRPERSON: You have not addressed this?

MR KOKO: No.

CHAIRPERSON: Oh, okay, no that's fine, if he hasn't then
20 you can read, okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: I thought if he had addressed on it then you could just ask the relevant questions without reading but if he hasn't you can read.

ADV SELEKA SC: Ja,

“During December 2015 I received a request from Mr Essa to arrange flight tickets for a Mr Matshela Moses Koko.”

CHAIRPERSON: On a lighter note, I was wondering why Mr Koko you didn’t respond to this on an affidavit because you do read a lot and you write a lot.

MR KOKO: Chair you remember this came in, in our last, when we were here and I just didn’t have the time to do that, but let me tell you I have a lot to say about it.

10 **CHAIRPERSON:** Okay.

MR KOKO: I have a lot to say about it.

CHAIRPERSON: Okay, alright.

MR KOKO: And Chair I think we did Mr Barrie?

CHAIRPERSON: You did what?

MR KOKO: In our supplementary affidavit we dealt – we didn’t deal with the, yes it is right but we didn’t deal with this through my, but it came afterwards, but we dealt with the Dubai trip in our supplementary affidavit.

CHAIRPERSON: That is fine.

20 **MR KOKO:** Mr Chair I can assure you we deal with this in an affidavit.

CHAIRPERSON: Ja, no that is alright. Mr Seleka continue.

ADV SELEKA SC: Yes.

“I received a request from Mr Essa to arrange flight

tickets for Mr Matshela Moses Koko and two of his family members, these being a Miss Mesima Elizabeth Koko and a Mr Peha Koko. This was for their travel from Denpasar, Bali to Dubai on 4 January 2016 and from Dubai through Johannesburg on 20 January 2016. The tickets were duly issued as follows.”

And the table is given of the tickets that were issued.

Paragraph 26 on the next page:

10 “These travel agents did not book any flights for Mr Koko and his family members from South Africa to Denpasar, Bali, Indonesia We were also requested to arrange for travel visas for Dubai for Mr Koko and his other two family members. These visas were arranged through Trimax ...[indistinct] LLC which is situated in Dubai. I emailed the three visas to Mr Essa on his salimessa@gmail.com.”

CHAIRPERSON: Sorry Mr Seleka, didn't we deal with this, why do I think, have a recollection of Mr Koko dealing with
20 the trips which were booked in December and he came back in January.

MR KOKO: We did Chair but we did not have this affidavit is a consequence of the previous discussion.

CHAIRPERSON: H'm.

MR KOKO: This ...[intervenes]

CHAIRPERSON: Okay, I just don't want us to repeat what we have done.

ADV SELEKA SC: Yes no this affidavit has not been dealt with in relation to Mr Koko.

CHAIRPERSON: Oh, okay, alright.

MR KOKO: We had Ms Alana's affidavit, that affidavit we dealt with .

CHAIRPERSON: Yes. Okay.

MR KOKO: And I told you that Ms Alana's affidavit is
10 defective and I used – I was very polite, but I just told it is
a lie under oath and I asked you to – that she cannot get
away with that manner, to remedy it the legal team went to
procure this one, so this supposed to be a remedy of Ms
Alana's affidavit ...[indistinct].

CHAIRPERSON: Okay, continue Mr Seleka.

ADV SELEKA SC: Yes Chair let me just summarise this
because the trip that was meant to be a return trip on the
20th the ticket was changed, or the booking was changed
and he returned on the 5th of January 2016.

20 **MR KOKO:** Correct.

ADV SELEKA SC: Ja. So you know the allegations that
Mr Essa is the one who arranged this.

MR KOKO: Correct.

ADV SELEKA SC: And that the invoice issued in Mr
Singh's name it was a mistake, that it had Mr Singh's

name, it should have been – well I don't know whether it should have been your name or Mr Essa but the expense for the trip were allocated again to Mr Essa as they say and then paragraph 32 Chairperson ...[intervenes]

CHAIRPERSON: Well let us start with the most important thing. Did this trip take place?

MR KOKO: Correct.

CHAIRPERSON: On the dates that are applicable?

MR KOKO: Correct.

10 **CHAIRPERSON:** You left South Africa on the date given and you came back to South Africa on the date given?

MR KOKO: Correct.

CHAIRPERSON: And you went to the places that she says you went to?

MR KOKO: Correct.

CHAIRPERSON: Okay alright, then you can talk about the other things, who paid and so on, and who made bookings, at least those important things are covered, the trip did happen and on the dates given and to the places that are

20 given.

ADV SELEKA SC: Yes, and the payments is in paragraph 32 on page 1565.9, she says on January 2016 I received a call from either Mr Essa or his secretary indicating that the driver would be dropping off the money to settle the invoice in respect of Mr Koko's travel arrangements. The driver

dropped R100 000 cash at my house, which I turn deposited at the bank into our bank account and indicate the reference as S.Essa, the reference of EFT on the receipt was an error. So I think on the receipt Mr ...[intervenes]

MR KOKO: Can we go to the receipt?

ADV SELEKA SC: Mr Koko you would have seen ...[intervenes]

MR KOKO: Can we go to the receipt?

10 **ADV SELEKA SC:** Yes. Is it S34? So they had ticked off EFT, there are three options, cash, cards, EFT, paid by cash, cards, EFT, they ticked off EFT and the way I understand her she say that was a mistake. But I think you need to tell the Chairperson Mr Koko ...[intervenes]

CHAIRPERSON: Let's – and she says it was Mr Essa or his secretary who asked her to make the bookings, is that right?

ADV SELEKA SC: Correct.

20 **CHAIRPERSON:** Yes, Mr Koko just tell your side of the story with regards to your knowledge who made the bookings for your travelling and who paid and so on. Who was supposed to have something to do with it and who was not supposed to have something to do with it.

MR KOKO: Chair thank you. I gave you my covering arrangements when I was here. First I told you that the

affidavit of Ms Alana Lima was a lie – was a lie in all aspects and it was an affidavit that was given to the Hawks in 2018 and now I understand why nothing has come out of it because lies can only take you this far.

So Ms Alana had alleged that they booked a trip for me from Johannesburg to Indonesia to Dubai and back to Johannesburg for the period of the 5th to the 20th and Mr Essa paid for it. That was – that is a lie.

10 Hundred percent of it is a lie. So now they have come back and they have taken the Alana Lima's lie and they have parked it. So it is no long applicable and I am glad they have done that they made good progress. We are going to make excellent progress here today.

So I have given you your team my travelling arrangements. It is in the bundle I think – it is Sundown Travelling it is the one that has got a price of 332 if you can take the Chairman to the page.

CHAIRPERSON: What page is it Mr Seleka?

MR KOKO: Oh ja, ja it is 1565.59

20 **CHAIRPERSON:** Point 9

MR KOKO: Yes. 1569 – 1565.59

ADV SELEKA SC: Pont 59.

MR KOKO: Yes.

CHAIRPERSON: Okay I have got that. The travel agent there is Thompsons is that right?

MR KOKO: Correct.

CHAIRPERSON: Yes I found it.

MR KOKO: Right. And that is a booking for my wife and I and five of my kids.

CHAIRPERSON: How many kids?

MR KOKO: Five kids.

CHAIRPERSON: Ja okay.

MR KOKO: From Johannesburg to Indonesia on the 23rd of December 2015 and back on the 5th of January 2016.

10 **CHAIRPERSON**: Hang on I am still at Point 59.

MR KOKO: Yes.

CHAIRPERSON: I do not see the destination.

MR KOKO: Chair if you go to the pages.

CHAIRPERSON: Oh is it in the next page. 23 December

MR KOKO: In fact if you go to 1565.63 you will find the travelling.

CHAIRPERSON: 63.

MR KOKO: 1565.63.

CHAIRPERSON: Yes there is an email there.

20 **MR KOKO**: And there is – it has got the covering arrangements for all my members.

CHAIRPERSON: Okay it is addressed to you and those you were travelling with. It says:

“Thank you for allowing us to provide you with your 00:03:40 free travel arrangements.

Please confirm your flights a minimum of 72 hours prior to departure and to check for any scheduled changes.”

And then it says whatever it says there and then in terms of the departure it is 23 December 2015 from Johannesburg International Airport for Doha Qatar Airways that is at 14:00 you were to arrive in Doha at twenty past eleven in the night on the same day. And then you were to depart the following day 24 December from Doha at 35 minutes to 9 Qatar Airways and arrive at Nborra [?] arrive airport on 24 December at ten past eleven in the night and then the next page that is 1565.64 then there provision for transfers there is – there I guess to your destination is that right? Mr Koko.

MR KOKO: Yes.

CHAIRPERSON: Ja. Okay and in terms of that booking you were to arrive back in Johannesburg on 5 January 2016 at five to nine in the morning. Yes. And this I would take it coincides substantially if not exactly the same as the travel arrangements made by Travel Excellence or not exactly?

MR KOKO: No, no, no. These are the travel...

CHAIRPERSON: This is Thompsons that I know.

MR KOKO: This is Thompsons Travel.

CHAIRPERSON: Yes.

MR KOKO: This has nothing to do with Travel Excellence. I

do not know Travel Excellence.

CHAIRPERSON: No, no remember I asked you when we were still on the affidavit of the travel of Ms Alana

ADV SELEKA SC: Alana yes Chair.

CHAIRPERSON: Ja when we were dealing with the affidavit I asked you whether..

ADV SELEKA SC: Or Sulliman sorry.

CHAIRPERSON: Sulliman ja.

MR KOKO: No, no it is Sulliman.

10 **CHAIRPERSON:** I asked you – hang on. I asked you whether you took the trip on the dates given by her to the destinations given by her and you said yes. So we must – if that is correct in regard to her it must be correct in regard to this. That is what I am talking about.

MR KOKO: Yes. Yes Chair I was – when you say her.

CHAIRPERSON: Ja.

MR KOKO: I was answering the question of Ms Sulliman.

CHAIRPERSON: Yes no no – ja.

MR KOKO: Ms Sulliman affidavit is false in all aspects.

20 **CHAIRPERSON:** Yes, ja, ja.

MR KOKO: So we

CHAIRPERSON: No, no we are talking about Sulliman ja.

MR KOKO: Ms Sulliman aff...

CHAIRPERSON: But those – this information from Thompsons what I am saying is in accordance with what you

agreed to.

MR KOKO: Yes.

CHAIRPERSON: When I was.

MR KOKO: Yes.

CHAIRPERSON: When we were talking about Suleiman's affidavit.

MR KOKO: Yes and the bookings were not done.

CHAIRPERSON: Ja.

MR KOKO: By Travel Excellence.

10 **CHAIRPERSON:** Yes, no, no this one is Thompsons.

MR KOKO: This is Thompsons and it is done by my family.

CHAIRPERSON: Ja no, that is fine.

MR KOKO: And while we are on that paid for by my family and Chair I now have a confirmation from Thompsons on the payment and the date the payment was received.

CHAIRPERSON: Ja.

MR KOKO: And we have given it to you now.

CHAIRPERSON: Is that separate – is that separate from the bundle?

20 **MR KOKO:** Yes it is separate.

CHAIRPERSON: New

MR KOKO: Chair we have prepared a very nice bundle for you.

CHAIRPERSON: Ja.

MR KOKO: And we have sent it to the team unfortunately Mr

Seleka was busy the whole so he did not have access to it.

CHAIRPERSON: Okay.

MR KOKO: But we have got a – in line to your guidance last time.

CHAIRPERSON: Yes okay that is fine yes.

MR KOKO: We have done it in addition – it is a nice pack.

CHAIRPERSON: Ja.

MR KOKO: 00:07:59 referenced.

CHAIRPERSON: No that is good ja.

10 **MR KOKO:** So the documents you will see here are not marked but they put in.

CHAIRPERSON: Yes they will be marked in due course.

MR KOKO: You have got the same documents.

CHAIRPERSON: Yes.

MR KOKO: That are properly marked in that way.

CHAIRPERSON: Yes. But I can – I can – they can be given to me to see for now and then ...

MR KOKO: You have to see them Chair otherwise we are not – we will not make progress if you do not see them.

20 **CHAIRPERSON:** Ja.

MR KOKO: I told you that we are going to work from the documents today and we are going to take away the gossip.

CHAIRPERSON: Ja. We – I see the first document and these documents will be in a bundle that will handed – and handed up at some other time. The first document in front of

me is from Kgomoitso Koko sent to Desdifano Vanessa
subject invoice and proof of payment request. It says:

“Hi Vanessa thank you, thank you greatly
appreciated.”

Oh it is dated 3 March 2021 at ten past one in the afternoon.

“Thank you, thank you greatly appreciated so
there is no way to find the actual deposits ?
are you able to see the branch it was made
from at least ...”

10 **MR KOKO:** You have to read the emails from the bottom.

CHAIRPERSON: Ja no I forgot that. I should start with the
one at the bottom. So that one is from Vanessa to Kgomoitso
and it says – it is dated 3 March 2021 at five past one. It is
to – it is from Destifano Vanessa to Kgomoitso Koko and the
subject is Invoice and proof of payment request.

“Hi Kgomoitso I can find history of two
deposits to us from FNB 17 November
R113 000.00, 25 November R270 800.00
hope this helps you. Regards Vanessa.”

20 And then Kgomoitso responds on the same day a few minutes
later I think.

“Hi Vanessa thank you, thank you greatly
appreciate it so there is no way to find the
actual deposits – are you able to see the
branch it was made from at least?”

The next document starting from the bottom is from Vanessa Destifano to Kgomoitso.

“Can I have your contact number please as
the below is not making any sense to me.”

And then Kgomoitso to Vanessa.

“I will appreciate the call”

And gives the number. And then the next one is – there is
an email from Vanessa Destifano to Kgomoitso.

10 “Sorry I do not what is it that you need this
for as I am honestly concerned that we will
not be able to help you we do not keep
information for longer than five years
(mumbling) at all.”

And then Kgomoitso writes to Vanessa.

“Hi Vanessa I am sure you have bank
statements for November/December 2015.
Can you kindly use my reference to check
the payment amounts that 00:12:00 the date
would be after the date of the deposit slip
20 that I sent you as that was the first payment.”

I am not going to read all of them. I think they can be read
when there is a file properly but I wanted just to have an
idea what they say. They can be read once they – ja.

MR KOKO: Yes Chair but what they say is that we have
made a booking.

CHAIRPERSON: Ja.

MR KOKO: And we have paid for it.

CHAIRPERSON: Yes.

MR KOKO: And they confirm that.

CHAIRPERSON: Yes.

MR KOKO: My family paid for that.

CHAIRPERSON: Yes.

MR KOKO: Now – but what is also 00:12:44 before you take
I need to make another – I need to make a very important
10 point. So you see that the confirmatory affidavit – the
confirmatory invoice was to the value of R332 255.00. The
payment that has been confirmed that you have just read
now is R383.800.00 it is R51 000.00 more and the
R51 000.00 more was a budgetary quote that my wife
received from Thompson to change to Dubai because she
was determined to go to Dubai on the 24th of November
already. So she paid that amount. The email that you –
there is another email Chair and I am going to beg you and
ask you to look at it.

20 **CHAIRPERSON:** Ja.

MR KOKO: It is part of the bundle I gave you.

CHAIRPERSON: Okay let me see. Yes Registrar.

MR KOKO: No, no.

CHAIRPERSON: This no – Thank you. Which one is it?

MR KOKO: It is the one from Tato.

CHAIRPERSON: Document number what from the top?

MR KOKO: It is the last one – it is the very last page.

CHAIRPERSON: It is the last one.

MR KOKO: Very – single page – it is a single page like this.

It is just 00:14:12.

CHAIRPERSON: Okay. Yes I have got it.

MR KOKO: And it comes from Tato.

CHAIRPERSON: Yes.

MR KOKO: To Terry..

10 **CHAIRPERSON:** To Terry Gunther.

MR KOKO: Kuzakona. Tato is my daughter.

CHAIRPERSON: Yes.

MR KOKO: And you will see

CHAIRPERSON: It is dated 14 December 2015. It is sent by Tato at 11:47 subject is additional arrangements for Mr M Koko, Mr P Koko and Ms M D Koko to Terry Gunther and it says:

20 “Hi Terry I hope this mail finds you well. The parties in – the party in the subject would like to add a trip to Dubai on the already planned trip to Bali. Below are the specs.

- Depart 18 December to Dubai.
- 00:15:98 until the depart to Bali from Doha on the 23 December. Please quote as soon as you can so that I can revert from my

side.”

Yes.

MR KOKO: So all.

CHAIRPERSON: That is 14 December.

MR KOKO: 14 December. What is – what this tells you for me – we were going to Indonesia. My family had plans to go to Dubai. They planned for it. We paid for it. The difficulty that we had Chair is that my daughters had problem and you will see it is three names it is Piha, it is Masema, it is me
10 which are the names that comes on the Salim Essa emails. So there was no – we planned for it. We paid with our money but we had difficulty with passports. So we could not – my daughter’s – my daughter could not get passports. So I went to Ms Daniels because between Ms Daniels and my professional assistant they never battled with visas – things happens quickly. I gave all the documents we have to Ms Daniels. I says we have booked our trip to Dubai. We have paid for it. It is paid for. I do not need anybody – I do not need Salim Essa to pay for it. There is the evidence that we
20 paid for it. I know – and – they were good in organising. Please see if you can sort out the visas for us. And if you cannot succeed then we will simply 00:16:49 we will not go – we will just go to Indonesia and back from Indonesia but we will not do the Dubai trip. We left South Africa without visas confirmed. They were confirmed when I was in – when I was

in Indonesia. They came to me and that is what we discussed earlier in – infoportal email address and that is when I also said when I came back I said to her how did I get this? She says it was for convenience. I had no clue who she used to get the visas for me.

CHAIRPERSON: The visas.

MR KOKO: I had no clue at all. But secondly I did not expect to pay because the evidence I have showed you we have paid for it. But I never got any refund that somebody
10 ever paid for us. That is how far I can take the story.

CHAIRPERSON: Ja okay.

MR KOKO: But Chair but here is a 00:17:51 for you. When I received the affidavit of Alana and we – you joked about it and say R100 000.00 I said to you nobody pays R100 000.00 for you and you do not know about it. Nobody. It is not my culture. No – nobody will pay R100 000.00 for me and I do not know anything about it. Chair I am going to give you a communication between my attorneys and the attorneys on record of Mr Salim Essa. I know them because we are in a
20 case together in the SIU and this is where I said the people who come to you to lie under oath cannot get away with it because they – they make it impossible for you to get to the truth. So I am going to give them to you Chair and you will then understand what I – what I have.

CHAIRPERSON: But is that still under the trip?

MR KOKO: It is under the trip.

CHAIRPERSON: Okay.

MR KOKO: It is – it deals with the payment Chair.

CHAIRPERSON: Okay alright.

MR KOKO: It deals with who paid.

CHAIRPERSON: Okay.

MR KOKO: Chair I see you have stopped sanitising documents. We – I the Minister of Health says we are entering the third wave. Chair Ms Suleiman says she was
10 called on the 20th by either Mr Essa or the secretary that somebody will dropping the cash on the 20th and she – and somebody dropped the cash in the house. That somebody is a person by the name of – I will tell you – Shaheed.

CHAIRPERSON: Hm.

MR KOKO: That person his name is Shaheed.

CHAIRPERSON: Shaheed.

MR KOKO: Yes.

CHAIRPERSON: Okay.

MR KOKO: Now if you go to the last page of the document
20 from Shannon Little it is an email communication between Ms Sulliman and Salim Essa. Again you read it from the bottom.

CHAIRPERSON: Ja there is a letter Shannon Little Attorneys. There is the letters two pages and then there is – do you want me to go to the last page?

MR KOKO: Yes it is the email.

CHAIRPERSON: Well the last page is Travel Excellence – just tell me –

MR KOKO: It is an email conversation,

“just thanking you at all times

Sameera Suleiman.”

It is Sameera Suleiman.

CHAIRPERSON: Ja but it must – ja it could be on the previous page is it not.

MR KOKO: Yes second previous page yes.

10 **CHAIRPERSON:** Ja tell me.

MR KOKO: Ja you read from the bottom up.

CHAIRPERSON: Ja tell me about it. Only the relevant parts.

MR KOKO: It is an email from Salim Essa on the – no, no. It starts from the bottom. So the bottom – it is an email from Sameera Excellence – Travel Excellence on the 18th of January 2016 at 20 past – 18 minutes past 9.

“Salam Saliem please see your bookings below.”

20 **CHAIRPERSON:** I am sorry. You are – okay I see where you are. Ja that is from

MR KOKO: Sameera

CHAIRPERSON: Sameera Sulliman.

MR KOKO: Yes.

CHAIRPERSON: She is writing to

MR KOKO: Salim Essa.

CHAIRPERSON: Salim Essa.

MR KOKO: Yes.

CHAIRPERSON: And she says:

“Please see your booking below.”

MR KOKO: Yes. She says:

“Salim Saliem see your bookings below.”

CHAIRPERSON: Ja.

MR KOKO: And she gives the bookings of Mr Essa and this
10 tells – these are the bookings of Mr Essa and Mr Essa’s kid
and the wife.

CHAIRPERSON: Ja.

MR KOKO: And Salim – and the next email is from Salim
Essa – salimessa@gmail.com the affidavit of Ms Sulliman
says that is the email that she communicated with Salim
Essa on.

CHAIRPERSON: Ja.

MR KOKO: It is 8 – it is Monday 18 January 2016 twenty
past eleven from Sameera Sulliman.

20 “RE please see below Mr Salim Essa
responding to Ms 00:23:49 and he says
perfect.”

CHAIRPERSON: Yes.

MR KOKO: The next email comes from Salim Essa – from a
Blackberry Ms Salim is Ms Sameera Sulliman sends an email

to Salim Essa at 21 past 9 Sameera she says:

“Can I issue your ticket?”

And then the next email comes from Salim Essa at January 18 22 minutes past 11 Salim Essa says:

“Yes please sending 100K with Shahied to cover this and the 11th and levelling – and leave me with some credit.”

CHAIRPERSON: Yes.

MR KOKO: And this is the R100 000.00 that Ms Sulliman
10 received in his house.

CHAIRPERSON: Yes.

MR KOKO: That was brought by Shahied that she says it is mine.

CHAIRPERSON: Yes.

MR KOKO: And she has kept these emails communications from you. So – so...

CHAIRPERSON: Yes.

MR KOKO: Ms Salim – Mr Salim – and we received these emails – this communications from lawyers of records of
20 Salim Essa on the 24th – on the 24th of March. At that point we only had the affidavit of Ms Alana. We only received the email of Ms Sulliman on the 25th.

CHAIRPERSON: So – so you say you got them through your interaction with Mr Salim Essa’s lawyers.

MR KOKO: Attorneys.

CHAIRPERSON: In regard to the SIU.

MR KOKO: Yes.

CHAIRPERSON: Investigation.

MR KOKO: Yes.

CHAIRPERSON: I wish that Mr Salim Essa could make himself available to the commission.

MR KOKO: I wish so too because he can – he can break all this.

CHAIRPERSON: Because his lawyers wrote to the
10 commission and said he was complaining that he was being
defamed in the commission and the commission wrote to
them and said where is he? Could you give us – can you
give us an undertaking that if we allocate a date for him to
come and appear before the commission he will come? And
I am told there has been no answer to this.

MR KOKO: Chair it is my wish that he comes here.

CHAIRPERSON: Ja.

MR KOKO: He will – he will – this commission needs him
here.

20 **CHAIRPERSON:** Ja we want him – we want him to come and
explain things and you know all kinds of things have been
said about him he could explain to the nation what
happened.

MR KOKO: Ja I do not have contact him Sir.

CHAIRPERSON: Yes.

MR KOKO: I actually went into the SIU documents search for the...

CHAIRPERSON: Contract attorneys.

MR KOKO: And hence give it here. But Chair the point is – the point I am making to you is Chair.

CHAIRPERSON: Okay that – that I guess we will get – we have got to

ADV SELEKA SC: We will keep them there Chair.

CHAIRPERSON: You do not know I need to – okay alright.

10 **MR KOKO:** The point I am making Chair is this is relevant to who paid for Mr Koko.

CHAIRPERSON: Ja.

MR KOKO: Mr Salim Essa says I brought the R100 000.00. I know the R100 000.00 you are talking about.

CHAIRPERSON: Yes.

MR KOKO: It was brought by Shahied.

CHAIRPERSON: Ja.

MR KOKO: Here is the email communications then that tells you what this R100 000.00 is for.

20 **CHAIRPERSON:** Was for ja.

MR KOKO: It was not for Mr Koko.

CHAIRPERSON: Ja.

MR KOKO: But Chair if you go to – if you go to page 1565.58. If you are there.

CHAIRPERSON: I am sorry what page?

MR KOKO: Bundle 18 1565.58.

CHAIRPERSON: That is point 58.

MR KOKO: Yes Point 58.

CHAIRPERSON: 58

MR KOKO: Yes. And you will realise Chair I do not buy the story of mistakes you know. I have come to the point where people are allowed – everybody else is allowed when he lies to represent a mistake – well I do not – when it is Mr Koko it impacts on his credibility.

10 **CHAIRPERSON:** Yes right.

MR KOKO: So

CHAIRPERSON: Right I am there.

MR KOKO: So – so Ms Sulliman says:

“I have received the money in my house.”

Who received the money in – that is a receipt. Who received the money there? Whose name is there? You can see it at the bottom right. Received by:

20 **CHAIRPERSON:** But also the – the date when that is received is 20 January 2016 it seems to me not 18. But that is a receipt at the office and did she not say the cash was delivered to her house?

MR KOKO: The cash was – just – in the house and she took it to the bank.

CHAIRPERSON: And it was – and the receipt – did she say she took it to the bank or to the office?

MR KOKO: No she took it.

CHAIRPERSON: Mr Seleka what is your recollection?

ADV SELEKA SC: She said:

“I in turn deposited at the bank into our bank
account.”

MR KOKO: Yes.

CHAIRPERSON: Yes. Okay.

“And indicated the reference as SE Essa”

CHAIRPERSON: Ja.

10 **MR KOKO:** Either this is fraudulent or she is lying. This cannot both be correct. Either she – in fact Chair we will get into the detail. This is either fraud or she is lying. But Chair there is another important part. Me and my counsel spent nights looking at the receipt number. That receipt number 50 or 595TE what do you read there?

CHAIRPERSON: 505.

MR KOKO: If you – we have asked for original of this. It reads - if you look at closely within this 595.

CHAIRPERSON: H’m?

20 **MR KOKO:** And you can start with, like, if 595 is 1040.

CHAIRPERSON: H’m?

MR KOKO: Is 1040.

CHAIRPERSON: H’m?

MR KOKO: And that is why we have asked for it.

CHAIRPERSON: H’m?

MR KOKO: But in any event. Ms Halima who lied to you in an affidavit before.

CHAIRPERSON: H'm?

MR KOKO: Who lied to the Hawks before. The Hawks said in Section 205 notice and says: We need the person who interacted with Mr Essa to write an affidavit which number is point(?) four. She wrote it. She did not refer them to Salim – to Ms Suliman. But this document, Chair, you should not take it lightly. I am asking you. I am
10 begging you. Because it is simply fraud. These people are misleading you from getting to the truth.

CHAIRPERSON: Well, what is – what needs to be looked at is that we have travel agents – agencies, Thompsons and Travel Excellence.

MR KOKO: I think I know what happened there, Chair.

CHAIRPERSON: H'm?

MR KOKO: I think I know what happened there.

CHAIRPERSON: They both seem to claim to have made bookings. I know that there was – there is a portion of the
20 – one of the affidavits from travel agents which seemed to say there is a part of a lack of the trip that they did not make bookings for but they say they made bookings for the others.

ADV SELEKA SC: It is the same affidavit.

CHAIRPERSON: Yes. So we have got two travel agents.

So the first thing is to see whether there is actual conflict in terms of the versions and it on the face of it, it does appear to be so. But the one thing, Mr Koko, that would be very interesting is to the extent that you had never used Travel Excellence. You had never interacted with either Ms Alana or Ms Suliman.

There is the question of how they would have come to know about your trip and when and what time you would leave for what destination and come back in what
10 flight if, one, the position, as you put it, as I understand it that you had never had anything to do with them. And two, if nobody had told them about those details, they say or one of them says Mr Salim Essa told them about it or his secretary. What do you say about that? Are you able to say anything?

MR KOKO: Yes, Chair.

CHAIRPERSON: H'm?

MR KOKO: I have gone through this evidence and this is where tried and really tried to help you. It is a fact that my
20 travel arrangements or my changing(?) arrangements from Indonesia to Dubai was done by Travel Excellence. The documents say so. I am not a type of guy who... a document, unlike many. The documents, if you look – the flight number that is there, is the flight number that I used. So I have no doubt ...[intervenes]

CHAIRPERSON: That part you accept, that they did that?

MR KOKO: I have no doubt.

CHAIRPERSON: Ja.

MR KOKO: Look, Chair, when – and this is what I keep on asking you. When documents speaks for itself. You really look stupid to... I mean, I have seen many people... look stupid because the every – the document say so when you try ...[intervenes] [Speaker unclear]

CHAIRPERSON: Ja.

10 **MR KOKO:** ...take people for a ride. The document say so.

CHAIRPERSON: Ja, h'm.

MR KOKO: So. And that is not a debate. You have got limited time and I do not want to spend time.

CHAIRPERSON: Ja.

MR KOKO: So that is... [Speaker unclear]

CHAIRPERSON: Ja.

MR KOKO: From Indonesia to Dubai was done by Travel Excellence.

20 **CHAIRPERSON:** Ja, h'm.

MR KOKO: They lied before and I do not know why they lied that they booked my... plan. [Speaker unclear]

CHAIRPERSON: H'm, h'm.

MR KOKO: Because they were lying. They did not think that I would have the documents. I will find the documents

to show that they were lying but... [Speaker unclear] But now they have... [Speaker unclear] Now when I – when my daughter battled with a visa and I asked Ms Daniels. My proposition is simple.

And that is why I spend a lot of time, trying to show you the proximity between Suzanne and Mr Essa. That is why I – I even now I have printed emails to show you that these people know each other. Ms Daniels in his – in her disciplinary hearing says he has been
10 communicating with Mr Essa since March – since April 2015.

You got – again, if you do not have it. I only – your legal team, I will go and show it to you. They know each other, these people. It is no coincidence that Ms Essa offered him – offered her R 800 million bribe. It is no coincidence that you would wake up on a Saturday morning and go to meet people in Dubai with pyjamas, wearing pyjamas. They know each other

I think, instead of her going to where I sent her
20 because I gave her the documents – I gave(?) her where to go. She went to her friends. She went to her friends. Now you keep on saying to me. Why is Salim following you? Salim is not following me. Ms Daniels went to her friends.

I had no reason, Chair, to get anybody paying for

me. I have given you confirmation that I will pay R 383 000,00. I have given you documents to show you that as early as December 2014, we have – my family planned go via Dubai. We just could not – had a problem with the visas which Ms Daniels sorted for us. I do not know he(sic) sorted of us. But clearly, clearly he(sic) solved it brought his(sic) friends in.

CHAIRPERSON: So. But you say from you side you had instructed her to deal with Thompsons?

10 **MR KOKO:** Yes.

CHAIRPERSON: Yes.

MR KOKO: And I gave her the documents.

CHAIRPERSON: Yes.

MR KOKO: I gave her man to deal with.

CHAIRPERSON: Had she dealt with Thompsons at your instance in regard to anything before or she had not?

MR KOKO: Chair, I – Suzanne used to – Suzanne introduced herself in Parliament as the Chief of Staff in my office. That is how she introduced...

20 **CHAIRPERSON:** H'm?

MR KOKO: So that tells you what a type of relationship I had. A professional one. We are not friends. But we are professionals that I can ask her such things. Granted, at that point, I asked her. It was December 2015. She had already moved to the Chairman's office but we still kept the

relationship.

CHAIRPERSON: H'm, h'm.

MR KOKO: We still kept the relationship.

CHAIRPERSON: So you have no recollection whether she might have dealt with Thompsons Travel Agents at her(?) instance out of this?

MR KOKO: No, I do not.

CHAIRPERSON: You are not... Ja, okay.

MR KOKO: No, no, no.

10 **CHAIRPERSON**: Alright.

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

CHAIRPERSON: Okay alright.

MR KOKO: But these are – the travel arrangements, I think that between her and my professional assistance, there would – I would just get my to my office and pick up my travelling documents and I will go. Between them, they were very efficient.

CHAIRPERSON: So is your evidence that, one, in regard to this part of the leg or this leg of the trip from Indonesia
20 ...[intervenes]

MR KOKO: To Dubai.

CHAIRPERSON: ...to Dubai, she is the one who asked – who must have asked Travel ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...Travel Excellence ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...to make bookings for you?

MR KOKO: Yes.

CHAIRPERSON: And that she is the one also who decided in regard to the visas to use Travel Excellence ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...without your knowledge?

MR KOKO: Yes, and here I am saying her associate which
10 concerning Salim Essa.

CHAIRPERSON: H'm?

MR KOKO: Because the thing with Salim Essa is there.

CHAIRPERSON: Yes.

MR KOKO: I mean, you all – we had to go through Salim
Essa. [Speaker unclear]

CHAIRPERSON: But why would you think she would go to
Travel Excellence when she knows you wanted her to use
Thompsons? Because it is not like – it would be different
you said: You know, I need to travel. Find a travel agent
20 and make this – ask them to do this for me without
specifying which one. But if you were using Thompsons
and you said to her: Ask Thompsons to do this for me.
Why would she go to Travel Excellence?

MR KOKO: Remember when I told you – I dealt with this
topic before, when we get into the visas. I said to you but

this email address is an email address that you gave to me that I must use it when I want to talk to the Chair but is the same email address that brings me a visa. And by the way, I have since changed my mind. I think she – Ms Daniels had – that was a portal that Ms Daniels had access to. Given the evidence, that is what it is. And she answer she gave me was convenience. And I said to you then the mistake I did not do, I did then, was not to probe this convenience thing.

10 **CHAIRPERSON**: And in regard to her having, probably, because I think that is what you are saying, probably approached Travel Excellence whether directly or through Salim Essa ...[intervenes]

MR KOKO: No, I think she – I think she approached Travel Excellence through Salim Essa.

CHAIRPERSON: Ja, ja. When did you discover that actually that leg of your trip had been booked for by Travel Excellence?

MR KOKO: Chair, this is interesting conversation. Long,
20 long.

CHAIRPERSON: Ja. Soon after ...[intervenes]

MR KOKO: Not soon.

CHAIRPERSON: After coming back?

MR KOKO: No.

CHAIRPERSON: Oh, much later?

MR KOKO: 2018.

CHAIRPERSON: 2018?

MR KOKO: Yes.

CHAIRPERSON: Yes.

MR KOKO: Dr Bonn(?) was even gone.

CHAIRPERSON: Yes. And how did it come about that you found out?

MR KOKO: Because Eskom went into – and this is the point. So I was so transparent with these emails that I –
10 on my phone used my Eskom email address. You know, it is not a characteristic of a person trying to hide. So I used my email address, Eskom email address to sent the emails to the receptionist to claim(?) the visas. And then it died there. Two years later, Eskom comes back to me and say: Actually, this email trail, somewhere along the line it has got Salim Essa in it. What was going on?

CHAIRPERSON: Well... And then, did you contact her that time, Ms Daniels, to say: On whose authority ...[intervenes]

20 **MR KOKO:** By that time we were no longer on speaking terms, Chair.

CHAIRPERSON: Ja.

MR KOKO: She was calling out, telling everybody that I stole money from Eskom.

CHAIRPERSON: Okay alright. Now, Ms Suliman says she

was asked by either Mr Salim Essa or his secretary
...[intervenes]

MR KOKO: Or his secretary.

CHAIRPERSON: Or his - Mr Salim Essa's secretary to
make bookings for you.

MR KOKO: Yes. And the visas, yes.

CHAIRPERSON: Ja, and the – well, I did not remember
about the visas in terms of her but yes, okay. And you –
we have reached a point where you are able to say: Well,
10 as far a particular leg of the trip from Indonesia from Dubai
that was – booking was made by Travel Excellence
...[intervenes]

MR KOKO: No, the documents say so... ...[intervenes]

CHAIRPERSON: Yes ...[intervenes]

MR KOKO: You cannot argue that.

CHAIRPERSON: But to – we have gone further because
you have said this must have happened in this way.
Ms Daniels must have spoken to Salim Essa and Salim
Essa must have spoken to Travel Excellence ...[intervenes]

20 **MR KOKO**: Correct.

CHAIRPERSON: So to an extent and maybe it is a limited
extent, the two versions fit in there although it comes from
different angles.

MR KOKO: Ja.

CHAIRPERSON: [laughs]

MR KOKO: Yes.

CHAIRPERSON: Because in regard to that part of the leg, then Ms Suliman must be correct to say either Mr Essa or Mr Essa's secretary spoke to me and – in regard to that part of the trip.

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

CHAIRPERSON: Ja, ja, ja.

MR KOKO: Yes.

CHAIRPERSON: Ja, ja.

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

CHAIRPERSON: Ja, you accept that.

MR KOKO: That part ...[intervenes]

CHAIRPERSON: That part is not a problem.

MR KOKO: It is not a problem for me.

CHAIRPERSON: Ja, ja.

MR KOKO: I accept.

CHAIRPERSON: No, that is fine. We are at about twelve minutes past nine.

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON**: We did not talk about when we would stop.

ADV SELEKA SC: Indeed.

CHAIRPERSON: But I think we should stop and then on Monday we can continue. On other times, I would go – I would be prepared to go further but I have got to – I think

we should stop now. And then on Monday we try and finish. I do not know whether Mr Seleka you had to or three questions you wanted to put in regard to this before we adjourn or you – they can wait until Monday?

ADV SELEKA SC: We – I can ask two or three or – ja. Or should they wait? Let them wait, Chair.

CHAIRPERSON: They can wait?

ADV SELEKA SC: Let them wait.

CHAIRPERSON: Okay alright.

10 **ADV SELEKA SC:** Ja.

CHAIRPERSON: Then it is fine. But before we adjourn, I want to raise something and I want mister – to hear what Mr Barrie might say about it, if it is something that he would want to respond to only on Monday, that is fine. I do not know, Mr Barrie, whether, one – once Mr Seleka has finished questioning Mr Koko you wish to re-examine, number one.

Number two. If you wish to re-examine, I do not know what you have in mind as to how long it might take.

20 But having said that, I want to say either if Mr Seleka ends up using all the time on Monday or uses most of the time and the time that is left is not enough for you to finish, I have begun to say to legal representatives of persons who wish to re-examine that maybe they could consider whether in the place of oral re-examination, they would be

comfortable with filing an affidavit after the evidence leader has finished to question the witness.

Within an agreed period, filing an affidavit which clarifies all the issues that they would have wished to clarify. Some have said that is fine but obviously it depends on each legal representative. But that is simply because of the time constraints. So I do not know whether you wish to think about it or is there something that you want to say something?

10 **ADV BARRIE:** Chair, something that we know...
[Speaker's microphone not working properly] ...but we have filed a new bundle, a further bundle today. It was sent to the team which we asked to be added to Bundle 50.

CHAIRPERSON: Ja.

ADV BARRIE: And we hope that will be made available to you by Monday.

CHAIRPERSON: Ja.

ADV BARRIE: Our problem is. This is Mr Koko's – I think it his eight day here and it is a very – it is in a sense wide-
20 ranging. In another sense, they are actually very – the issues are actually simple. But the way that the examination has gone in relation to each and every point because every time Mr Koko comes to testify, then the work stream goes and they find witnesses who contradict him and then he comes back and that is put to him and

then – and it is an endless process.

And then we need to deal with that in some way or another and I am not quite sure that it is practically possible to deal with that comprehensively in an affidavit. What I would propose is that, yes, we will do a – do something to that effect but it might still be necessary to hear Mr Koko.

CHAIRPERSON: Ja.

ADV BARRIE: Something to elucidate in some instances
10 but I am sure that it will cut the proceedings ...[intervenes]

CHAIRPERSON: Considerable.

ADV BARRIE: ...considerable but we need a bit of time. I just need a bit of breathing space. [laughs]

CHAIRPERSON: Ja. [laughs] No, that is alright. That is alright.

ADV BARRIE: But yes ...[intervenes]

CHAIRPERSON: Yes.

ADV BARRIE: ...we have actually considered that because we know that you have these time constraints.

20 **CHAIRPERSON:** Yes. No, thank you Thank you, thank you. Okay we are going to adjourn for today. For the benefit of the public. Tomorrow I will be hearing witnesses who will give evidence in connection with the State Security Agency. Mr Koko will resume his evidence on Monday, the evening session.

But I want to thank you Mr Seleka and your team. I want to thank the investigation team. I want to thank you Mr Koko. I want to thank Mr Barrie and his instructing attorney. And the staff and the technicians for your cooperation to enable us to sit so late in order to try and finish the work. I appreciate all the sacrifices that everybody is doing – is making to assist us. Thank you very much. We will adjourn now.

ADV SELEKA SC: Thank you, Chair.

10 **CHAIRPERSON:** We adjourn.

INQUIRY ADJOURNS TO 14 MAY 2021