

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

17 MAY 2021

DAY 396



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 17 MAY 2021

CHAIRPERSON: Good morning Mr Chaskalson, good morning everybody.

ADV CHASKALSON SC: Good morning Chair.

CHAIRPERSON: Are you ready this morning?

ADV CHASKALSON SC: I am – we are Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And today Mr Makhubo has returned to complete his testimony.

10 **CHAIRPERSON:** Good morning Mr Makhubo.

MR MAKHUBO: Good morning Chairperson.

CHAIRPERSON: Thank you.

MR MAKHUBO: Good morning Counsel.

CHAIRPERSON: Okay no that is fine you might wish just to remind the public where his evidence fits in and where we ended last time so that they can follow – the public can follow the evidence.

ADV CHASKALSON SC: Certainly Chair. Mr Makhubo is the current Executive Mayor of the City of Johannesburg.
20 He testified on the 27 November and he testified primarily at that stage on issues relating to entities in which he had an interest and the relationship with those entities and the Regiments Group of Companies that had contracts with the City of Johannesburg. Those contracts were – spanned a period when Mr Makhubo was not part of the political

leadership of the City of Johannesburg but also running into a period when he was the member of the Mayoral Committee for Finance.

We are going to pick up today and for the most part today I am going to dealing with a different set of issues those relations – those relating to the links between Mr Makhubo and his entities and entities and persons within the EOH Group of Companies.

But before we leave...

10 **CHAIRPERSON**: Yes.

ADV CHASKALSON SC: Chair before we leave the proceedings last November Mr Makhubo last time that you testified your legal representatives and indeed yourself had expressed a concern that the documents and – the documents that were provided to you and they ran into more than 1000 pages have been provided to you on short notice.

And I just wanted to give you an opportunity before we start today is there anything that you want to revert to in relation to the questioning on the 27th of November relating
20 to documents which possibly you have not had a lengthy enough opportunity to peruse?

CHAIRPERSON: Before he does so let us have the oath or affirmation administered then he can respond.

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

MR MAKHUBO: Moloantoa Geoffrey Makhubo

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

MR MAKHUBO: No.

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

MR MAKHUBO: Yes.

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

MR MAKHUBO: So help me God.

CHAIRPERSON: Thank you. You may be seated. Then you can respond to ...

MR MAKHUBO: Chairperson there is a bit of an echo the sound was not...

CHAIRPERSON: Maybe it was the aircon. Is it still there?

ADV CHASKALSON SC: Chair I think the problem may have been that I was not switching off my microphone when
20 I was not talking.

CHAIRPERSON: Well I do not know if that should create a problem. I think it – it should not because initially we thought we should switch them off but very often they are – all three on and there is no problem. At the moment Mr Chaskalson's mic is off but mine is on and yours is on can

you hear any echo?

MR MAKHUBO: No, no it is better as he was talking there was a bit on an echo.

CHAIRPERSON: Oh.

MR MAKHUBO: It is not quite audible.

CHAIRPERSON: Oh maybe – oh okay alright.

MR MAKHUBO: I am not sure if it was...

CHAIRPERSON: Okay maybe. Okay let us – that is fine.

Let us see how it goes – you will switch it off when you are
10 not speaking and see how it goes. Yes.

ADV CHASKALSON SC: I will do Chair.

CHAIRPERSON: Yes. Okay. Mr Makhubo.

ADV CHASKALSON SC: Mr Makhubo it may be simpler if –
when I am – if you and I alternate on microphones so when
I am talking I think that might help on the echo.

CHAIRPERSON: His one can stay on. Most of the time I
keep mine off except when I am talking but sometimes I
leave it on and there is no problem. But his one can stay
on even when he is not talking it should be fine. But I will
20 keep mine off when I am not talking.

ADV CHASKALSON SC: Thank you Chair. Mr Makhubo
then to get back to that question I just wanted to clarify that
now that you had a longer opportunity to look through those
documents is there anything that you wanted to revert to or
qualify in relation to your testimony last time around.

MR MAKHUBO: No.

ADV CHASKALSON SC: Can I possibly be more specific then. There was a transcript of a Power FM interview at Bundle – Flow Funds Bundle 2 page 926 onwards and we invited you assume that it was a correct transcript but if you wanted to check the tape you were free to do so. I just want to clarify that you do not dispute any of the accuracy of that transcript?

MR MAKHUBO: I – I did not check the tape but I am not – I
10 am not disputing it.

ADV CHASKALSON SC: Okay. And similarly, there were a series of tables of transactions that ran from Flow of Funds Bundle 2984 to Flow of Funds 2991 and there was also a table of transactions at Flow of Funds 3 pages 849 to 850 which were transfers between Molelwane Consulting and your personal accounts. I just want to check if there are any of those transactions which – which you want to place in dispute?

MR MAKHUBO: No.

20 **CHAIRPERSON:** Just one second Mr Chaskalson. I understood from what you said that Mr Makhubo may be legally represented.

ADV CHASKALSON SC: He is Mr Mphaga is

CHAIRPERSON: Oh.

ADV CHASKALSON SC: I apologise to you and Mr

Mphaga.

CHAIRPERSON: Okay would you just...

ADV CHASKALSON SC: I should have given him an opportunity to put himself on records.

CHAIRPERSON: Ja could have placed on – on record.

ADV MPHAGA SC: Thanks Chairperson. Advocate Moses Mphaga SC I am appearing for Mr Makhubo.

CHAIRPERSON: Thank you.

ADV MPHAGA SC: Thank you.

10 **CHAIRPERSON:** Thank you.

ADV CHASKALSON SC: And then I want to take you to – specifically to transactions that I did not question you directly about last time beyond referring to them generically in that bundle from page 984 to 991.

MR MAKHUBO: Bundle 2.

ADV CHASKALSON SC: Can you go to Bundle 2 page 990.

MR MAKHUBO: Page 9?

ADV CHASKALSON SC: 990.

MR MAKHUBO: You say the black ones or the red ones?

20 **ADV CHASKALSON SC:** The black ones – I will be referring exclusively to the black numbers today. 990.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: There is a table of cash deposits at the top of that page – ignore that for the meantime but then there are a table of transactions from TSS

Management Services to either of the two Molelwane Consulting Accounts with an aggregate figure of R4.457 million. I just want to clarify that there are no transactions there that you dispute.

MR MAKHUBO: No.

ADV CHASKALSON SC: And then below there is a table from ACCsolve but you can ignore that but go over the page to 991 and first there is a table of payments aggregating to R500 000.00 from Patrick Mak – with the reference Patrick
10 Makhubedu that were paid into the two Molelwane accounts. Again can you clarify if there are any of those transactions that you dispute?

MR MAKHUBO: No.

ADV CHASKALSON SC: And at the bottom – the last table is a table of payments with the reference Payment Zylec that were paid into the Molelwane current account a total of R630 000.00 – are there any of those that – that you dispute?

MR MAKHUBO: No.

20 **ADV CHASKALSON SC:** Now if I – I can ask you to turn to page 417 of that bundle – same Bundle 2. That is the affidavit that you furnished to this commission.

CHAIRPERSON: What is the page again?

ADV CHASKALSON SC: 417 Chair Bundle 2. And – and if you go down to paragraph 42 of your affidavit you say:

“To my knowledge Zylec is an entity owned by Mr Patrick Makhubedu and one Mr Metse Phiyega. I had no business relations with this entity.”

Now if you have no business relationship with Zylec can you explain why it was paying you amounts that aggregated to R630 000.00 or paying Molelwane amounts that aggregated to R630 000.00?

MR MAKHUBO: As far as I remember Patrick would especially in the early days when there is no cash flow in
10 Molelwane he would assist, from whatever quota that we would do including from Zylec that is how – that is what I remember.

ADV CHASKALSON SC: I see – and – so if we back to that table which is at page 991 the last – the last table in the – the bundle. If one looks at those date of the Zylec transactions they are 2012 and 2013. Now that is after Molelwane has successfully obtained its – its biggest contract ever which was the contract with Regiments in relation to the Johannesburg sinking fund quite a long time
20 after that in fact it is after that contract should have expired but it is during the period where that contract was prolonged.

Are you still suggesting that these were the cash flow payments?

MR MAKHUBO: I still maintain that in the early days that is

how we used to – between ACCsolve – Molelwane whoever had cash flows if I did Patrick would help with the cash flows.

ADV CHASKALSON SC: But this was not the early days this was after 2011 it was in fact after the time when according to your evidence you had intended to resign.

MR MAKHUBO: Yes there were still people at Molelwane and he would assist. Remember when I left ACCsolve where I was partners with Patrick we had agreed again that
10 things would continue and he – we had agreed that for the value that is in ACCsolve he will still have to pay me but this one specifically I am referring to I really think that it is around the – around those cash flows in Molelwane.

ADV CHASKALSON SC: So if I understand you correctly these would essentially be loans to Molelwane that Patrick would have organised to tied it over its cash flow difficulties.

MR MAKHUBO: They would be between Molelwane ACCsolve, Patrick, myself yes.

20 **ADV CHASKALSON SC:** So they were not – but the nature of the payments would – would not – it is like there was an underlying transaction supporting them beyond a loan to tide over cash flow difficulties.

MR MAKHUBO: That is how I understand them yes.

ADV CHASKALSON SC: Okay. Thank you. Can we then

move to the EOH issues and for the most part of – for these questions I am going to be referring to documents in the bundle Flow of Funds 1. Bundle 1 Flow of Funds. So if you can put Bundle 2 away and go to – go to Bundle 1. Once or twice I might have to refer to Bundle 3 so if you can also have that to hand but I – I am unlikely to refer to 2 again for a while.

MR MAKHUBO: Ja page?

ADV CHASKALSON SC: And can I ask you to go to Bundle
10 1 page 761.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And there there is a document
Chair I am not sure if you have page 761 of Bundle 1.

CHAIRPERSON: She is going to give it to me just now.
761.

ADV CHASKALSON SC: Yes Chair.

MR MAKHUBO: Yes I have got it.

ADV CHASKALSON SC: There is a proposal for the
upgrading of the City of Johannesburg Network and Security
20 Infrastructure prepared for the City of Johannesburg dated
16 April 2014. It is an EOH document. Do you recognise
this document?

MR MAKHUBO: I see it was sent to me but that – it does
not make sense so I do not recognise it at all.

ADV CHASKALSON SC: You do not recognise it?

MR MAKHUBO: No.

ADV CHASKALSON SC: Can I take you ...

MR MAKHUBO: I think it had nothing to do with me Chair.

ADV CHASKALSON SC: Sorry it does not.

MR MAKHUBO: Saying the City it had nothing to do with me.

ADV CHASKALSON SC: In the City it had nothing to do with you?

MR MAKHUBO: Yes.

10 **ADV CHASKALSON SC:** I think legally that should have been correct but can I – can I ask you to go up a page to 760. Now this is an email taken off a EOH computer. It is addressed by Patrick Makhubedu to geoff.makhubo@gmail.com is that your Gmail address?

MR MAKHUBO: Yes it is.

ADV CHASKALSON SC: And it is dated 27 August 2014 and the attachment EOH CoJ Networking Solution Volume 3.docx is the document that we have just seen. Do you recall receiving this email from Patrick Makhubedu on the
20 27 August 2014?

MR MAKHUBO: I – I do not – I tried to go back to my old emails but I – I do not. As I said when I read it it does not make sense why it came to me.

ADV CHASKALSON SC: Yes I – it also does not make sense to me why it came to you but the – there is an email

on EOH computer which is addressed to you attaching this document. Are you saying you have never received this document?

MR MAKHUBO: No, no I am not saying I have never received it I said I can see it is sent to me but I – I do not remember reading this document I do not even remember – as I say it is meaningless to me. IT was not even part of my portfolio.

ADV CHASKALSON SC: So IT was not part of your
10 portfolio?

MR MAKHUBO: No.

ADV CHASKALSON SC: Yes. You have this bundle of documents for over six months now. Have you raised with Patrick Makhubedu why there is an email from EOH address to your Gmail attaching this document?

MR MAKHUBO: No I did not.

ADV CHASKALSON SC: Did you not think it would – I mean you say it makes no sense that he would have sent it to you.

20 **MR MAKHUBO**: Yes.

ADV CHASKALSON SC: But they why did you not raise this with him – why did send it to me?

MR MAKHUBO: I did not occur to me that I visit with him but I just did not think it was important to raise but I did not raise it with him.

ADV CHASKALSON SC: Right. And if you did get involved in a procurement decision around IT that would have been completely irregular would it not?

MR MAKHUBO: Yes to receive a proposal.

ADV CHASKALSON SC: You – you did yes.

MR MAKHUBO: If I did.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: But I did not.

ADV CHASKALSON SC: Yeah you say you did not yes.

10 **MR MAKHUBO:** Ja it is a supposition that I did not.

ADV CHASKALSON SC: But there is this rather curious email from Patrick Makhubedu to you attaching an IT tender proposal.

MR MAKHUBO: I think it will be best to answer it himself I do not know really what – if...

ADV CHASKALSON SC: Okay. Well this email on its face was sent to you on the 27 August 2014 can I take you to – and you will recall that the proposal itself had a date of April 2014.

20 **MR MAKHUBO:** I see it here yes.

ADV CHASKALSON SC: Can I take you to some other documents or emails exchanged between you and Patrick Makhubedu in August 2016 shortly before this email apparently was sent to you. Can you go to 606 of Bundle 2.

CHAIRPERSON: 60 – 606 of?

ADV CHASKALSON SC: 606 – oh sorry of Bundle 1 – of Bundle 1 – Bundle 1 I beg your pardon Chair.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: 606 of Bundle 1. Bundle 1 is the bundle in – the same bundle that we have been working on and all of the references unless otherwise stated will be to Bundle 1. For the record I will try to remember to mention Bundle 1.

MR MAKHUBO: 606?

10 **ADV CHASKALSON SC:** 606.

MR MAKHUBO: Okay.

ADV CHASKALSON SC: So at the top of 606 you see an email from Patrick Makhubedu to Rene Jonker dated 6 August 2014 and what it forwards is an email that appears to come from you geoff.makhubo@gmail.com also 6 August 2014 to patrickmakhubedu05@gmail.com and can I just clarify at that point it is patrick.makhubedu05@gmail.com a Gmail address that you would use in corresponding with Patrick Makhubedu?

20 **MR MAKHUBO:** Yes and EOH ja but they use this one.

ADV CHASKALSON SC: And the email that appears to come from you to Patrick Makhubedu says:

“Dear Patrick, the ANC Greater Johannesburg requests urgent assistance with the relaunch of its Youth League this

weekend. Apologies for the late request but it is an imperative from Head Office. Attached is the accommodation quotation funds can be paid directly into the ANC or to the venue. Regards Geoff Makhubo and Regional Treasurer.”

Do you recall sending that letter?

MR MAKHUBO: Yes I remember this email requesting for money for the Youth League Conference.

10 **ADV CHASKALSON SC**: Right and if we go down two pages – oh sorry not two pages – if you go up to 602 – 602/603 we will see a letter from Rene Jonker to Patrick Madhubedu on the same day 6 August

“Banks will pay first thing in the morning.”

And underneath there is an email from Patrick Makhubedu to Rene Jonker forwarding ANC bank details and those ANC bank details appear to have been forwarded from you to Patrick Makhubedu later on the 6 August 2014 at 3:50. Do you recall that email attaching – forwarding the ANC bank
20 details on 6 August 2014?

MR MAKHUBO: Yes it would have made sense that we send bank details when you request the funding.

ADV CHASKALSON SC: Right. And then if you go down a page further at 604 you see an email from Patrick Makhubedu to Jehan Mackay who was a Senior Executive at

EOH at the time and he says:

“Hi please assist as per email below.”

And what is forwarded below again is an email from you geoff.makhubo@gmail.com to patrick.makhubedu05@gmail.com and over the page is the attachment that was attached to that email. Is that the – the quotation for the Youth League Conference venue that you wanted EOH to pay on page 605? R582 100.00.

MR MAKHUBO: Yes Chairperson it is a – it is a quotation
10 from the venue where the conference was held and it was a request for funding on behalf of the African National Congress Youth League Johannesburg region.

ADV CHASKALSON SC: Right. And then if we go down to page 612 we will see that your request was actually successful – sorry 607 you will see the Proof of Payment of R582 100.00 from TSS Managed Services which is an EOH company to the ANC Greater Johannesburg. Do you recall receiving payment of this amount R582 100.00 in the ANC bank account from TSS in response to your request?

20 **MR MAKHUBO:** Yes the request was honoured.

ADV CHASKALSON SC: Can I ask you then to go down further to page 609 and that is a letter that comes from you in your capacity as Regional Treasurer and you will see that it is signed or is in your name at the foot of 610 – can you go to 610 in – we are in Bundle 1 Flow of Funds Bundle 1.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: And can you describe this letter – sorry is this a letter that you sent to the EOH Executive Director copied to Mr Ebrahim Laher?

CHAIRPERSON: I am sorry Mr Chaskalson did you say 610?

ADV CHASKALSON SC: 610 is where the – Mr Makhubo's name appears on the document – 609 is where it is addressed to the Executive Director EOH Mthombo and
10 copies to Ebrahim Laher.

CHAIRPERSON: Oh okay. Alright.

ADV CHASKALSON SC: Is this a request that you sent to Mr Jehan Mackay?

MR MAKHUBO: Yes that is correct.

ADV CHASKALSON SC: And if one goes through the requests one sees that it is a request for a contribution relating to upcoming conferences and congresses and the total expenditure that the region needs is R6.180 million. You can see that figure at the foot of 610. And you were
20 asking ...

CHAIRPERSON: I am sorry Mr Chaskalson I am looking for R6, whatever?

ADV CHASKALSON SC: Oh.

CHAIRPERSON: Million.

ADV CHASKALSON SC: R6 180 000.00 at page 610 Chair.

Grand total just above banking details. Grand total is R6 180 000.00.

CHAIRPERSON: Oh yes. Okay now I see I was looking on the columns before that ja. I have seen it ja. Okay.

ADV CHASKALSON SC: And you sent this request to Mr Mackay – what sort of donation were you hoping to receive from him?

MR MAKHUBO: Well we – we were sending to say that from August to January there would be activities that would
10 be carried out by – by the region which is why we even broke the – the cash flows per month that we do not need the lump sum but if they can assist us to carry out all these activities that are stated in the letter – in the different months because the 2014 was a very busy year towards to the end. So that is – that is basically part of the fund raising efforts amongst others that we sent to – to EOH.

ADV CHASKALSON SC: I see and what sort of donation were you hoping receive from EOH?

MR MAKHUBO: How do you mean Chairperson?

20 **ADV CHASKALSON SC:** Sorry.

MR MAKHUBO: I do not understand the question.

ADV CHASKALSON SC: I mean what kind of donation were you expecting to receive from EOH? What – what size?

MR MAKHUBO: Well the –

ADV CHASKALSON SC: What part of the R6. – just over

R6.18 million were you hoping to get from EOH?

MR MAKHUBO: No I mean at that time they would tell me what they can afford and then so that I can approach other donors that would fund the region as well – let us say maybe you can afford R900 000.00 then it is fine. We would sent the same to other donors who would – and who – who in any case would have funded ourselves as well – funded the ANC as well.

ADV CHASKALSON SC: I see. Now the ANC was at the
10 time the controlling party in the city was it not?

MR MAKHUBO: Come again.

ADV CHASKALSON SC: The ANC was the – at the time the governing party in the City?

MR MAKHUBO: Yes. Yes.

ADV CHASKALSON SC: And EOH did a lot of business with the City did it not?

MR MAKHUBO: EOH has being doing business with the City pre-dating before I became Treasurer as well.

ADV CHASKALSON SC: Yes but I am interested in August
20 2014 was EOH doing business with the City?

MR MAKHUBO: Yes EOH was doing business with the City and continues to do business with it ja.

ADV CHASKALSON SC: And in August 2014 did EOH have any pending proposals before the City.

MR MAKHUBO: Well, to my knowledge – as you say that,

to my knowledge EOH was doing business at that time in The City.

ADV CHASKALSON SC: Well, I am interested in a slightly different question which is whether it had any pending proposals. In other words, business that it wanted to get but had not been awarded yet.

MR MAKHUBO: From the proposal that – I saw the email, it is very clear that they sent a proposal at that time but I was not – I mean, this really did not make sense to me but
10 yes they were going to continue to do business with The City. They have been doing business for a long time with The City and they still do business with The City today.

ADV CHASKALSON SC: And as we see from that email, there was a proposal pending before The City at the time.

MR MAKHUBO: It is apparent from the email, yes.

ADV CHASKALSON SC: Now, do you think it is appropriate for the ANC as the governing party of The City to solicit donations from companies who are doing business with The City and had pending bids before The
20 City?

MR MAKHUBO: Well, I suppose maybe there is an issue to be canvassed and I thought that it was canvassed with our national office as internally(?) structure when the President was here and the Treasurer General but we ask for donations from the spaza shop to do anyone doing

business with The City to anyone not doing business with The City. We go to private sector to ask for business... sustain. So I just think that whoever is willing to fund the ANC and we send proposals and it is transparent. So it should be appropriate.

ADV CHASKALSON SC: Well, you said it is transparent. In what way is it transparent?

MR MAKHUBO: Because I had wrote the letter to the Executive Director. You know, it is not a hidden thing. It
10 went into EOH as posing(?) to the EOH process.

ADV CHASKALSON SC: Yes, but that is hardly transparent visa vie the public. I mean, EOH knows if you are soliciting a donation from them. Does the public know?

MR MAKHUBO: Well, this is a private matter between the organisation. It is only now that the deal(?) was passed but, you know, private donations must be disclosed that are above hundred thousand, Chairperson. But before then, political parties – who knows who funds the DA in the Western Cape, whether they do business or not with the
20 Government of the Western Cape. Who knows who funds other parties.

But previously, of course, between the organisation and whoever donated it was kept a secret except when you go to conferences would account to our own members. Even some of the sessions are open. So

our own members would know who has funded us.

ADV CHASKALSON SC: Yes, so I think one of the rare points of common ground between the ANC and the DA at the time was nobody wanted to disclose the source of their donations.

MR MAKHUBO: [laughs]

CHAIRPERSON: That has to be true. [laughs]

MR MAKHUBO: [laughs]

ADV CHASKALSON SC: [laughs] They even went to the
10 Constitutional Court together on that one. But what I want to put to you is that in terms of an appearance of manipulation of tender processes. If a city – if a governing body in command of a city is soliciting donations from businesses who are doing business with The City and who are applying to do more business with The City, there is at least an appearance created that whether they respond to the donation and how they respond to the donation may affect the outcome of their pending proposals. What is your response to that?

20 **MR MAKHUBO:** I, during my tenure, would not have linked whether getting a tender or not. So I was not – in fact, if you ask anyone that I spoke to, will tell you that I always said a thing that I do not sell tenders because I am not involved in tenders. So as you speak about appearance, I – for me it is quite clear that the reason for

me to go to ask for money from, one, people I know.

Two, from any other businessperson who is willing to fund the ANC. Some of them would volunteer and I would write them letters. You would not even have a causality and Xhosa link between that and doing business in The City and the tender. So whether you win the tender or not, it does not depend on whether you fund the ANC or not.

There are lots of businesses doing – there are
10 lots of business doing – having transactions and business in The City but they do not fund the ANC and you know it does not work against them.

ADV CHASKALSON SC: We will get back to what you yourself did in relation to tenders and what you did not later but for now I am just wanting to talk about appearances. So I want you to not to speak about your own actions. I just want to hear your response on whether you accept that if the governing party solicits donations from companies doing business with The City and applying
20 to do more business with The City that creates an appearance of impropriety in the sense that the outcome of the pending proposal may be effected by the response for a donation. What is your response to that?

MR MAKHUBO: Appearance to whom? I do not think so that – you know because I was a player in requesting

money, for me, Chairperson, it does not really – unless you expressly say: If you do not fund this – our organisation, you will not get a tender. I do not see how it appears that this causality between, you know, funding the organisation and getting a tender.

Firstly, I am the Treasurer of the organisation. It means then I would have to instruct the accounting officer and the committees that preside over these tenders and illegally interfere in the procurement processes, which I am
10 prohibited(?) to do, for me to get – for the company to get the benefits. Then what does it mean?

It means that everyone will have to queue at the ANC door for them to get the tenders or any other governing party for them to get business with The City. So I do not know about the appearance because for me it does not appear that the appearance is the way you described it, Chairperson.

ADV CHASKALSON SC: Okay. Well, let us go back to what actually happened then. Can we go to page 612?

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

ADV CHASKALSON SC: And there you will see a payment from an entity called Prime Molecular. Do you know who Prime Molecular are?

MR MAKHUBO: I have subsequently learnt that it is Patrick's company.

ADV CHASKALSON SC: Okay. And if you look at that group of payments It is R 20 527.30 to SCC/14872 and if you go up a page you will see the covering email and that is an email from Patrick Makhubedu to yourself on 20 August 2014, saying proof of payment Sandton Convention Centre. Do you recall receiving that email from Patrick Makhubedu with the proof of payment with twenty thousand odd to the Sandton Convention Centre?

MR MAKHUBO: Yes, I saw the email as I was going
10 through the bundle.

ADV CHASKALSON SC: And what was that in connection with?

MR MAKHUBO: I think it was about a small meeting we had in the Sandton Convention Centre.

ADV CHASKALSON SC: Sorry, it was?

MR MAKHUBO: It was about a meeting we had at the Sandton Convention Centre.

ADV CHASKALSON SC: An ANC meeting in the Sandton Convention – a regional ANC meeting in the Sandton
20 Convention Centre?

MR MAKHUBO: No, actually, it was not an ANC regional meeting but it was a meeting of people that we organised.

ADV CHASKALSON SC: But in connection with an ANC – was it an ANC meeting or was it a ...[intervenes]

MR MAKHUBO: Yes, it was in connection with an ANC

thing(?).

ADV CHASKALSON SC: Okay. Can we then go further down to page 613? And there you will see another email from Patrick Makhubedu to yourself on the 22nd of August and it says forward payment confirmation 165 and it forwards a payment confirmation from Standard Bank. And if you go down two pages to page 615, that is still in Bundle 1, you will see that there is a payment that is made to a beneficiary, the ANC, and it has the beneficiary
10 reference Patrick Makhubedu and it says R 70 000,00 on the 22nd of August 2014. But for now I just want to draw your attention to what it says below:

“If you need more information or have any questions about this payment, please contact Mfundi 1...”

Do you know what Mfundi 1 was?

MR MAKHUBO: I do not know Mfundi 1 but I subsequently learnt that there is a company called Mfundi.

ADV CHASKALSON SC: Mfundi.

20 **MR MAKHUBO:** Yes.

ADV CHASKALSON SC: And what did you learn about Mfundi?

MR MAKHUBO: That is has got links with Patrick.

ADV CHASKALSON SC: And do you know who else it has links with?

MR MAKHUBO: I think it is Reno.

ADV CHASKALSON SC: Reno Barry?

MR MAKHUBO: Ja.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: And if I recall ...[intervenes]

MR MAKHUBO: I saw it from the ...[intervenes]

ADV CHASKALSON SC: From the transcripts(?).

MR MAKHUBO: Yes.

10 **ADV CHASKALSON SC:** And recall your testimony earlier that Reno Barry is your financial advisor.

MR MAKHUBO: No, Barry was introduced to me by Patrick and I asked ...[intervenes]

ADV CHASKALSON SC: Ja.

MR MAKHUBO: And I asked him to – in the affidavit I say, when I – because Mululane(?) people used to do my tax. When they stopped, I asked Reno to continue assisting me with doing my tax, not my financial advisor, just as my tax and my work tax, ja.

20 **ADV CHASKALSON SC:** I see. In your affidavit you actually described him as your financial advisor but are you saying he just does your tax?

MR MAKHUBO: Yes, he just does my tax. My financial advisor is somebody else who does my advice with my investments and everything.

ADV CHASKALSON SC: Okay. So Reno Barry is confined to tax?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: Can I take you to page 336 of this bundle?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: Bundle 1, page 336.

MR MAKHUBO: Yes?

ADV CHASKALSON SC: And there you will see an email
10 from Reno Barry to Patrick Makhubedu on
10 September 2014 which attached a document called
Mfundi Management Report 10 September 2014, and it
says:

“Hi, Patrick. Please find the attached
management report...”

And if you go down a page to 337, you will see
the management report which was attached.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Or the spreadsheet that was
20 attached as the management report.

MR MAKHUBO: Yes?

ADV CHASKALSON SC: And if you bear with me for one
moment?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: The – if we start at the top, it

says Sales Monthly EOH Invoice. So Mfundi is invoicing EOH monthly and there is a monthly amount of R 406 000,00. It runs across from October 2013 all the way through to August 2014. Then underneath, another sale that Mfundi does, is an EOH special invoice and we see R 1.2 million in June 2014. A special invoice to EOH in June 2014.

We see no other income to Mfundi other than income from EOH. You have an accountancy training.

10 Would you accept that that is a correct assessment of this spreadsheet that the only income comes from EOH?

MR MAKHUBO: That is how I read this spread sheet but I would not know.

ADV CHASKALSON SC: Yes. No, I am not suggesting that you have personal knowledge of ...[intervenes]

MR MAKHUBO: Ja ...[intervenes]

ADV CHASKALSON SC: ...relies on but ...[intervenes]

MR MAKHUBO: Ja, ja.

ADV CHASKALSON SC: ...on the report from Mfundi to
20 Patrick Makhubedu, all the income comes from EOH. Then underneath the sales, there are costs of sales, a range of them. And a lot of them seem to be relating to house alterations or house constructions. So if one goes down 1, 2, 3, 4, 5 one sees KG Designs.

A few later, one sees Northern Wholesale Tiles.

And then you would see Inovar Floor Centurion. A bit lower, one sees Pioneer Floor Heating, Advance Renovators, Dayzhan(?) Customer Furniture, Sundowner Skylights.

A bit lower down, Riapha(?) Properties. Can you offer any ideas to why Mfundi might be billing EOH for expenses of this nature, house improvement expenses of a cost of sales on their invoices to EOH?

MR MAKHUBO: I honestly why – and the operations of
10 Mfundi, I would not even know.

ADV CHASKALSON SC: Okay. And you yourself did not do any household alterations or house construction in that period of May 2014 to August 2014, which is when these...?

MR MAKHUBO: No, no, no.

ADV CHASKALSON SC: And you ...[intervenes]

MR MAKHUBO: The things(?) to my house has nothing to do with Mfundi.

ADV CHASKALSON SC: Sorry?

20 **MR MAKHUBO:** No, no, no. I – everything – anything – everything that has to do with me has nothing to do with Mfundi. It is my house. I mean, you are asking me about ...[intervenes]

ADV CHASKALSON SC: Yes, but I am asking a separate question. Were you doing household alterations in that

period?

MR MAKHUBO: My house alterations were around 2011 to around 2013 and of course we continue doing things. Even today, we are doing maintenance.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: But none of these expenses, Norman Wholesale Tiles, Inovar Floor Centurion ...[intervenes]

10 **MR MAKHUBO**: No.

ADV CHASKALSON SC: KG Designs. Do you recognise any of these suppliers?

MR MAKHUBO: No, no, no.

ADV CHASKALSON SC: Pioneer Floor Heat Keating.

MR MAKHUBO: No.

ADV CHASKALSON SC: But you have floor heating at your house?

MR MAKHUBO: Pardon?

20 **ADV CHASKALSON SC**: Do you have floor heating at your house?

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

ADV CHASKALSON SC: And do you remember when it was installed?

MR MAKHUBO: It was installed when I built in 2012.

ADV CHASKALSON SC: In 2012?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Not in 2014?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Well, can I take you to two which – two expenses which do affect you?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Or were related to you. If you see – remember we saw the proof of payment of R 70 000,00 to the ANC?

10 **MR MAKHUBO**: Yes.

ADV CHASKALSON SC: And if you go down, the August 2014 column, you will see that R 70 000,00 is reflected and then you move across left, is reflected as Mfundi Cost of Sales to EOH for the ANC. So it is cost of sales, ANC and you go across, you will see R 70 000,00 was paid by Mfundi to the ANC in August 2014. And Mfundi accounted to EOH as treating this payment as the cost of its sale to EOH. Is that an accurate description of what we see in this management report?

20 **MR MAKHUBO**: I would not know how they classify the expenses and how they do their books and ...[intervenes]

ADV CHASKALSON SC: Oh, no, but you see how they do it right now. You are an accountant and you see ...[intervenes]

MR MAKHUBO: Yes, I see that. They called it costs of

sales and then I – I mean, how would be this be a cost of sales to them?

ADV CHASKALSON SC: Well, they seem to be treating it as a cost of sales against the only sales that they have which are EOH invoices.

MR MAKHUBO: Ja, that is – I mean, I would not know. As I say, I see it from here. It is like reading any books as a third party but I cannot comment on why they would do that.

10 **ADV CHASKALSON SC:** But you will accept that as an accountant who reads management reports like this what this suggests or what the stakes as a report is that the R 70 000,00 payment to the ANC by Mfundi was built as a cost of sales on the EOH invoices that were the only sales that Mfundi had in that period.

MR MAKHUBO: That is how I read the ...[intervenes]

ADV CHASKALSON SC: Yes.

MR MAKHUBO: That is how they classified it.

20 **ADV CHASKALSON SC:** And that is presumable how Patrick Makhubedu would have read it when he saw it. That is how any trained accountant would read it, is that not right?

MR MAKHUBO: I cannot presume what Patrick read it.

ADV CHASKALSON SC: Well, how would any trained accountant read it?

MR MAKHUBO: Any trained accountant would read it as a cost of sales...

ADV CHASKALSON SC: The cost of sales in respect of invoice and the only sales are invoices to ...[intervenes]

MR MAKHUBO: Cost of sales of generating the sales that are ...[intervenes]

ADV CHASKALSON SC: [Indistinct]

MR MAKHUBO: ...reflected there. That is what an accountant would read these financials.

10 **ADV CHASKALSON SC**: Yes.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And those sales are invoices to EOH.

MR MAKHUBO: That is how I am reading this, Chairperson.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Let us go down one.

MR MAKHUBO: Yes.

20 **ADV CHASKALSON SC**: And one sees an R 80 000,00 payment. This time to Molelwane Consulting also in August 2014. And if I can just ask you to briefly shit to Flow of Funds, Bundle 3 and go to page 612?

MR MAKHUBO: I see, Mr Chaskalson, when you said let us go down I was wanting to go to the next page because

...[intervenes]

ADV CHASKALSON SC: On, sorry. No, no the same page, Chair. If you see where the R 70 000,00 is ...[intervenes]

CHAIRPERSON: Yes-no, I can see that. Now I understand. Just that previously you ...[intervenes]

ADV CHASKALSON SC: I was saying down by page.

CHAIRPERSON: ...or up when you say let us go back. You have not said let us go down when you say let us go
10 forward. So...

ADV CHASKALSON SC: I will try to be more precise.

CHAIRPERSON: [laughs] Alright. Bundle 3, what page?

ADV CHASKALSON SC: Bundle 3, page 612.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And if one starts at 611, which tells us what the document is. So up a page to Bundle 3 to page 611.

MR MAKHUBO: Yes?

ADV CHASKALSON SC: That is a bank statement from
20 Molelwane Consulting starting at 16 August 2014 and ending 17 September 2014. And you confirmed that it is.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Yes. Now if one goes, one sees that the opening balance is R 621.45. So Molelwane is almost in overdraft at that point.

MR MAKHUBO: Yes?

ADV CHASKALSON SC: And if one goes to 22 August, the very first entry in here is that R 80 000,00 that we saw reflected as an Mfundi payment to Molelwane in August 2014. It has the reference Patrick Makhubedu. Do you see that?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So if we then go back – well, keep that page open because we are going to come back to
10 it, but if we go back to August, the management report that Barry sent to Makhubedu which is Flow of Funds, Volume 1, page 337 we see that that R 80 000,00 from Mfundi to Molelwane appears on this management report again as a cost of sales in respect of the sales generated by those EOH invoices that Mfundi is issuing. Do you see that?

MR MAKHUBO: Yes, I see that.

ADV CHASKALSON SC: So as between Mfundi and EOH, R 80 000,00 paid into your close corporation was treated as a cost of sales between Mfundi and EOH in respect of
20 the EOH invoices that were issued to Mfundi. Do you know what this payment was for, this R 80 000,00 payment?

MR MAKHUBO: I think it was, as I see and as I read it, it was a cash flow to pay salaries in August 2014 attributed to assist Molelwane like just because – just as Accsolve

was assisted before. So on the 22nd, he deposited R 80 000,00 just to help pay the people there.

ADV CHASKALSON SC: So payment is Molelwane's cash flow problems, is that you are saying that R 80 000,00 was?

MR MAKHUBO: I think that what – how I can said and then that is how – you know, that is how we operated between Exsolve and Molelwane. That is – the two companies operated interchangeable for the longest of
10 time.

ADV CHASKALSON SC: Sorry, which two companies?

MR MAKHUBO: That is why I am saying Exsolve(?)
...[intervenes]

ADV CHASKALSON SC: I ...[intervenes]

MR MAKHUBO: ...was a director, ja.

ADV CHASKALSON SC: Exsolve?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Exsolve.

MR MAKHUBO: Yes.

20 **ADV CHASKALSON SC:** Yes.

MR MAKHUBO: Yes. And therefore, Patrick, when I left him he said: Look, please look after this up until it runs down. I think that is what he did and he would be the best person to answer, as I say what the issues were there.

ADV CHASKALSON SC: But I just want to – before we

get the opportunity to ask questions to Patrick, we need to get clarity from you. Your understanding is that is an R 80 000,00 payment to ease cash flow problems Molelwane would have at the time ...[intervenes]

MR MAKHUBO: That is ...[intervenes]

ADV CHASKALSON SC: ...and to enable it to pay salaries.

MR MAKHUBO: That is my understanding, yes.

ADV CHASKALSON SC: And indeed, we saw those cash
10 flows problems because its balance was, before it received that payment, its balance was down to R 621.45.

MR MAKHUBO: That is what it appears, ja, from the bank statement.

ADV CHASKALSON SC: But if you go back then to page
337. Sorry, it is – that same management report.

MR MAKHUBO: H'm.

ADV CHASKALSON SC: We see that this payment to
ease Molelwane's cash flow problem is treated as a cost of
sales as between Mfundi and EOH. How – can you offer
20 any explanation as to why Mfundi would treat a payment to
Molelwane as a cost of sales arising from its income from
EOH?

MR MAKHUBO: I definitely do not have idea why Mfundi
would classify something like this.

ADV CHASKALSON SC: I see. Well, maybe we will have

the opportunity to ask Mfundu in or Patrick in due course. Let me take us back to the chronology where 22 – we have gone through to 22 August. And then we come to 27 August ...[intervenes]

MR MAKHUBO: Which bundle is that?

ADV CHASKALSON SC: Oh, you can just put that one back. We have gone through all of these donations to the ANC and to Molelwane in early August and then on 27 August, we come to that email that I started with today
10 at page 760 of this bundle.

CHAIRPERSON: Bundle 3, must we ...[intervenes]

ADV CHASKALSON SC: Bundle 1. Bundle 1, Chair.

CHAIRPERSON: Must we keep Bundle 3 open at any page or not really?

ADV CHASKALSON SC: Not at any page.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: We may come back to it.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: But we – it will be in a different
20 context, Chair.

CHAIRPERSON: Okay.

MR MAKHUBO: It is Bundle 1, page?

ADV CHASKALSON SC: 760.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And so it is in that context of all

of these donations that have been solicited for the ANC and all of these and then this payment that has been...

CHAIRPERSON: Was that seven, six, zero or seven, one, six?

ADV CHASKALSON SC: 760.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: 760, Chair.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: It is in this context that on
10 27 August, Mr Makhubedu emails you a copy of the EOH proposal. Does the timing – can you comment on that timing in any way?

MR MAKHUBO: No, I have no comment on timing. I would not have a comment on that.

ADV CHASKALSON SC: You see, what I want to put to you is that Mr Makhubedu has made a series of donations to the ANC in the previous couple of weeks and he had now saved your company, Molelwane, from its cash flow difficulties and it was in that context that he thought he
20 might ask your assistance in relation to a pending EOH networking proposal. What is your comment on that?

MR MAKHUBO: No, Patrick could never do that. We were business partners for a long time. We have helped each other for a long time. We – he would not solicited any tender to me like this or any other way. We have known

each other for long.

ADV CHASKALSON SC: But then why would he email you this proposal?

MR MAKHUBO: I am not sure why he would email me this proposal. As I said, it has nothing to do with me but our relationship is such that he would not say I have donated to the ANC to this. No, he has never done that. And they have donated from the days before it was bought by EOH and they have never asked me for anything. Even before I
10 joined The City. Even, I think, before they even got business from The City that or even donate to the ANC.

ADV CHASKALSON SC: Again, I ask you. Did – why would he email you a proposal?

MR MAKHUBO: I do not know. As I say, it is his best place to answer that. I would not know because I was not even responsible for IT or any other procurement processes. I would not know.

ADV CHASKALSON SC: Well, let us go a little bit further. Let us go down to Flow of Funds, Bundle 1, page 778.

20 **MR MAKHUBO:** 778?

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Yes?

ADV CHASKALSON SC: And there you see another email from Patrick Makhubedu to yourself dated 29 August 2014. And it has an attachment and the attachment I son the

following page 778.1. You want to turn to page 778.1?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: The attachment is an invoice from TSS which is the EOH subsidiary to The City and it is in the amount to R 106 185 395.36 which is exactly the same amount as the proposal that Mr Makhubedu sent to you on 27 August, two days previously. Do you recall receiving this email?

MR MAKHUBO: Again, I saw it on this bundle. I do not
10 recall. It does not even make sense. Again was – how do you sent a proposal four days later, the invoice, before you even get the job? I mean, it does not even make sense.

ADV CHASKALSON SC: Well, the proposal was in respect of a proposal that had been made in April but we will get to why it all make sense in a minute. So you say you have no recollection of receiving this email?

MR MAKHUBO: As I say, I see it here but I could not even go to my old emails. So I do not have a recollection of this thing.

20 **ADV CHASKALSON SC**: But this is an email, again, taken off an EOH computer that is addressed to you on that date. Can you deny that you received it?

MR MAKHUBO: I see this on page 778 and as I say I tried to go back but I do not – I could not get as far as 2014 on my emails.

ADV CHASKALSON SC: I see.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: So you are not in a position to deny that this email was sent to you on the 29th of August by Patrick Makhubedu?

MR MAKHUBO: Well, I am not denying that it was sent to me but obviously I have got no recollection of an invoice sent to me that I could do nothing about.

ADV CHASKALSON SC: I see.

10 **MR MAKHUBO:** I could do nothing about this.

ADV CHASKALSON SC: Well, you have now had this document for over six months. You have gone back to look to see if you have found it on your Gmail and you say but you could not get back that far. Have you raised it with Patrick Makhubedu?

MR MAKHUBO: No, in the same way of the proposal, I did not raise it with him.

ADV CHASKALSON SC: Why have you not raise it with Patrick Makhubedu?

20 **MR MAKHUBO:** I did not see the need because I did not – I – nothing, nothing - this thing had nothing to do with me...

ADV CHASKALSON SC: I understand that it had nothing to do with you legitimately but the appearance is being created that Patrick Makhubedu is sending you emails

relating to procurement practises that are none of your business. Have you not want to find out from Patrick Makhubedu why he was doing this?

MR MAKHUBO: I was not... on the basis of appearances and I say, I did not – and when things to me do not affect me, do not want me to take action, I just ignore them. That is how I work.

ADV CHASKALSON SC: I see. Let us go a little further. Let us go to 1 September 2014 on page 779. That is an
10 email from Patrick Makhubedu to Reno Barry and this says:

“Please pay R 100 000,00 into the Molelwane account from Mfundu and make immediate clearance...”

And if we go to Flow of Funds, Bundle 3 at page 612. Bundle 3, page 612.

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: There we see that R 100 000,00 payment on the 1st of September. This is the Molelwane bank statement that we earlier looked at where there was
20 R 80 000,00 payment from Molelwane on the 22nd of August with the reference Patrick Makhubedu. If we go on the 1st of September, Patrick Makhubedu referenced R 100 000,00. Do you see that?

MR MAKHUBO: Yes, I am seeing that.

ADV CHASKALSON SC: So it looks as though that

Molelwane instruction resulted in a payment of R 100 000,00 into your Molelwane – sorry, that Mfundu instruction from Patrick Makhubedu reduced a payment of R 100 000,00 into your Molelwane account on the 1st of September. Is that correct?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And again, that was a point at which Molelwane was having cash flow difficulties before that payment. If you look, its balance was at R 597.57.

10 **MR MAKHUBO**: Yes?

ADV CHASKALSON SC: And after that payment it was over – it was at R 100 597,45. Without that payment it would not have been possible on 2 September to pay Kakali(?) salary R 10 000,00. Do you accept that is correct?

MR MAKHUBO: Yes, I am just going to overdraft. Yes, to the... [Speaker not clear]

ADV CHASKALSON SC: Who is Kakali?

MR MAKHUBO: It is my mother.

20 **ADV CHASKALSON SC**: Right. So your mother's salary would not have been paid without that R 100 000,00 payment by Patrick Makhubedu?

MR MAKHUBO: Yes, without we starting injecting money to the company, yes.

ADV CHASKALSON SC: Yes. And that money came from

Mfundi.

MR MAKHUBO: For me, it came from Patrick, ja.

ADV CHASKALSON SC: Oh, yes. But we have seen the instruction that it came from ...[intervenes]

MR MAKHUBO: Yes.

ADV CHASKALSON SC: ...that it came from Mfundi. And then on 2 September, there is a R 20 000,00 payment to Jeff Standard. Is that a R 20 000,00 payment into your account?

10 **MR MAKHUBO**: Yes.

ADV CHASKALSON SC: And again, that R 20 000,00 that was paid to you would not have been possible without the R 100 000,00 payment that came on the 1st pursuant to Patrick Makhubedu's instruction to Mfundi. Do you accept that?

MR MAKHUBO: If Patrick had not transferred into the account, yes.

ADV CHASKALSON SC: Yes. Then there are some payments below. Metzi(?), Rory and Simon got payments
20 of R 3 500, R 3 500,00 and R 2 500,00. Who are Metzi, Rory and Simon?

MR MAKHUBO: I cannot remember. It must be one of the comrades.

ADV CHASKALSON SC: Okay. Well, those comrades would not have been paid but for the R 100 000,00

payment that Patrick Makhubedu instructed from Mfundi.
Is that correct?

MR MAKHUBO: If Patrick had not paid into our account,
yes.

ADV CHASKALSON SC: Yes. And what about this Liberty
Life policy or this Liberty Life payment on the 5th of
September, R 22 895.00? Do you know what that – looks
like a policy premium. Do you know what that is in respect
of?

10 **MR MAKHUBO**: Yes, when we were in Molelwane they
would take policies for a couple of people including myself,
my mother working and others, ja.

ADV CHASKALSON SC: Okay. So the premium on a
policy of which, among others, you and your mother were
beneficiaries also would not have been able to be paid but
for the R 100 000,00 that Patrick Makhubedu instructed
Mfundi ...[intervenes]

MR MAKHUBO: Well, let me put it this way. If Patrick
had not paid, probably would have asked for an overdraft
20 or something like that. But as I said earlier, we used to
work like this. If he had cash flow problems, we would
help him. If you do not – but you know Exsolve – between
Exsolve and Molelwane. That is how we used to work.

ADV CHASKALSON SC: I see.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Did Molelwane have an overdraft facility with FNB at that time?

MR MAKHUBO: Well, you could ask for ten thousand facility. They used to grant us before then. At this time, I would not because as I have said I was not – ja.

ADV CHASKALSON SC: But you have no standing overdraft facility with FNB?

MR MAKHUBO: No, no, no. But whenever we needed temporary facilities, they assisted.

10 **ADV CHASKALSON SC:** And would it have been possible to organise a temporary facility on one day's notice?

MR MAKHUBO: No, no not really. Not really. But I think two days or three days, yes.

ADV CHASKALSON SC: I see. But ...[intervenes]

MR MAKHUBO: Even on my personal account, normally when there is a temporary facility I would get it within a day. Then we would... [Speaker not clear]

ADV CHASKALSON SC: But any rate, you would not have been able to pay that R 10 000,00 or – payment to your
20 mother on the 2nd of September and the R 20 000,00 payment that went into your Standard Bank account on 22nd of September. The R 20 000,00 payment that went into your Standard Bank account also on the 2nd of September.

MR MAKHUBO: You know the way you phrase it, it is like

there was no any other way to find cash flow but in this case, yes, Patrick did, as always, as we helped each other, as there was inter-company all the time, as we would inject money into the different companies to keep the cash flow going and we have done that for... [Speaker not clear] It is not the first time that we do this.

ADV CHASKALSON SC: I see. But this particular payment, why I am interested in it is, it is coming from Mfundi. The accounts to EOH for payment of this nature is
10 costs of sales for its invoices to EOH. And I am saying, without that payment all of these subsequent payments out of Molelwane would not have been possible about that cost of sales of Mfundi. Your comment on that?

MR MAKHUBO: You know, how Patrick – when we talk and he has got a couple of businesses, how he transacts with me or he transacts with Molelwane and/or Exsolve, I really do not – it has not been part of my – I will not even ask him to say: Where do you take the money from? But the way you are asking it, because of the document that
20 are here.

Yes, this money came from Mfundi, the way I see it on the documents and yes he did pay into Molelwane but whether he takes it from his personal account, Standard Bank or he takes it from Mfundi, Nedbank or whatever. I really would not even ask him where he gets the money

from.

CHAIRPERSON: Would this be a convenient time, Mr Chaskalson?

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Let us take the tea adjournment. We will resume at half-past eleven. We adjourn.

ADV CHASKALSON SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **ADV CHASKALSON SC**: ...in bundle 1. Can I ask you to go to page 782?

MR MAKHUBO: It is on from 781 to 783, my 782 is blank.

CHAIRPERSON: You do not have 782?

MR MAKHUBO: Yes, 781 and then 782 is a blank page.

CHAIRPERSON: Oh, okay.

MR MAKHUBO: It is a blank page.

ADV CHASKALSON SC: Chair, I will ask for a 782 to be found for Mr Makhubo but maybe before we – while we are looking for that I can go onto another document, does not
20 have to be dealt with immediately.

CHAIRPERSON: Ja, that is fine.

ADV CHASKALSON SC: Can I take you to page 339?

MR MAKHUBO: In bundle 1?

ADV CHASKALSON SC: In bundle 1, yes, and maybe start on 339, not 339.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: You will see on 338, there is another email from Reno Barry to Patrick Makhubedu, 15 September this time. It is says:

“Proof of payment, Molelwane Consulting.”

And if we go down, this time it is a payment from Molelwane Consulting with a beneficiary description Patrick Makhubedu – sorry, payment from Prime Molecular to Molelwane Consulting with the beneficiary descript Patrick
10 Makhubedu this time the amount is R70 000 on 15 September 2014. This payment is made not into the account that we have been looking at up till now but into the other account of Molelwane, 62052928060. Do you see that on the payment confirmation?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Do you confirm that that is a Molelwane account number?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So another 70 000 comes to
20 Molelwane from a Patrick Makhubedu entity executed by Reno Barry on the 15 September. Any comment on that?

MR MAKHUBO: I have no comment, I suspect it is one of those again. I have no comment. You know, Chairperson, the Molelwane and ACCsolve used to share offices in Braamfontein in Noswal Hall, 8th floor and at that time, as I

said, the active people managing Molelwane and to know what problems are there would not be myself as the executive. I stopped being executive at that time. So whatever the problems would be, whatever cash flows they would need, I think because Patrick used to oversee ACCsolve and take an interest in what happens in Molelwane. So I am not sure what this is.

ADV CHASKALSON SC: But you see what strikes me as strange about this payment is that if it was a cash flow
10 payment surely it would go into the business accounts of Molelwane, the 62002637025 account that we have been looking at because that is where Molelwane's cash flow ran, is that not correct?

MR MAKHUBO: I think that is correct. As I say, I would not – I did not quite look what the issue was here.

ADV CHASKALSON SC: But if Mr Makhubedu was alleviating cash flow who would not direct a payment into the other Molelwane account, would he, because that would not help on the cash flow.

20 **MR MAKHUBO:** Where would pay to and how interbank transfers would happen, I mean, I cannot comment on that.

ADV CHASKALSON SC: No but you can comment on one thing which is that a payment into that account, which is not the business account of Molelwane, is not going to help with Molelwane cash flow, is it?

MR MAKHUBO: What is the business account of Molelwane?

ADV CHASKALSON SC: Sorry, the account that we have been looking at when it hits cash flow problems, payments come in. That is 62002637025. This account into which the payment was made was a different account, was 62052928060. How would a payment into that account help with the cash flow problems of Molelwane?

MR MAKHUBO: I honestly would not know why they chose
10 this account now.

ADV CHASKALSON SC: I see but on its face it would not be your usual cash flow payment because a usual cash flow payment would go to the other account, would it not?

MR MAKHUBO: But even if it got into this account, I mean, these accounts are linked, it would have been a sweeping exercise, not a – I do not think it is an issue really.

ADV CHASKALSON SC: I see. Let us see what else happened on the 15 September. Can I take you to page
20 783 of bundle 1? And there you see an email from Patrick Makhubedu to yourself again off an EOH computer and the attachment is on the following page and the attachment is a blank draft of a letter of award from the City of Jo'burg been drafted – it has been attached to an email from Mr Makhubedu to you from EOH to the City. So the EOH

sends a draft to the City that says – it is backdated to the 22 May although it is sent on the 15 September, the same day that Mr Makhubedu has arranged for a 70 000 payment into your CC and it says – addressed to TSS, it says:

“Attention: Mr P Makhubedu”

Backdated to 22 May 2014 although we know it was sent on the 15 September.

“Dear Mr Makhubedu, upgrading of the City of Johannesburg network and security infrastructure.”

10 Do you recall what else was given that description? Mr Makhubo, do you recall what else was given the description upgrading of the City of Johannesburg?

MR MAKHUBO: Yes, it’s the proposal that you are familiar.

ADV CHASKALSON SC: Indeed, the proposal from April 2014:

“We refer to your proposal dated 16 March 2014...”

In fact it was dated 16 April 2014.

20 “...submitted in response to the abovementioned RFP. We have pleasure in advising you that after careful consideration of the proposals received and the evaluation thereof, your proposal has been successful and that you have been nominated as the preferred supplier for the upgrading of the City of Johannesburg network and security

infrastructure. Your participation in this tender process is highly appreciated. Yours faithfully.”

And then there is a line for someone to sign. Do you recall getting this email?

MR MAKHUBO: I saw it on the pack, I do not recall this.

ADV CHASKALSON SC: Can you deny that you received it?

MR MAKHUBO: Pardon?

ADV CHASKALSON SC: Can you deny that ...[intervenes]

10 **MR MAKHUBO**: No, no, I do not deny that.

ADV CHASKALSON SC: So you do not deny that it was sent to you?

MR MAKHUBO: Yes because I see the email here.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Yes, I cannot say I did not ...[intervenes]

ADV CHASKALSON SC: Yes, you do not recall getting it?

MR MAKHUBO: No, I cannot recall – I mean, what would I do with a letter like this, I do not – I do not sign letter like this, I – they are meaningless to me.

20 **ADV CHASKALSON SC**: Oh, I see, they are meaningless to you.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: But, Mr Makhubo, let me put to you what this letter suggests very strongly to me which is that Mr Makhubedu, who had been arranging a succession

of payments into your CC and a succession of payments to the ANC at your instance and who had earlier sent you a EOH proposal and an invoice to go with it, was now sending you a letter for the City to sign to award the bid to EOH. That is what it looks like. What is your comment to that?

MR MAKHUBO: Why would you send a letter a letter to somebody who cannot even sign, cannot even instruct the accounting officer to sign? I think that appearance – for
10 me, this thing is meaningless ot me and I would not
...[intervenes]

ADV CHASKALSON SC: No, no, no, let us answer the answer. Do you agree that this is what its appearance is?

MR MAKHUBO: Appearance maybe to you but for me it is meaningless, this thing, it is completely meaningless.

CHAIRPERSON: Well, let us deal with it. As I understand it and you must tell me whether your understanding is the same, Mr Makhubo, that on the face of it – well, not on the face of it, actually, that Mr Makhubedu seems to have
20 prepared a letter of award or a letter that he wanted or expected to be written to him or to TSS by the relevant official of the City of Johannesburg saying that TSS had been nominated as the preferred supplier for the upgrading of the City of Johannesburg network and security infrastructure. Is that your understanding of what seems to

- to what he was doing when you look at the fact that this draft letter comes to you together with – comes to you from him and the proposal is still pending and he had sent that proposal to you. You remember we talked about that earlier as well?

MR MAKHUBO: Yes.

CHAIRPERSON: And you did say you did not understand why he would send it to you because you had nothing to do with IT. Is my understanding – does it coincide with your
10 understanding of what this represents?

MR MAKHUBO: Well, Chairperson, I mean, I think you are correct to say that he probably would have expected a letter of award to be sent to him written this way.

CHAIRPERSON: Yes.

MR MAKHUBO: But I think he is the best placed person to respond to something like – I cannot go into his mind, to say what is it that he was thinking. All I know is that – and I think people would understand that a person in my position would be – would not even be part of signing a
20 letter like this because you need an EAC minute, you need to accounting officer to award, you need to Group Chief Financial Officer, you need a lot of steps in procurement of the City. That I understand because I was presiding over the policy, the procurement policy of the City but at the policy level, you know, the EAC, the central acquisition

committee, the Bid Adjudication Committees, they would have gone through those processes. Now why Mr Makhubedu on this instance would have sent a letter to me untitled – unless I would have expected him to say Geoff Makhubo or Moloantoa Makhubo sign this. So I think best placed – instead he is best placed to answer this, I am not...

CHAIRPERSON: But you would agree, would you not, that it is very strange that he should send this to you because
10 being close to you, as I understand him to have been, he ought to have known that you would not sit in the committee that would award the tender, is it not?

MR MAKHUBO: Yes, he would have known and he works in the public sector so he would know the responsibilities [intervenes]

CHAIRPERSON: He would know, ja.

MR MAKHUBO: And he was a public sector executive so he would know the responsibilities of the accounting officer or the politician in all levels of – all three spheres of
20 government.

CHAIRPERSON: Yes.

MR MAKHUBO: And this letter, I mean, would have been sent to myself as per this email from EOH, ja.

CHAIRPERSON: Of course, the first thing that is strange about this, I would imagine and you can say whether you

agree is that the – that he should draft the letter from outside of the City that should be sent by - to him or his company by somebody within the City, that is the first thing that is strange. You say to yourself why is he doing that because if the City – if the relevant committee or official who must decide this, does decide to nominate him or his company, they would write their own letter. Why is he drafting the letter for somebody within the City? Would you agree that is also strange that he would do that or was

10 it normal for bidders to do this?

MR MAKHUBO: I do not know about bidders in the City.

CHAIRPERSON: Ja.

MR MAKHUBO: As I say, I hardly am in involved ...[intervenes]

CHAIRPERSON: Ja, you do not get involved, yes.

MR MAKHUBO: In exchanges between the City and suppliers and service providers and that process I would not know its intricacies of how it works.

CHAIRPERSON: Yes.

20 **MR MAKHUBO**: But what is strange, as I say, is for me to have received a letter like this but save to say, Chairperson ...[intervenes]

CHAIRPERSON: Or maybe before you proceed, do not forget the point you wanted to make. Before you proceed are you, do you agree with me that that ordinarily would be

strange itself, that he should draft the letter himself? It should not be – you should not expect the City to draft its own letter to him?

MR MAKHUBO: I would expect the City to draft a letter.

CHAIRPERSON: Ja, yes.

MR MAKHUBO: As I say, I am not privy ...[intervenes]

CHAIRPERSON: To how they do things.

MR MAKHUBO: How they do the things between the administration.

10 **CHAIRPERSON**: Ja, yes.

MR MAKHUBO: But my expectation would be that the person would not even know that they are appointed up until the City writes to them to say you have been appointed.

CHAIRPERSON: Yes.

MR MAKHUBO: That is my expectation.

CHAIRPERSON: Yes, exactly.

MR MAKHUBO: And because I was in business and I was doing business with the public sector, that is how it
20 happened. I received letters from ...[intervenes]

CHAIRPERSON: From the...

MR MAKHUBO: From the client to say your bid has been successful.

CHAIRPERSON: Has been successful.

MR MAKHUBO: We will contact you for contract

negotiations.

CHAIRPERSON: Ja.

MR MAKHUBO: So I would have expected it to happen that way, not to happen this way because that is what has happened.

CHAIRPERSON: So two things that are strange about it.

1. Is that he drafts the letter being an outsider to the City, a letter that should be drafted by somebody in the City.

10 2. That he sends it to you.

So that is the second thing. But I interrupted you when you wanted to make a certain point and I said do not forget the point you wanted to make.

MR MAKHUBO: No, I was saying with proposals, I, even now in the position I hold today, I probably receive one proposal or the other on a daily basis – or maybe let me not stretch it, let me say on a weekly basis, people wanting to meet, people sending about innovative ideas, unsolicited bids. So in my email and Whatsapp you would find all sort
20 so people trying to sell whatever they sell in the City, solution for potholes, solutions for this and that, you know, to modernise the City. So proposals do come to us, I mean half the time we either send them to the chief of staff to say look, just send to the administration but the procurement process – because there is nothing I can do

with them and I think there is an understanding that when you are in a position of power or influence you are able to influence things. So things like proposals as they come to me, I think this one, the question is – because Patrick is close to you, why would he send something to you, which is what is strange but ordinarily, ordinarily, Chairperson, I receive emails – a barrage of emails around solutions, whether it is street light solutions or solar solutions or things that have been far from me, you know, water
10 purification, if these things come to my email and we can attest to that.

CHAIRPERSON: I think to a certain extent one can understand people may be sending their ideas to the mayor about problems that the City should confront with, solutions and so on, generally speaking, maybe without even talking about any particular tender, you know, because maybe the mayor is the face of the City, you know? So maybe in some – up to a certain point one can understand people doing that. Of course with him one, as
20 a business person who deals with the public sector lot, he would have known that with the position you were occupying you would not have anything to do with this proposal and him being close to you, he definitely would know that and that is why Mr Chaskalson's question arises, why does somebody who knows that this is not something

you are getting of him send it to you. So I think that is the context but I think your answer is one, you do not know, is that right? You do not know why he sent it?

MR MAKHUBO: Yes, Chairperson, I do not know and in fact I am just thinking now that I am interested to see who else it was sent to in the City.

CHAIRPERSON: Ja.

MR MAKHUBO: If at all, the same proposal.

CHAIRPERSON: Of course, if you do not know one would
10 expect that that is all the more reason why particularly in preparation for evidence here you would think it necessary to phone him and say, you know, I do not remember receiving this but I see that you sent me these things. Why were you sending me these things, you know I am not involved with this thing. Well, that is what one would expect.

MR MAKHUBO: With the bundles and from the three
bundles and the experience of the 27 November that Mr Chaskalson here would concentrate on 20 pages of the
20 three files, one would look at this and say what sort of question can come out of her?

CHAIRPERSON: And this was not one of them you were expecting.

MR MAKHUBO: No, this was not one of those that one was expecting because remember, the way I see it,

Chairperson, he is trying to create a link, causality that this has happened, therefore it is as a result of this, the funding of the ANC is directly linked to this proposal and I think that is where the question is going and in my mind being a treasurer from 2008, even way before, I would understand that I have never have linked any proposal with saying this is the tender I want you to pay to certain tenders so it never occurred in my mind that I would have read that was this question.

10 **CHAIRPERSON**: Mr Chaskalson?

ADV CHASKALSON SC: This is an issue I canvassed at length with Mr Powell when he testified. Did you not read Mr Powell's evidence?

MR MAKHUBO: No, it was not sent to me.

ADV CHASKALSON SC: You were aware the bundle that went to Mr Powell, this bundle, FOF1, was sent to you as an implicated person. Your evidence in relation to TSS and EOH was deliberately stood down beyond that week of 27 November to the backend of the week because you did
20 not have enough time to read through the bundle relating to Mr Powell in particular, it had been given too late. Mr Powell then testified about you and there was considerable coverage about it in the press. Did you not see that coverage?

MR MAKHUBO: Well, I did not watch but I heard snippets

of what he said, yes.

ADV CHASKALSON SC: Now ...[intervenes]

MR MAKHUBO: I was so surprised because he mentioned my name without – I was not even aware that he was going to mention my name there.

ADV CHASKALSON SC: Well, you got a Rule 3.3 notice saying that you were an implicated party in relation to his evidence or your attorneys did.

MR MAKHUBO: I do not remember getting that.

10 **ADV CHASKALSON SC:** Well, that is an issue you must take up with your attorneys but your name was mentioned and you saw it in the press.

MR MAKHUBO: Pardon?

ADV CHASKALSON SC: Your name was mentioned repeatedly and you say that in the press, you have just said you saw ...[intervenes]

MR MAKHUBO: Yes, I did.

ADV CHASKALSON SC: Now were you not interested to find out what was being said about you?

20 **MR MAKHUBO:** Well, the sorts of things he said about, you know, payments, the 2016 tender, those sorts of things that I looked at.

ADV CHASKALSON SC: Well, there were two tender that were addressed in his evidence. The one was the 2014 tender and the other was the 2016 tender. Did you not go

back to issues in relation to the 2014 tender?

MR MAKHUBO: No, the 2014 tender because for me there was no 2014 tender that I would have known and that I thought was important.

ADV CHASKALSON SC: So when was the first time that you paid any attention to this letter from Mr Makhubedu and these three letters from Mr Makhubedu the one forwarding you the proposal, the one forwarding you the invoice and this forwarding you a draft letter of award.

10 When was the first time that you paid any attention to those?

MR MAKHUBO: When I read the bundle.

ADV CHASKALSON SC: And when was that?

MR MAKHUBO: Last week.

ADV CHASKALSON SC: And did you not realise how embarrassing these three emails look for you?

MR MAKHUBO: No, I did not think so.

ADV CHASKALSON SC: You did not think it was embarrassing that Mr Makhubedu was corresponding
20 directly with you in relation to pending tenders and sending you draft letters of award and invoices for the City. Did that not strike you as embarrassing?

MR MAKHUBO: No, no, it did not embarrass me because I just thought look, I had nothing to do with this, so...

ADV CHASKALSON SC: But the impression to the outside

world is Mr Makhubedu, your close friend, thought that he had a relationship where he could send you these letters. Did you not see that?

MR MAKHUBO: No, not at all.

CHAIRPERSON: Ja, that is – I am surprised at that, Mr Makhubo, because certainly he is sending you things that he should not be sending in terms of your role in the City. Now he creates the impression that he expects you to do something for him or for his entity about these things. I
10 would have thought that you would find that embarrassing because it suggests something improper, does it not? It suggests that you – his expectation is that you would do something improper by interfering in tenders, is it not?

MR MAKHUBO: Chairperson, if I receive something and I call – just as an example – and I say [speaking in the vernacular] and I leave it at that. No, I cannot do anything - I am just saying – and then life continues. So those things happened, you call and say why are you doing this or whatever.

20 **CHAIRPERSON**: But at least he would stop, one would expect.

MR MAKHUBO: But I am just saying – because remember, I am reading this thing now and you say look, I did not call him but ordinarily when things like this happened and you are aware of them at that time, you can phone and say

look, why are you sending me this? I would not respond by email and say why are you sending me this? You call and say but why are you sending me this, for what purpose. No, no, maybe for information. Oh, can you do something? No, man, you know I cannot do something about this. And then you continue.

CHAIRPERSON: But at least he can give you an explanation, would he not, and one wonders what explanation he would give you because he cannot say to
10 you I thought you could do something because he knows that you know that he knows you cannot do anything legally.

MR MAKHUBO: Yes.

CHAIRPERSON: That much he knows so one would expect that you would call him to account so to speak, say why were you sending these things to me because you know I do not do tenders, I do not – I am not going to go and talk to the relevant committee official to say they must give you a tender. Why are you sending me a draft letter
20 that is meant to come from the City to your company to give a – to say you are the nominated – why are you sending it to me, why do you do that because you know I cannot do that, you know I would not do that. You are not like somebody who does not know me.

MR MAKHUBO: I take counsel, Chairperson, but I will ask

him.

CHAIRPERSON: Yes.

MR MAKHUBO: I will call him and ask him why did he do that.

CHAIRPERSON: Yes.

MR MAKHUBO: But as we speak now, I did not.

CHAIRPERSON: Yes, you see, the importance of it is that it might be said that that is the reaction of somebody who did not know why these things would have been sent to him
10 but that if you knew why they were sent to him, you would not call him to account because you knew and his answer would be ja, but you knew why I was sending them to you. You see, that is the importance of looking at it.

MR MAKHUBO: Yes, I do agree.

CHAIRPERSON: You understand.

MR MAKHUBO: But on other instances what I said, now when you receive a barrage and a whole lot of things, other things you just delegate to – and you deal with what is important at that time for you. But I suppose the
20 question is since you read this thing why did you not pick up a call and say in 2014 why did you send me this thing because it might be at that time that I just thought ag, it is one of those things that – one of those emails that come, one of the many but I do – that I did not do it, I did not call him.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: Well, there are two separate issues, as you have correctly identified. The first is why you did not call him to account in 2014. Now you say well, you may have thought it is just one of those emails that come but it is not just one of those emails that come, it is an email that comes from a close friend of yours, not a member of the public that is sending you an unsolicited suggestion for an award of a contract by the City, it is a
10 close friend that is doing that. Do you ignore Mr Makhubedu's emails on a regular basis?

MR MAKHUBO: Even if you can ask him sometimes will – even then, even now, if you read my message, no, no, I have not read it. Why? I read it, why did you not reply? No, no, I will reply later. I did not read it, I did not respond to him and I did not ask him.

ADV CHASKALSON SC: But these are three emails that run from sometime in August to the 15 September on three different dates and you did not call him to account on one
20 of them.

MR MAKHUBO: No.

ADV CHASKALSON SC: And he did not come back to you.

MR MAKHUBO: No.

ADV CHASKALSON SC: And say I have sent you

successive emails on this, what are you doing? Why are you...?

MR MAKHUBO: No. No, I do not remember speaking about even this thing.

ADV CHASKALSON SC: You see, Mr Makhubo, I find that very, very implausible, that someone would send not the same email three times but three successive increasing emails. The first one is the proposal, the second one is the invoice, the third one is the letter of award. These are
10 three different invoices with different purposes and your version is that you did not respond to any of them.

MR MAKHUBO: No, no, not at all because at least to my recollection, not at all because you probably would have found the email in the server had I responded but I did not respond because I cannot do anything about this.

ADV CHASKALSON SC: Well, you may not have responded by email but you may have responded by acting on it.

MR MAKHUBO: By action?

20 **ADV CHASKALSON SC**: Yes, I mean ...[intervenes]

MR MAKHUBO: But, I mean, Chairperson, with all due respect, what counsel is putting to me – and I am telling him my version. He has got his version. I do not know, I mean, it is a presupposition. I do not – you gave me counsel that, you know, you would have expected a

response like this and I duly agree that – as I said, I took counsel from you, but I did not.

ADV MPHAGA SC: Chairperson, just to add on my client's response. I think we just – Mr Chaskalson is just cross-examining my client, I think he has already responded to the questions and I think we should just proceed.

CHAIRPERSON: Well, obviously what Mr Chaskalson is doing is he wants to put a possible – maybe more than a possible position that comes to his mind for you to
10 comment on it because it would be fair for you to comment on it and, of course, you can comment on it or whatever. What he does not want to do is not to put that to you and maybe later on present an argument to me to say in the light of this and that that Mr Makhubo's evidence, this is the finding that you should make. So he is trying to be fair. So I think let him repeat that. I understand – but I think you will understand more because you are his counsel. So it is more about being fair, to give you a chance to say if you want to say something to what he is
20 going to put and you can say – you can dispute it or deny it and say it is not correct or it has got no foundation if you think there is no foundation for the proposition but he just wants to make sure that he puts it and then you can respond. You understand?

MR MAKHUBO: Yes, I do. I thought I had already

answered, he is just going over and over the same thing but I thought I had already replied to Mr Chaskalson.

CHAIRPERSON: Okay, because I am not sure that I had heard what it says, I think he must just [inaudible – speaking simultaneously]

ADV CHASKALSON SC: Well, let me put it this way, Chair. I am going to submit that the most plausible reason why there would not have been any response to these emails in 2014 and there would not have been any attempt
10 to engage Mr Makhubedu about these emails now in 2021 and last year in 2020, is that you knew exactly what Mr Makhubedu was asking of you and you were willing to provide what he asked of you.

MR MAKHUBO: I deny that and I think that it is a very, very wrong supposition.

ADV CHASKALSON SC: I put it you have denied it. Let us look at little bit further. Let us go to page 785, bundle 1, 785. That is an email sent from Mr Makhubedu at his EOH address to his own Gmail address and it forwards an
20 email from Ebrahim Laher of EOH to him and it says:

“Subject: Forward EOH Confidential CoJ.

Hi Patrick, in preparation for your meeting now with Geoff please see below for confirmation on the work being done by SAP. Our qualms are these services are part of A472 that was awarded to us. No formal

tender process was done by the CoJ to award these projects to SAP. Who signed these projects off in the City? Trevor has indicated to Ashley he did not know about this. SAP have now been there for about year. Where is this billing, etcetera, happening?”

That is from Ebrahim Laher. Now we have been unable to identify any Geoff other than yourself with whom Patrick Makhubedu dealt at the time. Do you recall meeting with
10 Patrick Makhubedu around September 2014 in relation to work being done by SAP?

MR MAKHUBO: Chairperson, I specifically do not recall the meeting with Pat around the work done by SAP but maybe on a round of golf we would have a conversation about there are pinpoints and send them to – let us say this thing, would sent them to say no, go and speak to the City Manager, go and speak to the Group Financial Officer, go to speak to whoever is responsible, the G2 and all that, hey man, we have not been paid and it is not – I receive
20 those all the time, we have not been paid in eight months, the SMMEs, so I – the specific – I do not even know what the 872 is, but the specifics of this, I do not recall but it might be that, you know, on a round of golf or something like that we spoke.

ADV CHASKALSON SC: Or would you agree that if the

Geoff referred to is yourself then what this email shows is that EOH thought that they could talk to you about matters relating to tenders at the City.

MR MAKHUBO: If the Geoff is me?

ADV CHASKALSON SC: If the Geoff is you.

MR MAKHUBO: If the Geoff is me I think they would have spoken to me about what they are doing in the City.

ADV CHASKALSON SC: I want you to answer my question. If the Geoff is you, does this email not reflect
10 that EOH thought that they could talk to you about tenders at the City?

MR MAKHUBO: Chairperson, would I really have to comment on what EOH thought?

CHAIRPERSON: Let me put it this way. Do you understand this email the way I do and I think the way Mr Chaskalson does that EOH thought that they could discuss tenders with Geoff, whoever that Geoff is.

MR MAKHUBO: I thought that what this would say is that please discuss with Geoff that we have got issues in the
20 City and we are escalating these issues if we do have them in the City because you are working there.

CHAIRPERSON: Yes.

MR MAKHUBO: We get this over – from everyone, we have not been paid, you have not done this.

CHAIRPERSON: Ja.

MR MAKHUBO: These are issues in the City of work that is happening in the City.

CHAIRPERSON: Ja.

MR MAKHUBO: That is how I understand how even service providers come in to introduce themselves and speak to us about what affects them all to talk about the work they do in the City.

CHAIRPERSON: Yes, yes. So your understanding too was that this letter or email contemplated that there would
10 be a discussion with Geoff whoever that Geoff was about these matters.

MR MAKHUBO: Yes, Chairperson, this email would contemplate that, like any other service provider that is in the space or any other space especially when it relates to things like billing or all that, which was a pinpoint at some point in the City. You would from time to time discuss whatever with the accounting firm we hired to do the step change or an ICT firm that you hired to correct the interface between City Power [indistinct] and the City but
20 we are discussing the actual what is the problem because when these things blow up, they blow up to the politicians, they blow up to the officials, so that might be what this intention is internally to say if you are going to have a meeting with a client because we do meet on – from time to time, even now in this position we do meet people, formal

meetings, can we come see you? You know, we are working in the city, these are problems we face, we have got community issues. So I am saying it is not abnormal that you talk about work that has been done in the City.

CHAIRPERSON: Mr Chaskalson, this may or may not have helped.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But that is not what they are
10 discussing here. What they are discussing here is that the City is giving work to SAP that they say the City should be giving to EOH. Let us read it:

“Our qualms are these services are part of A472 that was awarded to us.”

Now A472 you will recognise is the number of a contract that the City awards, will you not?

MR MAKHUBO: Yes, they used to call – ja, A something, something, ja.

ADV CHASKALSON SC: Right. So they are saying these
20 services were part of A472 the contract that was awarded to us. Then they say:

“No formal tender process was done by the CoJ to award these projects to SAP.”

Sp SAP is doing work which, according to them, was not governed by a formal process.

“Who signed these projects off in the City?”

Who is responsible for letting SAP do these project? That is what they are concerned about and that is what they want to speak to Geoff about.

MR MAKHUBO: But in this case, I mean, they even talk about Trevor because this would have gone to Trevor and say what happened here? I mean, go and speak to Trevor.

ADV CHASKALSON SC: No, no. No, no, they have already spoken to Trevor because Trevor indicated that he
10 did not know about it. This is in preparation for a meeting with Geoff.

MR MAKHUBO: Ja, they are talking about work done by somebody else that they want to do or that should have been done by them, ja.

ADV CHASKALSON SC: Yes, that they think they should be allowed to do.

MR MAKHUBO: Ja, that should be – that they say it is part of their own tender.

ADV CHASKALSON SC: Yes, yes.

20 **MR MAKHUBO**: But I would not even know the details that appears.

ADV CHASKALSON SC: No is this an appropriate thing to be speaking to you about?

MR MAKHUBO: About problems they have? About problems they have inside the City, about the work that the

work that they would be doing?

ADV CHASKALSON SC: No, about the fact that they say these jobs that you are giving to SAP you should be giving to us because we say that A472 covers that work and we say that SAP did not go out to tender for that work.

MR MAKHUBO: No, Chairperson, if service providers feel aggrieved about what is happening and they want to escalate to political leadership it is not about awarding of jobs to say look, we were awarded the BRT now somebody
10 else is doing it, we want to come and – it is for those things to happen, they feel aggrieved about something that is within their own contract and of course you will call the City to say look, City Manager, please sort this thing out be it looks like there is a contractual thing which is your domain but that bidder is aware. Because the alternative of this is going to court. I going to court to say we were awarded this and the alternative is to – so we look for other mechanisms to say can we escalate to the political principals failing which then we will challenge this thing
20 legally. It happens all the time.

ADV CHASKALSON SC: But why would they go to you if you say IT did not fall within your portfolio?

MR MAKHUBO: I would not know but if it relates to billing, they know that my pinpoint was billing.

ADV CHASKALSON SC: Yes, but it did not – it did not

relate to billing, it related to IT.

MR MAKHUBO: Well it relates to – I thought you said it relates to billing, to SAP.

ADV CHASKALSON SC: It relates to SAP, yes.

MR MAKHUBO: Yes, yes, I assume SAP, that is my worry to say what is happening if there is a dispute. I would not - know - I would have thought that is what they are talking about, but IT was not with me, yes.

ADV CHASKALSON SC: So what their complaint is, is
10 that if you go down a page to 786, you will see six projects that have been given to SAP. The Human Resources upgrade, the Solution Manager Dependencies, Employee File Management, SAPS Strategic, Archiving and SLO's service and they are saying those services should be provided by EOH not by SAP.

MR MAKHUBO: Yeah, no, this sort of gone to, as it was about billing, this should have gone to ICT or the MMC for Corporate Services.

ADV CHASKALSON SC: So it should not have gone to
20 Geoff. **MR MAKHUBO:** No, if Geoff it is me.

ADV CHASKALSON SC: Is there not another problem that even if it fell within your portfolio, the conversation should not be between someone who has been advancing hundreds of thousands of rands to keep your cash flow going in your CC and yourself, is that not a problem?

MR MAKHUBO: I do not think you are linking things that do not link, you are making links on things that do not have causality, our - his official position at EOH and my – our historical business relationships dating back to 2001, 2002 have got no links what we are trying to put together, so I do not I do not see how all these things link Chairperson, with all due respect.

Maybe when you say why would they be speaking to you that the question that is appropriate, but when you now
10 linking things that do not link because you could have easily used his relationship with me, if ever, I mean, he does not need to pay me to - we friends, we exchange things we, you know, exchange cars, our kids know each other.

We have been friends before I even - 10 years before I even got into the city, so I do not see why, why these things are being made.

ADV CHASKALSON SC: It is correct that in the previous months, it is been advancing large amounts of money into
20 your CC to stave off cash flow problems, is it not?

MR MAKHUBO: I did say that, between xSolve and Molelwane sharing the same office, he was active on that floor between the people managing Molelwane at the time, then himself they would talk about problems of both companies and then he would assist.

This was not the first time it was happening between the two companies, you can go back to 2004, 2005 and later on, I mean, the relationship between two companies and the two companies has been like that.

ADV CHASKALSON SC: No, I know that, sir, but what has happened is in the previous month, very substantial amounts of money have been paid into your Molelwane CC account at the instance of Patrick Makhubedu in order to stable the cash flow crisis Molelwane has been suffering.

10 **MR MAKHUBO:** Yes, that happened but we are linking what is happening in the city with what is happening outside, I am saying the two do not link.

ADV CHASKALSON SC: But I will show you later that EOH linked it very clearly, but do you – but before we get there, do you not agree that it is improper for someone who is advancing money to you in a private commercial capacity to be discussing business of the city with you in your official city capacity?

20 **MR MAKHUBO:** Chairperson, Patrick Makhubedu is my friend and a business partner in two companies and I do not find it strange that he would have asked me a question on one thing or the other if he did. So what the SC is asking here is that I am finding it strange that Patrick would ask me about something that relates to EOH, meanwhile we do have other relationships, I am finding it

strange.

I am not even sure whether people do limit what they talk about when they come together but certainly if ever he says that was one thing or the other I cannot say no, not now make a meeting in the office. No, I do not find it strange.

ADV CHASKALSON SC: My question was not strange my question was improper, do you are not find it improper that someone who is advancing large amounts of money to you
10 in your personal commercial capacity might be asking you to assist him in your official city capacity?

MR MAKHUBO: Patrick Makhubedu advanced money to me around consulting, that he worked together with xSolve have been helping each other for a long time. This thing have got no relationship with the question that you are asking me about the city.

So if we ask for help from Patrick, whether in whatever capacity, then you say, Patrick, this is me, your friend or Obakeng and others who are managing Molelwane
20 at that time are saying, we need cash flow and Dadi Makhubedu it is not been happening. I do not find it improper that it is happening there, so having a conversation with Patrick, you say the type of conversation we are having, because they said he must have a conversation with me.

And another thing is I am not even sure whether the conversation happened, but I do not find it improper, sir. I think you are making links, things, links on things that do not link.

ADV CHASKALSON SC: Well, I want to put it to you that it is improper, but I think you have given me your answer, I am not sure we can take it any further. If we are talking about the impropriety, I want to take you to just some further documents. Let us go to page 621 and you will

10 recall...[intervene]

CHAIRPERSON: That is on Bundle 1?

ADV CHASKALSON SC: Bundle 1, Chair, yes.

CHAIRPERSON: 621?

ADV CHASKALSON SC: 621, you will recall that on the 18th of September, EOH were telling Patrick what he needed to discuss with Geoff. Well, let us see what happened on the 19th of September. Do you see halfway down the page an email from yourself to Patrick Makhubedu:

20 “Dear Patrick,
Find a letter of funding request towards our regional conference expenses.
Regards,
Geoff Makhubo.”

Do you see that?

MR MAKHUBO: Yes, I see that.

ADV CHASKALSON SC: Do you recall sending that email?

MR MAKHUBO: I must have because it was it was the time of our regional conference.

ADV CHASKALSON SC: And if you go down to page 622, Bundle 1 and 623, you will see the letter that sets out the details of this request.

MR MAKHUBO: That is correct.

10 **ADV CHASKALSON SC:** And you will see it is addressed to Ebrahim Laher at EOH.

MR MAKHUBO: It was addressed to Patrick.

ADV CHASKALSON SC: Oh, sorry, it is addressed to Patrick, CC Ebrahim Laher at EOH 19 September 2014 and you set out what your expenses will be and you conclude, at the foot of 622:

“The Regional Executive Committee will appreciate contribution of at least R2.5million to ensure a successful conference.”

20 And then you give your bank details or the bank details of the ANC greater Johannesburg branch region. You say:

“Your support is highly appreciated and we thank you in advance for your commitment and contribution towards strengthening democracy.”

That is the day after EOH are talking about a meeting of

Pat and Geoff to sort out EOH's problems at the city. Do you recall sending this request for R2.5million donation from EOH to the ANC?

MR MAKHUBO: It was during the time of the conference, yes, I fundraised from a lot of people, yes EOH was one of them.

ADV CHASKALSON SC: And if you go down to page 625, you will see that EOH responded to your request, possibly not as generously as you had hoped, but still quite
10 generously. If you go to page 65, you see proof of payment on the 2nd of October of R1.5million from TSS Managed Services, which is the EOH subsidiary to the ANC, greater Johannesburg.

And you will see also if you go up to 624, that Patrick Makhubedu emailed you this proof of payment on 2 October. Could you confirm that you received this proof of payment from Patrick Makhubedu on 2 October?

MR MAKHUBO: Yes, the money did go into our bank account.

20 **ADV CHASKALSON SC:** But - and this email from Patrick Makhubo was sent to you on 2 October with proof of payment?

MR MAKHUBO: Well, I did not check the email but I know that the money came into it.

ADV CHASKALSON SC: I see.

CHAIRPERSON: I think you have said Patrick Makhubo.

ADV CHASKALSON SC: Ah, Patrick Makhubedu, I apologise. Can I – I have gone forward to 2 October but let us see something else that happened on 20 September, if you can go to page 296, Bundle 1 and you will see at page 296, that a payment is made by TSS to Molelwane on the 20th of September in the amount of R570 000. You see that?

MR MAKHUBO: Yes.

10 **ADV CHASKALSON SC:** And do you know what that payment was for?

MR MAKHUBO: Yes, it was relating to the old contract of CCMA.

ADV CHASKALSON SC: Sorry, the old contract of the CCMA?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: What was that contract?

MR MAKHUBO: It was between TSS Managed Services and Molelwane Holdings for the work that was done at
20 CCMA.

ADV CHASKALSON SC: What was that work?

MR MAKHUBO: Sorry?

ADV CHASKALSON SC: What was that work?

MR MAKHUBO: That should have to do with Voib[?] and another things at the CCMA, and also random agreement

that that was entered into in 2009, I think 2010.

ADV CHASKALSON SC: And this is a payment made in 2014, on that payment, you say?

MR MAKHUBO: Yes, at some point the payment stopped. I remember even much later we had a meeting with Jehan to say, but, you know, we need a full and final settlement because things have not been paid as they should have been much later than this, yes.

ADV CHASKALSON SC: And that just happens around
10 the same time in September 2014 where these other two contractual processes in the city, have been going on that we have been discussing.

MR MAKHUBO: TSS Holdings, TSS Managed Services and Molelwane Holdings had an agreement and they owed Molelwane some money.

ADV CHASKALSON SC: When do you say that debt originated?

MR MAKHUBO: It was originating because they were billing on a monthly basis as far as the agreement and
20 record and understand, and at some point, the payment stopped and I do not think there was active follow up and then we - there was a follow up, it originated previously.

ADV CHASKALSON SC: But when and when did it start?

MR MAKHUBO: I cannot recall the date, the contract started around 2009, 2010.

ADV CHASKALSON SC: And how long was that contract around?

MR MAKHUBO: It was supposed to run for five years.

ADV CHASKALSON SC: And the payments, but the payments would have stopped when do you think?

MR MAKHUBO: Well the payments if they were kept up they would have stopped when the contract stopped.

ADV CHASKALSON SC: Yes, but when did they stop being kept up? When did this amount of R570 000 start
10 accumulating?

MR MAKHUBO: I cannot hear you, sorry?

ADV CHASKALSON SC: Ultimately an amount of R570 000 was paid in September 2014, as you say that is an accumulated arrears.

MR MAKHUBO: Yes, I think at that point that would have been about a million or so if I remember well. But they themselves were trying to get some final payments and, and all that if I do remember well, but this was related to CCMA.

20 **ADV CHASKALSON SC:** No I understand it is related to the CCMA I am trying to work out how long those areas had been building up.

MR MAKHUBO: I cannot tell you now.

ADV CHASKALSON SC: Well you say it was about a million you say the areas were?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And what was the monthly payment?

MR MAKHUBO: Shu, monthly payments would have been about 60 or 70 000, somewhere there.

ADV CHASKALSON SC: So for - to get from 60 to 70 000 to a million you are looking at a well over a year are you not.

MR MAKHUBO: Something around that, yeah.

10 **ADV CHASKALSON SC:** So we are talking about arrears that on your version have been there for over a year, but are settled on the 19th of September 2014?

MR MAKHUBO: Well, I do not think they were settled at that time, if I remember well, to my recollection, but there was a toing and froing and a whole lot of things and I think the meetings with Jehan Mackay would have attested to that they were owing us and there would have been those conversations.

20 **ADV CHASKALSON SC:** So I see, this did not settle the areas it part paid the areas you are saying.

MR MAKHUBO: As far as I remember, yes and I said I raised about a million I do not think it was the full amount because at some point I do not remember the date well, but it was much later than this where we said, look, we need full and final settlement so that Molelwane can walk

away because then it is one down.

ADV CHASKALSON SC: I see, but after not paying for over a year EOH paid for the first time in September 2014?

MR MAKHUBO: Yes, to TSS paid in 2014, yeah.

ADV CHASKALSON SC: And that is within a month of sending you three letters asking you to act improperly in relation to the ICT services and sorry, infrastructure and support contract and the day after they were expecting Patrick Makhubedu to meet with Geoff to discuss EOH getting back work that apparently had been given to SAP.
10 Can you comment on that chronology?

MR MAKHUBO: The first chronology I think we have canvassed quite extensively, the talking to Geoff, I think we have been extensively again canvassed. I cannot comment on what the date but we needed our money at least Obakeng told me that we needed our money at that time, yeah.

ADV CHASKALSON SC: Alright, I am now going to move onto the 2016 tender, we will still be in Bundle 1 but the
20 starting point is for this section of the questioning is November 2015 when a tender invitation is put out by the City of Johannesburg for the SAP upgrade and implementation tender, we have heard evidence that that invitation went out in November 2015. Can I take you to page 480 of Bundle 1.

MR MAKHUBO: I am there.

ADV CHASKALSON SC: And at the top of 480 you see an email from Nyiko Mutileni of EOH to Jehan Mackay, do you know Mr Mutileni?

MR MAKHUBO: No.

ADV CHASKALSON SC: And it says:

“For your information City of Johannesburg outsourced tender is out, I prepare all team members to attend to it. I have also notified Mr Makhubedu because of Geoff's influence, thank you. So once again, Mr Makhubedu is being asked to get involved because Geoff has influence. You know of any other Geoff's who might have had influence over City of Johannesburg tender at the time?”

MR MAKHUBO: I do not know of any Geoff who had an influence - I do not know of any Geoff that would have had an influence on any tender.

ADV CHASKALSON SC: Do you know of any Geoff's other than yourself to whom Mr Makhubedu is close?

MR MAKHUBO: I only know myself but I would not have an influence on any tender.

ADV CHASKALSON SC: We will get to that, can I then take you to page 451. This is again an internal EOH email in relation to this tender it starts at the top then going down for an email from Ebrahim Laher to an EOH team and

it says:

“I need this properly mobilised for this, no half-hearted efforts and internal politics please. This is life and death of SAP services.”

And below, there is an email from Ebrahim Laher to Asher Bohbot copied to Patrick Makhubedu and it says:

“COJ support contract going out for tender.”

And it says:

10 “COJ are proceeding with the advertising of our current contract this week.”

So this was a contract that EOH held.

“This despite their assurance that they would rather extend our contract.”

Were you aware that EOH had been assured by people and the city, that the city would prefer to extend its contract in relation to SAP support?

20 **MR MAKHUBO:** No, not at all, I am one of those who do not like irregular expenditure. So I would have thought that if something must go to tenders – so I do not know who would have assured them for extension.

ADV CHASKALSON SC: I see, and then on it goes and then at the end it says:

“Anyway, I suspect the next quarter is going to be a political minefield, we need to be proactive and ready for what is coming, we cannot lose this.”

Says Mr Laher. Then, if one goes down to 487, we are still dealing with the same contract and Jehan Mackay writes to his team including Patrick Makhubedu on 2 December, he says:

“Please can we ensure in our bids to COJ we commit a certain percentage of work and revenue we allocated to the Josie at work program. We need to provide more or less an estimate of how many SME’s, this allocation will benefit, number of jobs created from our meeting last night this part is very critical.”

Then two paragraphs down:

“EB/Pat, we need a number urgently that can be allocated for goodwill to the organisation.”

And then there is a sort of smiley face after goodwill.

“A number that can be allocated for goodwill to the organisation.”

Do you know any organisation in respect of which goodwill payments might assist a City of Johannesburg tender?

20 **MR MAKHUBO:** I would not know what Jehan was writing here.

ADV CHASKALSON SC: Okay, lower down there is a forwarded email from 1 December 2015 and that email may well be illegible on your copy or very difficult to read. So I am going to read it out. It says:

“On 1 December 2015 at 8:21am, Ebrahim Laher wrote, Hi guys.

Quick update on the consortium talks for the bid. Deloitte have pulled out of the bid. They think they will get the TMO, Trevor has apparently assured them. I have asked Ashley to contact KPMG as per Pat's conversation with Geoff, HDS wants to pull out according to curtain.”

Now, did you have a conversation with Patrick Makhubedu
10 in relation to putting EOH in contact with KPMG?

MR MAKHUBO: Well, I have not seen this email and I cannot recall that, I know that KPMG was - had been appointed earlier on to help us with what we call a revenue step change and to deal with the issues of billing and revenue and cleaning up data and all that, so I would not - I would not have - I mean, I would not - I did not see this email so I would not have thought and thought it through, to link it.

ADV CHASKALSON SC: But the question is, did you have
20 a conversation with Patrick Makhubedu suggesting that EOH contacted KPMG?

MR MAKHUBO: I do not recall that conversation.

ADV CHASKALSON SC: You do not recall that?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Are you denying it or are you

just saying you cannot recall?

MR MAKHUBO: I cannot recall the conversation, I had many conversations, so I cannot recall this one.

CHAIRPERSON: Mr Chaskalson I think it would be helpful if you would have the content of that email, the one that is illegible on our bundle if it could be typed out from where you read it, because it obviously is legible. Where you - if it could be typed out or something so that a note can be made to say this is what that email that is illegible is
10 supposed to read.

ADV CHASKALSON SC: I will attend to that Chair, we can hopefully get that done at the lunch adjournment because I have the text ready to cut and paste.

CHAIRPERSON: Ja, okay because on mine it is completely illegible.

ADV CHASKALSON SC: Okay.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Now, Mr Makhubedu we have heard evidence that the closing date of the bid for this
20 tender was 14 December 2015. I want to take you to 1 February 2016 and for that, I want you to go to Bundle 3, page 646, Bundle 3, 646 and at this stage there still had not been any award of the tender.

But if you go to 1 February, you will see that on the 1st of February, a payment of R200 000 was made with the

reference P Makhubedu, Mfundu into the Molelwane accounts and that took the balance of the Molelwane account from R63, 19 to R200 063,19. Do you see that?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And this, again, is one of these cash flow payments, I assume that Mr Makhubedu arranged for Molelwane. Now certainly the cash flow was much more acute at that stage, and it have ever been the account was down to R63,00. Do you see that?

10 **MR MAKHUBO:** Yes, yes I do.

ADV CHASKALSON SC: Now without that payment, there would have been no money to pay the R10 000 to the Absa credit card and the account numbers there given on the 2nd of February whose Absa credit card is that?

MR MAKHUBO: I can check but I think it was mine, but I will have to verify it.

ADV CHASKALSON SC: Okay, put it this way if it is not yours, please come back and let us know. If you do not come back to us, we will assume it is yours. Then there is
20 another payment on the same day of R30 000 to Geoff standard. I assume that was a payment of R30 000 into your Standard Bank account. Is that correct?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And there is a payment on that day of 30 000, Nono, FNB. Do you know who Nono is?

MR MAKHUBO: That is my wife, yeah.

ADV CHASKALSON SC: Sorry, that is?

MR MAKHUBO: That is my wife.

ADV CHASKALSON SC: That is your wife?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And there is a payment of 10 000 called credit card payment. Do you know whose credit card was paid with that 10 000?

MR MAKHUBO: No, I must just check as well.

10 **ADV CHASKALSON SC:** Okay, will you come back to us on that and just confirm if it was yours or not. Then there is a 26 000 payment, 296 to that same Liberty Life premium that we have heard earlier, which was in respect of a policy, of which at least you and your mother were beneficiaries. Is that correct?

MR MAKHUBO: Yes, and others yeah.

ADV CHASKALSON SC: And then there are two payments on the 4th of February to the Palazzo Monte, and I presume that is Monte casino, that is a hotel and casino and those
20 two payments of 3 881 and 18,255 aggregate to just over 22 000. Do you know what those payments were for?

MR MAKHUBO: I cannot recall.

ADV CHASKALSON SC: So you do not know who ran up this bill of 22 000 at the Palazzo Monte casino and made that purchase on a cheque card?

MR MAKHUBO: No I cannot recall what they were for.

ADV CHASKALSON SC: You cannot recall that?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: You see the details of the cheque card are mentioned on the account. It says 485442 and then a couple digits missing, and 5778. Would you be able to establish whose cheque card that was?

MR MAKHUBO: I suspect is Molelwane card but I cannot recall what was happening at Monte.

10 **ADV CHASKALSON SC:** I see. Now, none of these payments would have been possible without the 200 000 payment made through Mfundi at the instance of Mr Makhubedu. Do you accept that?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Yes, you do. So we have just looked at payments into Molelwane on the 1st of February and payments that were made out of Molelwane on the 2nd of February and let us then go to page 488 to see what happens on the 3rd of February and in the – Bundle 1, page
20 488.

In the middle of the page, you see an email from Ebrahim Laher...[intervene]

MR MAKHUBO: Sorry, Bundle 1?

ADV CHASKALSON SC: Bundle 1, Bundle 1, sorry.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Now, in the middle of that page, you see an email from Ebrahim Laher of EOH to a large number of EOH employees and it says:

“Hi, guys,

I have been running around like crazy and have not had time to debrief you on all the key things I have been involved in that I need to share with you. COJ, I am very concerned about the city allowing people to re-price seems to be a way to catch us out on scope. We need to be careful here, actions, I will meet with Geoff.”

10

Did Mr Laher meet with you in February 2016?

MR MAKHUBO: I cannot remember the date but I did have lunch with Ebrahim sometime in 2016 at my insistence to ask for money for elections, per say.

ADV CHASKALSON SC: But the elections were later in the year were they not?

MR MAKHUBO: Yes, we were preparing for research for - because they have to do research earlier, around February, March, April.

20

ADV CHASKALSON SC: I see; you do not recall meeting with him in February 2016?

MR MAKHUBO: No I do not remember the date but we did meet at my insistence, though, to discuss the issues – I might say he did raise that his got issues in the city and I

said look, that is the issues that you need to discuss with the city manager.

ADV CHASKALSON SC: I see, what is it do you recall...[intervene]

MR MAKHUBO: Sorry, he plans to meet a whole lot of people not me only, my and others - I do not know who else, this thing is not clear.

ADV CHASKALSON SC: Yes, the names that I see are Dada, Mike and Mike, and Dumisani. Do you know who
10 Dada might be and Mike and Dumisani?

MR MAKHUBO: I think Dumisani says COT, it is not COJ.

ADV CHASKALSON SC: Ah, yes you are absolutely right. I am sorry, so in COJ, it is Dada and Mike.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Do you know who Dada and Mike might be in the City of Johannesburg?

MR MAKHUBO: Well there is a couple of Mikes, there was Mike working in the revenue department but was he support services, I am not sure whether they referring to
20 him and I am not sure which Dada is this, the only Dada that I know is the regional secretary of the ANC.

ADV CHASKALSON SC: I see and can you give surnames for the two, the Mike that you mentioned and the Dada that you – is the regional secretary of the ANC?

MR MAKHUBO: Come again?

ADV CHASKALSON SC: Sorry, Dada who is the regional secretary of the ANC, what is his surname?

MR MAKHUBO: It is Dada Marrero, but I am not sure what it has to do with COJ because he is not in the city, he does not work for the city.

ADV CHASKALSON SC: Yes, I understand that but EOH seem to, as we will see later seem to regard the ANC as controlling decisions within the city, and Mike?

MR MAKHUBO: If it is the Mike, the Mike that was
10 working in finances, Mike Dube.

ADV CHASKALSON SC: Sorry, Mike?

MR MAKHUBO: Mike Dube.

ADV CHASKALSON SC: Dube?

MR MAKHUBO: I think so because I am not too sure of any other Mike's that I would know.

ADV CHASKALSON SC: I see, so his going to meet with Dada and the only one you knows is involved in the regional ANC. Mike, the only one you can think of is in COJ finance and Geoff. You said he tried to raise issues
20 with you in relation to the city, do you recall what issues it was, they were?

MR MAKHUBO: I cannot remember specifics but two things. One, broadly, one was to do with their support contract, issues of payments and all that and I think two, he was talking about the issues of the upgrade, the tender

upgrade, and I said, look, we cannot be talking about that this thing is out and it is on tender. So you cannot be talking about it.

ADV CHASKALSON SC: So it is this tender, the SAP services upgrade that he tried to engage you on, and you said no...[intervene]

MR MAKHUBO: About these issues that he raises here about re-pricing, other people are allowed to re-price and I said look is not my forte and that is it, I am here to see you
10 because I need money for elections.

ADV CHASKALSON SC: Right, but did you not say to him, this is totally irregular, why I am a political leader of the city you should not be engaging with me about these things.

MR MAKHUBO: I said these issues are best referred to by the officials, the accounting officer who is ultimately responsible for supply chain.

CHAIRPERSON: Your meeting with him, did you say when it would have been in relation to February, March or are
20 you not able to say?

MR MAKHUBO: Chairperson, it is around - if I remember well it is around March, because we were wanting to – we wanted money for research, elections research and normally, we do a dipstick around, if elections are around August we do a dipstick around March, April, you know, to

gage the mood, and I think all political parties to do research, what are the issues, what we should respond to, so it should have been about around that time, I cannot remember the date.

CHAIRPERSON: Okay, no, that is fine. I am just trying to think what the chances are that the Geoff he is referring to would be you just bearing in mind that he talks about the need to meet Geoff, if it so happens, maybe that you also need to see him around about that time. What - have you
10 got any sense what the chances are he may have been referring to you irrespective of whether he was justified or it was improper for him to want to discuss those matters with you?

MR MAKHUBO: I mean; I can only assume I do not - these are internal emails.

CHAIRPERSON: Yes.

MR MAKHUBO: I mean, I - people are talking about me, you know, I can call them named droppers.

CHAIRPERSON: Ja.

20 **MR MAKHUBO:** People are dropping names all over which is happening, but I remember in 2016 that specifically...[intervene]

CHAIRPERSON: You met with him.

MR MAKHUBO: Which is not far back, specifically, I needed to see them for substantial amount of fundraising

but initially I needed money for research.

CHAIRPERSON: Okay, Mr Chaskalson.

ADV CHASKALSON SC: And Mr Makhubo, can I clarify that this tender the SAP upgrade tender was that something relating to billing that would have fallen within your – or under your oversight?

MR MAKHUBO: I think it is much more broader, yes ISU, the ISU portion would have been under ourselves, but HR and finance, finance would have been under supply chain
10 but broadly it could have been run both by business and ICT, which is somewhere else.

ADV CHASKALSON SC: Yes, the actual running of the tender bid but oversight of the contracts that are ultimately awarded, at least part of it is falling under your finance jurisdiction, is that not so?

MR MAKHUBO: Well the total contract would have been under ICT, but the operations of the actual module would have been under, ourselves whether it works or not.

ADV CHASKALSON SC: Sorry, the operations of?

20 **MR MAKHUBO:** The module, the module that, the billing module.

ADV CHASKALSON SC: I see, so there are many modules.

MR MAKHUBO: There are different modules, so there will be all over the modules.

ADV CHASKALSON SC: I understand the billing module would have been under your oversight in its operation, the award of the contract would have been a matter for ICT administration – the administration of the city in ICT.

MR MAKHUBO: It will be ICT, and the city manager and the Group CFO.

ADV CHASKALSON SC: Okay, thank you. Can we then in this chronology, we have gone from February maybe March let us go to April, Bundle 3, page 652. Bundle 3, and
10 it is 652 and I emphasise that the tender is still not been awarded at this stage.

And there you see again a payment of 50,000 on the 25th of April from Patrick Makhubedu and it comes in with a balance of R617 in the account that takes that balance from 617 to 50 617. Is this another one of these cash flow payments?

MR MAKHUBO: Yes, I would have to check at this time because, yes it is, because there are some things that are coming out of here. But when we do a recon on what he
20 owed me from the xSolve exit I will have to see that this was not part of it but yeah, this is – I will have to, in 2016 I will have to check.

ADV CHASKALSON SC: Sorry, the - I did not get your last comment...[intervene]

CHAIRPERSON: I think his answer is yes, he thinks it

might be one of those cash flow payments but he would like to double check to make sure because it could be something else.

MR MAKHUBO: No, when I said that in - we did agree when we left xSolve that whatever value there is there he himself because his the sole owner at that point. We came up with a figure that he will pay me overtime because of the cash flow.

But I am just figuring out that if this is not one of those that he put in here because I can see the things that
10 come out of here are less for Molelwane but more for me that use to come out, me and other people that use to come out of here and but as we speak he still has not paid me in full but that is that is not for the Commission.

But this is the – I would rather go and double check this I did not go through every payment to say this one's cash flow because the people are already gone at that point, the Chairperson, the staff in the main has already been retrenched, severance pay, severance packages
20 already paid at Molelwane and the factor Molelwane was winding down at that point.

CHAIRPERSON: Okay, Mr Chaskalson.

ADV CHASKALSON SC: So by April Molelwane is winding down it no longer has employees, you say?

MR MAKHUBO: It no longer has employees, yes active

employees, yeah.

ADV CHASKALSON SC: April 2016, can we...[intervene]

MR MAKHUBO: I think that, sorry, I think that happened earlier than 2016.

ADV CHASKALSON SC: It may even be earlier.

MR MAKHUBO: Sorry?

ADV CHASKALSON SC: It may even have been earlier.

MR MAKHUBO: It is earlier, the winding down happened earlier, the retrenchments happened earlier.

10 **ADV CHASKALSON SC:** I see.

CHAIRPERSON: How early maybe 2015?

MR MAKHUBO: 2015, around, 2015 around late 2014, 2015 I mean, I think there are letters somewhere I just cannot remember the dates.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Then if we go to back to Bundle 1 and page 194.

CHAIRPERSON: I see we are at one Mr Chaskalson.

20 **ADV CHASKALSON SC:** Chair, this is as good a time as any to take a break, thank you.

CHAIRPERSON: Okay, so you say we can adjourn we do not have to...[intervene]

ADV CHASKALSON SC: Yes, Chair that is convenient.

CHAIRPERSON: Okay, we will take the lunch adjournment and we will resume at two o'clock.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV CHASKALSON SC: Thank you Chair before the adjournment we were going through the chronology of events around the time of that SAPS support contract in 2016 and we had in a payment – we had gone up to a payment of R30 000.00 into Molelwane on 25 April 2016. I now want to
10 go to 30 April 2016 and Mr Makhubo can you turn to Bundle 1 page 194.

MR MAKHUBO: Yes I am there.

CHAIRPERSON: Bundle 1.

ADV CHASKALSON SC: 194 Chair.

CHAIRPERSON: 194.

ADV CHASKALSON SC: There you will see an invoice from – it says Molelwane Holdings Pty Limited but in fact the bank account details at the foot of the page are Molelwane Consultings bank account details. It is an invoice to TSS for
20 R500 000.00 ostensibly in respect of professional services – LAN and WAN. Mr Makhubo do you know what work was done to justify this invoice?

MR MAKHUBO: Again anything that had to do with TSS as far as I can recall the full and final settlement around the local area network and the world area network is the CMA as

this was connected to that when I looked at it. Correct.

ADV CHASKALSON SC: So – so what you say is that this was a full and final settlement payment in relation to the CCMA work?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: But the invoice was issued – the invoice does not say that.

MR MAKHUBO: Yes the invoice – the invoice basically was – was as per the normal. I mean you can look at even the
10 address it is not our address at Braamfontein but this was a – I know this was the full and final settlement. I did check.

ADV CHASKALSON SC: So that is – that is what you understand.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: It to be.

CHAIRPERSON: I am sorry please remind me the settlements arose out of what? I think you dealt with it earlier but I just want to connect it with what you are saying now.

20 **MR MAKHUBO:** An earlier point that was canvassed around 2014 that there were – the invoice is not paid at that time and it was –

CHAIRPERSON: It was - did not paid Molelewane?

MR MAKHUBO: To Molelwane ja Molelwane Holdings but ...

CHAIRPERSON: Yes Molelwane Holdings or Molelwane

Consultings.

MR MAKHUBO: Consulting ja. Yes, yes the others have been paid before.

CHAIRPERSON: By – by TSS or by somebody else?

MR MAKHUBO: By TSS Holdings – by TSS Managed Services yes.

CHAIRPERSON: Okay. Yes okay.

MR MAKHUBO: Yes.

CHAIRPERSON: Now you referred to the CCMA was that –
10 that was not the normal CCMA.

MR MAKHUBO: That was a client. That was a client.

CHAIRPERSON: Is it the normal CCMA that we know or is it somebody else?

MR MAKHUBO: No, no that was a client.

CHAIRPERSON: The commission.

MR MAKHUBO: The commission yes.

CHAIRPERSON: For conciliation.

MR MAKHUBO: Yes.

CHAIRPERSON: Oh okay. So were you both engaged by
20 the CCMA that is TSS and Molelwane?

MR MAKHUBO: No, no what happened was there were services on the Memorandum of Agreement in 2009/2010 that when TSS tendered for VOIP which is Voice Over IP LAN and WAN then Molelwane then plugged into Supply Chain Management Services and others at that point.

CHAIRPERSON: Oh the CCMA had given that contract or that work to.

MR MAKHUBO: To TSS.

CHAIRPERSON: TSS only.

MR MAKHUBO: Yes. Yes TSS Managed Services.

CHAIRPERSON: And then TSS had an arrangement with Molelwane.

MR MAKHUBO: In 2009 yes.

CHAIRPERSON: To assist it in regard to some aspects.

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

CHAIRPERSON: Of the contract.

MR MAKHUBO: That is correct.

CHAIRPERSON: And therefore Molelwane was owed not by the CCMA.

MR MAKHUBO: No, no by TSS.

CHAIRPERSON: But by TSS certain amounts.

MR MAKHUBO: Yes.

CHAIRPERSON: For work that it had done.

MR MAKHUBO: Yes.

20 **CHAIRPERSON:** At the instance of TSS.

MR MAKHUBO: At the instance of TSS yes.

CHAIRPERSON: Okay alright.

ADV CHASKALSON SC: But this is work that would have been a long long time ago, is that not right?

MR MAKHUBO: That would have been work that had

continued until the end of the contract.

ADV CHASKALSON SC: Yes but when we – when we dealt with the 2014 payment and you said this was part payment of the arrears.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: You said that that was about – the arrears were around a million and that was half a million and that was in 2014 and you accepted that those arrears had already been there for about a year in 2014. Is that not
10 correct?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: So this would be payment in respect of arrears that had been there for about a year before 2014 – say 2013?

MR MAKHUBO: Yes and continuing yes.

ADV CHASKALSON SC: But it could not have continued for – it could not have continued beyond the point at which Molelewane stopped having staff surely?

MR MAKHUBO: It could not have continued to the extent
20 that people who have worked on it – because remember some of these things we would use sub-contractors and all that.

ADV CHASKALSON SC: Sorry.

MR MAKHUBO: I am just saying that most contracts that we would get if we do not have people on the bench and

companies do that you use sub-contractors and all that but this was full and final settlement of the – of the figure as far as I remember.

ADV CHASKALSON SC: Yes – yes but I want to – I want to pin down when the work that you think was done was done. Are you suggesting that it would have been done after 2013?

MR MAKHUBO: No. I – I would not have the exact date but I know that work continued to be done. I mean I can – we can find out if we need a submission from working and
10 others.

ADV CHASKALSON SC: You see and you talk about paying sub-contractors I do not see any evidence in the bank statements of Molelwane Consulting of payments to sub-contractors to IT sub-contractors in those bank statements. Maybe you can find them for me but I do not see any.

MR MAKHUBO: I – I – all I am saying is that some work would have been done through sub-contractors and this one – this – what I say – ACCsolve people who worked – worked there then we paid ACCsolve but this one was full and final
20 settlement as far as I know.

ADV CHASKALSON SC: Yes if you say full and final settlement when I earlier asked you about arrears and what was outstanding you said that the R500 000.00 paid in 2014 was about half of what was owed. Is that correct?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: You recall that. Now this would seem to be the other half of what was owed if your recollection is correct.

MR MAKHUBO: That is correct and probably more but that is correct.

ADV CHASKALSON SC: But a million was owed in 2014 and we agreed that that was in respect of services that would have been at least a year old then, you recall that?

MR MAKHUBO: As I said that the payments were about 60 a
10 month or so. I do not have – I know the contract was to end around 2015 or so.

ADV CHASKALSON SC: Right but at 60 a month you need to run for a year to build up ...

MR MAKHUBO: More than – ja.

ADV CHASKALSON SC: Ja. For more than a year to build up the money.

MR MAKHUBO: Ja, ja so the calculation would have been look if is more this is full and final settlement yes.

ADV CHASKALSON SC: But what I am saying to you is I
20 have looked through the accounts of Molelwane and you do not see ongoing payments from TSS to Molelwane from 2014 through to 2016 that would reflect ongoing payments of current liabilities beyond the one or two odd payments that we have discussed together.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So if the arrears were a million in 2024 and half were paid off in 2014 in respect of – in respect of services that were already a year old in 2014 you cannot have a final payment of R500 000.00 to settle those areas in 2016 if ongoing services have continued to be provided.

MR MAKHUBO: The way I understood it from – as I have got the explanation from the guys who were manning at MC was that when we negotiated to say look we are small but can we get a full and final settlement to shut this thing down
10 and that is it.

ADV CHASKALSON SC: I – I see but you – you – that was a process that was also trying to be done in 2014 was it not?

MR MAKHUBO: No. 2014 was not full and final settlement no.

ADV CHASKALSON SC: No I know it was not but when we discussed it if I recall your evidence correctly that was what was being looked for in 2014 or not?

MR MAKHUBO: Was a payment of arrears in 2014 to say you owe us please pay us.

20 **ADV CHASKALSON SC:** Yes but you – I recall your evidence to be in 2014 that they paid about half of the arrears.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So there were a million arrears ...

MR MAKHUBO: I said about...

ADV CHASKALSON SC: Approximately ...

MR MAKHUBO: Approximately does not mean that is a million rands yes.

ADV CHASKALSON SC: So there were approximately a million arrears in 2014 which we agreed would have had to have been building up from at least 2013 or before.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And half of that was – was paid off in 2014 just around the time of those other contract between
10 the City and EOH that we were talking about.

MR MAKHUBO: That is around the time when we – we went to Jehan and said look there is an amount outstanding.

ADV CHASKALSON SC: Yes, yes but – but we have dealt with it in the chronology of the payments – of the City relationship with EOH as well.

MR MAKHUBO: And I said ...

ADV CHASKALSON SC: Are you saying the two are unrelated.

MR MAKHUBO: The two are unrelated yes.

20 **ADV CHASKALSON SC:** Well now in 2016 we see another payment of half a million and it just so happens to come also at a time when EOH has a ending bid out with the City for a SAPS support contract which they have said is a matter of life and death for them.

MR MAKHUBO: It was for them but for me TSS – TSS was

owing us.

ADV CHASKALSON SC: Well let – can I take you to how TSS explained this payment. If you go to the very next page which is 194.1 – sorry not TSS – EOH. I beg your pardon it is 194.1 and – do you have 194.1?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Now do you see there an internal EOH email about the Molelwane invoice and at the bottom of the page is a payment authorisation. You see that?

10 **MR MAKHUBO:** Yes.

ADV CHASKALSON SC: And it is payment authorisation of this invoice of 30 April 2016 and it is – the payment was dated 20 – the authorisation was dated 26 May 2016.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And then you see an email chain. If you go up from the payment authorisation there is a query about you know what is this for? And then if go up further you get the answer.

20 “It is ED for City of Johannesburg Enterprise Development for City of Johannesburg. It was budgeted for in the financial year 2016 numbers. I asked Rene for a schedule of the – of ED payments budgeted when we compiled the budgets then if the amount is in the budget I do not ask further questions.”

You see that?

MR MAKHUBO: I read this and I thought look this cannot be – I do not even know who Peter Wayne is. All I know is that TSS was doing business with us at CCMA.

ADV CHASKALSON SC: Well what this reflects is that EOH whatever Molelwane thought EOH provided for this Molelwane payment of half a million plus VAT is what they call Enterprise Development for the City of Johannesburg. They linked it directly to the City of Johannesburg.

10 **MR MAKHUBO**: I would be interested to hear how they do that – how they did that because the negotiations with Jehan Mackay was exactly this. You owe us money for CCMA.

ADV CHASKALSON SC: Yes well internally they regarded it as a payment linked to this City of Johannesburg that is what this email shows.

MR MAKHUBO: I – I – as I have said Chairperson I would be very, very interested to hear why would they have do something like this.

20 **ADV CHASKALSON SC**: Yeah I know – we may get there we may not but you will accept that what this reflects is inside EOH they saw this payment as linked to the City of Johannesburg.

MR MAKHUBO: This is the email I see and we say – even inside EOH I mean I – they must corroborate this I do not know why they would have done this. Now all I know is

exactly what I have said to you before.

ADV CHASKALSON SC: Well let us explore why they may have done it. Was Molelwane working on any City of Johannesburg contracts with EOH?

MR MAKHUBO: No.

ADV CHASKALSON SC: No so it could not have been for that reason.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So I want to put it to you that the
10 only plausible reason that they would have done it is that they thought by paying money to your close corporation they were buying influence in relation to City of Johannesburg contracts.

MR MAKHUBO: TSS.

ADV CHASKALSON SC: That is what they thought.

MR MAKHUBO: TSS Managed Services owed Molelwane Consulting money for the contract that existed prior to the – getting to the City. What they thought I would not know but all I know and I can tell you that I had a conversation that
20 time with the leader of TSS to say you owe us please pay us.

ADV CHASKALSON SC: I see so when did you have that conversation?

MR MAKHUBO: The time when we – we started saying look you have not been paying us in 2014.

ADV CHASKALSON SC: 2014.

MR MAKHUBO: That is when we started the conversation but it did not stop there.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So you had a – you had a conversation – sorry who was the leader of TSS that you had this conversation with?

MR MAKHUBO: Jehan

ADV CHASKALSON SC: Jehan. So you had a conversation
10 with Jehan saying you must pay me money – or you must pay Molelwane money that you owe Molelwane.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And you had this conversation at the same time as EOH had a tender pending before the City of Johannesburg in this case the tender was I think for R400 million plus. Is that correct?

MR MAKHUBO: The tender had nothing to do ...

ADV CHASKALSON SC: No, no I – just answer my question. You had this conversation at a time when they –
20 when the tender for R400 million plus was pending.

MR MAKHUBO: My conversation with Jehan Mackay had nothing to do with the tender.

ADV CHASKALSON SC: No I am asking about time. You can – you can – you have made clear that you are saying that it had nothing to do with it. I am asking timing. Was

this conversation at a time when that tender for R400 million was pending?

MR MAKHUBO: I had a conversation with Jehan Mackay on 00:16:27.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: When I had that conversation regarding this payment to Molelwane. What was happening in the City was none of – was not – I was not concerned about it.

ADV CHASKALSON SC: Let – let us put a date on it. An
10 approximate date on it. Are we talking about the first quarter of – first half of 2016?

MR MAKHUBO: I had that around that time – same time that I said I had a conversation with Ibrahim to ask for money exactly the same time ja – around the same time.

ADV CHASKALSON SC: I see so – so now that conversation with Ibrahim Lehar if I understood was in relation to soliciting donations for the ANC.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So at the same time as you are
20 soliciting donations for the ANC you also asking TSS to pay Molelwane amounts that you say are owed from TSS to Molelwane.

MR MAKHUBO: I am demanding money from TSS that is owed.

ADV CHASKALSON SC: Okay. Is there any written demand

that you made to TSS?

MR MAKHUBO: No, no I just had a conversation.

ADV CHASKALSON SC: I see. Why would you not put a demand like this into writing if it is a legal demand?

MR MAKHUBO: That is how we operated – hey man you owe me please pay me.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Never been a legal thing.

ADV CHASKALSON SC: I see. And all of this is happening
10 in a period when the City is adjudicating a tender that is a matter of life and death for EOH on their own version.

MR MAKHUBO: On their version and from what you say yes but as I say I am not talking about the tender I am talking about soliciting funds for the ANC not even soliciting asking for donations and asking for the money that is owed.

ADV CHASKALSON SC: I see. Well let us go back to the ANC again. Can I take you to page 499 of Bundle 1 – 499.

MR MAKHUBO: Yes I am there.

ADV CHASKALSON SC: And there we see that on 19 May a
20 letter is written from the office of the Regional Treasurer and if you go down a page or two you will see that it is signed by you on – at the foot of page 500 – if you go down to 500 just to confirm that is your signature on it.

MR MAKHUBO: Yes that is correct.

ADV CHASKALSON SC: And this is a request addressed to

the CEO of EOH Mr Bohbot.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: It was copied to Mr Mackay, Mr Lehar and to Mr Makhubedu. It says:

10 “Dear Mr Bohbot we would like to thank you
for the continued support your company has
been giving to the African National Congress
in the past. Support ensured that our
activities become successful ANC in Greater
Johannesburg region is preparing for the
2016 elections. Part of the process the
region is finalising the process of nominating
its candidates thereafter the election
campaign will be full steam starting with the
local manifesto launch and unveiling of our
mayoral conference. As discussed with your
colleagues in previous meetings these
activities require resources to execute and
the election budget is R50 million. The
20 Regional Executive Committee humbly
requests and will appreciate contribution and
transfers as per timelines below.”

And then you set out a timeline of contributions that you would want from 18th of May 2016 through to the 30th of August 2016 and the total is R50 million. And then you leave

the – you give your account details and the rest is – is sort of courtesy comments.

So let us – let us just go back.

“As discussed with your colleagues in previous meetings.”

Now this is plural – several meetings. Do you recall how many meetings you had with EOH people about donations to the ANC in this period of the first five months of 2016:

10 **MR MAKHUBO**: Sorry it would have been a meeting with Pat, a meeting with Ibrahim, no I would have probably raised the same issue with Jehan as well.

ADV CHASKALSON SC: Sorry one meeting with Pat, one with Ibrahim and one with Jehan? Or ...

ADV CHASKALSON SC: When we sat for more than one but I know Ibrahim it was one and then Jehan it was one yes.

ADV CHASKALSON SC: And with Pat probably several.

MR MAKHUBO: Probably several saying that how is this thing – how is this thing I had donations yes.

20 **ADV CHASKALSON SC**: Right. Now you have already indicated that in the same period – well you have already indicated that at one of these meetings somebody tried from EOH tried to raise the SAPS support contract.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Is that correct?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Do you recall who it was?

MR MAKHUBO: I did say on the record that it is the meeting that happened in my insistence with Mr Laher.

ADV CHASKALSON SC: Okay. So Mr Laher was the one who tried to raise the SAPS support contract and you referred him to the City Administration.

MR MAKHUBO: Mm.

ADV CHASKALSON SC: Now in an earlier answer to my –
10 one of my question you suggested that in the course – if I understood you correctly that at one of these meetings you also engaged Mr Mackay over a payment of what you said was an outstanding debt due to Molelwane. Is that correct?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Right. So there is a meeting about a donation to the ANC and at the same time you say you must Molelwane what you owe it. Are these issues that you would raise with Patrick Makhubedu?

MR MAKHUBO: Are these issues that?

20 **ADV CHASKALSON SC**: Are these issues that you would have raised with Patrick Makhubedu the- the issue of either the SAPS support contract or the outstanding payment that Molelwane was claiming?

MR MAKHUBO: Well in this case with Patrick I was raising the issues of funding for the ANC and of course the issues of

TSS because he was part of it before TSS was bought out by – by EOH to say look you guys owe us – and of course we would have other conversations. We used to talk about a whole range of things from football to what is happening in the City, how the business is going, how is he doing as an Executive, how am I doing in the City? We talk about a whole lot of things.

ADV CHASKALSON SC: Right. And all of this is happening while this life or death tender for EOH is pending before the
10 City of Johannesburg.

MR MAKHUBO: Well this is happening at this time when I am preparing for 2016 elections. And I might say like it is not the first time that I would have asked for money from them and having said look please can you – can you fund us. It is not the first time that it happens.

ADV CHASKALSON SC: I see. Can we go down then to 503 in Bundle 1 it is an email that you sent on the 26th of May.

MR MAKHUBO: 500 and?

20 **ADV CHASKALSON SC:** 503.

MR MAKHUBO: Thank you.

ADV CHASKALSON SC: 26 May it is an email addressed by you to Patrick Makhebedu and copied to Mr Laher and Mr Mackay. Do you recall sending this letter?

MR MAKHUBO: Yes I – I have read it and I think it was sent

by me.

ADV CHASKALSON SC: And it says:

“I have sent a couple of letters of request to your good selves as a sequel to the meetings we had. Discuss those meetings now. The last letter had cash flow requirements starting this week.”

And I assume that the last letter referred to is the one that we have just seen. Is that correct?

10 **MR MAKHUBO:** Huh.

ADV CHASKALSON SC: The letter of 19 May 2016.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Then the next sentence I – I am particularly interested in.

“I have communicated our agreements to the ANC leadership especially the Regional Office Bearers and Province”

So you had reached some agreements with these three gentlemen do you recall what those agreements were?

20 **MR MAKHUBO:** Ja that there is a commitment to fund.

ADV CHASKALSON SC: Well what was the commitment?

MR MAKHUBO: I mean they said to me look – then look what they saying and then they can – might not fund the whole 50 million but they will come back to me. So the issue here was that guys this is the first week and we need to kick

off.

ADV CHASKALSON SC: And you are saying that the agreement was something as vague as we will see what we can find?

MR MAKHUBO: The agreement was that they is willing to fund ja.

ADV CHASKALSON SC: They are willing to fund?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Nothing more than that?

10 **MR MAKHUBO:** No, no nothing more. I mean I would go to the officer bearers and say look guys I have – got some money at least the initial money for the elections EOH is on board and I will approach other funders as well.

ADV CHASKALSON SC: And did you write similar letters to other people?

MR MAKHUBO: Come again.

ADV CHASKALSON SC: Did you write similar letters to other companies?

MR MAKHUBO: I fund raise to other companies as well.

20 **ADV CHASKALSON SC:** No I am talking about similar letters talking about agreements that have been reached and

MR MAKHUBO: Remember other...

ADV CHASKALSON SC: Being engaged with the ANC leadership.

MR MAKHUBO: Remember others would say look we will

pay you on a certain date or yes we agree we will give you R200 000.00 today or something like that. These ones I said look we have agreed to – to fund us because I need the money now they are kicking off the election campaign.

ADV CHASKALSON SC: So what you are suggesting is that in the other cases you had agreements – fixed agreements we will fund this amount or pay this amount on that date but in this case you did not have an agreement.

MR MAKHUBO: Funding – funding is not a linear process
10 and you get people handle them differently and you – you sit with people and say okay we committing to funding but we will come back to you on the quantum and then the dates – so you say okay please I need it next week at least the first tranche. Then they give you the first tranche. It happens all the time to other people to say but you promised to pay me – to pay – to bring it for us for rental and rental is due today. It happens that way and then you can write to them as well.

ADV CHASKALSON SC: Now who else did you have engagements of this sort with? What other companies?

20 **MR MAKHUBO:** No I cannot – should I disclose because they are not here.

ADV CHASKALSON SC: No, no they are not here.

MR MAKHUBO: No there is no requirement to disclose people that I fund raise from it there Chairperson? You know the law today is there but I mean to ask me who did the ANC

fund raise from I think it is an unfair question and I do not think it is part of this.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Well Mr Chairperson what we are going to submit is that the – when one has regard to the full conspectus of facts relating to these sorts of fund raising arrangements with EOH there is a very – or we will submit that these – that these were ultimately corrupt payments paid by EOH and if there is a similar arrangement with other
10 – with other companies that Mr Makhubo had it is the job of the commission to investigate that.

I can understand that people are not present today and maybe Mr Makhubo does not want to say publicly but he can write it – he can write the name of the companies down on a piece of paper and then they will not be embarrassed publicly but it is not a question that he can refuse to answer.

CHAIRPERSON: Well of course if that is the submission that would be made it would help the ANC to – or yourself to show that we are doing the same thing with other people –
20 with other companies. I am saying it would maybe I should say may not would with other companies and whether in regard to the same companies – the same submission can or should or maybe made might be something else.

But of course it might be something you wish to reflect on. I mean – and maybe if he I am thinking about the

implications of the – of the previous regime before the – the passing of the Bill or the Act on political funding what the implications were for the fact that – for the period before the Bill became the Act Mr Chaskalson.

ADV CHASKALSON SC: There was no obligation...

CHAIRPERSON: I am talking – I am now trying – trying to think aloud in terms of disclosure.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Ja.

10 **ADV CHASKALSON SC**: Mr Chair my understanding of that regime is that there was no obligation to disclose.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But there was no obligation not to disclose either.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And so...

CHAIRPERSON: Ja.

ADV CHASKALSON SC: It is not as though there is a statutory prohibition.

20 **CHAIRPERSON**: Yes.

ADV CHASKALSON SC: On answering the question.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: But Chair I do not want this to delay the ...

CHAIRPERSON: No, no that..

ADV CHASKALSON SC: The process of the cross-examination.

CHAIRPERSON: No that is fine.

ADV CHASKALSON SC: I would be happy for Mr Makhubo...

CHAIRPERSON: That is fine. I think – I think reflect on it Mr Makhubo and maybe communicate to your legal team what the position is.

I – I know that sometimes political parties would say we obtained these donations on the basis that we would not
10 disclose the donors but I know that earlier on you talked about transparency acting transparency in terms of these donations and of course there are letters here. It is not something that maybe was just the subject of discussions without anything on record.

So – so reflect on it and you can get advise whatever advise you can get then communicate with the commission whether you wish to mention names of other entities where basically you dealt with them on the same basis as with EOH or whatever basis. Your basis might not necessarily be a
20 basis that Mr Chaskalson has but your own basis

MR MAKHUBO: No, no we will get advise even from the head office from 00:02:40 and run on...

CHAIRPERSON: Yes.

MR MAKHUBO: On what the position of the ANC is on this matter.

CHAIRPERSON: Ja.

MR MAKHUBO: And I had certainly very clear that my basis of engaging funders and the – the SC here Mr Chaskalson are quite different and are opposite because fundraising for a political party is not inherently corrupt.

CHAIRPERSON: Ja. Shall we leave it on that basis Mr Chaskalson?

ADV CHASKALSON SC: I am happy to leave it on that basis Chair.

10 **CHAIRPERSON:** Ja okay alright.

ADV CHASKALSON SC: Can I take us back then to the chronology and let us go to 30 May 2016 and if I can ask you to go to Bundle 3 page 267.

CHAIRPERSON: Did you say 267?

ADV CHASKALSON SC: 3 – 267 Bundle 3 Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And will you confirm that this is a Molelwane Consulting statement for the month ending 30 May?

20 **MR MAKHUBO:** That is correct.

ADV CHASKALSON SC: And if we go over the page to 268 we see a payment from TSS on the 30th of May for R570 000.00.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And we see again that this

R570 000.00 comes in at a point where Molelwane has cash flow difficulties before the R570 000.00 the balance in the account was R268.00. You will confirm that – R268.48.

MR MAKHUBO: That is correct but I mean we did not have cash flow problems because there was actively trading.

ADV CHASKALSON SC: Sorry because it was not?

MR MAKHUBO: I am just saying when you say it had cash flow problems it looks – you sound like it had an operational cash flow problems.

10 **ADV CHASKALSON SC**: But at this point it was not trading you say.

MR MAKHUBO: It was not actively trading no.

ADV CHASKALSON SC: Yes well let us – let us test that answer. Can we go down to the next statement and maybe go down to page 370 where the transactions begin. And here we see what happened to the R570 000.00. The first payment is a transfer of R50 000.00 it does not tell you where it went.

20 There were two transfers of R50 000.00 but if you – if you go to the table at page 849 of this bundle you will see that that transfer ended up in your bank account. Sorry I have given you the wrong reference there.

Let me get the correct reference. Correct reference will be page 849 which is the table of transactions from Molelwane accounts into your personal accounts and you

see if you go down to 31 May 2016.

MR MAKHUBO: Which bundle is this sorry?

ADV CHASKALSON SC: At page 849.

MR MAKHUBO: Which bundle?

ADV CHASKALSON SC: Bundle 3 – Bundle 3.

CHAIRPERSON: And what is the date Mr Chaskalson?

ADV CHASKALSON SC: 31st of May 2016.

MR MAKHUBO: Bundle 3 – 849.

ADV CHASKALSON SC: 849 that is correct. And you will
10 see that on the 31st of May there is a transfer from the
62052928060 account into your personal accounts – your
personal FNB account of R50 000.00. You see that?

CHAIRPERSON: The dates are on the 3rd column.

ADV CHASKALSON SC: The third column from the left is
the dates.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And this is maybe 17th from the
bottom or 15th from the bottom around about there – towards
the bottom of the page. We will see two transactions on the
20 31st of May. Okay.

The first if a transfer of R50 000.00 and while we are
at it let us – let us also note the transfer of R200 000.00
both on the same day. You can pick those up on the bank
statement itself if we go back to page 270. Okay. And you
will see that the R50 000.00 is the first transaction on the

top of the page on page 270 – 270.

MR MAKHUBO: I am getting confused. 270?

ADV CHASKALSON SC: 270 which is back to bank statement itself.

MR MAKHUBO: Yes alright.

ADV CHASKALSON SC: Okay. And if you go down 7 items still on the 31st of May there is a R200 000.00 transfer also with no description but we now know that that went into your – into your FNB account.

10 **MR MAKHUBO**: That is right.

ADV CHASKALSON SC: Now there are other payments. There is an ABSA credit card 4797692 payment of R15 000.00. Is that your credit card?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Your ABSA credit card right. And then there is a payment saying Jet Standard for another R15 000.00. Would that be a payment into your Standard Bank account?

MR MAKHUBO: That is right.

20 **ADV CHASKALSON SC**: And then there is a payment with the reference Kakale [?] that if I remember your earlier evidence is your mother?

MR MAKHUBO: That is right.

ADV CHASKALSON SC: And that earlier on was a salary payment in the same amount. So did she still draw salary

from Molelwane?

MR MAKHUBO: Well I was paying her ja I mean we – it is not withdrawing putting into the flows and we were drawing ja.

ADV CHASKALSON SC: Sorry I did hear that.

MR MAKHUBO: Just saying we were not putting the thing to a close now we starting to draw and finalise but yes that is correct.

ADV CHASKALSON SC: Yes but she was drawing a
10 R11 000.00 odd monthly salary still?

MR MAKHUBO: Ja we transferred it – we transferred R11 000.00 to her ja.

ADV CHASKALSON SC: Yes. And then – there is something...

MR MAKHUBO: Normally (talking over one another) salary ja.

ADV CHASKALSON SC: Right. Then there is something called travel costs and travel costs and then a second reference Molelwane Moloantoa Makhubo – now that is you,
20 is it not?

MR MAKHUBO: That is right.

ADV CHASKALSON SC: That R100 000.00.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Do you recall what that was for?

MR MAKHUBO: But it says travel costs I do not know – I

cannot recall which travel we were going.

ADV CHASKALSON SC: Oh well –

CHAIRPERSON: I am sorry – I am sorry Mr Chaskalson. Is R100 000.00 on page 649?

ADV CHASKALSON SC: Oh no Chair we are back on the bank statement itself at page 270.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: I do not know if you have got – are you on 270 Chair?

10 **CHAIRPERSON:** I am on 270 yes.

ADV CHASKALSON SC: So the payments we have dealt with are the R50 000.00 at the top of the page.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Which is a payment to Mr Makhubo.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: The R15 000.00 ABSA credit card which is a payment into his credit card.

CHAIRPERSON: Ja.

20 **ADV CHASKALSON SC:** The R15 000.00

CHAIRPERSON: Oh.

ADV CHASKALSON SC: Below which is a payment into his Standard Bank account. The R11 000.00 below that which is payment to his mother sort of a salary payment. The R100 000.00 travel costs which are his travel costs.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: So we got to the point. Perhaps I might be able to help you here. The travel agency we found out who received this payment was called Indigo Travel and it may be linked to the next payment which is R5 000.00 with your name and it says “Padi – P-a-d-I”. Now Padi as I understand it is the international diving association. Did you go on a diving trip at some stage around here?

MR MAKHUBO: My – my – the last born at home my
10 brother’s name is Padi.

ADV CHASKALSON SC: Oh Padi – okay well I drew a connection which was not there. So that is your brother – so that is a payment to your brother – the R5 000.00.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: And the R100 000.00 is a payment to Indigo Travel. Do you recall what you were paying Indigo Travel a R100 000.00 for?

MR MAKHUBO: No where do you get that? Because I will have to – there is a statement somewhere I will have to..

20 **ADV CHASKALSON SC:** We just got the contract account detail from FNB for that R100 000.00 payment.

MR MAKHUBO: I do not remember Indigo Travel. I ...

ADV CHASKALSON SC: Okay they may have a different trading name.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: But you cannot recall which travel expenses of yours.

MR MAKHUBO: But it says they are mine but I cannot remember where I was going ja.

ADV CHASKALSON SC: Right and you are saying that by that stage Molelwane was winding down so these are unlikely to have been Molelwane travel expenses.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: They look more likely to be your
10 personal expenses.

MR MAKHUBO: That is right. That is right.

ADV CHASKALSON SC: Right. Then there is an amount below that on the 31st of May credit card payment R10 000.00. Would that have been your credit card payment?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So let us – if we tot these up we see R50 000.00 + 2 x R15 000.00 gives you R80 000.00 _
R11 000.00 gives you R91 000 00 + R100 000.00 is a
20 R191 000.00+ R5 000.00 is R195 000.00 + R200 000.00 is
R395 000.00 + R10 000.00 is R405 000.00. So R405 000.00 of this payment from Molelwane goes to expenses relating to you primarily but also your family, is that correct?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And of course there was not that

money in Molelwane's account to pay any of these expenses before the R570 000.00 arrived from TSS.

MR MAKHUBO: What – what work do you do Chairperson? When you – when you winding down you collecting debts and you know what is left is to – as I said in the first – first – in November you extract value. You take over – so you collect debts for exactly that – that reason. So – so to say that this would not have happened – yes that would not have happened I agree with you. But if there is a debt that has to
10 be paid and it is paid that is what you do.

ADV CHASKALSON SC: Well you see that may be so in ordinary circumstances but here we are talking about a payment which the debtor describes as having been an enterprise development payment on a City of Johannesburg contract.

ADV CHASKALSON SC: I see that.

ADV CHASKALSON SC: So – let me finish and then you can comment. So R405 000.00 of what they pay and characterised as a enterprise development payment on a
20 City of Johannesburg contract is R405 000.00 that goes to you and your family and when I said to you earlier the most obvious reason for them to characterise it an enterprise development family is they thought they were buying your influence. Do you think that this reinforces that?

MR MAKHUBO: I am saying to you that they owed us – your

version and your thesis is one thing but the reality and the truth here if we ever wrote that – that email can come here and we can get counsel to cross-question to ask what they did or get one of the EOH people that are dealing with Chairperson and say look let us cross-question and say why did you do this – what was this – this all about for me? And put it to them I can tell you that my version is correct.

ADV CHASKALSON SC: Well let me tell you this extraordinary coincidence in the chronology which is that
10 after this R405 000.00 goes off to you and your family and the balance of R4 – R570 000.00 of an enterprise development payment on the City of Johannesburg contract is paid to Molelwane.

Two days after this happens low and behold Executive Adjudication Committee approves the EOH contract – the SAPS support contract and that you will at 504. So they thought that this was an enterprise development payment on a City of Johannesburg contract – sorry it is 504 Bundle 1.

20 **CHAIRPERSON:** Did you say?

ADV CHASKALSON SC: 504 Bundle 1.

CHAIRPERSON: 504.

ADV CHASKALSON SC: And the chronology confirms their hunch.

MR MAKHUBO: I suppose what you are saying is that the

checks and balances in the City the three committees and that I would be so influential that whatever I say goes. And I can tell you I have nothing to do with this tender – absolutely nothing to do with this tender.

So what – what my 00:17:00 sorry – sorry Chairperson – is that this money was owed that is why it went where it went and – and how the – the tender was approved I think the City – people who were sitting in the bid adjudication committee can be called. I do not think it is a
10 problem to call them and say what happened? Did I say anything to them if anything?

Did I influence them in any way? It cannot be that we leave it at the level of supposition and all that. The people are here. The people can be called and say what was my role in doing this thing? And I can tell you now absolutely there is nothing that I said to them.

So if we cannot be saying because of this and that you know we making linkages and causality that I do not think exists. I just think it is a bit unfortunate and unfair that
20 you know making causalities and linkages that are not there. The people are there to be asked – to be called. To be asked.

They took that decision. They make the – they did the evaluation. They must come and say this is how we did the evaluation and what was my role in it and I think they

can – they can corroborate that.

ADV CHASKALSON SC: Well – well of course if the people corruptly twisted the adjudication process to reach a result that you required they are hardly likely to admit that in – in these proceedings are they? Mr Makhubo do you think it is likely we are going to get an answer from them saying yes we – Mr Makhubo asked us to do this, this is what we did.

MR MAKHUBO: I say I did nothing you can call them. I know if you are saying to them you corruptly evaluated that
10 tender it is up to them to say I was not there and I did not even talk to talk to anyone in those – in those – in that tender adjudication committee.

Neither do I talk to anyone who has got – with tenders because it would illegal for me to do so. And you are correct it will be –it will be very illegal. But if you have – the decision is that no this thing was done corruptly I think the people are there in the City.

The documents that shows was part of the DAC was shows who chaired the EAC – the Executive Adjudication
20 Committee are there and they can – I think they can be called.

ADV CHASKALSON SC: Alright. Well you will agree with me will you not that the EOH internal emails suggests that they thought that these payments were linked to the CoJ Contract and first let us stop there. Do you agree with that?

The EOH internal email shows that they thought that these payments were linked to the CoJ contract.

MR MAKHUBO: The email that you showed me now.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Of which I do not even know the people.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: I know the people that I wrote letters to. I do know who these people – who would they – they wrote these emails. And I think they must come and answer. I

10 cannot – I cannot comment on them.

ADV CHASKALSON SC: No.

MR MAKHUBO: I know what the truth – what the issue is here.

ADV CHASKALSON SC: No, no but I would like you to answer my question. That email shows that those people thought the payment was linked to the CoJ SAPS support contract.

MR MAKHUBO: The email as I read it says these things SAP ED whatever ED CoJ contract the way I read it.

20 **ADV CHASKALSON SC**: Yes.

MR MAKHUBO: But I do not think it is a correct email.

ADV CHASKALSON SC: So you do not – you think that email got it wrong.

MR MAKHUBO: I think that email – I do not mean – I do not even know who these people are.

ADV CHASKALSON SC: Yes. But you will agree with me also that two days after the payment is made to the Executive Adjudication Committee has its meeting and appoints EOH. That is what we see on this letter.

MR MAKHUBO: I see this letter signed by the CFO and it has got that date yes – the 8th of June.

ADV CHASKALSON SC: No, no the letter is dated the 8th of June but it says the meeting of the Executive Com –

10 “Kindly be advised that your offer in respect of an appointment of services provided for the SAP implementation upgrade has been approved by the Executive Adjudication Committee at its meeting held on 2 June 2016.”

MR MAKHUBO: Yes I see that.

ADV CHASKALSON SC: The meeting was on 2 June which was two days after the payment.

MR MAKHUBO: The two do not link.

ADV CHASKALSON SC: I see. Let us just ...

20 **MR MAKHUBO:** So we can – what I am saying Chairperson and I am really throwing a challenge to the commission. I am made to answer for people who wrote things that I do not know and I have got no idea why they wrote these things. So the Executive Adjudication Committee sends a letter to the EOH do you not think it is fair that the people who did

this thing they must come and answer why did you – why did you pay on this day – what happened?

CHAIRPERSON: Well I think you – you have put your side to say as far as you are concerned there is no link. I think that is what you are saying.

MR MAKHUBO: Yes.

CHAIRPERSON: Is that right? So Mr Chaskalson just wants to make sure that you can say whatever you wish to say about whatever link you make – putting and you are free to
10 say there is no link and you are free to say there is no justification to make a link.

But the question of calling people that is a separate issue. I am just talking about – about you commenting on what he says and – that when he makes a link about the dates and whatever you are free to say but there is no justification for linking the two as far as you are concerned.

MR MAKHUBO: Chairperson I have been repeating the same thing. He uses different documents to come to the – to try and draw link but I will take that Chairperson and saying
20 Mr Chaskalson I – I see the emails – I have seen the – I see the file – I have read the file – I see these things in the file but I – I really do not know. I see these things for the first time even here when I read.

ADV CHASKALSON SC: I see. Can I – can we just agree on one thing that the value of this contract that was awarded

on the 2nd of June was R400 – was more than R404 million. You add up those numbers you will get to slightly over R404 million.

MR MAKHUBO: Well I see – I see that includes for VAT on this letter of award yes.

ADV CHASKALSON SC: Yes. Inclusive of VAT yes.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: In response to my questions you have said that these people who are linking payments from
10 EOH to this contract are people who you just do not even know. I would now like to take you to some people who also link payments to this contract and they are people who you do know.

Now the commission has heard evidence that Mfundi invoiced EOH R16million in respect of services that Mfundi described as “A CoJ SAPS Support Special” and this is the SAPS Support Contract is it not? Okay from the CoJ and you will recall that Mfundi is run by your tax advisor Mr Reno Barry.

20 **MR MAKHUBO**: That is correct.

ADV CHASKALSON SC: Now if you go to page 344 of this Bundle 1 you will see an email from Reno Barry on the 6th of January 2017 to Patrick Makhubedu another – your close friend Mr Makhubedu and it says:

“Subject: Mfundi ANC Recon.”

CHAIRPERSON: I am sorry I missed the page Mr Chaskalson.

ADV CHASKALSON SC: 344 Chair. 344.

CHAIRPERSON: 344 on Bundle 1.

ADV CHASKALSON SC: Bundle 1 yes Chair.

CHAIRPERSON: I have got it.

ADV CHASKALSON SC: And Mr Barry says:

10 “Hi Patrick attached is the last ANC recon I have showing an amount of R560 000.00 still to go however there might be payments made afterwards that must be added to the recon to reduce this 00:25:12 see columns for August and September 2016 for items not included. Please advise if any items must be added to the recon. Kind Regards Reno Barry.”

If we go down a page. It says:

“Mfundi mobile expenses ANC GM.”

Now those are your initials GM are they not?

20 **MR MAKHUBO:** Thank you.

ADV CHASKALSON SC: And I am going to show you documents that suggest that that is what they had in mind. They were referring to you. ANC Geoff Makhubo. We start off with sales and the sales from which Mfundi invoiced R16 million were a CoJ SAPS support special. The – Mfundi was

providing services to EOH in relation to the SAPS Support Contract according to Mr Barry ie. Accounted.

And let us see what those services were. We see a list under cost of sales of ANC election expenses which come to R15.439 million. So you will agree that from this document Mfundu invoiced EOH R16 million in respect of the COP SAPS Support Contract and then treated as the cost of sales payments of R15.439 million that it made in relation to ANC electioneering expenses. Will you agree with that?

10 **MR MAKHUBO:** Yes as far as I understood when I was asked questions whereas – was that the initial – the donation for the ANC would be about R20 million.

ADV CHASKALSON SC: Sorry I did not hear the number. The...

MR MAKHUBO: I am just saying when I heard – when I asked them was that the donation would have been about R20 million and then – and then I got that no look the – like – unlike before where they used to pay us directly into – into our account they – they have got a way to – to do it and I
20 said no fine I do not – how you do it is your internal matter it does not have anything to do with me. I requested donations from yourselves and – and done let us keep on talking to Patrick about what I need paid and that is how we did it.

ADV CHASKALSON SC: So – so if I understand you correctly the – that they being EOH reached agreement with

you that they would donate approximately R20 million to the ANC.

MR MAKHUBO: That is the agreement that they said look we will give you about R20 million.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: But they wanted to pay suppliers directly.

MR MAKHUBO: Well they said look we cannot – we cannot
10 give it to you directly so I said look find a mechanism I – that is your problem I just need the money and I need suppliers to be paid.

ADV CHASKALSON SC: Can you think of any legitimate reason why EOH would want to pay suppliers directly rather than paying the R20 million to the ANC as the donation that it says?

MR MAKHUBO: I would not know – I would not know
Chairperson. That is the information I got and I said look I am in election mode I do not – how it goes I just want
20 expenses paid. I am the treasurer there – the volunteers on the ground would need apparel – would need catering on the ground and all that. So that is what – that is what happened we need to bring you know we need to bring – we need audio you need a whole lot of things during elections.

ADV CHASKALSON SC: So am I to understand that each of

these line down – line items relate to requests that you made to pay and leave the top line item – Management fees and taxes leave that out. But for the rest each of these line items relate to requests that you made to EOH to pay suppliers.

MR MAKHUBO: I can confirm that I recognise majority of them that – but yes the – you know adverts in the newspapers, and un-holdings would be bringing a project with 00:29:52 printers for printing yes – touch printers form
10 printing yes.

ADV CHASKALSON SC: Well let us maybe look at the example – one of the examples. Nahana Holdings. If you go to 680 of this bundle you will see how the process seems to have operated.

MR MAKHUBO: 600 and?

ADV CHASKALSON SC: 680 Bundle 1.

MR MAKHUBO: 80?

ADV CHASKALSON SC: 680 yes.

MR MAKHUBO: That is correct.

20 **ADV CHASKALSON SC**: And you will see an invoice from Nahana to the Greater Johannesburg Region ANC contact Geoff Makhubo and then there is an invoice for a social media strategy in various details that comes to R1250 plus VAT a grand total of R1425 and you will see that on this list next to Nahana Holdings there is the grand total of R1425 –

sorry the list on page 345.

But before you leave 680 if you go up a page to 679 you will see that that invoice from Nahana was forwarded first to you by somebody called Andy Magaz to you and Obekeng Chikane and then you forwarded on to Patrick Makhubedu on the 22nd of July.

So if I understand how the system worked a supplier to the ANC in relation to the election campaign would send you an invoice. You would forward it to Patrick Makhubedu and he would attend to payment of the supplier directly. Is that correct?

MR MAKHUBO: Yes that is correct.

ADV CHASKALSON SC: And that is true of to the best of your knowledge of all of these line items on the email from Mr Barry to Mr Makhubo other than the top one which says Management Fees and Taxes which obviously did not go to the ANC but seemed to have gone to Mr Barry and Mr Makhubedu.

MR MAKHUBO: To the best of my knowledge number 1 and 2 there from number 3 yes that is what happened here.

ADV CHASKALSON SC: And that R4million cost of sales ANC fundraiser you did not see that amount?

MR MAKHUBO: No, no that amount went into a – a provincial ANC account.

ADV CHASKALSON SC: Provincial ANC. So it did go to the

ANC it just did not go in the same way as paying suppliers.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Now what we know from Mr Barry's email is how he accounted for these expenses in relation to EOH was a cost of sales on a single sale which was the City of Johannesburg SAPS Support Special.

So as between Mr Barry and EOH these payments to the ANC of R13million odd – just over R13million because you have got to take the R2.4million off the bottom figure of
10 R15.439 million were a cost of sale in relation to the SAPS Support Contract. Is that not correct as they accounted for.

MR MAKHUBO: That is what I see on the - what is appearing here Chairperson.

ADV CHASKALSON SC: Now – so these are people who you know Mr Barry and Mr – and Mr Makhubedu.

MR MAKHUBO: Yes I know them.

ADV CHASKALSON SC: And they seem to be treating these payments to the ANC as linked to the City of Johannesburg SAPS Support Contract do they not?

20 **MR MAKHUBO**: The – the – I requested for money but the way they are accounting for it here they seem to call it a cost of sales. I do not know how – how they agreed with – with EOH how they are going to account it but I formally asked for money to – from Asher and this is what I got.

ADV CHASKALSON SC: Yes but they – but what we see is

how they account for it inter parties is a cost of sales relating to the City of Johannesburg SAPS Support Contract.

MR MAKHUBO: That is how I see it myself now.

ADV CHASKALSON SC: They link it to the SAPS Support Contract.

MR MAKHUBO: They are doing it ja.

ADV CHASKALSON SC: Yes. I am not saying you are. But these are people who you know well. Have you ever raised with them why they linked these payments to the SAPS

10 Support Contract?

MR MAKHUBO: Well when I – when I received – when I saw this – this recon I said but – so this thing went through Mfundi because I sent these things to Patrick and the way I understood it I thought it would be a direct donation and paying to – donation to the ANC and paying to the ANC. Why they treat is as cost of sales support I would not know.

I mean I looked at this thing as even an income statement it looks like one but I would not have asked as to why do you treat this as cost of sales. And how – why are accounting for

20 this thing this way.

ADV CHASKALSON SC: Yes but my question was have you raised it with them because they will know why they accounted for it that way?

MR MAKHUBO: No, no not with Reno no. I would have not raised it with Reno I – all I know is that I said look is the

money finished – no, no there was some money left can we – can we pay because in my mind this thing is a donation requested as a donation and let us send this as a donation and if my recollection served me well you know we – we thank them for a donation.

ADV CHASKALSON SC: Is – so you – you got this reconciliation back in 2016 oh sorry 2017 because we only prepared in January 2017. Did you get that reconciliation then?

10 **MR MAKHUBO:** Yes I did.

ADV CHASKALSON SC: Yes. And it did not occur to you at the time to ask them why they are treating ANC electioneering expenses as a cost of sales on the City of Johannesburg contract?

MR MAKHUBO: Chairperson I – I really thought that it is their own accounting issues internally. We asked for a donation, they gave it – give it in a particular way. How they accounted for it – and in my letter I even say please whatever I said we asked for a donation and donation to date
20 – into dates this – the donation request pre-dates this thing. So I – look the accounting I cannot answer for them and I did not ask them.

ADV CHASKALSON SC: You see what their accounting suggests very strongly is they regarded these payments as part of a quid pro quo for that SAPS Support Services

Contract. That is what the accounting suggests. Will you accept that?

MR MAKHUBO: I would like them to answer that. I – I – as I say I accepted donations. I – if they – if you read it is the sense that quid pro quo I said I needed donations if in their minds quid pro quo I really cannot comment on it.

ADV CHASKALSON SC: Now I know you would want them to explain why they did it but I need to interrogate your state of mind in – at the point at which you received this – this
10 reconciliation so I need to ask you would you not – do you not accept that on its face this reconciliation suggests that EOH Mr Makhubedo and Mr Barry and Mfundu regarded the ANC election campaign expenses as a quid pro quo for the City of Johannesburg SAPS Support Contract.

Is that not what – what this document suggests? I am not – not asking you to say that that is correct that is what they were but I am asking you to say – to comment on is this not what this document suggests?

MR MAKHUBO: Honestly when I see this document I saw – I
20 looked at the expenses of what they – what I have asked for has it been paid, is there money left if so what – what is going to be done with it? What are the final expenses of the election campaign at that point? Would they have been paid by other people? You know those are the things that I looked at.

But looking at – at this thing to say okay these people are now using – I have got an income statement and it says this is a – they are treating this thing as their own expenses. That is how I read it – as their own expenses not expenses on behalf of somebody else.

ADV CHASKALSON SC: Let us just take it step at a time then. Did you see at the time that under sales the sales were described as CoJ SAPS Support Special. Did you notice that?

10 **MR MAKHUBO:** I noticed that and I thought it is their own agreement between them and EOH. Nothing to do with us.

ADV CHASKALSON SC: Yes so you noticed at the time that as between EOH and Mfundi these expenses were going to be accounted for in relation to the City of Johannesburg SAPS Support Contract.

MR MAKHUBO: I saw that it looks like the invoice to me from Mfundi to EOH related to SAP – yes that I saw and I saw the expenses that I asked that they are paid.

20 **ADV CHASKALSON SC:** Yes. So these ANC election expenses you have knows since 2016 were accounted by Mfundi to EOH as expenses relevant to the City of Johannesburg SAPS Support Contract.

MR MAKHUBO: I am unsure what...

ADV CHASKALSON SC: In terms of their accounting system.

MR MAKHUBO: I am – I am unsure. I wanted – I asked for – for a list to say who have you paid – can we reconcile these things this is what I got. What they do internally quite honestly Chairperson I does – had nothing to do with me.

ADV CHASKALSON SC: So are you saying that if they internally think that they are buying your influence on the SAPS Support Contract with these expenses you do not care?

MR MAKHUBO: They did not get what they bought because
10 I did not buy anything. I continuously requested donations from them since 2008 from TSS and there has never been a buying of any favour.

ADV CHASKALSON SC: Well they did get the CoJ SAPS Support Contract whether it was due to you or not – they got it, did they not?

MR MAKHUBO: And then they got other contracts before.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Even before my time. Even before I was the Treasurer.

20 **ADV CHASKALSON SC:** Yes and the ones that we have investigated do not look good. But you knew after – so you knew at the time that this is how they accounted for them and since November you must have known that we regarded this as quite sinister. Is that not correct?

MR MAKHUBO: You regard what as quite sinister?

ADV CHASKALSON SC: Since November – since the evidence of Mr Powell where we spent some time showing the link between all of these expenses and the City of Johannesburg SAPS Support Contract.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: You must have known that this commission regarded this as – as a problematic link.

MR MAKHUBO: I saw that when that Mr Powell's says it seems as if it – it looks like these things supposes – and in
10 my mind I said about these people are not buying friends. If they are accounting for it this way it has absolutely has nothing to do with us.

ADV CHASKALSON SC: But you – if I understand your evidence correctly you – you have not yet asked Mr Makhubedu your close friend or Mr Barry your tax advisor why they accounted for it this way.

MR MAKHUBO: Why they called it cost of sales? Why they called it cost of sales?

ADV CHASKALSON SC: So why they called it – not – not
20 just cost of sales but cost of sales in relation to a sale that is the CoJ SAPS Support Contract.

MR MAKHUBO: Not really. I honestly thought that it is an internal agreement between the two of them. As I say I wrote a letter to – to EOH. I did not write a letter to Mfundi. I requested donations from EOH like I have done before and

earlier on you showed us that they have funding us but these are not the only funds that have – have – they have given to the ANC – these are not the only donations and that is what I knew.

I knew that if they accounting for the – they wanted to use somebody else to pay I think it is best placed to answer for them and how they accounted for it this way. All I can say Chairperson is that I – I met them and said look I need funds for elections. I wrote a letter to them. I even
 10 gave them the cash flow I need it this way – this month – this is what I will doing. I need to do elections – there is not 00:12:54 and those things they have come to – to the party with and I thanked for it.

ADV CHASKALSON SC: Now over and above these payments you said their total payments were going to be R20million. Did they deliver on their full R20million that they apparently agreed to?

MR MAKHUBO: Well I do not think it is a full R20million. I know that they helped us pay for our research which is about
 20 R1.5million or so and ja I think it – I remember about there.

ADV CHASKALSON SC: So at any rate it – well there may be other expenses as well that I might refer you to. The – which are on this list but not – sorry which – which appear to have been forwarded by you to EOH but are not part of the R16 million that was reconciled on this list. Did you forward

other expenses to EOH beyond the ones that you see here?

MR MAKHUBO: Yes as I say I am – I am acutely aware that I did ask them to pay for – for our research and I think the invoice was sent to them directly.

CHAIRPERSON: Can I just ask the R20million am I right in understanding that that was in one year they promised that – R20million.

MR MAKHUBO: That was in 2016 yes.

CHAIRPERSON: Yes. Oh to me that sounds quite a large amount does it also sound quite a large amount to you? But
10 you were Regional Treasurer you would have a better idea. Maybe to say that was nothing compared to what others donated. That sounds quite a large amount.

MR MAKHUBO: Chair if – if somebody is...

CHAIRPERSON: To donate.

MR MAKHUBO: We ask for R50 million they say we give you 20 – we take it.

CHAIRPERSON: Ja. Ja.

MR MAKHUBO: If you go somewhere you ask for 20 they
20 give you 10 you take it.

CHAIRPERSON: Yes.

MR MAKHUBO: If you go to others – I mean others would have – they vary.

CHAIRPERSON: Ja.

MR MAKHUBO: Others over a one year period they would

you know give us R400 000.00 a month.

CHAIRPERSON: A month.

MR MAKHUBO: Ja.

CHAIRPERSON: Shew. So over a year.

MR MAKHUBO: Over a year. So – so I am just saying that they vary.

CHAIRPERSON: Ja. That would translate to about how much in twelve months?

ADV CHASKALSON SC: Just under R5 million if it is
10 R400 000.00 a month.

CHAIRPERSON: Okay.

MR MAKHUBO: So – so they vary. They vary Chairperson depending on what you ask from them.

CHAIRPERSON: Ja.

MR MAKHUBO: You know the – the – so during elections and I think we say somewhere that in the year of conferences and elections our – our fundraising peaks.

CHAIRPERSON: Ja.

MR MAKHUBO: And during –especially – especially local
20 government elections for us as a region our – our fundraising peaks because you know we have to contest every ward – 135 wards.

CHAIRPERSON: Ja.

MR MAKHUBO: So we have a candidate in each ward. We then contest in the media we contest to volunteers on the

ground.

CHAIRPERSON: Yes.

MR MAKHUBO: And all parties do that.

CHAIRPERSON: Ja.

MR MAKHUBO: You know you need posters, you need pamphlets.

CHAIRPERSON: Yes.

MR MAKHUBO: You need buses. You need transport.

CHAIRPERSON: Ja.

10 **MR MAKHUBO**: You need food. You need t-shirts which are a large expenditure as well. You know if is winter like this one we needed beanies. We needed big jackets and we needed sweaters and you call them hoodies – we needed hoodies because this election was not – was – I mean it was bitterly cold on the 3rd of May – on the 3rd of August then can you imagine July how it was. So this one was very – was a very expensive election campaign.

CHAIRPERSON: Well I am just thinking that if you talking about R20 million just for 2016 that was of course as you
20 point out an election year for one – from one company in regard to a region not even the province – not even the country so it must means that in the end if that is anything to go by that quite large sums of money are given for – at least for the ANC and obviously other parties fundraise and do not know how much they – they get and so on. But it does seem

to indicate that one talks about large amounts when it comes to at least election years.

MR MAKHUBO: That is correct which why I said R4million went into the provincial account.

CHAIRPERSON: Ja.

MR MAKHUBO: So it helps other regions as well.

CHAIRPERSON: Oh is that out of that R24 million.

MR MAKHUBO: Yes it is yes, yes.

CHAIRPERSON: Oh okay. Okay. Okay.

10 **MR MAKHUBO**: And it was not all because we had thought that we will give them more but...

CHAIRPERSON: Ja.

MR MAKHUBO: But you know – ja.

CHAIRPERSON: Okay no that is alright.

ADV CHASKALSON SC: Can I just look a couple of other expenses. If one goes to 647 Bundle 1 – 647. For one sees again a – an email from you to Patrick Makhubedu on 3 June 2016 and it has a quote from Gauteng Coaches behind it for R450 000.00 for 100 buses to go to and from FNB. This as I
20 understand it was another invoice that you – or quote that you sent to EOH hoping that they would pay it. Do you recall if they did pay it or did not?

MR MAKHUBO: As far as I remember they did not pay all the – for all the transport – all the buses – other donors did pay for – for the transport to the provincial launch of our

manifesto.

ADV CHASKALSON SC: So they would have paid for some of that?

MR MAKHUBO: Yes some of it they would have paid for some of it.

ADV CHASKALSON SC: And that would be obviously over and above what one sees in the Mfundu reconciliation because those payments – the bus payments were not on that recon.

10 **MR MAKHUBO:** No that is correct which is why I said there would have been payments. I could only remember the research one.

ADV CHASKALSON SC: Including the research.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Now you see I need to put to you again that EOH are apparently regarding these sorts of payments well over R13 million on election expenses as a quid pro quo for the SAPS Support Contract that the City awarded to EOH in June 2016 – but EOH are regarding it as
20 that. And you seem quite unconcerned about that. What is your response to that?

MR MAKHUBO: If it was a first time that we – we dealt with TSS/EOH in terms of funding the ANC I – I would have been concerned but over time you know for a extended period of time we have rarely asked for money paid directly to a venue

here, paid directly to Eskom centre, paid directly to this and that.

And I think what you are raising is that you know the mindset of – of somebody who funds you Chairperson which is why I think the bill came to be concern was raised by parties and civil society in Parliament that we – we do not understand the nature of this payment and maybe the minds do not meet.

I am asking for a donation and somebody is thinking
10 that they are buying a favour or they are buying a person or something like that.

And what the SC is raising and which is what I think it is being covered by this – by the Bill now is that this thing because it is now in the – you have to declare it to the IEC every amount over a R100 000.00 and you cannot get over R50 million from one – one donor being – you need that organisation means – means that you know from a branch to national we cannot get from – from one month donor.

We – it then covers really that the intention cannot be
20 other than giving a donation because it is – it is open. Now – now I would have thought that the people that I dealt with I would not have really thought that they are – I would have thought that they thinking that they are funding the ANC not that they are buying a favour.

That is how I would have approached my

conversation with Patrick. That is how I would have approached my conversation with – with Mr Laher and Mr Mackay to say look I am here as a Treasurer to ask for money. It is yay or nay. I thought those are 00:22:48 on my face I know I can say no we are not funding.

Others are saying no we will fund you but we will fund everyone who is represented in Parliament. Others would say no, no we are funding nationally we are not funding you. And we would every door whether it is a bank
10 or it is – and whether we do business with the City – as I say we – we go and help local – local branches sometimes. Fundraise from a taxi association.

When there is a – there is a rally you go to the taxi association and say can you please ferry us for free from Ivory Park to FNB Stadium and then we quantify that thing because they are supporting the branch.

And in our minds we – we put the ANC first and say we are funding the organisation – we are strengthening democracy – so what is being put to me is that the EOH
20 thought they are buying a favour and they thought that it is quid pro quo that we got this tender and now we – we are funding you and I thought but even before that I have asked them for funding and there has never been an issue that is being to a tender.

I do not know their accounting internally maybe if

you searched it would have been the same – I do not know. But for now I really take it that I never doubted the bona fides of the people I was talking to as an ANC Treasurer.

ADV CHASKALSON SC: But now you have seen the internal accounting both on the Molelwane payment and on the ANC donations. In both cases they link it to that very specific City of Johannesburg tender.

MR MAKHUBO: I have seen their emails ja. I have seen the emails here on the bundle.

10 **ADV CHASKALSON SC:** Yes and in respect of both the Molelwane payment and the R13 million odd that Reno Barry disbursed on ANC election expenses. There is a connection between those payments and the SAPS Support Contract in the way they describe them. They just – they describe that connection. Not me they do.

MR MAKHUBO: Ja what they described here.

ADV CHASKALSON SC: Yes

MR MAKHUBO: They – yes.

ADV CHASKALSON SC: But you seem remarkably
20 unconcerned about that.

CHAIRPERSON: So I think – I think what Mr Chaskalson is saying Mr Mahubo is your attitude towards discovering how they described it should be different – should be how could they have linked you to – to tenders in the City because as far as you were concerned this was separate and

independent request for a donation and there is nothing you – maybe there is nothing you said to them which would have given them any indication that they should link the two and you – you would be surprised maybe more than that to say they – they were linking it and you – you do not see why they were linking it and it is something of – it is cause for concern to say I was dealing with people and I thought that they – they saw this request for donation as simply a request for donation unconnected to anything but I discover now that
10 they were connecting it with tenders. So – so that is what I think he is – he is saying to you. He says he would have expected you to – to be quite concerned about how they looked at this.

MR MAKHUBO: Chairperson I was going to – and I do not think it was a matter of the commission here because I was going to – to ask the people that I know myself to say you know that I do not trade in tenders. I do not trade in proposals. I have never done and I do not do that.

So – so internally how is this still – how are these
20 things linked to a 00:27:17. Now did you know we had a funder once and may his soul rest in peace who were playing golf and I was asking for donations I am just going to 00:27:29 he made a call that I will follow and he says look can you deal with that as marketing expenses.

So we were playing golf and I was trying to say look

we are going to a conference we – or I cannot remember whether it was Women’s League and then I could hear him on the phone calling somebody to say look the letter will follow but this thing is quite urgent but treat that as marketing expenses. And I asked him to say why do you treat donations as a marketing expense.

CHAIRPERSON: Marketing expense.

MR MAKHUBO: Because you are not marketing to me I am asking you in donation so either it is part of CSI or
10 something like that and he says look now I have always done it because I – I am getting requests from all over so I need to make it expenses.

I say look I am going to write you a letter of donation I am not going to give you an invoice because a marketing expense must be linked to an invoice. So if it is linked to an invoice then at least you know that it is an invoice done to you.

So I asked him and he says look now that is how I do it internally. When I write the letter what I do with my books
20 I write off your business. You asked me for a donation I am giving you a donation.

So – so that is the – the – what I got from – from this – this donor of ours. So these are the things that you – you deal with – and not worry what – how they put it because you do not question their bona fides.

And I suppose what the commission is asking me is that you know I – I should – should be saying to them while I think that this is a donation and it is an arms length transaction that you donating when I internally without even saying it to us you are treating me as a – as a – for all intents and purposes a marketing cost related to this very same tender and every expense that is related to that comes out of this profit for this tender.

And then I find that quite unfortunate that it is not the
10 holistic donation from – from EOH it is something that is linked to a tender. I am interested to see how they have treated the buses and it is something that would be quite interesting to see how they have treated the buses, the donations and other donations previously because they would not have gone through Mfundu they would have come directly from EOH it would be quite interesting to see how they deal with it.

CHAIRPERSON: I might not have – but you really have – have in mind Mr Chaskalson so feel free.

20 **ADV CHASKALSON SC:** You - you have DCJ. There are two issues that I want to pursue going forward. It is the first is what EOH has done in this case seems to be similar to what you refused to go along with in the case that you reference the anonymous donor wanted it – wanted an invoice. Because what EOH did here is they got an invoice

from Mfundi that said they got several invoices from Mfundi that said SAPS Support Contract and R16 million. And then in Mfundi's book that becomes a sale and the cost of sales for Mfundi are paying all of these electioneering expenses. So nowhere in the books of these entities does one see a donation to the ANC instead what one sees is a set of invoices with expenses. You will agree with – that that is what one sees.

MR MAKHUBO: Correct.

10 **ADV CHASKALSON SC**: - The book. And that of course is misleading according to – to your view.

MR MAKHUBO: It is completely misleading.

ADV CHASKALSON SC: Completely misleading and it may even be a fraud on the Receiver because if these are expenses they will be deducted – they will be deductible whereas if the donations they will not.

MR MAKHUBO: Yes, no I said that is a donation and it must be treated as such.

20 **ADV CHASKALSON SC**: Yes. Yes. But in the books you do not see any donations.

MR MAKHUBO: I do not see – well I am saying they are listing expenses – an expense list but I do not see a donation – saying donation yes.

ADV CHASKALSON SC: So that is the one problem but the other problem is more serious in my view because what it

suggests is in their mind when they bill something to Enterprise Development for instance it is a legitimate amount to pay for a quid pro quo on a particular contract. And that is – that is the issue that I would have expected you to get much more concerned about because the suggestion from the books of EOH is that they have been buying your influence. That is very clearly what their books say if you look at them.

MR MAKHUBO: It will concern me if they thought they are
10 buying but I know that I was not bought. You are correct that even in their minds they thought they were buying me because I would have had no assistance and no help from them – for them in a particular case. So whatever influence they were buying if they thought they were buying me and if they accounted for it as they were buying me according to yourselves here on the books it is quite concerning, you are correct.

ADV CHASKALSON SC: But what then worries me is that
20 you - you have not taken it up with them. You have not raised it with them. These are – these are not strangers; these are people to whom you are close and you have not seen fit to raise it with them, why not?

MR MAKHUBO: Chairperson as I say it – it did not dawn on me that these people are treating me as a – they are treating us as a marketing tool or buying our favour because I know

there is no favour that they bought. I know that conversations I had with them is not about buying favours. It is just arms-length conversations about funding, about – 00:03:30 about legitimate debts so – so internally what they – what they do because for me it is up to them and SARS and others internally what they do to think that internally they can talk.

In fact I was saying earlier to my counsel that you know we suffer in our positions a lot of name dropping. 10 Somebody will say I was speaking to the Mayor and he says this and that and that and that. They will go to City Power and say no the Mayor sent me.

And it – it really happens but what it shows here it shows that the – the business and what – what we think that is happening is sometimes not aligned because business think for them it is marketing; we think it is a donation and that is why I would – I would really support this new law that – that now says look tell us where you get your funds from and there is a limit – there is a cap to them so everyone is 20 capped because then at least this misunderstandings will not be – will not be there.

I know that I was not – I was not bought by anyone. My – the letters show that we – we asked for money and I think even now the current Treasurer is still asking for money and other Treasurers throughout the country will

continue asking for money from donors in the same way.

So if this thing continues I think – or continued the same problem that there is no meeting of the minds between us and business and that is – that for me is quite concerning. But because I thought that for me I was very clear what this transaction was all about. I did not – I did not take it up with them.

ADV CHASKALSON SC: Well I am glad to hear are in favour of a new Bill. Of course the new Bill will not help to
10 stop payments of expenses the way that EOH was paying them unless there is prohibition of that because those payments will not – will not appear either in the books of the ANC or in the books of EOH as donations; will they?

MR MAKHUBO: I think the Act is very clear that it is a payment money and in kind paying rent on behalf of the ANC – paying for t-shirts so the income part is part of the Act.

ADV CHASKALSON SC: But how do you ever enforce that? How do you ever – how do you ever – I mean the way you enforce the Act is presumably by looking at the books of the
20 donors and by looking at the books of the – of the political parties.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And donations like this do not show up in the books.

MR MAKHUBO: There is a duty to declare imposed both on

the donor and on the organisation.

ADV CHASKALSON SC: Ja.

MR MAKHUBO: The new Act imposes ...

ADV CHASKALSON SC: You have far more faith in the compliance with duties than I do. But I want to – I want to come back to the issue that is disquieting. You talk about this as though this were an issue that were just internal to EOH. How they accounting for it internally. But they are not just accounting for things internally they are taking it
10 external and they communicating with you about it. So Mr Makhubedu sends you three successive emails in relation to that 2014 contract. He sends you the proposal, he sends you the invoice and he sends you a letter of award. That is not internal. That is addressed to you.

MR MAKHUBO: Yes as I said I did canvass that point earlier and I said I did nothing about it because I do not why he sent it to me and I thought that was fully canvassed.

ADV CHASKALSON SC: Yes but this is no longer an – an intern of how they viewing it in relation to themselves
20 privately. It is also – it is a communication to you about how they are viewing in relation to you in your position as Office Bearer of the City is it not?

MR MAKHUBO: As I say I – I talked to Mr Makhubedu you know lots of times. We chat and I never had an idea that would he will be using me as a – will be seeing me as a

ticket to – towards his own thing. I mean – that sort of thing so – so I would – I – it does not occur to me that he would treat me that way.

ADV CHASKALSON SC: But in all of these conversations you have never seen fit once to ask him why did you send me a proposal? Why did you send me an invoice? Why did you send me a blank letter of appointment? These are documents which on their face suggests something very sinister going on.

10 **MR MAKHUBO:** But I did nothing about them. I could do nothing about them. I – so I could do nothing about them. I did nothing about them.

ADV CHASKALSON SC: And you have never seen fit to – to raise them with Mr Makhubedu?

MR MAKHUBO: No I mean you know – you know Chairperson as I said earlier on I did not raise it – did not occur to me when I received this thing and you did ask me and I did say I take counsel.

Remember you advised and I said no I do take
20 counsel and probably I should have acted differently. Because as I say I received many of these things; I refer them; some I ignore them.

In fact most I just ignore them because there is nothing I can do with them. Whether it is requests for this proposal of this they come all the time. All the time. All the

time. So earlier on you advised that maybe you should have in your position and you were close to this person call and say why do you send me this thing? And - and-maybe one should have done that. Sending to me.

Now the recon you asked for X amount of money and you say hey I have sent you invoices surely there must be money left to – to wrap up. Yes here is a list of what we paid.

Okay now here is a list okay everything else tick,
10 tick, tick, everything has been paid. Give it to the guy who was doing now – was helping with the books here – whose name is here and then say okay let us reconcile. It was on the day when we account and send you thank you letters or when we account we have to say look this was transport, this was this, this received in kind, this we received in cash and when you go to conference we do say received R10million in kind. Somebody paid for our t-shirts. Somebody paid for the – there are many of those please can I pay the supplier directly. There are many who do that. Say look please send
20 an invoice I will pay the supplier directly. They – they do that all the time. So – so I just think this is – this is – as I say you advised earlier on and I do take counsel with that ja.

ADV CHASKALSON SC: You see I want to put it to you that there is the same parallel with the way you dealt with Regiments. You will recall that in November I showed you a

document that Regiments were emailing among themselves – the cheat sheet. Do you remember the cheat sheet?

MR MAKHUBO: The so called cheat sheet ja.

ADV CHASKALSON SC: Yes well they – it was their word not mine. And the cheat sheet referred to issues that Regiments were going to – at least according to the emails were going to raise with you. You recall that? Mr Nyhonyha was going to raise the issues with you according to the email. If you want to read the email again it is ...

10 **MR MAKHUBO**: No I think it is said – because remember I said the first time I heard about that thing I got it from Mama Phulane. I did say to you.

ADV CHASKALSON SC: Yes. Yes.

MR MAKHUBO: Because they asked me about it in 2018 and I answered them exactly the same way I answered that this is the document we sent to Geoff that is what – I do not know I think that is what it says.

ADV CHASKALSON SC: And were you suggesting that it – the Geoff was not you?

20 **MR MAKHUBO**: No, no I am suggesting that I do not recall receiving that document. I did not even know what the cheat sheet is. I think that is – I re-read the transcript and I think that is what I said as well.

ADV CHASKALSON SC: Yes I do not want to go – I do not want to go over that questioning again because we did it in

November but the one thing that I do want to emphasise is Regiments were sending emails among themselves with Nyhonyha Pillay and Wood suggesting that they could use you to influence processes in the City of Johannesburg. That is clear from the emails. But you never raised that from Reg – with Regiments after Amabhungane broke it. That is correct. You never confronted Regiments to find out why?

MR MAKHUBO: No because as I said the same way – I mean these things have nothing to do with me. Half of the
10 things I do not even know about so why do I have to pursue it? Why do I have to occupy my mind with it?

ADV CHASKALSON SC: Well – because if nothing else it is causing you considerable inconvenience in having to explain yourself here at the Zondo Commission where there is an appearance that Regiments think they can use you to buy influence.

MR MAKHUBO: You know the Chairperson asked me on that day or maybe what you are asking is what will shock you. What will shock you and I answered.

20 But I think it is quite unfortunate that my – my actions Chair and maybe as I said take counsel is that when I think that things do not require me to take a decision I cannot take a decision; I cannot influence; I cannot do anything.

They are just one of those things that come to me amongst many that come to me that I – I just put aside and

that you know if somebody sends you something requiring to do something maybe call them and say why do you send me this you know it is not – it does not belong to me; please go back. Especially because it is some – they talk amongst themselves and when you look at – when you look at certain things you say but why would they talk amongst themselves they are not even talking to me. But I do – I do take it Chairperson and see that – I responded in exactly the same ways.

10 **ADV CHASKALSON SC:** Yes and I want to take you to a different document which reinforces the notion that Regiments thought they could buy your influence. And it is in the supplementary bundle it is at the back of Bundle 3. If you could go to page 1068 of Bundle 3.

MR MAKHUBO: Page?

ADV CHASKALSON SC: 1068 - 1068. And what you will see at 1068 is an email from someone called Regina Ramasema to a whole bunch of people who sat on the Regiments Executive Committee in 2014 and it says:

20 “Dear EXCO members please find attached the following documentation in preparation for the next EXCO meeting on Wednesday morning at 8.”

And there is an agenda and previous minutes. Now if you go up to 1061 still in Bundle 3 – 1061 you will see the

previous minutes are the minutes of the monthly EXCO meeting on 28 May 2014. You have that?

MR MAKHUBO: Ja.

ADV CHASKALSON SC: And if you come down to Item 5 on page 1064. You have 1064?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: See 5 is funds action plan that is Regiments fund managers action plan. It says:

“Deal pipeline”

10 And then there are a number of issues and then the last one it is:

“CoJ inking fund” I think that is a typo it should be sinking fund and what is recorded in the minutes is:

“LN that is Litha Nyhonyha.”

CHAIRPERSON: I am sorry did you say under 5?

ADV CHASKALSON SC: Under 5 – it says Funds action plan at page 1064 Chair.

CHAIRPERSON: Ja. Okay.

20 **ADV CHASKALSON SC**: To the right it says Funds and the last item under Deal Pipeline. CoJ inking fund. And I think it should be sinking fund which is – which was Regiments contract at the City. Litha Nyhonyha mentioned that he made a follow up for the sinking fund mandate with the City manager Ms Gomotso Letsatsi and Mr Geoff Makhubo.

Now did Mr Nyhonyha in 20 – in May 2014 contact you in relation to the sinking fund mandate at the City?

MR MAKHUBO: And the answer is definite no.

ADV CHASKALSON SC: Definite no you say.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: So if these minutes are correct and this is what was – she told his partners he was – he was not telling the truth to his partners.

MR MAKHUBO: Well I saw this thing for the first time when
10 we received the document – I saw the document on Saturday from yourselves when we received together with his response because I was interested to see his response.

ADV CHASKALSON SC: Well his response is interesting. Let us go to that response. It is at page 1057. You see we – we or not we the Chairperson sent Mr Nyhonyha a directive in terms of Regulation 10.6 of the Commission’s Regulations at the foot of 1057.

20 “I hereby direct you Mr Litha Nyhonyha to deliver on or before 30 April 2021 to the secretary or acting secretary of the commission at the address given above an affidavit or a firm declaration in which you provide a full account of any and all discussions correspondence and meetings between yourselves, Ms Gomotso Letsatsi

the City Manager of Johannesburg and Mr Geoffrey Makhubo then MMC of Finance regarding the conclusion of a contract between Regiments Fund Managers and the City of Johannesburg in respect of a Johannesburg sinking fund as reflected in Item 5 of the minutes of the Regiments EXCO meeting of 28 May 2014 emailed to you on 30 June 2014 and copies of which are attached
10 to this directive as annexures A and B.”

Those are the documents you have just seen. Now Mr Nyhonyha’s response was very interesting. You will find that response at page 1069. So if you go down to 1069.

MR MAKHUBO: Yes I am there.

ADV CHASKALSON SC: Mr Nyhonyha did not respond. Instead his attorneys said

“We refer to the abovementioned matter with reference to your Directive which was issued on 22 ultima wherein you requested our
20 client Mr Litha Nyhonyha to provide a full account of any and all discussions correspondence and meetings between him, Ms Gomotso Letsatsi then City Manager and Mr Geoffrey Makhubo then MMC of Finance regarding the conclusion of a contract

between Regiments Fund Managers and the City of Johannesburg in respect of the Johannesburg sinking fund as reflected in Item 5 of the minutes. We invite attention to the fact that Advocate Hermie and Cronje the Director of Public Prosecutions stated under oath in restraint proceedings instituted by the NDPP in terms of Section 26 of the Prevention of Organised Crime Act that it is

10 the intention of the NDPP to inter alia charge Regiments Capital, Regiments Fund Managers, Regiments Securities as well as its directors including our client Mr Nyhonyha with the offences of corruption, money laundering and fraud. A substantial proportion of the evidence relied upon by the NDPP in its court papers are derived from

20 hearings of the commission compliance with your request in the terms framed in your directive as the potential to violate our client's Section 25 Constitutional rights we are accordingly instructed to record that our client has elected not to provide you with an affidavit or affirmation."

So the one thing that Mr Nyhonyha did not say is no,

no, no this never happened I did not say this and I never met Mr Makhubo instead he said I plead my right to silence I do not want to answer this question. So which I must put to you suggests very strongly that from his perspective it did happen. What is your comment on that?

MR MAKHUBO: I – I say it did not happen. I mean I read this thing when you sent us – when you sent it to us. There is no meeting that would have discussed let alone what does not even make sense is that the court case was still going on
10 in 2014 00:20:49. So when I read this and I said look but 20
– court case is still going on the interdict is still valid in 2014. I mean this thing was sorted out in 2015. Why would we talk about a mandate then.

ADV CHASKALSON SC: Well...

MR MAKHUBO: It just does not make sense.

ADV CHASKALSON SC: Let me take you back to the contract that you had with Regiments.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: That is in Bundle 2 page 714.
20 Bundle 2 – 714.

MR MAKHUBO: Correct. I am there.

ADV CHASKALSON SC: And if you go to paragraph 2.2 you will see the obligations of Molelwane Consulting under that contract. There are six obligations that relate to the tender process. There is only obligation that creates an ongoing

obligation on Molelwane after the tender process and that is 2.2.7 on page 715. That says:

“That Molelwane must maintain on an ongoing basis all strategic relationships with the City of Johannesburg for during and after completion of fund management mandate for the mutual benefit of the parties.”

Now that clause says that it is your obligation to maintain strategic relationships between the Joint Venture
10 which is yourself and Regiments and the City of Johannesburg before during and after the completion of the fund management mandate.

And my submission to you is that Regiments regarded that as an obligation on you to ease their way inside the City of Johannesburg. What is your comment on that?

MR MAKHUBO: I mean you putting it to me that Regiments did – you saying to me – you put it to me that Regiments considered this an obligation to me. Of course I did explain what I interpreted it as to be when we entered into a contract
20 in 2005/2006 you now the strategic relationship. Now if you say in 2014 they are saying they were activating that and then says Oh no I never had the meeting with Litha Nyhonyha discuss and Gomotso discussing the sinking fund in 2014. The case was going on.

ADV CHASKALSON SC: Well let us – we have seen how –

we have seen how EOH accounted for the payments that they made to you. Let us look how Regiments accounted for the payments that they made for you – to you.

If you go to page 920 of this Bundle 2. Or go up to – go down to 922 which is probably the best place to start. 922 Bundle 2.

MR MAKHUBO: Okay.

ADV CHASKALSON SC: And what you see...

CHAIRPERSON: I am sorry – I am sorry Mr Chaskalson
10 maybe because you are going to looking at that issue maybe we should take the adjournment before you start.

ADV CHASKALSON SC: Chair I am near the end.

CHAIRPERSON: Ja...

ADV CHASKALSON SC: My guess is maybe fifteen minutes.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: But I am happy to – I mean if you
..

CHAIRPERSON: Oh you will take about fifteen minutes to get to the end.

20 **ADV CHASKALSON SC**: I think I am fifteen minutes away from the end.

CHAIRPERSON: Okay no let us take a short adjournment and then we complete when we – we finish when you.

ADV CHASKALSON SC: Thank you.

CHAIRPERSON: After the adjournment. Let us take a ten

minutes adjournment. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV CHASKALSON SC: Thank you, Chair. We are at Bundle 2 and we were saying we were going to look at how Regiments accounted for payments to Molelwane. And what we see at 922 is an email from Eric Wood to Salim Essa, Kuben Moodley and Valence, which is the Gmail
10 address of Ashok Narayan on the 18th of May 2015. Those were the three individuals associated with the shell companies that the Gupta enterprise used to take kickbacks from Regiments. And what Mr Wood says to those three is:

“Hi, all. I sent updated list of outstanding invoices to Transnet. Please note that we have just issued a small invoice for iron ore for April...”

And if we go up a page. So go up to two pages
20 to begin with. You will see what he sent as part of the attached spreadsheet which was an email of invoices Regiments had issued to Transnet and you will see what the Transnet invoice – what Regiments’ invoice to Transnet was, what the amount was.

In the column that I am interested in raising with

you now, which was pointing out to you is, you will see there is after the column, it says amounts. There is a column that says Jivito(?) or Omics and those were the entities that took the Gupta cut out of payments to Transnet and Albertine was a Gupta related entity that took a smaller cut.

And so this is how Regiments' account internally or what happens to their Transnet money. On the same spreadsheet, there is a tab that relates to companies other
10 than Regiments Capital. Two subsidiaries, Burnington(?), which is one of the Regiments' subsidiaries and Regiments Fund Managers. You will find that tab on page 921.

Now on the Burnington tab you have the same structure, the spreadsheet Client, date of invoice, invoice number, amount, Omics which is going to be the Gupta related laundering entity that will take a cut and what is outstanding, et cetera. Now in the first five months of 2015 when this email was sent off, there have not been any invoices from Burnington's.

20 So that is all blank but underneath we see how Molelwane features. And essentially, Regiments treat Molelwane on exactly the same basis that they treat Omics which is an entity that has to be paid a cut of what they get from an organ of state as a way of easing them into position at the organ of state.

So you see that Molelwane appears in the same column as Omics. And here there are two invoices that Regiments describe in relation to the City of Johannesburg, an amount of R 1.236 million that it received in – that it invoiced in February and banked in April 2015 and of that, it has to pay a cut of R 98 000,00 to Molelwane on the same in respect of the March fee that it received also in April 2015.

So what I want to put to you is Regiments' internal accounting records also suggests very strongly that they have treated Molelwane as though – what they paid Molelwane was a payment for influence such an organ of state. In this case The City of Johannesburg. Can you comment on that?

MR MAKHUBO: Firstly, I will not comment on the internal(?), but I - for first invoice in January 2006 when we agreed on the structuring fee and how we are going to be splitting the invoices, the management fee and - fee that you say internally based on this spreadsheet that they are putting(?) us as a – no, not as a subcontractor but as a something else. I do not know.

I do not even know who Omics is but I know that they had a relationship with these chaps, Regiments since 2004/2004. So I – I can - honestly cannot comment. I mean, I have looked at this spreadsheet and I thought

basically they are just separating what is due to them what is due to Molelwane in terms of the contract ...

ADV CHASKALSON SC: The structure of the spreadsheet is that they treat Molelwane in exactly the same structural place as they treat Omics but they appear in the same column.

MR MAKHUBO: I cannot comment on that. They are not – these are different things where I see them. This is Regiments Fund Manager fixed(?) the contract with me.
10 What they do on the Transnet issues is none of my issues. How they – because here there is no Omics. There is nothing. There is a Molelwane Consulting that - contract, work on the tender document in 2004/2005 with Regiments. So I will not comment on that.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: But all our invoices – Molelwane is not Omics.

ADV CHASKALSON SC: No, no I know Molelwane is not Omics but what I am saying is that in Regiments' 20 accounting systems, how they treat the income from their organ of state contract and their payments to Molelwane is exactly the same way as they treat their income from organs of state and their payments to Omics.

MR MAKHUBO: Chairperson, [laughs] ...you get me this. Firstly, it is a spreadsheet just saying these are the

...[indistinct] and this how it gets paid(?). This one comes to our bank. And this is a spreadsheet from Regiments at an internal – it is an internal email. Now counsel wants me to comment that they treating Regiments as Omics. I mean, I cannot comment on that. I do not know.

CHAIRPERSON: Well, if you say you cannot comment, that is fine. If you do not have any comment to give.

ADV CHASKALSON SC: You see, your obligations to Regiments was to maintain on an ongoing basis all
10 strategic relationships with The City of Johannesburg before, during and after the completion of the Fund Management Contract. You remember that?

MR MAKHUBO: My obligation was those seven points that we did up to 5. Number 6 says where necessary we need to - did not happen. When necessary, just check where everything is going. So I do not know why – what Omics has got to do with my obligation in 2006, quite honestly. I do not know why they linkage(?) and I find it very unfair and unfortunate that now I am being linked to Omics.

20 **ADV CHASKALSON SC:** Well, I did not link you to Omics. I mean, Regiments put you on the same spreadsheet with the same structure. I did not do that.

MR MAKHUBO: But it is a completely different column. Different column completely.

ADV CHASKALSON SC: Sorry, different...?

MR MAKHUBO: It is a different tab, as you say. It is a different tab. I mean, that is aligned(?). I do not see how – relationship is in – how they do it - I think Regiments will have to answer. I am not Omics here. We were never Omics.

ADV CHASKALSON SC: Ja, it is not a different tab. It is the same tab. It is a tab for companies other than Regiments Capitals. Subsidiaries other than Regiments Capital. So Regiments Fund Managers is not Regiments
10 Capital. It is a subsidiary. Burlington is not Regiments. It is a subsidiary.

And you will see under Burlington, provision is made for payment to Omics in exactly the same place as under Regiments Fund Managers, provisions is made for payment to Molelwane. I do not want to take it further than that. I am not suggesting that you were Omics but what I am suggesting is that, from Regiments' perspective they treated you at the accounting level exactly the same way as they treated Omics.

20 **MR MAKHUBO:** They are best to answer. I cannot comment to that, Chairperson. As I said, I quite – I think it is quite unfortunate that we look at a spreadsheet and make inferences from that spreadsheet that would be treated(?) as Omics. I – we are not Omics.

ADV CHASKALSON SC: No, I am not saying you are. I

am saying your role for Regiments in relation to the Regiments Fund Managers contract was the same role that Omics played for them in relation to the Burlington contract ...[intervenes]

MR MAKHUBO: Well, I do not know what they are. What their role is. Our role is 127 points to Regiments had – and we agreed on that contract in 2005.

ADV CHASKALSON SC: Well, let us look at seven. What did you – what is this role?

10 “Maintaining on an ongoing basis all strategic relationships with The City of Johannesburg before, during and after completion of Fund Management mandate for the mutual benefit of the parties...”

MR MAKHUBO: Again, Chairperson. On the 27th of November, we canvassed that. That question was asked but we will repeat because – to say, we took a view that we were interested in the long-term funding. Remember to grow the fund depends on the debt – the debt
20 that The City takes and the debt that it takes on a bullet form basis, effectively.

So how they were going to – what is the capex outlook, what is the funding outlook, what is the difference between own funds loans, what is the carrying(?) capacity in the balance sheet? Strategically, where is The City

going? What is the IDP? So we emerged(?) ourselves in that.

That is why even now by the time we got into The City in 2011, we much understood what was going on in The City because we missed(?) ourselves. So for me that is what – that is the value add. I mean, everything. We did not even say - because they ask the same questions that counsel is asking, that anything insinuating anything other than what I am saying is quite unfortunate.

10 **ADV CHASKALSON SC:** Well, I just want to put it to you that what you just described does not relate to the maintaining a strategic relationship with The City. It just does not. It is a different – that is an obligation – it is a different obligation all together. But let me step back.

If we look at the overall position in relation to Molelwane, you will agree with me that the primary source of income for Molelwane after 2008 was Regiments and that apart from Regiments the second largest source of revenue was payments by companies related to EOH, were
20 they not?

MR MAKHUBO: Yes, I can say that there was a time where – when we worked with – started working with Regiments. The other business – there were other business, refinery in Durban. We were doing check-downs and others who were doing small ... We were doing - work

for companies. And on the Molelwane's side. Yes, we then – in fact, 2005 went into what I thought was a - with Regiments, yes.

ADV CHASKALSON SC: And the question is quite simple. Is there anyone other than Regiments or an EOH Group company, TSS or EOH that paid more money than either those into Molelwane?

MR MAKHUBO: No.

ADV CHASKALSON SC: Now the internal documents of
10 both of those companies that we spent quite a lot of time on show that they both assumed that you be able to influence processes in The City to their benefit.

MR MAKHUBO: Ja, ja. Well, that is your version. That is the assumption, ja.

ADV CHASKALSON SC: No, no the internal documents. Let us look at the cheat sheet. Does the cheat sheet not show that they assumed that you could influence internal processes in The City ...[intervenes]

MR MAKHUBO: I said to you I do not know what a cheat
20 sheet is.

ADV CHASKALSON SC: But you have seen the cheat sheet. You have sent he email. Does it not reflect on their part a believe that you can influence payments – influence processes in The City to their benefit?

MR MAKHUBO: Chairperson, I cannot comment on

Regiments or EOH's contention on what their - like this. And I think earlier on, we did go through this thing that when people do things internally and they say – and counsel here argues that they think that I can be influential. And even 2000 – I do not know how I could be influential in 2005, quite honestly, in 2006. I really – all we know ...[intervenes]

ADV CHASKALSON SC: The cheat sheet was 2010, if we are talking Regiments. The internal minutes were 2014.

10 **MR MAKHUBO:** I really cannot comment on that because what ...[intervenes]

ADV CHASKALSON SC: Okay. No, no, no.

MR MAKHUBO: ...all I know I had contract with them to do certain things. So what they thought, I cannot comment on that.

ADV CHASKALSON SC: And we have seen a whole succession of internal documents from EOH that suggest that Jeff can be prevailed upon to help them out in certain circumstances.

20 **MR MAKHUBO:** I challenge the Commission to call the people to ask them what their answers would be. I cannot comment on that.

ADV CHASKALSON SC: No ...[intervenes]

MR MAKHUBO: I cannot.

ADV CHASKALSON SC: I want to put to you that the

evidence is overwhelming that the payments made by EOH were payments made for your influence. The EOH thought(?) was making to buy your influence. What is your comment on that?

MR MAKHUBO: I deny that and I dispute that. There was never been a solicitation of funds from EOH to – from them to buy - to sell influence. For the ANC, we will always ask for donations and they have always come to the party, like other donors.

10 **ADV CHASKALSON SC**: Right. But EOH linked those payments, we have seen to be The City of Joburg contracts. Did so twice.

MR MAKHUBO: I am interested to find out where they did that so that they can come and account.

ADV CHASKALSON SC: That is for them to explain.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: It is the state I am talking, their state of mind. And Regiments, I submit, did so too in the way that they accounted for your payments the same way
20 as they accounted for the Omics payment from Transnet.

MR MAKHUBO: Again, Omics came in – I do not know what Omics is. I think they came in later. I know what our agreement with Regiments that we sent in 2006 in January. It had nothing to do with whatever Omics did. I do not even know who they are.

ADV CHASKALSON SC: I am not suggesting that you and Omics were in any way linked. I do not want to make that suggestion.

MR MAKHUBO: But you are making – you are linking us together.

ADV CHASKALSON SC: No, I am saying that the way that Regiments accounted – I am not saying that you are part of the Gupta conspiracy. I am certainly not saying that. I do not want that to go out today. That I am not saying. But
10 what I am saying is that the way that Regiments accounted for payments to you was the same way as they accounted for payments to Omics. But just like they thought they were buying influence with Transnet with Omics, they thought they were buying influence at City of Johannesburg with Molelwane.

MR MAKHUBO: So certainly for me, they bought no influence. And I do not know whether you can call a spreadsheet an accounting sheet but this is a spreadsheet that I see here. So in my years of accounting I have never
20 called this thing an accounting sheet but...

ADV CHASKALSON SC: What we do know is that EOH repeatedly corresponded with you in relation to pending tenders and they repeatedly financed Molelwane when Molelwane was running into cash flow difficulties while those tenders were pending.

MR MAKHUBO: Not correct. I have never received cash flows from EOH but my relationship with Patrick Makhubedu from his own – whatever is what he owns. I explained it that with us and Exsolve, we used to work together. So whether he gets it from Zylek or from anyone else. And I have explained it earlier on. EOH has never intervened in Molelwane Consulting ...[intervenes]

ADV CHASKALSON SC: So these payments come from Mfundi, they come from Zylek... Oh, sorry. They come from
10 Mfundi and on occasion come from EOH. It is TSS itself. Are you disputing that?

MR MAKHUBO: No, TSS, if you look at the payments from whenever this thing started, they have been coming to Molelwane Consulting.

ADV CHASKALSON SC: What we have seen is that they come in at precise moments where there is a cash flow difficulty in Molelwane. No payments come in at a time other than appointed which Molelwane is in cash flow difficulties.

20 **MR MAKHUBO**: Chairperson ...[intervenes]

COUNSEL: Chair, maybe I must object. I think ...[intervenes]

CHAIRPERSON: Ja?

COUNSEL: Chair, I must object. I think Mr Chaskalson is now cross-examining the witness. We have canvassed the

very same issues and I think he is expecting different answers from the witness.

ADV CHASKALSON SC: Chair, I am just pulling together the strands at the end of the cross-examination. I am trying to finish here.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I am going to suggest that the Commission should conclude that Mr Makhubo has been guilty of corrupt practices. I need to lay a proper
10 foundation for that.

CHAIRPERSON: H'm. And that is to the end of this – about the end of your questioning?

ADV CHASKALSON SC: This is the end of my questioning.

CHAIRPERSON: H'm. Okay. I think let us – we are finalising. So that is fine. Of course, if Mr Makhubo says: Well, I have already responded to that question, that is fine.

MR MAKHUBO: H'm.

20 **ADV CHASKALSON SC:** So, Mr Makhubo, I am just summarising what has come before. We have seen donations of millions of rands to the ANC which you solicited while EOH had pending bids in The City and which they and the Mfundi accounted for as costs in relation to EOH contracts with The City. You have seen that?

MR MAKHUBO: Yes, I have seen that and I have answered that.

ADV CHASKALSON SC: And thus far I have just been looking at how EOH and Regiments have – what one can infer about the state of minds of EOH and Regiments but let us look at your state of mind. You deliberately misled the public on the Power FM interview when you claimed that you derive no benefit from payments to Molelwane after 2011.

10 **MR MAKHUBO:** I answered that on the 27th of November and you spoke about undue benefit.

ADV CHASKALSON SC: Yes. Well, let us look at what you actually said on Power FM.

MR MAKHUBO: I know what I have said and I correct it here to talk about undue benefit.

ADV CHASKALSON SC: Yes, but that is not what you said on Power FM and it could not conceivable been what you thought you said on Power FM at the time because you were so emphatic. Can I take you to what you said at
20 Power FM? It is at page 941 of Flow of Funds, Bundle 2.

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: Now when I question you on this in November, you had reserved your right to check the transcript. You come back and you have not corrected anything. So I did not, on the 27th of September, wanted to

take you to task on anything in any detail because you may have come back and said this is not what I said but we are passed that now. So the presenter says to you:

“Alright. So the time you were already MEC at the time you resigned...”

You resigned from Molelwane. That is what he is referring to.

Mr Makhubo: “Yes, yes.

10 Presenter: “Which means you continued to derive benefit from a company doing business with The City.”

And your answer is:

“I did not derive benefit. In fact, if any ...[intervenes]

CHAIRPERSON: Sorry, what page – what line?

ADV CHASKALSON SC: Oh, sorry, Chair. We are down at page – we started at 21, 21 of line – of page 941.

CHAIRPERSON: Yes, okay alright.

20 **ADV CHASKALSON SC:** In fact, let us start a little bit earlier, 17.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Yes.

Mr Makhubo: “Ja, I resigned. The final resignation was around 2013/2014. I must get my dates. But it is around 2013/2014 and

basically everything else was pushed out. The company was deregistered this year...”

That is 2020.

Presenter: “Alright. So the time you were already MEC at the time you resigned?...”

That is the presenter and you say: “Yes, yes.”

Presenter: “Which means you continued to derive benefit from a company doing business with The City.”

10 And your answer is:

“I did not derive benefit. In fact, if any fees came because the fees came, they went into staff and all that. I did not derive any benefit from that time. I, Jeff Makhubo, did not...”

That is very emphatic. And it is false. We know from the tables that there were in fact adequate payments of more than R 7 million from Molelwane into your personal accounts.

20 **MR MAKHUBO**: Chairperson, on the 27th of November I clarified this. Even you and the transcript you will repeat to say: Are you saying you – it was ... I said yes. We spoke about undue benefits on the 27th ...[intervenes]

ADV CHASKALSON SC: That is not what you said, Mr Makhubo.

MR MAKHUBO: On the 27th of November, that is what I

said, sir.

ADV CHASKALSON SC: No, no that is what you tried to explain in the statement but that is not what you said on Power FM. You did not mention undue at all.

MR MAKHUBO: I stick to my explanation to the Commission, sir.

CHAIRPERSON: Yes, I – the 27th of November was about what? Six or so months ago? So one needs to be – to make sure that one understands. So is your position that
10 you explained on the 27th of November that you were talking about undue benefits? That is what you were saying you did not receive?

MR MAKHUBO: That is correct, Chair.

CHAIRPERSON: And Mr Chaskalson was saying, the question was not whether you received any undue benefits. The question was whether – or the suggestion was that you continued to receive benefits from a company doing business with The City without making any distinction in terms of what was put to you as to whether it was due or
20 undue.

MR MAKHUBO: That is correct, Chair.

CHAIRPERSON: But your answer was you were talking about undue benefits?

MR MAKHUBO: That is correct, Chair.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: Depending on what you wanted to say although I doubt it.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: But it certainly is not what you said. You did not mention the word undue at all and there is nothing in the turn-up of what you said that referred to undue benefit. What is your comment on that?

MR MAKHUBO: ...I stick to my statement – that summary, sir.

10 **ADV CHASKALSON SC:** You see, the concern of the presenter was not about due or undue benefit. It was: Were you a member of Molelwane at the time it was doing business with The City. And then your answer was that you did not receive any benefit.

CHAIRPERSON: Or maybe let me put it this way, Mr Makhubo. I think what Mr Chaskalson is suggesting to you is that where a question was - a proposition was put to you the way it was put, namely, why you when you were – you could continue to draw benefit from a company doing
20 business with The City.

If you intended to say you did not receive undue benefit, one would have expected you to say: Yes, I did receive benefits but I was entitled to those benefits. So there is no issue. I was entitled to them by law. That is what one would have expected. I think that is the

suggestion from or implied suggestion from Mr Chaskalson.

Because the proposition makes no difference between due or undue. And if in your mind you were saying: Well, I think I must make it clear that what I did not receive was undue benefits. You would still say: I did receive benefits but they were due. And there is nothing wrong with receiving due benefits.

MR MAKHUBO: No, correct, Chair. I could have said that I derive from undue benefit or the way you phrased it.

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

MR MAKHUBO: And what is written here. I think it is simply broadcast but I really meant undue benefit. And I would like to leave it at that.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: Look ...[intervenes]

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: No, Mr Makhubo, I am going to argue with that that is a dishonest answer because what you said is that if any fees came they went into staff. Now
20 that has got nothing to do with whether a benefit was due or undue. It has to do with whether you received the benefit. And you proceed:

“I did not derive any benefit from that time.

I, Jeff Makhubo, did not..”

So I am going to put it to you that this answer is

dishonest and that you knew at the time when you had this Power FM interview that you were giving an answer that was not truthful.

MR MAKHUBO: I stick to my answer. I meant undue benefits, sir – Chairperson.

ADV CHASKALSON SC: And on similar line ...[intervenes]

CHAIRPERSON: Of course I am sorry, Mr Chaskalson. Of course, an answer that says you meant undue benefits, 10 namely, you did not receive undue benefits, is an answer that suggests that you did receive due benefits, is it not?

MR MAKHUBO: That is correct.

CHAIRPERSON: And I think that is where Mr Chaskalson's question arises, to say, the next part you say whatever benefit came went to staff and not I, Mr Makhubo. I think he is where he is ...[intervenes]

MR MAKHUBO: No, I hear you.

CHAIRPERSON: Alright, ja.

MR MAKHUBO: I am just saying that on the 27th you 20 asked the question and I clarified it.

CHAIRPERSON: Ja.

MR MAKHUBO: But ...[intervenes]

CHAIRPERSON: Okay.

MR MAKHUBO: So it is – I mean, it just a letter that says: Look, you did not mean this, you mean this. That is what I

meant.

CHAIRPERSON: Ja.

MR MAKHUBO: And then that is – that is – I would like to leave it at that.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: You see, that is not the only misleading statement you have made to the public in relation to your relationship with Molelwane. You gave a blatantly false answer to AmaBhungane three times in
10 relation to this issue when you said you resigned from Molelwane in 2011. If I could take you to page 947 of, again, Bundle 2?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: And that is your statement to Molelwane in October 2018. And if you go to the second last – well, let us start with the third last.

“There was never a conflict of interest as internal Molelwane agreement with Regiments on the first sinking fund would have lapsed in
20 January 2011 when I took public office.

Molelwane Consulting did not continue providing services to Regiments in the second contract as it did not participate in the RFP.

Further to this, I declared all my private business interests upon taking public office as

required by law.

In addition to this, I subsequently resigned as a member of Molelwane Consulting and Director of all other companies in November 2011...”

So that is the first time you said it. You then repeated that again in 950. At the top of 950. This is the second statement.

10 “I tendered my resignation as a member of Molelwane Consulting in November 2011.

This was in line with my decision to use my skills as a public representative...”

You then said it again a third at page 952, your third statement... The bottom paragraph on 952.

“As stated previously, I tendered my resignation as a member of Molelwane Consulting and other business interests in November 2011.

See attached letters...”

20 And there are some letters attached. Now, we know the fact that you continued to conduct the financial affairs of Molelwane for its entire life after 2011, do we not?

MR MAKHUBO: Yes, Chair. I think this was canvassed and I – when we talked about interest and all that but I

tendered – I have moved as an Executive Director or Executive Member of Molelwane and this thing worsened – as I say, it was canvassed. Here are the point – specific questions that were asked to me but yes.

ADV CHASKALSON SC: So I find it difficult to give an innocent explanation of the fact that three times you would misrepresent the fact that you continued to control the financial affairs of Molelwane after 2011 and in fact was still doing so at the time that you answered these
10 questions from Susan McComery.

MR MAKHUBO: Ja, she was asking me – she did not ask me about that but she was asking me specific questions. And I said and I said in one of the affidavits that because I knew that she was meeting with my oppositions, I was smelling politics into these things. So, therefore, I wanted to answer the way I wanted to answer it.

ADV CHASKALSON SC: So you – are you saying that you deliberately gave a false statement to Susan McComery because you thought that she was meeting with your
20 political opponents?

MR MAKHUBO: I did send a letter to Susan McComery but look, I gave somebody a power of attorney to do certain things.

ADV CHASKALSON SC: Yes. Well, look, what you said in relation to your resignation of Molelwane in 2011 was

false.

MR MAKHUBO: It was not affected(?), sir. And that is what I said. It was not affected. Even in my affidavit I said that.

ADV CHASKALSON SC: Yes. But no one reading those statements would have known that you were administering with financial affairs of Molelwane up until the time that you had write ...[intervenes]

MR MAKHUBO: As I said on the 27th, I was waiting for
10 things to go down to the right value and I did canvass it. And I think, Chair, you did ask me about the value. I said: Yes, we want it down because of the interlink between – if it was a like Exsolve. I resigned as a Director and all the things but the CC was intertwined. Again, it was – I do not think that we deliberately picked – deliberately gave false information...

ADV CHASKALSON SC: Well, let us look at what you said to Power FM which the way you sort of retreated a little bit from misrepresentation but still gave a false
20 version. If you go back to 941.

COUNSEL: Chair. Honestly, I should not object. I think – I know he was reading up but he is basically restating what he have already canvassed. It is on the record. And I think these are matters that he can leave for argument if there are any inferences to be drawn.

ADV CHASKALSON SC: But Chair, this is literally my last question ...[intervenes]

CHAIRPERSON: Ja.

ADV CHASKALSON SC: ...before I put the confusion.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But I would like Mr Makhubo to at least have the opportunity to answer it.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: Because I am going to suggest
10 that there was a corrupt relationship here and in fairness to him, he must – and I am going to rely, in part, ...[intervenes]

CHAIRPERSON: Ja.

ADV CHASKALSON SC: ...on the past statements he had made in relation ...[intervenes]

CHAIRPERSON: ...a chance to say something if he has something to say. If you do not have anything to say, you say so.

MR MAKHUBO: [No audible reply]

20 **ADV CHASKALSON SC:** So if you go to what you said to Power FM on page 941. You say:

“Ja, I resigned but final resignation was around 2013/2014...”

Now that too was false because you were still managing the financial affairs of Molelwane as late as 2019

and ...[intervenes]

MR MAKHUBO: Chairperson, I think this was canvassed and I have really answered that. I am not going to give any further comment.

ADV CHASKALSON SC: So you see, I struggle to understand why you would make these statements that are so clearly false in relation to your relationship with Molelwane after 2011. And the only conclusion that I could reach is that you knew that it was improper to continue to
10 benefit from Molelwane when their primary income came from parties who were buying their influence at The City of Joburg where you were an office bearer. And that is what I will argue to this Commission. So I wanted to give you an opportunity to respond to that.

MR MAKHUBO: I think the whole purpose(?) of counsel of here is not correct. No important(?) inference from me. I stated on the record that we wanted to add value and we strike(?) value from Molelwane whatever is owed and deal with whatever is outstanding.

20 So I think my comment is that I disagree with counsel and he says he will argue it to the Commission and I suppose if there is a chance that we can argue to the contrary, we will show that the line of questioning and the so-called connecting of his dots are actually misaligned and completely false.

ADV CHASKALSON SC: Thank you, Mr Makhubo. We will have to leave it at that, Chair. I have no further questions here.

CHAIRPERSON: Thank you very much. Counsel for Mr Makhubo.

COUNSEL: Chair, I do not have any re-examination.

CHAIRPERSON: No re-examination.

COUNSEL: Save to – just get clarity. Again, Mr Chaskalson says he will argue ...[intervenes]

10 **CHAIRPERSON:** Ja.

COUNSEL: I am not so sure whether that opportunity will be available also to the legal teams?

CHAIRPERSON: There will be no oral argument as things presently stand but there will be an opportunity for written submissions to both the Commission's Legal Team and to yourselves.

20 So, actually, I would urge you to start working on the consult missions with regard to what findings I should make in relation to the evidence of witnesses who may have said certain things about Mr Makhubo and his own evidence and evidence of what he may have said about witnesses who may have already given evidence here.

So, the sooner you get onto that, the better. So there will be that opportunity so that you can make your submissions. We – I think in due course, I might put some

deadline but in the meantime, I think just start working on it.

COUNSEL: Thank you, Chair.

CHAIRPERSON: Okay alright. Thank you very much, Mr Makhubo.

MR MAKHUBO: Thank you, Chair.

CHAIRPERSON: We have come to the end of your evidence. You are now excused. We are going to adjourn the day session. I will take a 15-minutes adjournment and
10 at five o'clock we will start the evening session with Eskom work stream. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon. Good evening, Mr Seleka. Good evening, everybody.

ADV SELEKA SC: Good evening, Chair.

MR KOKO: Good evening, Chair.

CHAIRPERSON: Good evening. Are you ready?

ADV CHASKALSON SC: We are ready, Chairperson.

20 **CHAIRPERSON**: Okay.

ADV CHASKALSON SC: Alright.

CHAIRPERSON: Let us – please administer the oath or affirmation to Mr Koko, hopefully, for the last time.

MR KOKO: I hope so, Chair.

CHAIRPERSON: [laughs]

MR KOKO: I really hope so.

CHAIRPERSON: Okay alright.

REGISTRAR: Please state your full names for the record.

WITNESS: Matshela Moses Koko.

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

WITNESS: No.

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

10 **WITNESS:** 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.

WITNESS: So help me God.

MATSHELA MOSES KOKO: (d.s.s)

CHAIRPERSON: Thank you. You may be seated. Thank you. You may proceed.

EXAMINATION BY ADV SELEKA SC (CONTINUES):

20 Thank you, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: Just to remind us.

ADV SELEKA SC: Yes.

CHAIRPERSON: You are continuing with the issue of

travelling?

ADV SELEKA SC: We will – ja, I will have ...[intervenes]

CHAIRPERSON: Okay.

ADV SELEKA SC: I will make my observation on that and I will carry on.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: I will simply make my observation and ask some more questions ...[intervenes]

CHAIRPERSON: Ja.

10 **ADV SELEKA SC:** ...on that.

CHAIRPERSON: Ja.

ADV SELEKA SC: Which then should bring that matter to a close.

CHAIRPERSON: Yes.

ADV SELEKA SC: We would then be left with ...[intervenes]

CHAIRPERSON: Tegeta

ADV SELEKA SC:an issues Mr Koko's connection with or links with or relations with the Guptas. It is very brief,
20 Chair. And then it is Tegeta.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ja.

CHAIRPERSON: No, that is fine. There was an issue in respect of which we agreed that it should be dealt with at the commencement today, if I recall correctly, last time.

We were all here. That Mr Koko wanted or raised. I cannot remember the details but I remember that I said: Well, let us leave it and when we start on Monday we can start with it. But if nobody remembers is, it must mean that it is not so important.

ADV SELEKA SC: H'm.

MR KOKO: I can recall it, Chair.

CHAIRPERSON: [laughs] Okay.

MR KOKO: [laughs]

10 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Chair?

CHAIRPERSON: Yes?

ADV SELEKA SC: I have a recollection.

CHAIRPERSON: Ja.

ADV SELEKA SC: That you were asking me whether I had two or three questions to ask.

CHAIRPERSON: H'm?

ADV SELEKA SC: That may not be what you have in mind.

20 **CHAIRPERSON:** No, no that is not, ja. It is something else and Mr Koko obviously remembers it.

ADV SELEKA SC: Ja.

CHAIRPERSON: I think it was something that involved documents, I think. There were some documents that you wanted to deal with, if I am not mistaken. Mr Koko, just

remind us what it was.

MR KOKO: No, Chair. It relates to my signature on an Eskom procedure in August 2015, relating to the MSA. In fact, relating to the National Treasury's approval.

CHAIRPERSON: Yes.

MR KOKO: That I signed.

CHAIRPERSON: Ja.

MR KOKO: And correctly so.

CHAIRPERSON: Ja.

10 **MR KOKO**: And a procedure in a practice note, that is what we call ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...giving effect to the National Treasury's statements ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...in Eskom.

CHAIRPERSON: Ja.

20 **MR KOKO**: And the question that arose is that. I sent an email on the 31st of August to the team that was delegated to negotiate the MSA ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...asking them what is purpose.

CHAIRPERSON: Ja.

MR KOKO: Subsequent to that, on the 2nd of September, I received feedback and that feedback, at the end of it,

amongst it, asked me for help and one of the things – one of the items that I was requested to assist on was the National Treasury's ...[intervenes]

CHAIRPERSON: Instruction note.

MR KOKO: ...instruction note. And the question was: What did I do about it?

CHAIRPERSON: ja.

MR KOKO: And I said I did nothing about it.

CHAIRPERSON: ja.

10 **MR KOKO**: Because the team knew my instructions on it.

CHAIRPERSON: Your position.

MR KOKO: My team knew my position on it.

CHAIRPERSON: Ja.

MR KOKO: And that is it.

CHAIRPERSON: Ja. But what was – is what was outstanding that you just explained as you have or there was more?

MR KOKO: Well, Mr Seleka took issue with the fact that I did nothing.

20 **CHAIRPERSON**: Oh.

MR KOKO: And I signed the instruction in August.

CHAIRPERSON: You did provide that explanation. So, Mr Seleka, do you remember what else there was to be still revisited?

ADV SELEKA SC: Ja. On that issue note, Chair.

CHAIRPERSON: Ja?

ADV SELEKA SC: Perhaps I should say, I did not take an issue with that that he did not do anything.

CHAIRPERSON: Ja.

ADV SELEKA SC: What I was pointing out is that his version that he told Dr Ngubane about the requirement for Treasury approval was the one which I thought was new when he mentioned it for – the last time.

CHAIRPERSON: No.

10 **ADV SELEKA SC:** Not that he did not do anything about it.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: But that issue has been traversed.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: And the evidence is clear on that issue, Chair.

CHAIRPERSON: Okay. No, that is alright. Let us proceed then.

ADV SELEKA SC: Ja, I want us to proceed.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: Because ...[intervenes]

MR KOKO: Thank you, Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: Chair, before we start with Tegeta, I will just give a brief run-up ...[intervenes]

CHAIRPERSON: No, that is fine.

ADV SELEKA SC: ...and then we will come to it.

CHAIRPERSON: Ja, that is fine.

ADV SELEKA SC: For now there are two issues. Mr Koko then provided us with the documentation last time on the travel agents. And my observation is this, Chair, because we were right at the end he was taking time taking the Chairperson through the documentation. And I would have thought that the concession that Travel Excellence did do
10 the arrangement for the trip from Indonesia to Dubai and then from Dubai to Johannesburg, would have been given right at the beginning.

But that concession was given to you at the tail end Chairperson. That I do not dispute that Travel Excellence did the arrangements for the flight bookings. So that extent, Chair. The documentation that was produced from Thompson's do not disprove the evidence of Ms Sooliman. So I do not need to ask question in regard to that.

20 **CHAIRPERSON:** Well, let me make sure I understand that.

ADV SELEKA SC: Yes.

CHAIRPERSON: The one thing that was certainly said by Mr Koko last time was that the trip from Indonesia to Dubai ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...was booked by Travel Excellence. Now I cannot remember whether he also said from Dubai to Johannesburg also was Travel Excellence. I just remember quite clearly from Indonesia to Dubai.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: But from what you have said, it is like your understanding is that even from Dubai to Johannesburg he accepts that that was done by Travel
10 Excellence. Is that right?

ADV SELEKA SC: That he did not dispute it, Chair.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Because that is in Travel Excellence's affidavit.

CHAIRPERSON: Oh, okay. Let me just clear that with Mr Koko.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is your concession or admission in relation to Travel Excellence making bookings for you
20 limited to the trip from Indonesia to Dubai or also – or it extends to Dubai to Johannesburg as well?

MR KOKO: Chair, my answer is and again, I get workshop on the answering you.

CHAIRPERSON: Ja. [laughs]

MR KOKO: So to - based on the workshop that I am

giving, the answer is that I agree based on the evidence before you.

CHAIRPERSON: Ja, ja.

MR KOKO: That changes to my travelling plans from Indonesia to Dubai to Joburg ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...was booked by Travel Excellence.

CHAIRPERSON: Okay. No, that is sorted out.

MR KOKO: Now that it have answered your question.

10 **ADV SELEKA SC:** Ja?

MR KOKO: I – there are two issues.

CHAIRPERSON: H'm?

MR KOKO: And the first issue was that the affidavit of Ms Alana that served before you on the 1st of April or May, April/March was false because the travelling – Travel Excellence ought to have known that they did not book my travelling from Johannesburg to Indonesia to Dubai and back to Johannesburg.

CHAIRPERSON: Ja.

20 **MR KOKO:** They ought to have known.

CHAIRPERSON: Yes.

MR KOKO: But two. I have also said to you. I have booked my trip through Thompsons from Johannesburg to Indonesia to Dubai – not to Dubai to Doha ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...back to Johannesburg.

CHAIRPERSON: Ja.

MR KOKO: And I – my family paid for it.

CHAIRPERSON: H'm.

MR KOKO: And it is only because of the problems we had with the visa that I requested assistance of Ms Daniels, I provide you with proof that we have paid.

CHAIRPERSON: Ja.

MR KOKO: And I have also motivated to you that Ms
10 Daniels, instead of going to work, said here she went to her friends. So I concede – I accept the booking.

CHAIRPERSON: Ja.

MR KOKO: But what I need you to deal with is first the falsehood of Ms Alana's affidavit because it is intended to – it is perjury. It is a lie under oath that is deliberate. One. Two. It is another falsehood of Ms Sooliman's affidavit that says on the 20th of June, which Essa paid hundred thousand for my travelling arrangement.

CHAIRPERSON: Ja.

20 **MR KOKO**: When the evidence before you shows you that the hundred thousand received ...[intervenes]

CHAIRPERSON: Okay alright. I think what you seemed to be saying is. Except for the concession that you have made in relation to Travel Excellence making any bookings for you, namely for the trip from Indonesia to Dubai and

from Dubai to Johannesburg, except for that. Any other booking that they say they did for you, you say it is false. Is that correct?

MR KOKO: That is correct.

CHAIRPERSON: Okay.

MR KOKO: But I am also saying to you ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...that I do not know them.

CHAIRPERSON: Ja.

10 **MR KOKO**: They did not act under my instructions.

CHAIRPERSON: Yes. Yes and I think you said they must have acted under Mr Essa's, Daniels who would have been asked by Ms Daniels ...[intervenes]

MR KOKO: Correct.

CHAIRPERSON: ...to arrange for those bookings.

MR KOKO: Correct.

CHAIRPERSON: In terms of payment for that part of that trip or that leg of the trip. Did you pay for that or what is the position?

20 **MR KOKO**: Chairman, I gave you proof ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...from Thompsons ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...that they received – we have paid 308 – 78 – three thousand eight hundred rands. [Speaker not clear]

CHAIRPERSON: H'm.

MR KOKO: ...including the trip to Dubai.

CHAIRPERSON: H'm?

MR KOKO: I gave it to you.

CHAIRPERSON: So the payment you made to Thompsons
...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ...included that part of the leg of the
trip, namely from Indonesia to Dubai ...[intervenes]

10 **MR KOKO**: To Johannesburg.

CHAIRPERSON: ...to Johannesburg.

MR KOKO: Correct, Chair.

CHAIRPERSON: Okay. You did not pay to Travel
Excellence.

MR KOKO: No.

CHAIRPERSON: You paid to the travel agents that you
knew.

MR KOKO: Correct.

20 **CHAIRPERSON**: Okay alright. Okay. Mr Seleka, at least,
I think the areas of dispute are ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...seem to be clear.

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

CHAIRPERSON: And where there is agreement, it is
clear.

ADV SELEKA SC: Yes. No, indeed, Chair. That was going to be my next question which you asked.

CHAIRPERSON: Yes.

ADV SELEKA SC: And I am listening to that answer given to you, Chairperson.

CHAIRPERSON: H'm?

ADV SELEKA SC: And I wonder, Mr Koko, how do you get a trip and flight bookings, visas arranged for you by one agent and then you pay another agent? And the payment
10 that you have shown the Chairperson, it shows that these are payments – they have November against them. So I do not know whether the payments are made in November or of which year because the payment that Travel Excellence is talking about is made in January 2016.

MR KOKO: Chairman, I gave you an email from my daughter, Tato(?), dated December 14 to the agent that says for the three members of the party, Mrs Koko and Ms P Koko and Mr Koko. They are – they are changing – they are making changes to their travelling plans... So the
20 first thing is that. It has always been my family's plans for the three of us to go via Dubai in November already and for that, in November, we had paid R 51 000,00 for it because my wife got a budget – for that and we paid for it. So there is no ambiguity.

CHAIRPERSON: Ja.

MR KOKO: The point now ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...the point now is. Once we had problems with the visas and I took all the documents that are before you except the ...[intervenes]

CHAIRPERSON: Just hang on. By the way, have those been put into a bundle now?

MR KOKO: We have.

ADV SELEKA SC: Yes, Chair.

10 **CHAIRPERSON**: Oh, okay alright.

ADV SELEKA SC: And I will refer the Chairperson.

CHAIRPERSON: You will refer to them?

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay alright. Continue, Mr Koko.

MR KOKO: Now, all those documents with the exception of Mr Tato's email which comes after the fact when we were running around to prove our innocence, which she said were given to Ms Daniels including our confirmatory invoice from Thompsons. I said: Ms Daniels, I am – we –
20 my family wants to go to Dubai. We are battling with the visas. You have always handled this for me, at least in my capacity at work. Can you help her with? This is the agent that I am working with.

CHAIRPERSON: Ja.

MR KOKO: And she went to sort it out. I did – I only

know when we were looking at the records that I now know how she sorted it out.

CHAIRPERSON: H'm, h'm.

MR KOKO: But the point is. I have given you documents as evidence that shows you that we have paid from – through Thompsons, yes.

CHAIRPERSON: H'm.

MR KOKO: Yes, Chair.

CHAIRPERSON: On your version, the position would be
10 that Thompsons were paid more than the work they did because ...[intervenes]

MR KOKO: Indeed.

CHAIRPERSON: Ja, ja, ja.

MR KOKO: Indeed.

CHAIRPERSON: Ja.

MR KOKO: And not only were they – to be exact. They were paid R 51 000,00 more.

CHAIRPERSON: Yes.

MR KOKO: Which I never received back.

20 **CHAIRPERSON**: Yes.

MR KOKO: And I had no reason to receive it back.

CHAIRPERSON: Yes.

MR KOKO: Because I got the service for the money paid.

CHAIRPERSON: Yes, yes, yes. Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay?

ADV SELEKA SC: What we have, just quickly. The bundle has been prepared, Eskom Bundle 15(c). Mr Koko, I think you will also have it.

CHAIRPERSON: Just one second. I do not want to forget this. I would be important to obtain, if possible, clarification from Thompsons because obviously if they did not make a booking, they should not have kept payment for a booking they did not make. So it would be important to
10 obtain what they have to say about this issue. Okay
alright.

ADV SELEKA SC: Yes, indeed, Chair.

MR KOKO: Mr Seleka, I do not have 15(c).

ADV SELEKA SC: No, 15 ...[intervenes]

MR KOKO: C.

ADV SELEKA SC: Ja, C.

MR KOKO: I have got A and B here.

ADV SELEKA SC: Oh, here it is Mr Koko. Sorry.

CHAIRPERSON: Okay let us continue then.

20 **ADV SELEKA SC:** Thank you, Chair. These are the bundles then, Chair, we received on Thursday last week. I would like to refer the Chairperson to page 1554.

CHAIRPERSON: Just say what bundle it is for the record.

ADV SELEKA SC: Eskom Bundle 15(c).

CHAIRPERSON: Okay.

ADV SELEKA SC: Page 1554. This is the bundle of documents provided by Mr Koko.

CHAIRPERSON: Provided by?

ADV SELEKA SC: By Mr Koko.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes.

ADV SELEKA SC: On that page, 1554. Mr Koko, are those the payments you are referring to ...[intervenes]

10 **CHAIRPERSON:** Hang on. Hang on one second.

ADV SELEKA SC: Oh ...[intervenes]

CHAIRPERSON: Hang on.

ADV SELEKA SC: Sorry, Chairperson.

CHAIRPERSON: Hang on one second.

ADV SELEKA SC: [No audible reply]

20 **CHAIRPERSON:** I see that there is an affidavit by Mr Koko at the beginning of the bundle. And that affidavit was deposed to on the 2nd of December 2020. Are the documents that are in this bundle attachments or annexures to that affidavit or are they standalone documents?

MR KOKO: They are standalone documents, Chair.

CHAIRPERSON: They are standalones.

MR KOKO: The affidavit in the first page ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...we have submitted previously.

CHAIRPERSON: Ja.

MR KOKO: But we cannot find – we actually handed it to you previously.

CHAIRPERSON: Ja.

MR KOKO: It was a correction of some of the errors of my previous affidavit that we have discussed previously with Mr Seleka.

CHAIRPERSON: Okay.

10 **MR KOKO**: But it is not in any of the bundles.

CHAIRPERSON: Okay.

MR KOKO: And counsel thought it prudent that we must include it for completeness sake of my bundle.

CHAIRPERSON: Okay.

MR KOKO: But the rest of the documents are standalones.

CHAIRPERSON: Okay alright. We – okay, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Page 1554. If Chairperson is there?

20 **CHAIRPERSON**: I am there.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes?

ADV SELEKA SC: Yes, thank you, Chair. Mr Koko has said yes. But Mr Koko, just for the benefit of the Chairperson. So are the payments you say you made to

Thompsons?

MR KOKO: That is correct, Chair. And there is no year there. So this ...[intervenes]

CHAIRPERSON: I am sorry. Oh, okay. the payments that are highlighted there.

ADV SELEKA SC: Yes.

MR KOKO: Yes.

CHAIRPERSON: Okay.

MR KOKO: Chair, there is no year there but 17 November
10 is 17 November 2015 and 25 November is
25 November 2015.

CHAIRPERSON: Okay.

MR KOKO: And the total amount is R 383 800,00.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes?

ADV SELEKA SC: So, Chair, those are the proves. I
think in light of the Chairperson's request to us to obtain
an affidavit from Thompsons, I will leave this matter at
that.

20 **CHAIRPERSON**: Ja, okay.

ADV SELEKA SC: Yes. Because we know the payment by
Travel Excellence, they say it is in January 2016.

CHAIRPERSON: What Mr Koko's concession may mean is
that he has checked and the documentation from
Thompsons does include payment for work they did not do.

Or, he might be meaning: Look, based on what I – has been revealed, they did not make the payment. They did not include certain parts of the work for which I paid them and – but whether or not – for some reason they paid – they included when they paid the airline. I do not know. I just want to clarify whether we are at a point where we say, the airline was paid for that change of the trip ...[intervenes]

MR KOKO: Chair ...[intervenes]

10 **CHAIRPERSON**: ...by Travel Excellence.

MR KOKO: Chairman, the documents are our travels.

CHAIRPERSON: Yes.

MR KOKO: ...as I looked at them ...[intervenes]

CHAIRPERSON: Are clear.

MR KOKO: ...do not show that Thompson ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...and Travel Excellence ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...ever talked.

20 **CHAIRPERSON**: Yes.

MR KOKO: ...note ...[intervenes]

CHAIRPERSON: Ja, ja.

MR KOKO: They do not show that at all.

CHAIRPERSON: Ja, they do not, ja.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: Thompsons confirmed the booking from Johannesburg, Indonesia, Doha back to Johannesburg.

CHAIRPERSON: Yes.

MR KOKO: Those are the documents before you.

CHAIRPERSON: Yes.

MR KOKO: It is in this bundle.

CHAIRPERSON: Yes, yes, yes.

MR KOKO: The change in travelling plans, once our visa
10 was confirmed, the documents also show they were done...
[Speaker is unclear]

CHAIRPERSON: Ja.

MR KOKO: From ...[intervenes]

CHAIRPERSON: From Travel Excellence.

MR KOKO: ...from Travel Excellence.

CHAIRPERSON: Ja.

MR KOKO: Again, including the travel leg.

CHAIRPERSON: Ja.

MR KOKO: So the travel leg – the return back was paid
20 twice.

CHAIRPERSON: Yes.

MR KOKO: Because Thompson was paid for it.

CHAIRPERSON: Yes.

MR KOKO: Yes. The Joburg ...[intervenes]

CHAIRPERSON: Oh, Thompson was paid – oh, you mean

paid twice by different sources?

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: Yes.

CHAIRPERSON: One payment coming from wherever.

MR KOKO: Yes.

CHAIRPERSON: Travel Excellence bought it.

MR KOKO: Yes.

CHAIRPERSON: And then the other payment having been
10 made by you to Thompsons.

MR KOKO: Correct.

CHAIRPERSON: Ja.

MR KOKO: Correct.

CHAIRPERSON: Yes.

MR KOKO: Ja, but Chair, if Mr Seleka wants to leave this.
There are two issues I want to pick up ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...relating to Ms Sooliman's affidavit. And we
dealt with it and I did not push back because I have always
20 thought it is a minor issue.

CHAIRPERSON: Ja.

MR KOKO: And it is going to distract the bigger issue
which is what we just dealt with. And the bigger – the
issue that I want to deal with is that there is a modification
– there are changes on Ms Sooliman's original affidavit

that happened on the 25th of March 2015 and
...[intervenes]

CHAIRPERSON: Talk about who took the affidavit to the
NPA or something?

MR KOKO: Yes, yes.

CHAIRPERSON: Ja, because you did mention it.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: Chair, initially, before I could detect the
10 falsehood of both ladies, I thought it is probably a mistake
but I can tell you no it is not a mistake because now after
my appearance here I phoned Mr Anoj Singh. I said: Can
you send – can you read me this paragraph that has been
– what does it say?

And it actually says – Ms Sooliman says: I
handed to the Commission the affidavit that I have
submitted to the Hawks or to the police. That she
submitted to the Hawks. So she says: I submitted. Now I
think – I am looking – I have asked for it. Because I can
20 tell you, knowing their behaviour, chances are the
submission – the affidavit that she submitted to the police
and the affidavit that we are working from here, it most
likely says two different things.

And Mr Seleka was not correct to show me an
affidavit that she thought Ms Sooliman was referring to.

She was not referring to Ms Halima's affidavit. She was referring to the affidavit that she herself submitted to the police.

CHAIRPERSON: Ja. Well, I see that Mr Seleka is shaking his head but we – you did raise that issue last time.

MR KOKO: Yes.

CHAIRPERSON: So, Mr Seleka, do you want to say what you want?

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: And then we move on.

ADV SELEKA SC: Thank you, Chair. We did. And the issue arose from the amendment made by Ms Sameera Sooliman in her affidavit where she changes the I, deletes that, and said it was Ms Alana. She writes on margin of that. And that is the explanation. So we said, we have that affidavit which is the only affidavit that was given to us of Ms Halima Alana and she corrected the mistake that she is the one who submitted the affidavit. We dealt with
20 that.

CHAIRPERSON: H'm. But just to complete the story.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: They are coming tomorrow?

ADV SELEKA SC: They are.

CHAIRPERSON: They will be testifying tomorrow.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Both of them?

ADV SELEKA SC: Thank you, Chair. I intended to
...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...mention that to the Chairperson.
Both of them are coming tomorrow.

CHAIRPERSON: Okay, okay.

ADV SELEKA SC: And on the issue of announcement
10 Chair. Eskom's attorneys, Bowman Gilfillan, I am at pains
to get an answer from the Chairperson on the cross-
examination.

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs] Or the leave to...

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs] Ja. So. Chair does not have
to mention it now but I thought ...[intervenes]

CHAIRPERSON: Ja. No, no, no.

ADV SELEKA SC: ...bring it to your attention.

20 **CHAIRPERSON:** I have not forgotten about it.

ADV SELEKA SC: Yes.

CHAIRPERSON: Well, tomorrow morning just remind me
to indicate what is going to happen.

ADV SELEKA SC: Thank you, Chair. I will.

CHAIRPERSON: Ja, okay alright.

MR KOKO: Chair, there is another issue relating to that, now that they are coming up. There is also a receipt that is purported to show a proof of payment where Ms Alana in her affidavit says I received the money in my house but the receipt says the money was received by Ms Halima. And the affidavit – either the affidavit is wrong or the receipt is wrong.

And Chair, it cannot be a mistake. I counted more than five misrepresentations in this affidavit that
10 when I raised them, they say no it is a mistake. It is not a mistake. Either Ms Sooliman received the money or the receipt is a fault.

CHAIRPERSON: Well, I think I wanted to raise this question the last time but I do not remember that I did. You know they say they were asked by either Mr Salim Essa or to – by his secretary. Obviously, the secretary would be acting on his instructions, I guess, to make bookings for you. Now, you say you never had any dealings with them. Is that correct?

20 **MR KOKO**: I do not know them, even today.

CHAIRPERSON: You do not know them, yes. Now the question that which arise is. If they made any - deliberately made any false statements in their affidavits about you or your travelling. One would look for ...[intervenes]

MR KOKO: The motive.

CHAIRPERSON: The motive.

MR KOKO: Yes.

CHAIRPERSON: To say: you know, if you - if we know each other - you remember we were talking about - sometime back when you were giving your evidence, we were talking about...

MR KOKO: Yes.

CHAIRPERSON: [laughs] If you had been friends,
10 sometimes the relationship goes sour ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON: ... because of some reason. So if your former friend makes certain false statements about you, you might connect it to the relationship having gone sour or whatever else but if it is somebody that does not know you, has never had any dealings with you, one wants to say why would they do that. Now, I think they say themselves or one of them says in the affidavit they have never dealt with you. They do not know you.

20 **MR KOKO**: Yes, that is correct,

CHAIRPERSON: At least one of them, I think says that.

MR KOKO: Yes.

CHAIRPERSON: So that one is agreed with you that the two of you do not know each other. They have never dealt with you. on the face of it you would not expect somebody

who has not dealt with you to deliberately lie about you but it may well be that there is some reason, there is a motive. So I was wondering whether you are able to say what do you think why they would do that?

MR KOKO: Chair, I had a good answer to that question myself and it is for that reason that up until the last time I was here accepted that the misrepresentation in the affidavits is nothing else but mistakes because they do not know me.

10 **CHAIRPERSON**: Yes.

MR KOKO: I do not know them. I mean ...[intervene]

CHAIRPERSON: They do not have any issues with you.

MR KOKO: They have no issues with me. It is not like my *maatjie*(?).

CHAIRPERSON: Yes.

MR KOKO: It is not like miss Daniels.

CHAIRPERSON: Ja.

20 **MR KOKO**: So until I received my attorneys upon their request received a letter from Mr Essa's attorneys of record that says actually here are the communications between Ms Sooliman and Mr Salim Essa. our client did make hundred thousand payment. it was dropped by a gentleman called Shahiq and it was for the travelling details of Mr Essa, his wife and his son and his - I am not sure there is a son or...

Let us say he is - for the neck of a better word. Here are the documents. And then I sit back and I said but how can - and that was the email of the 18th of June 2015 that was dropped on the 20th of June. Now I sit back and say how can Sooliman miss such an important material fact.

And not only do that but tell the Commission that this hundred thousand that I knowingly know well was for the travelling details off the family of Mr Essa. Why does
10 she allocate to Mr Koko? It stops being innocent. Now I may not know the motive now.

CHAIRPERSON: Ja.

MR KOKO: But This blows her cover that she is not acting innocently.

CHAIRPERSON: Well, would it not - would the fact that there was R 100 000,00 that was paid, made on the same day that was for something else? Would that scenario not suggest that they may be a greater possibility for a genuine misunderstanding of what was for what as opposed
20 to a situation where there was no R 100 000,00 paid at all?

MR KOKO: Chair, I can only work with the documents before us.

CHAIRPERSON: Ja.

MR KOKO: And the documents before us is that she received R 100 000,00 for a specific transaction which

makes a dubious and suspect to allocate it to another transaction.

CHAIRPERSON: Of course, it comes from the same person that she says gave her ...[intervenes]

MR KOKO: And ...[intervenes]

CHAIRPERSON: ...what would the other R 100 000,00 ...[intervenes]

MR KOKO: And that is convenience. That same person has given to her the reasons for the R 100 000,00 in
10 writing. it says, here is my R 100 000,00. Shahiq is dropping it. This is the reason for it. Way back in 2015. So it is - me and you today have the benefit of hindsight.

It is a document that existed in 2015 when we did not know that I will be sitting here in front of you as part of the Commission. So it is not documents that are doctored. They existed. The only think she can say is that those documents are false. That is the only thing that she can say.

CHAIRPERSON: Ja.

20 **MR KOKO:** But if there is no challenge on the document and the documents are legit coma then it shows the - you know I have listened to Mr Makhubo who was sitting here and Mr Chaskalson - on the basis of his answers goes to a character. and a set back and I shook my head and I said in this Commission it looks like certain witnesses are

allowed to be an ethical - it is okay for as long as the other opponent belongs to a particular faction. No, Chair. the character of Ms Sooliman and the character of Ms Halima - it is in entirety based on their submissions. It cannot be light. It cannot be false. It cannot be a mistake.

CHAIRPERSON: Well, certainly what we want to establish is what the truth is because you have two travel agents here making certain claims in regard to the same family. The same about Mr Koko and his family and the travelling.
10 So it is important to establish exactly what it is. But I think we have dealt with a period.

ADV SELEKA SC: Ja.

CHAIRPERSON: They will give evidence tomorrow. I am sure you will be watching.

MR KOKO: Yes.

CHAIRPERSON: And they will be questioned about that issue. I think – I hope Mr Seleka's junior is noting that issue about that email from Mr Salim Essa saying what the R 100 000,00 was for.

20 **MR KOKO:** Yes.

CHAIRPERSON: But let us move on.

ADV SELEKA SC: Yes.

MR KOKO: Now, Chair, I have told you the link. The only person that I talked to was Ms Daniels.

CHAIRPERSON: Ja.

MR KOKO: Now I do take note too that they say in their affidavits that they do not know Ms Daniels.

CHAIRPERSON: Yes, yes, yes.

MR KOKO: I have no ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...issues with them.

CHAIRPERSON: Ja.

MR KOKO: Because clearly, I know evidence before the Commission here ...[intervenes]

10 **CHAIRPERSON**: Ja.

MR KOKO: ...that ...[intervenes]

CHAIRPERSON: Your analysis is that Ms Daniels spoke to Mr Essa.

MR KOKO: Correct.

CHAIRPERSON: And Mr Essa spoke to them.

MR KOKO: Yes.

CHAIRPERSON: And of course, they know Mr Essa.

MR KOKO: Yes.

CHAIRPERSON: Ja, okay. Mr Seleka.

20 **ADV SELEKA SC**: Thank you, Chair. So just to say there is no – on the – on what Travel Excellence says they arranged, Thompsons does not claim to have done the arrangement.

CHAIRPERSON: Oh, okay.

MR KOKO: And goes for that. [Speaker not clear]

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: I may have – at some stage I thought that was right but over the time I think I may have mixed that up.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is Travel Excellence's version that they arranged only that part of the trip which was from Indonesia to Dubai and from Dubai to Johannesburg?

10 **MR KOKO**: Correct, Chair.

CHAIRPERSON: And Thompsons – and that is subject by Mr Koko.

ADV SELEKA SC: Yes.

MR KOKO: Correct.

ADV SELEKA SC: As Travel Excellence.

CHAIRPERSON: Ja, that is Travel excellence.

ADV SELEKA SC: That is right.

CHAIRPERSON: Now, Travel Excellence – Mr Koko, Travel Excellence – no, not Travel ...[intervenes]

20 **ADV SELEKA SC**: Thompsons.

MR KOKO: Thompson.

CHAIRPERSON: Their version is that they made bookings for the trip from Johannesburg to...?

ADV SELEKA SC: To Indonesia.

MR KOKO: Indonesia, to Doha and to Johannesburg.

CHAIRPERSON: Doha.

MR KOKO: Back to Johannesburg.

CHAIRPERSON: Back to Johannesburg.

MR KOKO: Correct.

CHAIRPERSON: That is their version.

MR KOKO: Correct.

CHAIRPERSON: But the part where they say back to Johannesburg cannot be right because that was done by Travel Excellence, is it not?

10 **MR KOKO**: It is correct. They have done it.

CHAIRPERSON: They have made the booking?

MR KOKO: Correct.

CHAIRPERSON: Okay but you travelled on the booking made by Travel Excellence?

MR KOKO: Correct.

CHAIRPERSON: Oh, okay. But then if it is so, they did the work. What they might not have done is the payment for the ticket.

MR KOKO: Correct.

20 **CHAIRPERSON**: That is what ...[intervenes]

MR KOKO: Correct.

CHAIRPERSON: ...would not have taken place.

MR KOKO: Correct.

CHAIRPERSON: Ja. Okay, okay alright. So the – but is the – their booking in relation to Dubai, Johannesburg. Is

it the same flight?

ADV SELEKA SC: No.

MR KOKO: No, no Chair. They did not book ...[intervenes]

CHAIRPERSON: Dubai to Joburg.

MR KOKO: They did to book – no, they did not book Indonesia ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...Dubai back to Johannesburg.

10 **CHAIRPERSON:** Ja.

MR KOKO: They booked Johannesburg, Indonesia, Doha back to Johannesburg.

CHAIRPERSON: Oh, okay, okay. Which you never used.

MR KOKO: Which I never used. Which I ...[intervenes]

CHAIRPERSON: ...Johannesburg you never used.

MR KOKO: Which I never used.

CHAIRPERSON: Yes, okay.

MR KOKO: And I never got – I never reclaimed the money.

20 **CHAIRPERSON:** Yes, okay, okay. No, no, no. Then I understand.

ADV SELEKA SC: Yes.

CHAIRPERSON: So now I understand. On what Travel Excellence claims in terms of what they booked, Mr Koko does not dispute anything.

ADV SELEKA SC: Correct.

MR KOKO: Correct.

CHAIRPERSON: Other than that, it was not at his instance.

MR KOKO: Correct.

CHAIRPERSON: As far as Thompsons is concerned, they say the booked Johannesburg to Indonesia, from Indonesia to Doha and from Doha to Johannesburg.

ADV SELEKA SC: Correct.

10 **CHAIRPERSON:** Now Johannesburg to Indonesia and Indonesia to Doha was used?

MR KOKO: Correct.

CHAIRPERSON: But Doha to Johannesburg was not used?

MR KOKO: Correct.

CHAIRPERSON: And but they were paid?

MR KOKO: Correct.

CHAIRPERSON: Okay alright.

MR KOKO: And I did not claim the money back.

20 **CHAIRPERSON:** And you did not claim the money back, ja.

MR KOKO: Correct.

CHAIRPERSON: Ja. So what they would have been entitled to is only the services for booking but the actual ticket, they were not entitled to claim that?

MR KOKO: Correct. But remember, I did not go back to them and say: You owe me money.

CHAIRPERSON: No, I accept that you did not claim it back, ja.

MR KOKO: And there was a reason why.

CHAIRPERSON: Ja, because you said you did not know.

MR KOKO: Because I did not know.

CHAIRPERSON: Ja. But had you asked them to book a trip from Doha straight to Johannesburg?

10 **MR KOKO**: Yes.

CHAIRPERSON: You had asked them?

MR KOKO: Yes.

CHAIRPERSON: Okay. Did you ask them to change that?

MR KOKO: I asked Ms Daniels to do that.

CHAIRPERSON: You asked Ms Daniels to do that.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: Yes.

20 **CHAIRPERSON**: And when you had asked them to book a flight from Doha to Johannesburg, you dealt with them directly or did you ask Ms Daniels?

MR KOKO: I dealt with them directly. My family dealt with them directly.

CHAIRPERSON: Directly, your family?

MR KOKO: Yes.

CHAIRPERSON: Okay alright.

MR KOKO: And not only that Chair. We paid R 51 000,00 more ...[intervenes]

CHAIRPERSON: Yes.

MR KOKO: ...in anticipation that we are going to go to Dubai.

CHAIRPERSON: Ja, okay.

MR KOKO: Which we never claimed that too.

CHAIRPERSON: Okay, okay. Mr Seleka.

10 **ADV SELEKA SC**: Yes. Thank you, Chair. I think in that context, Chairperson, you will see that it makes your question all the more important as to, if Travel Excellence has done the work ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...and it is accepted ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...who paid.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC**: Because they would have generated an invoice.

CHAIRPERSON: Ja.

ADV SELEKA SC: They would have had to be paid.

CHAIRPERSON: Ja.

ADV SELEKA SC: So who paid for it.

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: But Chair, you will recall – and Mr Koko I want to raise this with you so you can explain to the Chairperson that already in – on the 3rd of January 2016, you received your three visas, for you, your wife and the child from Businessman Info Portal. Chair, that is – could I refer the Chairperson – which bundle does the Chair has? Oh, that is Eskom 15.

MR KOKO: Chair...

ADV SELEKA SC: Is it 18(b) that Chair has? I think it is.
10 I think it is 18(b). It must be ...[intervenes]

CHAIRPERSON: It must whichever one you asked them to put here.

ADV SELEKA SC: 1088, Chair. Let us go to page 1088.

CHAIRPERSON: It is 18(b)?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: And what page must I go to?

ADV SELEKA SC: 1088.

CHAIRPERSON: 1088?

ADV SELEKA SC: Yes. And Chair once you have that,
20 just give me an indication so I can move on to my next point.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: I have got it.

ADV SELEKA SC: This is an – this the culmination of the

exchange of emails between Mr Essa and Travel Excellence, Chair. The other emails are on the pages after this but they all come to this email from Businessman infoportal1@zoho.com on 3 January 2016 to Matshela 2010, matshela2010@yahoo.com and it is a forwarding of the visas to Mr Koko which were received from Travel Excellence from Tjadida(?) Magette(?) re Koko family visas.

That email, Mr Koko, gets to be forwarded – I
10 mean it gets to be forwarded by you on Sunday – at the top of the page – Matshela Koko on Sunday, 3 January 2016 to reception@grandestonbali.com(?) So on the face of this, because you will see the email on Ms Tjadida Magette on the flipside on page 1089 as there are details which is Travel Excellence, 167 Rose Avenue and the rest of the information is there. On the face of it, you would have seen that this document or your visas did not come from Thompsons.

MR KOKO: No, sir. No, sir. So before this, I had a text
20 communications with Ms Daniels. So I expected it. It came back from – and I have told you before that I have received it from the infoportal address. I immediately forwarded it and all what attracted me – and you will see I have got it on my – I think a Samsung, a small phone, which does not give you the privilege to see the full detail

of it. So at no stage, up until 2018, did I know that this email, first originated from Travel Excellence and on the chain(?) was Salim Essa. Not at all. I only came to know about it on or around February 2018 and it was brought to my attention by Eskom.

ADV SELEKA SC: Yes. Chair, the documentation speaks for themselves.

CHAIRPERSON: The change of the trip for you not to travel directly from Doha to Johannesburg but – no
10 ...[intervenes]

MR KOKO: Yes, yes correct.

CHAIRPERSON: Ja.

MR KOKO: Ja, ja correct.

CHAIRPERSON: Yes, not to travel from Doha to Johannesburg but to travel from Indonesia to Dubai.

MR KOKO: Dubai.

CHAIRPERSON: And from Dubai to Johannesburg.

MR KOKO: Yes.

CHAIRPERSON: When was that made, that change?

20 **MR KOKO:** There is – you have got communications to you, Chair.

CHAIRPERSON: Ja.

MR KOKO: You have got documents from Tato.

CHAIRPERSON: Ja.

MR KOKO: On the 14th of December 2015.

CHAIRPERSON: Yes. So that was done in December?

MR KOKO: 2015, yes.

CHAIRPERSON: Okay.. No, I just wanted to
...[intervenes]

MR KOKO: Yes. And it was paid for ...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...in November 2015.

CHAIRPERSON: Ja, okay no that is fine.

ADV SELEKA SC: Ja. Then the one last thing on this
10 aspect before I move on, Chair, is back to that Eskom
Bundle 15(c) which is the correspondence between the
attorneys. Mr Koko's attorneys and the attorneys for
Mr Salim Essa or what we are told by Mr Salim Essa's
attorneys, page ...[intervenes]

CHAIRPERSON: What page again?

ADV SELEKA SC: Page 1571.

CHAIRPERSON: H'm. Yes?

ADV SELEKA SC: Yes. Page 1571 is an email Chair from
Mr Kgomo tso Ndou, that is Mr Koko's attorney sent on
20 Saturday, 20 March 2021 at 20:02 to
nigel@shannonlaw.co.za. The subject is Matshela Moses
Koko, State Capture Commission of Inquiry. It says"

"Good day.

We hereby act on behalf of Mr Matshela Moses
Koko.

Our client has been summoned to give evidence at the State Capture Commission Inquiry to give evidence surrounding alleged state capture at Eskom.

During 1 March 2021, our client was questioned on the attached affidavit.

According to the aforesaid affidavit, our client's trip to Dubai was paid for by your client, Mr Salim Essa.

10 We hereby kindly request confirmation in the form of a written statement or collateral information from your client that the aforesaid payment have nothing to do with our client in order to put this issue to rest.

Regards Kgomotso Ndou..."

And his signature.

CHAIRPERSON: H'm.

ADV SELEKA SC: Mr Koko, you see the paragraph, the last paragraph of this email?

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

ADV SELEKA SC: It is a very curious request that has been made. You did not get a written statement from the attorneys. Is that correct?

MR KOKO: Which attorneys?

ADV SELEKA SC: Mr Salim Essa's attorneys?

MR KOKO: We got a letter from them.

ADV SELEKA SC: Yes, but not a written statement?

MR KOKO: I got a letter from them.

ADV SELEKA SC: But not – okay. Did you get a statement from Mr Essa?

MR KOKO: If you – I consider this letter a statement, Chair.

ADV SELEKA SC: Okay the Chairperson is still reading.

10 **CHAIRPERSON**: No, no I am listening. I hear what you say.

ADV SELEKA SC: Did you hear, Chair?

CHAIRPERSON: I hear, ja.

ADV SELEKA SC: Okay.

CHAIRPERSON: Continue.

ADV SELEKA SC: So the answer is a no you did not get a statement from Mr Salim Essa?

MR KOKO: Chair, the statement is on page 10572.

ADV SELEKA SC: Yes, okay. So that is a letter then Chair from what we are told is Mr Essa's attorneys.

20 **CHAIRPERSON**: H'm.

ADV SELEKA SC: And Chairperson you would have seen the paragraph. Mr Koko referred to this letter but paragraph 4 – let me read 1 and 2:

“We referred to your mail and your enquiry regarding the allegation made in an affidavit

deposed to by a certain Halima Alana.

The averment by Ms Alana is that our client, Mr Essa, allegedly made payment to the Travel Excellence for air tickets, which according to the deponent, was being issued to your client, Mr Koko, were paid for by our client by way of a cash deposit to Travel Excellence on 20 January 2016...”

And then they deal with this in paragraph 4.

10 They say:

“The allegations by Ms Alana concerning your client are false.

Our client did, in fact, make a cash payment to Travel Excellence on 20 January 2016 but this was in respect of his own air ticket and changes to travel arrangements for his wife and child which were effected through Travel Excellence.

20

We annexed hereto an exchange of mails between Mrs Sooliman and our client which clearly indicates that the R 100 000,00 cash payment by our client was for our client’s air ticket and the aforementioned amendments to the travel arrangements with the balance being held as a credit in favour of our client and not

for travel arrangements for Mr Koko as falsely claimed in the affidavit...”

So that is what they were asked to confirm, Chair.

CHAIRPERSON: H’m.

ADV SELEKA SC: And then they attached an email, which Mr Koko referred to, of the 18th of January 2016, where Mr Essa says – and that is on the next page, page 1574. Yes, please. That is the top email.

10 **CHAIRPERSON**: Of course, Mr Koko, one notes what the attorney is saying which one takes it to be in accordance with their client’s instructions and that would need to be raised with the witnesses from Travel Excellence but it would have been better if they provided an affidavit by Mr Salim Essa under oath saying what he said here. Or even better still. If he came here and he gives evidence himself. But I accept that you do not control ...[intervenes]

MR KOKO: Chair, I would think that the Commission has better control than I do.

20 **CHAIRPERSON**: No, no I accept. I am just mentioning that it would have been much better. I accept that you do not have control about ...[intervenes]

MR KOKO: And it would have been better for me.

CHAIRPERSON: You have no power to force it to come here.

MR KOKO: Most certainly.

CHAIRPERSON: Ja.

MR KOKO: The only thing I said to you previously.

CHAIRPERSON: Ja.

MR KOKO: That made me to trigger my attorney to this.

CHAIRPERSON: Ja.

MR KOKO: Because every third week I get emails
...[intervenes]

CHAIRPERSON: Ja.

10 **MR KOKO**: ...from them on a different matter.

CHAIRPERSON: Oh, okay, ja.

MR KOKO: Ja, but emails because we are in – when court
...[intervenes]

CHAIRPERSON: Court, ja.

MR KOKO: ...with them and Eskom. So every three
weeks or four weeks ...[intervenes]

CHAIRPERSON: Ja.

20 **MR KOKO**: ... I get an email from one of them. It is
communicating with the courts but for some reason
...[intervenes]

CHAIRPERSON: Ja.

MR KOKO: ...I get all their communications with other
people.

CHAIRPERSON: Ja, well, it must be that they do not want
to be accused of communicating with the court and leaving

you out.

MR KOKO: Yes.

CHAIRPERSON: When you are also involved in the same matter.

MR KOKO: Yes.

CHAIRPERSON: But – no, that is fine.

MR KOKO: Yes.

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Yes. Chair, just to point out because
10 that email on page 1574, Chairperson did note this last
time, that it is on the 18th of January 2016. And Mr Essa
says:

“Yes, please. Sending 100K which should,
with Shaheed(?), to cover this - and leave me
with some credit...”

And the question was. There is obviously a
discrepancy between 20 January 2016 and
18 January 2016. I was going to ask Mr Koko whether did
it take the driver two days to reach the Travel Excellence
20 people to deliver the payment. I do not know whether you
have an answer to that?

CHAIRPERSON: You mean, you would have asked
Mr Salim Essa.

MR KOKO: Ja.

ADV SELEKA SC: Yes. [laughs]

CHAIRPERSON: Not Mr Koko.

ADV SELEKA SC: That is right, Chair.

MR KOKO: I was going to tell you ...[intervenes]

CHAIRPERSON: [laughs]

MR KOKO: ...that I have no knowledge of that.

CHAIRPERSON: Ja.

MR KOKO: All what I do know, based on the cover letter ...[intervenes]

CHAIRPERSON: Ja.

10 **MR KOKO:** ...is that the notification was on the 18th and the delivery was on the 20th. That is the only reasonable conclusion I can make, based on what is here.

CHAIRPERSON: Okay. Anyway, I assume that the witnesses from Travel Excellence have been alerted to this and they will be able to deal with it tomorrow.

ADV SELEKA SC: Yes, Chair we ...[intervenes]

CHAIRPERSON: If they are not, they need to be.

ADV SELEKA SC: No, they have.

20 **CHAIRPERSON:** Okay alright. We are going to have to move on but ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: I do not know if it is necessary for us to take another break. We normally take it after two hours but could we please take a five minutes break?

ADV SELEKA SC: Thank you, Chair.

ADV BARRIE SC: Chair, may I just... Oh.

CHAIRPERSON: Yes?

ADV BARRIE SC: On this issue. The documentation that came into our possession sometime in January, I believe, was the affidavit from Alana in February. No, the affidavit from Alana was in January. And you will recall, maybe not because that was quite a number of appearances ago as far as Mr Koko is concerned, but you will recall that we at that time asked that the original of this affidavit of
10 Ms Alana should be produced and...

But in encompassing that request was, of course, the original documentation which is annexed to that document because these things all have audit trail and what we have seen was simply, in terms of those affidavit, for instance, one page out of a bank statement and the rest have been redacted. But no sooner, at least, there must then be R 100 000,00 payments if one has regard to the full bank statements.

But the point that I am simply making is that the
20 original documentation is clearly very important to this court because documents can be false, et cetera. And for instance, a receipt book. A receipt book – where are those receipt books.

CHAIRPERSON: Ja.

ADV BARRIE SC: Can they be produced to the

Commission? And will we be allowed to inspect those documents? Because – I think my learned friend at the time said that he will obtain the original affidavit and make it available to us but that has not happened. But I am making a different point.

I am making the point that the court will have or the Commission will have to investigate the audit trails pertaining to these various transactions because they should be available. And receipt books were apparently
10 available in 2018. So they should be available now as well.

CHAIRPERSON: Okay. Well, you reminded me of something I wanted to say much earlier Mr Barrie. On the assumption that today is the last day for Mr Koko to give evidence. If there are any issues you have raised that have not been attended to, I would like to know which ones those are in the form of a document.

I think previously I asked for a document. So do not forget that because I do want that all issues that you
20 have raised be looked into and you get an answer one way or another. I do not want issues that will be left hanging. So I mention that.

Of course, Mr Barrie has just mentioned the issue of the original affidavit and whatever, the receipts and so on. So, Mr Seleka, do you want to say something

response before we adjourn?

ADV SELEKA SC: Yes, on the affidavit.

CHAIRPERSON: Yes.

ADV SELEKA SC: That is the affidavit we received that as submitted to the Hawks. So they have wanted the original of that affidavit, Chair.

CHAIRPERSON: The original would be with the Hawks?

ADV SELEKA SC: With the Hawks, yes.

CHAIRPERSON: Okay.

10 **ADV SELEKA SC:** But we have since obtained, ourselves have since obtained affidavits from Travel Excellence.

CHAIRPERSON: Ja.

ADV SELEKA SC: Which we are specifically relying on.

CHAIRPERSON: Ja/

ADV SELEKA SC: Yes. As evidence before ...[intervenes]

CHAIRPERSON: Yes.

ADV SELEKA SC: We have – I have asked investigators to obtain ...[intervenes]

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** ...to make a request to the Hawks in regards to the original ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...of that affidavit which we have.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: And has there been a response or not?

ADV SELEKA SC: I am not aware whether there is a response from the Hawks. I will have to follow up myself with the investigators.

CHAIRPERSON: Well, what can be done is, because probably the Hawks would like to keep the original.

ADV SELEKA SC: Yes.

CHAIRPERSON: What can be done is one of two things. Because it is Mr Barrie who wants to see the original.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: Obviously, if you want to see it you can do the same. Is to arrange with the Hawks, to say in regard to this matter, if you are not going to release the original, can we at least visit your offices and inspect the original. So if Mr Barrie wants a letter from the Commission that will hopefully facilitate him seeing that, a letter can be ...[intervenes]

ADV SELEKA SC: Certainly, Chair.

CHAIRPERSON: ...prepared and given to him.

20 **ADV SELEKA SC:** Certainly, Chair.

CHAIRPERSON: He can use to the Hawks, to say: I represent a client who has an interest in seeing the original and can I see it?

ADV SELEKA SC: Ja.

ADV BARRIE SC: But Chairperson it is not really the

original affidavit as much but it is the original documentation. The ...[intervenes]

CHAIRPERSON: The receipts?

ADV BARRIE SC: The ...[intervenes]

CHAIRPERSON: The receipts?

ADV BARRIE SC: They have to be somewhere. And as your – as he has pointed out. Presumably they will have that. They will have the receipt books.

CHAIRPERSON: Ja.

10 **ADV BARRIE SC:** And they should be able to produce that.

CHAIRPERSON: Whatever original documents they have, which are relevant to our investigation, the Commission should be able to at least give you a letter that you can use to the Hawks to show that the Commission would like them to make it possible for you to see those documents.

ADV BARRIE SC: I would think, with respect, that that should come – that request should come from the Commission.

20 **CHAIRPERSON:** No, no I am saying that is one approach but I am just saying because we are at the time at which we are in terms of the work of the Commission. If the Commission might delay, one thing they can do is to give you a letter which that would facilitate. So in the meantime, you do not have to wait for the Commission.

You can approach the Hawks and say: In this request, I am supported by the Commission. Here is a letter. Then maybe they can... Just in case, to avoid any delays.

ADV BARRIE SC: Ja.

CHAIRPERSON: Ja. Okay alright. I think, Mr Seleka, you can arrange for that to be attended to.

ADV SELEKA SC: Certainly, Chair.

CHAIRPERSON: Mr Barrie or his attorneys can be given a letter that will ask the Hawks to ...[intervenes]

10 **ADV SELEKA SC:** Allow him to inspect.

CHAIRPERSON: ...make – ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because they simply want to have sight and inspect it, ja. Okay let us take a five minutes adjournment. We adjourn

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

20 **ADV SELEKA SC:** Thank you, Chair. Mr Koko, I remembered something during the adjournment that you had in fact called one of the Travel Excellence ladies last year, late last year. Ja? You asked them about – ja, to ask them about this issue of payment?

MR KOKO: No.

ADV SELEKA SC: You did not call them?

MR KOKO: No.

ADV SELEKA SC: Because one of them says you did call them.

MR KOKO: No, no, I have no relationship with these people. I do not know them I never spoke to them.

ADV SELEKA SC: Or Ms Halima Allana.

MR KOKO: No, I have never talked to them, I do not know them.

CHAIRPERSON: Does she say that in an affidavit or...?

10 **MR KOKO**: No, she does not ...[intervenes]

ADV SELEKA SC: She has not reduced it to writing, chair, in affidavit.

CHAIRPERSON: Oh, okay. Alright.

ADV SELEKA SC: Ja.

MR KOKO: No, Chair, I have never spoken to them and if they say so then they look more suspect.

ADV SELEKA SC: Well, she said she will check the records. Mr Koko, you travelled from Indonesia to Dubai on the 4 January 2016. You slept over there and travelled
20 from Dubai on the 5 January 2016 back to South Africa, is that correct?

MR KOKO: That is correct.

ADV SELEKA SC: Ja. I understand that you slept over at the Oberoi Hotel.

MR KOKO: That is correct.

ADV SELEKA SC: Now if we could please – Chair, we can remove the other files, I would like us to go to Mr Koko’s bundle, Eskom bundle 15(b). Page ...[intervenes]

CHAIRPERSON: That is the new file?

ADV SELEKA SC: No.

CHAIRPERSON: It is an old file?

ADV SELEKA SC: It is the old file.

CHAIRPERSON: 15(b)?

ADV SELEKA SC: 15(b) yes.

10 **CHAIRPERSON:** What page?

ADV SELEKA SC: Page 1476.

MR KOKO: Page?

ADV SELEKA SC: From 1476.

CHAIRPERSON: Yes, I have got that.

ADV SELEKA SC: Yes. Chair, to make sense of the email trail because there is - you know, they always start at the bottom up, I would ask the Chair that we start at page 1480.

CHAIRPERSON: I have got that.

20 **ADV SELEKA SC:** Thank you, Chair. Mr Koko, there is an email there on the 3 January 2016 at 15.53, Reservations TODB and there is an email address and the email reads:

“Dear Ms Sarah, greetings. We have already made the reservation for Mr Matshela Koko under

confirmation number 467415 and have shared the confirmation letter to Mr Ashu and cc'd to you. Please provide us with the guests' mobile number and email address so we can arrange for the transfers accordingly. Also kindly advise the billing instruction for the same. Should you require any further assistance please do not hesitate to contact us, warm regards, Ria Poma(?), Reservations Oberoi.”

- 10 I have read this to you, Mr Koko, which is confirmation of a reservation made for you and they say confirmation letter has been shared with Mr Ashu. Do you know Mr Ashu?

MR KOKO: Yes, Chair, I know Mr Ashu, I have met him once.

ADV SELEKA SC: Yes. Do you have any comment in regard what is stated in this email?

MR KOKO: I have no personal knowledge of this email so I have no comment.

- ADV SELEKA SC**: Okay. Let us proceed to page 1479
20 because you will recall she asked:

“Please provide us with the guest’s mobile number and email address so we can arrange for the transfers accordingly and kindly advise the billing instruction for the same.”

CHAIRPERSON: I am sorry, I was just making a note

here.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: What page did you go to from 1480.

ADV SELEKA SC: Ja, we are going in reverse order, Chair. 1479.

CHAIRPERSON: Okay. Just read again?

ADV SELEKA SC: At the bottom of the page, the email trail starts, one is from Ashu Chwala at ...[intervenes]

CHAIRPERSON: On Sunday 3 January 2016 and it is to
10 Reservations TODB, c.c. Sarah Donhowin(?). The subject
is booking for Sahara Computers. Is that the one?

ADV SELEKA SC: That is correct and it is a reply, Chair.

CHAIRPERSON: And the time is 5.58 p.m.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: So she is replying to Ria Poma and she says:

“Dear Ria, Sahara will pay the entire bill. Please
do not ask any credit guard guarantee from the
20 guest at the time of check-in.”

And at the previous page is a – stamps.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: Mr Koko in regard to this exchange?

MR KOKO: No, I have no personal knowledge of these emails.

ADV SELEKA SC: Then still on page 1479, Chairperson.

We go up, it is an email from Sarah still on Sunday the 3 January 2016 at 16h00 to Ashu Chawla and reservations TODB cc'ing Duty Manager and it is also a reply:

“Booking for Sahara Computers”

And she writes:

“Dear Ashu, the below is noted and the team has been informed. Also for future bookings unless you let us know which guests will pay we will not ask for credit card guarantee or payment.”

Will your response be the same?

MR KOKO: Correct, Chair.

ADV SELEKA SC: Then, Chairperson, we can go finally to page 1476. The first email is the second from the top, so that is the email of 15.52, that is the time stamp.

CHAIRPERSON: Yes.

ADV SELEKA SC: From the Oberoi Dubai reservations. TODB. As I said it is the 3 January again, 2016:

“Subject: Reservation confirmation at the Oberoi Dubai/Matshela Koko/467415. It is sent to Ashu@Sahara.co.za, cc'd Sarah@oberoihotels.”

And you see confirmation of reservation confirmation. The guest name is Mr Matshela Koko with all the details. Arrival date Monday 4 January 2016 and the arrival details. At the bottom left hand corner, Chair, there is kind of a

message, Mr Koko.

“Dear Mr Koko, thank you for choosing the Oberoi Dubai. We are pleased to confirm your reservation and look forward to welcoming you to the Oberoi Dubai. Yours sincerely, Ria Poma.”

Did you receive this confirmation, Mr Koko?

MR KOKO: No.

ADV SELEKA SC: Do you have any comment in regard to this email?

10 **MR KOKO**: The only comment I have, Chair, is the – if the email from Ashu to Mr Salim Essa which is in accordance to my proposition I have told you. I have said to you from day one that my travelling plans were done through Ms Daniels and I have told you that Ms Daniels went to her friends to arrange the travelling plans and this just proved that. This just proves exactly that.

CHAIRPERSON: But this seems to suggest that Sahara Computers or Ashu Chawla made bookings for you only in regard to the accommodation whereas Travel Excellence
20 maybe made bookings in terms of the actual flights.

MR KOKO: Correct.

CHAIRPERSON: Is that correct?

MR KOKO: Correct.

CHAIRPERSON: Okay, alright.

MR KOKO: Just looking at the documents here.

CHAIRPERSON: Ja, that seems to be the position. And now in terms of accommodation, had you asked Thompsons to make bookings for accommodation in the other destinations?

MR KOKO: Correct.

CHAIRPERSON: And they had made them?

MR KOKO: Correct.

CHAIRPERSON: You had not asked them to make any bookings about Dubai because...

10 **MR KOKO**: Because Dubai was part of my change in plans.

CHAIRPERSON: Yes.

MR KOKO: So the booking of the plane tickets and the accommodation would be done by the party that does the change in travelling plans.

CHAIRPERSON: Yes, so on your understanding up to 2018 or maybe up to more recent your understanding was that the accommodation in Dubai had been booked by Thompsons as well?

20 **MR KOKO**: Correct.

CHAIRPERSON: Okay, Alright,.

ADV SELEKA SC: Yes. Well, the accommodation in Dubai – was that the question, Chair?

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Ja. But that will beg the question, Mr

Koko, if your understanding was that the accommodation in Dubai was done by Thompsons, is that what you say?

MR KOKO: At all material times, Chair, my change in travelling plans were done through Ms Daniels using Thompsons because I paid Thompsons, I did not pay anybody.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes but you did say to the Chairperson last time when you were here that you did enquire with Ms
10 Daniels why she used a different travel agency.

MR KOKO: No, no. Chair, once again, transcripts will dispense of it. I asked Ms Daniels why am I receiving my visas on an email address that you gave me on the basis that it belongs to the Chair, why would the Chair of Eskom get involved in my visa travelling? And her answer was it was convenient. That is the only thing you will find in the transcripts, you will not find what Mr Seleka says.

ADV SELEKA SC: Yes, but that is – no, I have not said anything. You interrupted me, that is what I was going to
20 say. So then, Chair, the email on that page, Mr Ashu emails it or forwards it to Mr Salim Essa. Mr Koko has already touched on that and that is the last ...[intervenes]

CHAIRPERSON: I am sorry...

ADV SELEKA SC: Page 1476.

CHAIRPERSON: Yes?

ADV SELEKA SC: We were on...

CHAIRPERSON: Oh, here at the top?

ADV SELEKA SC: At the top, yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: So those reservation confirmations seems to have been emailed then by Mr Ashu Chawla to Mr Salim Essa.

CHAIRPERSON: So the amount that you paid to Thompsons included also the accommodation?

10 **MR KOKO:** Yes, yes, except that when I got to Oberoi, I was made to pay. I was made to paid contrary to the view, I was made to pay and I paid.

CHAIRPERSON: Ja.

MR KOKO: And when I – one of the questions I asked from – while I was still in Dubai and the answer I got, no, your accommodation in Dubai you have to pay and I paid and the evidence before you today, if it has not been given to you, will show you that I paid – I made a direct payment to Oberoi.

20 **CHAIRPERSON:** Ja, okay. Well, I am just thinking this thing is becoming more confusing because Mr Gama who gave evidence last week in relation to Transnet, he also had a trip that took him to this same hotel at some stage, I think it was the end of ...[intervenes]

MR KOKO: From the World Economic Forum.

CHAIRPERSON: Huh?

MR KOKO: For the World Economic Forum.

CHAIRPERSON: It might have been from the World Economic Forum.

MR KOKO: Yes and [indistinct – dropping voice]

CHAIRPERSON: And if I recall correctly, under the Transnet work stream there is evidence suggesting that he was – it may have been paid for by Sahara Computers, the same Chawla, Ashu Chawla, I think, is mentioned in emails
10 connected with his stay there and there is correspondence from that hotel to Mr Ashu Chawla about Mr Gama's stay but Mr Gama has also produced an invoice and says he paid for himself. So I am just saying ...[intervenes]

MR KOKO: Ja. Chair, I cannot speak for...

CHAIRPERSON: For other people.

MR KOKO: For other people.

CHAIRPERSON: No, no, I accept that.

MR KOKO: In the same way – I do not know where these emails come from. I suspect they come from the Gupta
20 emails stuff and I do not want to get to - to take you into the authentic or not, for me ...[intervenes]

CHAIRPERSON: Ja, you are not interested.

MR KOKO: I am not interested in it.

CHAIRPERSON: Ja.

MR KOKO: What I will show you, as part of this bundle, is

my email communication with Oberoi.

CHAIRPERSON: Yes.

MR KOKO: It is what I will show you.

CHAIRPERSON: Ja, ja.

MR KOKO: And you have to make the judgment call which ones are authentic.

CHAIRPERSON: Ja, ja.

MR KOKO: Because I have an email – when this story broke out, because I paid, I wrote to them and I said give
10 me proof, give a receipt, they gave me a receipt.

CHAIRPERSON: Ja.

MR KOKO: I took the same receipt to parliament. Mr Seleka asked for it, I gave it to him.

CHAIRPERSON: Ja.

MR KOKO: I believe he has not received it but I gave it to him again. My counsel had a problem with it. He queried it and queried it and then we said okay, let us write to them again, you know, kill this story, let us – we wrote to them and they responded and they confirmed that I paid to
20 them. Again this is before.

CHAIRPERSON: Ja, okay, that is fine.

MR KOKO: The rest of the – whether these emails are authentic or not, you have got investigators.

CHAIRPERSON: Authentic or not, you are not interested in that.

MR KOKO: I am not interested, you have got investigators and they must deal with it.

CHAIRPERSON: Ja. No, that is fine. Mr Seleka?

ADV SELEKA SC: Yes. Thank you, Chair. Let us go now to page – okay, we are done with those pages, Chair. That is on the 3rd. Now on the 4th, let us go to page 1482. There are two emails there ...[intervenes]

CHAIRPERSON: What page again, I am sorry, I was just making some notes.

10 **ADV SELEKA SC:** 1482.

CHAIRPERSON: 1482. Okay.

ADV SELEKA SC: Yes. Chair, you will see there are two emails, the one is right at the foot of the page but that seems to relate to a different person, Mr Dan Mantsha. So we will confine ourselves to the email at the top.

“From concierge TODB, Monday 4 January 2016
...[intervenes]

CHAIRPERSON: I am sorry, where is the one that relates to Mr Dan Mantsha?

20 **ADV SELEKA SC:** Right at the bottom of the page, it goes over to the next page.

CHAIRPERSON: Mr Dan Mantsha might be the person who was Chairperson of the Denel board from about mid-year 2015. Okay, yes.

ADV SELEKA SC: Yes, thank you, Chair. So for present

purposes, Chair, we concentrate on the top one.

CHAIRPERSON: Ja. You focus on what concerns your work stream. Ja.

ADV SELEKA SC: No, what concerns the witness before me, Chair. I have seen that one.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. “

“Concierge to Mr Ashu Chawla. Re drop off”

So it is a reply to his email at the bottom but let us see
10 what the person is writing.

“Dear Mr Chawla, greetings from the Oberoi Dubai.
Please note the chauffeur details mentioned below
for the drop towards Emirates Hill.”

Then the chauffeur’s name is given with the mobile number
and then it reads:

“Please also note the chauffeur details for the
arrival transfers arranged for Mr Koko.”

Then the name is also given for the chauffeur with the
contact numbers.

20 “Please contact me at the concierge for any further
assistance. Warm regards.”

So, Mr Koko, on the face of this, it again looks like Mr
Chawla was involved in the arrangement for a chauffeur for
you on the 4 January 2016. Do you have any comment?

MR KOKO: I have no personal knowledge of this, Chair.

ADV SELEKA SC: Okay. Then let us go to page 1484, Chairperson.

CHAIRPERSON: Yes, I have got it.

ADV SELEKA SC: Thank you. Mr Koko, this appears to be an invoice from the Oberoi Hotel addressed to Sahara Computers. The invoice is dated 10 February 2016. 10/02/2016.

“Kind attention accounts department.”

Date – and the column regarding dates, they give the dates
10 and the first entry is 4/01/2016, 4 January 2016 and in regard to the particulars is your name, Koko Matshela A and they give the details 4 January 2016 – oh, it is arrival date and departure date. 4 is arrival, January 2016, and departure date is 5.

CHAIRPERSON: I guess A after Koko Matshela must be for arrival because he does not have an initial with A.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So D stands for departure, A for arrival.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Okay.

ADV SELEKA SC: And the fees are indicated. The next entry again has the same date, it is like a repetition of the first entry and then they give the amount of 3 160. Then there are other persons there as well which I will leave this to the Chairperson.

CHAIRPERSON: Ja, no that is fine.

ADV SELEKA SC: They are familiar names, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: So three more people seem to have been – at least one's dates coincide with yours, Mr Koko, the others came there after you on the 22 January and the 14 January 2016. Mr Duduzane Zuma on the 14 January 2016. Do you wish to comment on this because it is an invoice addressed to Sahara Computers?

10 **MR KOKO:** Yes. If there is any document you need to verify that is blatantly false is this.

ADV SELEKA SC: Say again, Mr Koko.

MR KOKO: If there is any document you need to verify that in my view is blatantly false and is not in accordance with the evidence before you, that I will show you is this one. This one and the next one following it.

CHAIRPERSON: Yes.

MR KOKO: One. But, two ...[intervenes]

ADV SELEKA SC: Yes, let us go to the next one.

20 **CHAIRPERSON:** Are the reasons the same for both why you say they are false?

MR KOKO: Yes, yes.

CHAIRPERSON: If they are the same then let us go to the next one.

ADV SELEKA SC: No, they are not the same, Chair.

MR KOKO: No, the reasons are the same.

CHAIRPERSON: No, he would know which reasons he is advancing.

ADV SELEKA SC: Oh, the reasons?

CHAIRPERSON: His reasons, ja.

ADV SELEKA SC: Sorry, but these documents are not the same.

CHAIRPERSON: Let us go to the next document so that he can give me the reasons only once.

10 **ADV SELEKA SC**: Okay, I am with you, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes. Page 1485. Mr Koko has already seen this from his comment. So this is, on the face of it, an invoice with the name Mr Matshela Koko and under that name is Sahara Computers and then there is a DBL, South African travel agent. That one is blank, no name is given. Against the name company you have Sahara Computers and there is a billing, the invoice on the right hand side, Chair, where you have the room number, 1601 guests.

20 Arrival, you have the same date and departure, the bill number, the rate, printed on 2 February 2016, the cashier's name is also there and this, on the face of it, Mr Koko, seems to relate to your stay at the hotel, Description of what they charged for, mini-bar, food, in-room dining food, accommodation charge, tourism fee, rooms municipality fee

and so on. So then you can address the Chairperson in regard to this invoice, which seems to be a charge for the services rendered to you, but directed either to yourself or to Sahara Computers.

MR KOKO: Chair, can you go to Eskom bundle 15(c)?

CHAIRPERSON: 15(e)?

MR KOKO: (c).

ADV SELEKA SC: The next one, Chair.

MR KOKO: Yes but please do not move away from
10 ...[intervenes]

CHAIRPERSON: From this page.

MR KOKO: Ja.

CHAIRPERSON: Ja, okay, that is alright. Eskom bundle 15(c). Have you got a page number?

MR KOKO: Page 66.

ADV SELEKA SC: 1565.

MR KOKO: Page 66.

CHAIRPERSON: Have you got the page?

ADV SELEKA SC: Page number?

20 **MR KOKO**: 1565.

ADV SELEKA SC: 1565.

CHAIRPERSON: I have got it.

MR KOKO: The document you have in front of you on page 1565 on Eskom bundle 15(c), it is an invoice dated – printed on the 6 October 2017 and it was emailed to me by

Oberoi and it is a correct invoice. The document that you looked at in 15(b), Eskom bundle 15(b), 1485, purports to be the invoice. I do not know what is the source of it but the document coming from Oberoi tells you services that was rendered to me that I received.

CHAIRPERSON: I know you are struggling because you have small space there but when you speak away from the mic I cannot hear you.

MR KOKO: Understood, Chair.

10 **CHAIRPERSON**: Yes. Okay, alright, just make the point again? You said the invoice that is at...

MR KOKO: 1565, bundle 15(c).

CHAIRPERSON: Is the correct invoice.

MR KOKO: I an invoice sent to me by Oberoi. It is in my name, top left, Matshela Koko.

CHAIRPERSON: Yes.

MR KOKO: It has no company names – name.

CHAIRPERSON: Ja.

20 **MR KOKO**: It shows that I made a direct payment on the 4 January 2016.

CHAIRPERSON: Yes.

MR KOKO: Direct payment. You will see that it has got a – it is a stamp from Oberoi that says Invoice Paid.

CHAIRPERSON: Ja.

MR KOKO: Right. But that is only reference to Oberoi.

My counsel had a problem with that.

CHAIRPERSON: Had a problem with which one?

MR KOKO: The document you see on Eskom 15(c) 1565.

CHAIRPERSON: Okay, yes.

MR KOKO: And the problem my counsel had was that the only reference to Oberoi is that stamp and nowhere else does it show that it comes from ...[intervenes]

CHAIRPERSON: That hotel.

MR KOKO: From the hotel and basically my counsel
10 pushed back on it.

CHAIRPERSON: Ja.

MR KOKO: And then on page – on the next page, Eskom bundle 15(c), 1566.

CHAIRPERSON: Ja.

MR KOKO: You will see there an email from me to Oberoi Hotel and it is in 2018, February and it is the general manager of the Oberoi Hotel and I said to him – and I write to him 24 minutes past eight in the morning, on the morning of the 13 February, on Tuesday and I say to the
20 general manager - and his name is there, I say:

“My name is Matshela Koko and the copy of my passport photo is attached.”

I have to send in a copy of my passport to authenticate myself otherwise anybody can do that.

“I arrived at your hotel on 4 January 2016 and left

on 5 January 2016. I was booked in room 1601 with my wife and my young son. My bill number is 76255, I made a direct payment and no third party paid for me, I need the information invoice please.”

On the next page ...[intervenes]

CHAIRPERSON: That is page 1567?

MR KOKO: Page 1567, the general manager of the Oberoi Hotel responds to me:

10 “Dear Mr Koko, thank you for your kind email and for having been our guest on 4 January 2016 for one night. As requested, please find above attached the invoice for your last stay with us. Should you require any further information please do not hesitate to contact me directly. Best regards.”

On page 1570, that is the Oberoi invoice.

CHAIRPERSON: 1570?

MR KOKO: 1570.

CHAIRPERSON: Okay.

20 **MR KOKO**: And this met the requirements of my counsel and you will see that it – at the top it comes from Oberoi, invoice directed to me, again paid direct payment. So I cannot talk to other communications between Oberoi and Ashu Chawla and I do not know them.

CHAIRPERSON: Ja.

MR KOKO: I communicate directly with Oberoi for the payment that I made directly and that is all what I can – that is my evidence to you.

CHAIRPERSON: Ja.

MR KOKO: The rest I do not know and I cannot talk about other people that are not here.

CHAIRPERSON: No, no, that is fine. The same thing that has happened here has happened in the case of Mr Gama, so I think, Mr Seleka, you and Mr Myburgh, who is the
10 evidence leader in the Transnet work stream need to talk to try and establish what is going on here because in respect of Mr Gama, with reference to the same hotel, there is an invoice that has got the hotel's name and that also that is addressed to Mr Ashu Chawla or Sahara Computers and on the fact of it you will say that the booking was made – you would say that Mr Gama is associated with or is part of Sahara Computers and then - I think that invoice had been obtained by the investigation team maybe from the Gupta Leaks, I am not sure. And
20 then Mr Gama had obtained an invoice from the same hotel. I do not know if it was two invoices, from the same hotel because he too maintained that he had paid for himself on the occasion of his stay in that hotel. He contacted the hotel and he said he obtained an invoice. Now one of the invoices, there were two invoices in regard

to Mr Gama or if not three, I cannot remember, but one of them also had the date stamp, just like one of these date stamps. The other one I might not have had the stamp and might not have had the name of the hotel either. So the same issues arise where there is correspondence that suggests that the invoice was sent to Sahara Computers or that Sahara Computers paid but the guest also says I paid and obtains from the hotel documentation that suggests that they paid. So it looks like...

10 **ADV SELEKA SC**: Yes.

CHAIRPERSON: Like the travel agents ...[intervenes]

MR KOKO: Chair, there is one thing, there is one step you are not mentioning.

CHAIRPERSON: Ja, well maybe I was still going there but mention it.

MR KOKO: The step is, it is not the evidence before you that Sahara paid.

CHAIRPERSON: Sorry?

MR KOKO: It is not the evidence that...

20 **CHAIRPERSON**: Ja.

MR KOKO: Or it is not the submissions being made to you that Sahara paid ...[intervenes]

CHAIRPERSON: Well, I am not going ...[intervenes]

MR KOKO: And I have not even seeing any ...[intervenes]

CHAIRPERSON: In regard to ...[intervenes]

MR KOKO: I am not seeing any evidence before you.

CHAIRPERSON: Ja.

MR KOKO: That says Sahara paid.

CHAIRPERSON: No, no, no, I am not that far yet, you know, but you are right to mention that but with or without them having paid, there is sufficient concern to say what is going on here, you know? You know, what exactly is going on? So, I think, the evidence leaders must look into that and probably something more needs to be done.

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

CHAIRPERSON: To try and establish what exactly is the position.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay, alright. But to go to your reasons, Mr Koko, because I think you did not actually complete your reasons why you say the one on bundle 15 at page 1485 is false. Are you saying that because one, it does not have the name of the hotel? Two – is that what you say?

20 **MR KOKO**: Chair, there is a lot of issues I can say but I will not say them. All what I can tell you is this.

CHAIRPERSON: Ja.

MR KOKO: The date of this invoice is 10 February 2016.

CHAIRPERSON: Is that the date when it was printed?

MR KOKO: Yes, top right corner.

CHAIRPERSON: I see 2 February, you say 10.

MR KOKO: Well ...[intervenes]

CHAIRPERSON: I am talking about the one at bundle 15 page 1485 because that is the one you say is false.

MR KOKO: Chair, on page 1485, bundle 15(b) just at the of the box there is a date there. I read there ...[intervenes]

CHAIRPERSON: For printing or for what? I see three dates, one for your arrival, one for departure ...[intervenes]

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

10 **CHAIRPERSON**: One for printed on.

MR KOKO: Just on top of the total amount 275 with the date right at the top.

ADV SELEKA SC: Chair, I think Mr Koko is on a different page.

CHAIRPERSON: I suspect so.

MR KOKO: Yes, you are right.

ADV SELEKA SC: 1484.

MR KOKO: 1484, I apologise, Chair.

CHAIRPERSON: Yes?

20 **MR KOKO**: The date at the top I read it as 10 February 2016. That is the date of the invoice.

CHAIRPERSON: But the one which is 1485 is an invoice, the one at page 1484 ...[intervenes]

MR KOKO: Chair, I sincerely apologise, I am probably misleading but it is ...[intervenes]

CHAIRPERSON: Hang on, let us not speak at the same time, Mr Koko. The one at page 1484 – oh, is also an invoice. Okay, I did not realise that.

MR KOKO: They are both invoices, Chair.

CHAIRPERSON: Okay, alright, but the one is for a number of people.

MR KOKO: The one is for a number of people.

CHAIRPERSON: Ja.

MR KOKO: And the other one is for me.

10 **CHAIRPERSON**: Ja, ja.

MR KOKO: So the one printed on the 10 February says that I owed Oberoi Hotel 3 435 Dirham.

CHAIRPERSON: As at the 10 February.

MR KOKO: As at the 10 February, ja, and I am saying that is false.

CHAIRPERSON: Yes.

MR KOKO: Right, if you go to the next one, it is printed earlier, it is printed the 2 February.

CHAIRPERSON: Yes.

20 **MR KOKO**: An it says I do not owe.

CHAIRPERSON: I see that, yes.

MR KOKO: It says I do not owe.

CHAIRPERSON: Yes.

MR KOKO: So just at the face of it, one of them is wrong.

CHAIRPERSON: Ja.

MR KOKO: Right?

CHAIRPERSON: Ja.

MR KOKO: So, it cannot both be right.

CHAIRPERSON: And then, of course – well, the one that you obtained after your counsel had raised issues about the one at 1485, that one appears to be an original invoice.

MR KOKO: Correct.

CHAIRPERSON: And the balance there is ...[intervenes]

MR KOKO: Is zero.

10 **CHAIRPERSON**: Zero.

MR KOKO: Yes.

CHAIRPERSON: I does not indicate when it was printed, of course, or does it?

MR KOKO: It does, Chair.

CHAIRPERSON: Oh, where is that?

MR KOKO: It does not but the email accompanying it is February 2018.

CHAIRPERSON: Ja. Yes, okay, so ...[intervenes]

20 **MR KOKO**: Just the audit trail show the falsehood of what is in the Gupta emails, allegedly. So – and but I do not want to be the one dealing with the falsehood of the audit trail, on the false – all what I am simply saying to you, by simply looking at it and doing the audit of the documents you find in the audit trail, there are significant contradictions to them. But finally, it is still directed to

Sahara and I had nothing to do with Sahara.

CHAIRPERSON: Ja. Well, I must just also mention – I forgot something. You see, the invoice at page 1485, one of the two that you say must be false ...[intervenes]

MR KOKO: I am there, Chair, bundle 15(c).

CHAIRPERSON: Ja, has got Mr Matshela Koko, Sahara Computers.

MR KOKO: Yes.

CHAIRPERSON: I did not double-check but I suspect that
10 the one that you obtained after your counsel had raised issues with this one does not have Sahara Computers.

MR KOKO: No, it does not.

CHAIRPERSON: Because obviously if it had you would raise the issue.

MR KOKO: Yes, it does not. Even the one ...[intervenes]

CHAIRPERSON: Because the position is that you had nothing to do with Sahara Computers.

MR KOKO: Exactly. Even the one that I obtained before my counsel queried, it did have Sahara.

20 **CHAIRPERSON:** Yes. Well, I want to say Mr Gama's one or one of those ones also had Sahara Computers and then the one that he obtained himself did not have any mention of Sahara Computers. So I am just mentioning that there are these features about this hotel and its invoices that are ...[intervenes]

MR KOKO: Chair, I assume you are making a big assumption that these emails are correct. I have just showed you the contradictions ...[intervenes]

CHAIRPERSON: No, no, I have just said to Mr Seleka, you remember I said he and the other evidence leader must look into this because you cannot – on the face of it you cannot have this kind of situation.

MR KOKO: Yes, yes. Just – please recognise my approach.

10 **CHAIRPERSON**: Yes.

MR KOKO: My approach is the one that say I will talk to the evidence I know.

CHAIRPERSON: No, no, no, I understand that.

MR KOKO: I will not rubbish the other evidence, it will rubbish itself.

CHAIRPERSON: Ja.

MR KOKO: I will only talk to what I know, I will only...

20 **CHAIRPERSON**: No, no, no, I understand that but, you see, you can afford to take that approach because you are not sitting here.

MR KOKO: Correct, Chair.

CHAIRPERSON: I am sitting here and having seen that the same thing has happened in another work stream in regard to the same hotel concerning somebody who was a guest at that hotel, I have to say what is going on here?

So that is why I said the investigators must ...[intervenes]

MR KOKO: Understood, Chair.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Mr Koko, insofar as whether or not Sahara paid, we have seen that email from Mr Ashu Chawla saying to Ria:

10 “Sahara will pay the entire bill, please do not ask
any credit card guarantee from the guest at the time
of check-in.”

And then obviously see that invoice goes to them. I want to ask you this, Mr Koko. When you say you paid for yourself on arrival, were you not given proof of your payment?

MR KOKO: Chair, I was. That is 2015. The documents before you, you realise that I have to retrieve them and email them. I had them before. But I did not have the foresight that I will be sitting here, needing those
20 documents. All the documents I have here, I acquired them later. I had them before and if I knew that I will be sitting here I would have kept everything safe but I did not expect to be sitting here, so I do not have them. But I was given ...[intervenes]

CHAIRPERSON: I assume you would have paid with your

card?

MR KOKO: No, Chair, when I travel, I bought a lot of – at the airport, just what you buy, a lot of [inaudible – speaking simultaneously]

CHAIRPERSON: ...and Euros.

MR KOKO: Yes and you buy, you pay, you ...[intervenes]

CHAIRPERSON: So you paid cash.

MR KOKO: I paid cash, yes.

ADV SELEKA SC: Ja because clearly from the
10 communication they were told not to take your card for the purposes of guaranteeing the payment when you are checking in, so it seems card was the method by means of which you would have had to guarantee your payment based on that email exchange with the hotel.

CHAIRPERSON: Of course he had cash he would not have to guarantee anything.

MR KOKO: I do not understand.

CHAIRPERSON: Ja because he would just give them and that is it.

20 **ADV SELEKA SC**: Okay, my question was, number one, because this was a follow-up. Number two is, of course these are invoices that you have requested in February 2018. There is no proof of payment. These are just invoices that either were issued to you or to Sahara Computers but there is no proof of payment.

MR KOKO: Chair, the invoice tells you who made the payment and that should be good enough. It says so, a direct payment by the client. That is what it says. I do not – I cannot take it any further than that, the invoice speaks for itself.

ADV SELEKA SC: Yes.

CHAIRPERSON: Of course on your version, Mr Koko, if your version is true, let us proceed on that basis, then the scenario which would emerge is that people connected with
10 Mr Salim Essa or Salim Essa and Sahara Computers, Mr Chawla, they are all busy together with travel agents they use, namely Travel Excellence, they are all busy wanting to make bookings for your travelling and accommodation and even wanting to pay for these in circumstances where you have nothing to do with them. Of course you say Ms Daniels is the one who is putting them to all of this without my knowledge. You agree, that is the picture that emerges.

MR KOKO: I agree but there is one step further.

20 **CHAIRPERSON:** Ja.

MR KOKO: I have made submissions to you that all material times I know who paid for my travels.

CHAIRPERSON: Ja, no, no, that ...[intervenes]

MR KOKO: So at no material times – there is no ambiguity.

CHAIRPERSON: Ja, no, no, no ...[intervenes]

MR KOKO: I have given you documentary proof.

CHAIRPERSON: I understand that.

MR KOKO: About the payments. But I agree with you.

CHAIRPERSON: Ja, ja. So on your version it is Ms Daniels who just does not want you to use your own money as far as she is concerned for this travelling and accommodation, she wants these people to make bookings for you and to pay for you in circumstances where, from
10 your point of view, they do not know you, they have nothing to do with you, but she is buy wanting them to incur all of these expenses and they probably do not even ask why must we pay for Mr Koko, Ms Daniels? Why? We do not know him, we have nothing to do with him, why must we pay for him? You understand that that is the scenario that emerges?

MR KOKO: Yes, yes and I need to comment on that.

CHAIRPERSON: Ja, comment on it, ja.

MR KOKO: Chair, one of the things you must look at, it is
20 a document that I got from your legal team and I have come to accept that some documents are made available to me by your legal team and your investigators, but you never come to see them.

CHAIRPERSON: Oh. You mean I never come to see them?

MR KOKO: Yes.

CHAIRPERSON: Okay, yes?

MR KOKO: So I have come to accept that.

CHAIRPERSON: They are not in the bundle, the bundles.

MR KOKO: I need you go and read the judgment that is written by a colleague of [indistinct – dropping voice] Mr Cassim.

CHAIRPERSON: About Ms Daniels?

MR KOKO: About Ms Daniels.

10 **CHAIRPERSON**: I have read it.

MR KOKO: And you will – once you read that judgment you will then get a picture of who Ms Daniels is.

CHAIRPERSON: Ja, no, no, I read it before she came to testify for the first time.

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: And once we look at this evidence, you will not take long to realise who Ms Daniels was doing the bidding for. I did not know that but now I have regards to
20 the evidence. In bundle – in part 3 of Eskom 15(c), I have included emails that shows her communications, blind copy me, vice versa. I am curiously waiting for the report of Prof Bux of the forensics. When we were here we made to write a letter to him which we did. My proposition is that you are going to find all these letters on her computer. In

her affidavit, in her transcript and I can take you to them because I have got it, she accept and concedes that the letters of suspensions comes from her. The origination of the template comes from her. The professor says it comes from her computer and was modified on another computer, of an Apple computer. They have offered her R800 million at Megawatt Park. I never had that contact with her. She says no, she wakes up on a Saturday morning to a meeting in Melrose Arch to meet people with pyjamas. I am simply
10 saying, once you have regard to the transcripts when Ms Daniels was dismissed, you will not spend long to see who was the main Gupta man at Eskom or woman.

CHAIRPERSON: Well, let us say she was a Gupta person at Eskom. This is 2015 or early 2016 when you returned from your trip. Now I go back to a question I raised earlier on. At that time during that year the two of you were still close based on what you testified. Now I am trying to understand what her motive would have been to say look, I know Mr Koko uses Thompsons for travelling arrangements
20 but – and he will pay them, for himself, but I am going to ask Mr Salim Essa to speak to the travel agents he uses to say can they make bookings for him and then maybe she asked him to talk to Mr Chawla to arrange the accommodation. So I go back to the question of what is the motive because the one thing she must think about is

that if you wanted her to talk to Thompsons to make bookings for you and she has gone now to other people you will not be happy with that. Why is she...?

MR KOKO: Yes. So, Chair, remember, this is a trip that I paid fully for.

CHAIRPERSON: Yes, yes.

MR KOKO: And the only thing that was a problem was a visa which my experience with her was that those type of arrangements she will easily dispose of, easily, quickly,
10 that is the only reason I went to her. My proposition is that it was easier for her to deal with these friends to sort out my problem.

CHAIRPERSON: Ja.

MR KOKO: And that is why when I asked her *post facto*, she said it was convenience.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Chair, warn me not to touch on everything Mr Koko but ...[intervenes]

CHAIRPERSON: I said non-material things. If it is
20 something important, material, obviously you have deal with that.

ADV SELEKA SC: Correct, Chair. Mr Koko you realise you are saying the invoice says that it is payment by the client.

MR KOKO: It is a direct payment.

ADV SELEKA SC: Yes, by the client.

MR KOKO: Yes.

ADV SELEKA SC: But it does not say ...[intervenes]

CHAIRPERSON: Well, he said direct payment which he said he is interpreting to mean payment by him.

MR KOKO: Yes.

ADV SELEKA SC: Ja, okay. Yes, no, I just wanted to establish that that is his interpretation.

CHAIRPERSON: It is his interpretation, ja.

10 **ADV SELEKA SC:** Thank you.

MR KOKO: Yes and it is specific, Chair. If I can read to you ...[intervenes]

CHAIRPERSON: No, no, no, do not read it, Mr Koko.

ADV SELEKA SC: Ja, we will see it.

CHAIRPERSON: We will know – but we have seen it, ja. Okay.

ADV SELEKA SC: Mr Koko, then that completes this matter.

CHAIRPERSON: Of the travelling.

20 **ADV SELEKA SC:** Of the travelling, Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: It is completed.

CHAIRPERSON: Do we put away these bundles or...?

ADV SELEKA SC: Bundle 15(b) we should still use it. The other ones we can put away.

CHAIRPERSON: Okay.

ADV SELEKA SC: Hopefully we will be brief on this one, Mr Koko. It is a question that had been asked at the Parliamentary Portfolio Committee and, Chair, in Eskom 15(b) if we could go to page 1081 and this in regard to the Guptas. Page 1081, sorry.

CHAIRPERSON: I do not have 10...

ADV SELEKA SC: ...81.

CHAIRPERSON: Well, I have got one that is written by
10 hand when other pages are typed. Is that the one you are talking about? It is on Mr Koko's affidavit, supplementary affidavit. Mr Koko's supplementary affidavit starts on 1047 and goes up to 1098. So 1081 is page 37 of his affidavit. Do we have different bundles?

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

CHAIRPERSON: Otherwise his affidavit the next page that is type in terms of pagination is 1184.

ADV SELEKA SC: Is that 15(b), Chair, what you have?

CHAIRPERSON: Yes, I think so, I think I checked. Yes,
20 Eskom bundle 15(b).

ADV SELEKA SC: Oh, that is...

CHAIRPERSON: Do you want to double-check whether you have got the same?

ADV SELEKA SC: Ja, I see – the Chairperson has – okay, I am at 10. Let us see, Chairperson, because the

transcript starts on page 1047.

CHAIRPERSON: Just hang on one second, just see this letter that sets out Mr Koko's concerns as at 3 December 2020 but I think that is the one that we have dealt with.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay. Yes, you see, the last page before Mr Koko's supplementary affidavit is 1181. No, maybe I - I think I went to 11 instead of 10.

ADV SELEKA SC: Oh, okay.

10 **CHAIRPERSON**: Okay, no, now I have 1081. I think I was at a wrong place.

ADV SELEKA SC: Okay.

CHAIRPERSON: But Mr Koko's supplementary affidavit needs to be properly paginated in terms of typed - in terms of it being typed, in terms of the pagination being typed.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: I think that affidavit is misplaced, Chair. I know it is somewhere else properly paginated. I
20 need to look at the Chairperson's bundle.

CHAIRPERSON: When we are finished, you know, you must take it and make sure that it is put in the right place.

MR KOKO: Yes, Chair.

CHAIRPERSON: Okay, I am at 1081.

ADV SELEKA SC: Thank you, Chair, you will see 1081 Mr

Koko, you are already there.

MR KOKO: I am there, Chair.

CHAIRPERSON: First tell us what is the document at page 1081, Mr Seleka?

ADV SELEKA SC: It is a ...[intervenes]

CHAIRPERSON: It is a transcript of the Eskom Inquiry in parliament?

ADV SELEKA SC: The Parliamentary Portfolio Committee, correct, Chair.

10 **CHAIRPERSON**: Yes okay and it starts at page 1047?

ADV SELEKA SC: Correct.

CHAIRPERSON: Then it continues.

ADV SELEKA SC: It continues until page 1128.

CHAIRPERSON: Yes and at 1081 there are questions by committee members to Mr Koko.

ADV SELEKA SC: Then, Chair, I think – sorry, Chair, to make that point I was making, it is after this transcript that you see Mr Koko's supplementary affidavit at 1129.

CHAIRPERSON: Oh, one of his supplementary affidavits?

20 **ADV SELEKA SC**: It is that same one which is not paginated.

CHAIRPERSON: Oh, it is a duplication?

ADV SELEKA SC: That is correct, Chair.

CHAIRPERSON: So this other one should...

ADV SELEKA SC: Should be taken out.

CHAIRPERSON: Should be taken out?

ADV SELEKA SC: Yes. But I will regularise the Chairperson's file, ja.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: So let us go back to 1081. Mr Koko, you will recall you were asked about whether you know the Guptas and the question arises from here.

CHAIRPERSON: He was asked whether.

ADV SELEKA SC: I will read the question.

10 **CHAIRPERSON:** Ja.

ADV SELEKA SC: Whether he knows the Guptas.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: So it is – the first question is Dr Luyende(?) who says:

20 "Mr Koko, it is the opportune time for you make a contribution that will clear the dark cloud over the state owned enterprises of which Eskom is one of them, on perception that is all over that the state resources that are looted deliberately by individuals within these institutions. It is something that is a concern to all South Africans so the position that you are in and the importance of the position that you are filling should be used by use here because we rely on you to clear that information honestly. And the question is, can you clearly indicate that in

the position that you are in you do not know any of the Gupta family members pertaining to the service provision at Eskom illegally or, if legal, you indicate.”

Do you recall this question, Mr Koko?

MR KOKO: Yes, I do.

ADV SELEKA SC: Yes. And then your answer comes after the Chairperson’s remarks there, Mr Chair, says against the name Mr Koko, your response was:

10 “I do not know, I have not met any of the Gupta brothers I see in the pictures. I have met Mr Howa, I have met Ashu, I have met Salim Essa.”

MR KOKO: That is correct.

ADV SELEKA SC: That is correct. And I have shared with you ...[intervenes]

CHAIRPERSON: I am sorry.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: I understand, Mr Koko, that last portion of that answer in the transcript where it says:

20 “I have met Mr Howa, I have met Ashu, I have met Salim Essa.”

I understand within the context of the first sentence you make that that is what the media is saying, not that you were saying yourself you had met them?

MR KOKO: No, no, no, no, I have met Mr Howa.

CHAIRPERSON: Oh.

MR KOKO: At that point I had met Mr Howa.

CHAIRPERSON: By that time.

MR KOKO: By that time.

CHAIRPERSON: Oh.

MR KOKO: I had met Mr Ashu.

CHAIRPERSON: And you had met Mr Salim Essa?

MR KOKO: And I had met Mr Salim Essa.

CHAIRPERSON: Okay, okay, no, no, that is fine. But why
10 does the first sentence say:

“I do not know, I have not met any of the
...[intervenes]

MR KOKO: Gupta brothers.

CHAIRPERSON: Oh, that is the Gupta brothers.

MR KOKO: Yes.

CHAIRPERSON: As opposed to those referred to as their
associates.

MR KOKO: Yes, yes.

CHAIRPERSON: Okay, that is fine. So you make a
20 distinction, I have not met any of the Gupta brothers but
here are people that I have met.

MR KOKO: Correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: And, Mr Koko, these are people who
have had dealings with the Guptas, they have had dealings

with the Guptas.

MR KOKO: Well, they are regarded as Gupta associates.

ADV SELEKA SC: As Gupta associates.

MR KOKO: That is what the media cast them as.

ADV SELEKA SC: Ja. Mr Salim Essa, we know from Eskom's evidence that he was in Switzerland with Mr Zwane at the time, Minister Zwane and Tony Gupta to negotiate the deal for Tegeta and Oakbay to acquire OCH – OCM. So we know from that evidence.

10 **MR KOKO**: I know from the evidence of Mr [indistinct], I know from the evidence of Clinton Ephron and Mr Mosebenzi Zwane did not deny that. So that is far as I can say, comment to your statement.

ADV SELEKA SC: Ja. So Mr Ashu here is the same Mr Ashu Chawla we have reading about in the emails.

MR KOKO: Yes.

ADV SELEKA SC: Ja. Just quickly on the Guptas, focusing on the Guptas, we now shared with you the affidavit of witness 3.

20 **MR KOKO**: Yes.

ADV SELEKA SC: What they refer to as witness 3.

MR KOKO: Yes.

ADV SELEKA SC: I know that the Chairperson will not ...[intervenes]

CHAIRPERSON: Before the witness 3 issue.

ADV SELEKA SC: Yes.

CHAIRPERSON: So you had – you met Mr Ashu Chawla on 24 November 2015, that is the month when bookings were being made for you, is that right?

MR KOKO: Yes.

CHAIRPERSON: Yes, okay. And you say he was with Mr Howa and Mr Salim Essa?

MR KOKO: No.

CHAIRPERSON: Oh, I thought this sentence says that, it
10 does not say that?

MR KOKO: No, the sentence does not say that, Chair.

CHAIRPERSON: Oh, okay.

MR KOKO: So I met them on different occasions.

CHAIRPERSON: Oh, you met them – oh, you met him on the 24th?

MR KOKO: Yes.

CHAIRPERSON: But the others you were not – you did not mean that you met them on the same occasion with them.

20 **MR KOKO:** No, Chair. So I am certainly – I am certain that we will get to the meeting of the 24 November 2015. Mr Seleka likes that meeting a lot.

CHAIRPERSON: Yes, ja.

MR KOKO: So I am certainly sure he will take use there.

CHAIRPERSON: Except that, Mr Koko, you say in that

sentence:

“I met Mr Ashu – was in the meeting of 24
November 2015 with Mr Howa.”

MR KOKO: Correct.

CHAIRPERSON: So the two of them were in this
...[intervenes]

MR KOKO: Correct.

CHAIRPERSON: Oh, Mr Salim Essa was not in that
meeting.

10 **MR KOKO**: Yes.

CHAIRPERSON: Okay.

MR KOKO: And we will go to the – I am certain we will
not close today without going to that meeting.

CHAIRPERSON: Ja, okay. No, that is fine.

MR KOKO: And it has got minutes and you will the
minutes of the meeting, Ashu is there, Chawla is there and
other executives.

CHAIRPERSON: Yes. Okay, no, that is fine, that is fine.

CHAIRPERSON: No, I did not see the full stop after Mr
20 Howa in the transcript. Okay, it is:

“Mr Salim Essa, I have met a couple of times, he is
a shareholder of Trillian and he met me a couple of
times to discuss Trillian transactions.”

So when would you say you met him for the first time, are
you...?

MR KOKO: Chair, I am on record.

CHAIRPERSON: Ja.

MR KOKO: I have given evidence here.

CHAIRPERSON: Ja, that was early in 2016.

MR KOKO: On the 10th – it was after the 10 February 2016.

CHAIRPERSON: Ja, okay.

MR KOKO: That was our first meeting.

CHAIRPERSON: Okay.

10 **MR KOKO**: And then our last meeting was around June 2016.

CHAIRPERSON: Okay. No, that is fine. Of course, Mr Koko, although you do listen to a lot of evidence of different witnesses you only have to remember those who say something about you. I sit here and listen to a few hundred – I have set here, listen to quite a number of witnesses, so I am not going to always remember what Mr Koko said on a particular day.

MR KOKO: Chair, I run a business.

20 **CHAIRPERSON**: Ja.

MR KOKO: That does its business – it is with cross-border. I am a project developer.

CHAIRPERSON: Ja.

MR KOKO: I am happy I left Eskom contrary to what many people think. Leaving Eskom was the best thing that

happened to me.

CHAIRPERSON: Ja.

MR KOKO: So every time I take time off to watch witnesses at Zondo, at the state capture, it is a [indistinct] my pocket.

CHAIRPERSON: Ja.

MR KOKO: So I do not watch – I do not sit and watch Zondo, I sit and watch witnesses that are of interest to me.

CHAIRPERSON: Ja. No, no, I understand, ja. But you
10 know why I was saying ...[intervenes]

MR KOKO: I understand that, Chair.

CHAIRPERSON: Ja, okay. So on a lighter ...[intervenes]

MR KOKO: I apologise when I say Zondo.

CHAIRPERSON: Okay.

MR KOKO: That is how – that is what we refer to the Commission, Chair, the Zondo Commission.

CHAIRPERSON: On a lighter note, does that mean your blood is no longer blue, now that you run your own business?

20 **MR KOKO:** I have moved on and even if you can rule that I must go to Eskom, I will refuse. I will refuse.

CHAIRPERSON: Okay. Let us continue.

ADV SELEKA SC: Yes, thank you, Chair.

MR KOKO: Chair, my blood is blue, you can see it.

CHAIRPERSON: Still blue?

MR KOKO: You can see it.

ADV SELEKA SC: Chair, I know ...[intervenes]

MR KOKO: You do not throw away 33 years of your life overnight.

CHAIRPERSON: Ja. I understand.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Mr Koko, questions of interest arise from what you say there about Mr Salim Essa.

10 “Salim Essa, I have met a couple of times, he is a shareholder of Trillian and he met me a couple of times to discuss the Trillian transaction.”

Which transaction was that?

MR KOKO: The Trillian transaction, Chair, was the MSA contract with McKinsey. That is what I referred to there. Now I may have used an unfortunately terminology there but when I say Trillian transaction I meant the contract that Eskom had with McKinsey.

20 **ADV SELEKA SC**: So when – and I will be quick on this because of what I see here, I want to go to the Guptas. When would you have met with him given that McKinsey decided quite early on not to have Trillian as their subcontractor?

MR KOKO: Chair, once again I testified to this, that I met Mr Salim Essa after the meeting I had with the lady – oh, I

forgot her..

ADV SELEKA SC: Goodson.

MR KOKO: Ms Goodson. And that meeting was on the 10 February 2016 and that was the meeting where she asked me to pay the invoice of 30.6 million. I met him after that.

ADV SELEKA SC: Yes. But your evidence to the parliamentary portfolio committee is that Salim Essa, I have met him a couple of times, not once.

MR KOKO: Of course, I have said I have met him – I can
10 only remember two occasions, in fact I have met him only twice, not a couple of times. I have met him in February and I have met him in March – I beg your pardon, I have met him in June. My main affidavit deals with those meetings.

ADV SELEKA SC: The invoice of 30.6 million has nothing to do with the MSA. You are saying your meetings with him here was about the MSA, the Trillian transaction which you say you should have used the word MSA.

MR KOKO: Chair, Mr Seleka is right, so – and we are
20 dealing with semantics here. So when I said McKinsey – Trillian transaction, I refer to the relationship that Trillian has with McKinsey that brought them to Eskom. So I do not know how to answer that question. It is quite simple, the only relationship that Eskom had with Trillian was McKinsey. That is the only relationship, there was no any

other relationship and Mr Seleka is right, the 30.6 million transaction had nothing to do with the MSA it had to do with the corporate plan. So if I can be – if I can try to be precise to you, I will say corporate plan/MSA.

CHAIRPERSON: Of course, Mr Koko, I would expect you if you – if the meeting was about maybe their relationship to say relationship as opposed to transaction. Post transaction seems to be specific as if there was a specific transaction.

10 **MR KOKO**: Chair, I have only met Mr Essa purely on specific transactions. We have never met to discuss anything general.

CHAIRPERSON: Oh, okay, then I must have I misunderstood you.

MR KOKO: We have never to discuss anything general. On two occasions I have met Salim Essa our discussion was very specific.

CHAIRPERSON: So on this occasion on the – you said you met him a couple of times to discuss the Trillian
20 transaction.

MR KOKO: Yes.

CHAIRPERSON: Which transaction was that?

MR KOKO: Corporate plan/MSA.

CHAIRPERSON: Ja, okay. Mr Seleka.

ADV SELEKA SC: Mr Koko did say MSA.

MR KOKO: I did say MSA, Chair.

CHAIRPERSON: Mr Seleka – I nearly said Mr Salim Essa.

MR KOKO: No, no, no, I did say MSA, Chair. But it is nothing untoward there, I mean, I have said on many occasions here how even you, Chair, confusing the MSA and the corporate plan.

CHAIRPERSON: Ja.

MR KOKO: Even Mr Seleka used to do that.

ADV SELEKA SC: No.

10 **MR KOKO**: The only discussions I have had with Mr Essa were specific and related to the corporate plan and MSA. That is the only relationship I had, that is the only discussions I had with Mr Essa.

ADV SELEKA SC: So if you met with him in June 2015, Mr Koko, about the MSA, why would that be – why would you have met with him?

MR KOKO: Exactly, Chair, if you look at my main affidavit, I deal with that topic exactly because it raises eyebrows because in March McKinsey had already told us
20 that they are not having a relationship with Trillian.

CHAIRPERSON: The red flags were...

MR KOKO: Yes.

CHAIRPERSON: Ja.

MR KOKO: Yes, they wrote to us I think on the – either the 29th or the 28th.

CHAIRPERSON: 29 March.

MR KOKO: Yes, my affidavit deals with that. The arrangement Eskom had with McKinsey at that time was that it is termination but six months that – six months period, six months termination.

CHAIRPERSON: Six months notice. Or a certain period within which the arrangement would continue.

MR KOKO: Yes.

CHAIRPERSON: Before it is finally terminated.

10 **MR KOKO**: Exactly.

CHAIRPERSON: It comes to an end.

MR KOKO: Exactly.

CHAIRPERSON: Okay.

MR KOKO: Exactly, now I have heard too many versions of that. The fact is there continued to be a relationship between McKinsey/Trillian post March and the argument was work has been done therefore the partners are entitled to be paid. That was the discussions we had in March and my response to them, you will see it in my affidavit, I said
20 guys, I do not care who did the work, I have not contract with you guys, I have got contract with this one. I will pay this one on a valid invoice and it is up to you guys how you manage your relationships. So that the discussions we have made in March. My main affidavit is very clear. I even make a point in my main affidavit that this meeting

was strange given that the relationship with McKinsey had ceased to be the case in March. So I deal with that quite nicely.

ADV SELEKA SC: Thank you, Chair, because we know from Dr Weiss' affidavit that they never partnered with Trillian. So your – the convening of the meeting is surprising in the light of what you knew at the meeting of the 30 March 2016.

MR KOKO: Yes and the beauty part about it is that
10 present in that meeting was McKinsey executive, Sagar.

ADV SELEKA SC: I had not finished, but...

CHAIRPERSON: Ja, let him finish, Mr Koko. Ja.

ADV SELEKA SC: Ja. But, Chair, that is the evidence we have, Mr Koko. Chair, let me go to the Guptas.

CHAIRPERSON: But complete your point. I thought you have not completed the point you wanted to make, ja.

ADV SELEKA SC: Yes. So the strange part about
20 convening the meeting, even the fact of your attending, and you have not even said where you attended the meeting is the fact that not only did McKinsey write to you but McKinsey had a meeting with the steering committee wherein you were told we will not be contracting with Trillian. So that transition of six months, it is not even relevant to that point. So the question is, the strangeness of the meeting and you having to go address Trillian, it is

still hanging.

MR KOKO: Chair, it does not hang at all. The meeting of June was arranged by McKinsey in Trillian's offices. I ...[intervenes]

CHAIRPERSON: Sorry, it was arranged by McKinsey?

MR KOKO: By McKinsey.

CHAIRPERSON: In?

MR KOKO: In Trillian's offices.

CHAIRPERSON: Okay.

10 **MR KOKO**: I saw nothing wrong in attending.

CHAIRPERSON: Ja, it took place in Trillian's offices.

MR KOKO: In Trillian's offices.

CHAIRPERSON: Is that the one that happened on the day when there was a to be a workshop or something?

MR KOKO: Ja, on both meetings.

CHAIRPERSON: Ja, there was a workshop.

MR KOKO: Ja on both meetings we ...[intervenes]

CHAIRPERSON: Okay, okay.

20 **MR KOKO**: But the June meeting was arranged by McKinsey, Mr Sagar.

CHAIRPERSON: Ja.

MR KOKO: And it was Melrose Arch meeting.

CHAIRPERSON: And the purpose?

MR KOKO: The purpose was invoicing, Chair.

CHAIRPERSON: Oh.

MR KOKO: There was a strong push from Trillian that says before ...[intervenes]

CHAIRPERSON: They wanted to be paid directly.

MR KOKO: No, it was beyond that.

CHAIRPERSON: Ja.

MR KOKO: Before the cancellation so much value was added, R25 billion and, Chair, I have told you before that anybody telling you that there was no value by McKinsey is lying to you but because the contract, the basis of the MSA
10 was that you get paid on value created and the value was created and the value was priced. The number I have served before our board was R1.8 billion that was due to McKinsey. Now Trillian was saying we are entitled to our share in that R1.8 billion. That is a discussion I remember we had.

CHAIRPERSON: Ja, okay.

MR KOKO: And my response to them I said quite frankly, I have no business having these discussions with you. These are discussions Eskom should be having with
20 McKinsey. That is the meeting of June. So first I – the meeting was called by McKinsey. It happened in Trillian's offices and even today I see nothing wrong why I attended.

CHAIRPERSON: Of course you could have said even without going there, there is no need for me to attend this meeting.

MR KOKO: Ja, Chair, and again we have canvassed this too.

CHAIRPERSON: We did canvass it, ja.

MR KOKO: We canvassed it, I have never said no to a small and medium company calling me to a meeting with its principal and if I was still at Eskom today I will still go.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: No, that part has not been canvassed so your question was ...[intervenes]

10 **CHAIRPERSON:** Oh, I was under the impression that it was canvassed.

MR KOKO: No, it was, Chair.

ADV SELEKA SC: It was not.

MR KOKO: We can go to the transcripts again, you will find it and I have answered it to you the way I am answering it to you now. I will not – I saw nothing wrong ...[intervenes]

CHAIRPERSON: But anyway, your answer is what you are saying.

20 **MR KOKO:** Yes.

CHAIRPERSON: Namely, because you are being called by a small to medium sized company, you were not going to say no.

MR KOKO: Yes.

CHAIRPERSON: You would go there even if it was to say

I am not supposed to – I am not going to stay.

MR KOKO: Yes.

CHAIRPERSON: Because I have got nothing to do here.

MR KOKO: Yes.

CHAIRPERSON: And then you leave.

MR KOKO: Yes.

CHAIRPERSON: Okay, is that what happened on that day?

MR KOKO: Exactly that, Chair.

10 **CHAIRPERSON**: Yes, okay.

MR KOKO: Exactly that.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Because that explanation was given in regard to the meeting you had after Ms Goodson was at your offices. But, you see, there is two parts ...[intervenes]

MR KOKO: Chair, we are going back to Trillian again. We are not going to finish, next year we will still be here. I have got a feeling that Mr Seleka will go back to a topic
20 until he gets the answer that he thinks he wants.

ADV SELEKA SC: Ja. No, if you give a direct answer we will finish.

MR KOKO: Because now we are back to Trillian. We have got to move, Chair. I need to discuss Trillian, I need to discuss ...[intervenes]

CHAIRPERSON: Tegeta.

MR KOKO: I have got a lot to say in Tegeta, we cannot keep – I am here eight times, Chair.

CHAIRPERSON: But let me hear.

MR KOKO: It is for the eighth times I am here discussing Trillian and McKinsey, we have to move on now.

CHAIRPERSON: No, no, I understand.

ADV SELEKA SC: Ja. Thank you, Chair.

CHAIRPERSON: What was the point?

10 **ADV SELEKA SC:** This is the question. There is one point which is what Mr Koko says there was no contract between Eskom and Trillian ...[intervenes]

CHAIRPERSON: I will tell you what we must do.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us get to get to Tegeta.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And anything that still needs to be addressed in relation to other topics, it can be addressed by way of the questions and he can do an affidavit after he
20 has finished, is it not, because we are trying make today the last day.

MR KOKO: Chair, we are not going to finish, it is my eighth time now. I hope I am not coming here for the twentieth time.

CHAIRPERSON: Ja.

MR KOKO: Your Commission has to end.

CHAIRPERSON: You see because I think there is an acceptance that anything that has not been done today can be dealt with by way of affidavits. Let us get to Tegeta.

ADV SELEKA SC: No, that is alright, Chair, because – can I just make one last point here then I will move on, Chair, which is this ...[intervenes]

MR KOKO: Ja, there is an affidavit of witness 3.

ADV SELEKA SC: Which is this. Mr Koko had also said
10 this contract of the MSA did not fall under his department at the parliamentary portfolio committee, so it is still a question why he attended this meeting.

CHAIRPERSON: Let us move on, you can put it in writing.

ADV SELEKA SC: But I will move on.

CHAIRPERSON: Let us move on. Okay.

ADV SELEKA SC: So, Chair, we will leave – should I leave the witness 3 evidence?

MR KOKO: No, no, no, no, you cannot. This guy has lied about me.

20 **CHAIRPERSON:** No, I was saying let us get to Tegeta simply because in my mind Tegeta is there.

ADV SELEKA SC: Ja.

CHAIRPERSON: But whatever, we just move to – get to something new.

ADV SELEKA SC: Yes.

MR KOKO: No, we have to deal with witness 3.

ADV SELEKA SC: Yes, okay.

CHAIRPERSON: Ja. And you can see Mr Koko is very keen to deal with it.

ADV SELEKA SC: Yes, Chair, the evidence ...[intervenes]

CHAIRPERSON: Let us do that.

ADV SELEKA SC: Ja, it will be quick. The evidence of witness 3 was led by a different work stream, I have obtained the affidavits.

10 **CHAIRPERSON:** Ja. Oh, it is the one who says he saw Mr Koko?

ADV SELEKA SC: Correct, Chair. Correct.

CHAIRPERSON: Ja, but that is all he says is it not.

ADV SELEKA SC: That is Saxonwold in 2013.

CHAIRPERSON: Ja, what I am saying is, the only thing is that he says he say him.

ADV SELEKA SC: Correct.

CHAIRPERSON: There is nothing else, really.

ADV SELEKA SC: No, nothing else.

20 **CHAIRPERSON:** Ja. Mr Koko, do you want to say anything about that? I think you have already said something.

MR KOKO: No, no, no, Chair. Chair, I have kids, I have worked hard for my name. When a witness comes and say – witness 3 comes here to sit here and say - let me quote

...[intervenes]

CHAIRPERSON: Of course, he did not sit there.

MR KOKO: Yes, Chair. I have to quote him. He says:

“Whilst waiting in my vehicle for Gigaba to return from meetings inside the Gupta residence.”

ADV SELEKA SC: Just indicate where are you reading from?

MR KOKO: It is ...[intervenes]

CHAIRPERSON: Are you reading from his affidavit or
10 transcript.

MR KOKO: It is affidavit.

CHAIRPERSON: Okay, what page are you – or paragraph, are you able to say?

MR KOKO: Chair, it is his main affidavit and I am reading paragraph 22.

CHAIRPERSON: Okay, alright.

MR KOKO: He says:

20 “While waiting in my vehicle for Gigaba to return from meetings inside the Gupta residence I noticed on different occasions people arriving or leaving the premises that I recognised. Individuals in this regard include Brian Molefe, Matshela Koko, Ben Ngubane, Linda Mabaso...”

Now the way he writes my name I conclude immediately that this person does not know by just purely by writing my

name and then he...[intervenes]

ADV SELEKA SC: Chair, that is the first name. Not the surname, the first name.

CHAIRPERSON: Ja, ja.

MR KOKO: Right. Now in his transcripts on the 13 August 2020, day 250 he says – Mr Pretorius asks him:

“Right. Right, were you able observe whether there were any other people present outside the residence?”

10 Witness 3 responds:

CHAIRPERSON: I just think I will need to look at it, ja. It is a very narrow issue.

MR KOKO: “I saw Mr Brian Molefe and later I saw Matshela Koko of Eskom, Ben Ngubane, Linda Mabaso our Chair then within the premises.”

Now he says Mr Mabaso, our Chair then. Mr Mabaso was not the Chair of Eskom then. So this is false, but listen to this. Then he comes and comes and put a supplementary affidavit. He says I want to clarify the I misunderstanding
20 of – created by Mr Singh. He says paragraph 8 of his supplementary affidavit.

“At the time when me...”

ADV SELEKA SC: I will read it for you.

MR KOKO: Page 9. No, I have to read it. Page 9, paragraph 9:

“Regarding Mr Koko, I confirm that I did not know who he is when I saw him at the Gupta residence in 2013. I only began to know who Mr Koko is when Mr Singh was seconded to Eskom during or on about July or August 2015. I provided close protection and driver services for Mr Singh during the secondment at Eskom for the period of approximately two month. It was during this period when I saw Mr Koko at Eskom that I recalled that I
10 had seen him on previous occasions in 2018 at the Gupta evidence in Saxonwold.”

Now, Chair, his affidavit is very clear, I saw Mr Koko, I recognised him in 2013. You cannot recognise somebody you do not know. You cannot recognise a person you have not seen before. I saw Mr Koko, I recognised him but I did not know, I have never met him. Chair this is type – these are the witnesses that are putting my name into disrepute. He says he does not know me, he has never met me. He recognised me two years later. Two years later. Chair,
20 these witnesses cannot get away with these type of things.

CHAIRPERSON: No, no, no, I hear what you are saying, it is a legitimate issue to raise. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. I think ...[intervenes]

CHAIRPERSON: I guess there is not much you can say

because ...[intervenes]

ADV SELEKA SC: Yes, no, there is not much, Mr Koko
...[intervenes]

CHAIRPERSON: It is not a witness you have consulted
with.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: I realise how Mr Koko has earlier said
one is dealing with semantics. I think the witness, when
10 confronted, with which Mr Koko is saying which is what Mr
Singh was saying about this witness, he explained it in
paragraph 9 and I was waiting to hear how you criticise
paragraph 9 but I did not hear any from the Chair.

CHAIRPERSON: Ja, what does 9 say?

ADV SELEKA SC: No, this is the paragraph, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: It says:

20 “Regarding Mr Koko, I confirm that I did not know
who he is when I saw him at the Gupta residence in
2013. I only began to know who Mr Koko is when
Mr Singh was seconded to Eskom during or on
about July or August 2015.”

Which, of course, all that – that comment is correct.

“I provided close protection and driver services to
Mr Singh during the secondment at Eskom for the

period of approximately two month. It was during this period when I saw Mr Koko at Eskom that I recalled that I had seen him on ...[intervenes]

CHAIRPERSON: Ja, but that is what Mr Koko has read.

ADV SELEKA SC: Yes, that is what he has read. So what ...[intervenes]

CHAIRPERSON: But there is difficulty with it.

ADV SELEKA SC: There is what?

CHAIRPERSON: There is difficulty with it because you
10 say today I saw Mr Seleka...

ADV SELEKA SC: Yes.

CHAIRPERSON: And you say I recognised him and then sometime later you say you did not know him, you did not know him when you saw him but you said your recognised him. So one of the points Mr Koko is making is you cannot say you recognised somebody when you do not know them, you need to know them in order for you to recognise them and that seems to be a legitimate point.

And then also, if you are going to say you saw
20 somebody you did not know two years ago...

ADV SELEKA SC: Yes?

CHAIRPERSON: ...when you meet them two years later you then recognise that it is somebody you saw two years ago. You then say oh, I have got – maybe it could happen, I do not know, but it something that needs explanation.

ADV SELEKA SC: Ja.

CHAIRPERSON: I think Mr Koko is right to raise that and point out that that is – that that part, as it stands, is not without problems.

ADV SELEKA SC: Yes. No, Chair, he is entitled to raise it. Chair will recall the witness' evidence was that this happened on at least six occasions in 2013 that he would see the people there at Saxonwold. So ...[intervenes]

CHAIRPERSON: But did he see Mr Koko on six occasions
10 because I understand him to be talking about one occasion when he saw Mr Koko. That is how I understood his affidavit. I may be wrong but that is our ...[intervenes]

ADV SELEKA SC: Ja, I will check and remember, Chair ...[intervenes]

MR KOKO: There is no six occasions, that part you can be assured.

CHAIRPERSON: But does he say a number of occasions maybe?

ADV SELEKA SC: I remember the Chairperson and him
20 counting – I will get that part about whether it was Mr Koko he was seeing or ...[intervenes]

CHAIRPERSON: No, but it must have been in regard to maybe somebody else that ...[intervenes]

MR KOKO: In any event, he still did not know me.

CHAIRPERSON: You see on – when we were questioning

him the work stream was different, so I would not have focused on Mr Koko.

ADV SELEKA SC: No, of course.

CHAIRPERSON: I would have focused on Mr Singh, I think.

ADV SELEKA SC: Ja.

MR KOKO: And Mr Mabaso was not the Chairman of Transnet then, that is another lie.

CHAIRPERSON: But let us move on, it is a very narrow
10 issue, ja.

ADV SELEKA SC: That is correct, Chair. Mr Koko, we can deal with the OCM/Tegeta matter.

CHAIRPERSON: Okay, what is your estimate of how long you might be on Tegeta?

ADV SELEKA SC: Chair, I think it depends on how Mr Koko is going to answer.

CHAIRPERSON: Ja.

ADV SELEKA SC: I could give a summary of how I would like to approach it because these matters are interrelated.

20 **CHAIRPERSON:** Ja, okay, not that is fine. I want us to take another ten minutes break.

ADV SELEKA SC: And I could take 30 minutes with it.

CHAIRPERSON: H'm?

ADV SELEKA SC: I could take 30 minutes with it, Chair.

CHAIRPERSON: No, that is fine. I think the important

thing is that we do strike a proper balance between doing justice to the issues and not taking too long.

ADV SELEKA SC: Yes.

CHAIRPERSON: Let us take a ten minutes adjournment again. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SELEKA SC: Thank you Chairperson. Chairperson
10 just in terms of the evidence we have in regard to the Tegeta OCM matter, Mr Koko will give his version or his – ja his version against this evidence we have, which is that – just to paint a picture, prior to the secondment of Mr Molefe to Eskom, OCM and Eskom have a cooperation agreement which they are seeking to have it finalised in order to deal with the transaction, the supply of coal agreement between the two parties and that mainly relates to the quality of coal and the price for which OCM wants to charge Eskom. The cooperation agreement comes
20 back from May 2014. It gets to be referred to Mr Molefe in April, 23rd April 2015 and he terminates it and he has testified here and with that termination the - they issue a letter of demand for OCM to pay Eskom the R2.17billion which they say is for penalties.

That amount ultimately gets to be whittled down in agreement with Tegeta during the arbitration process, but with regard to the - going back to the arrangement between Eskom and OCM is the negotiations that go on to have OCM supply Eskom with coal even as OCM is under business rescue, but also negotiations where Eskom becomes involved particularly in the meeting Mr Koko is referred to of the 24th of November 2015. When Mr Koko says to OCM officials, we will only buy - we will only
10 consent to the sale, if you sell the assets of OCH not only OCM, so to enlarge the scope of their assets to be sold.

But the DMR Mr Joe Rapella had also said the same before this meeting to Mr Clinton Ephram, that meeting takes place and in that meeting OCM tells Eskom Glencore is taking a decision to take us out of business rescue, and we will honour the agreement and supply you.

So they know this in November, in December, even as at the time when Mr Koko will then prepare the submission for the R1.68billion pre-payment in December
20 2015 for the Board to make a round robin decision.

So Mr Koko will explain that submission, will explain his role prior to that submission, particularly with emails exchanged between him and Mr Joe Repella to write a letter to the DMR asking the DMR to intervene, which letter is used in that submission as the reason why a pre-

payment should be made and I will not conclude that that pre-payment decision gets to be made and a guarantee after that - the day after the pre-payment is converted into a guarantee.

And we will see whether Mr Koko has any knowledge in regard to that, I know his touched on it when we were not dealing with it and then it will be the submission of April 2016 which is again signed by Mr Koko and this is for a pre-payment to Tegeta of R659million and
10 Mr Koko will then explain to the Chairperson, why that submission was made.

CHAIRPERSON: Well, why do you not ask him the questions? When I asked you how long you took, I did not mean to say, stop now.

ADV SELEKA SC: Okay.

CHAIRPERSON: No, I just wanted to have an idea.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Ask him the questions.

ADV SELEKA SC: Let us go Mr Koko then, the
20 submission, Mr Koko of December 2015, the 8th of December 2015. I would like you to before we deal with the submission in itself, explain to the Chairperson the email exchange between you and Mr Joe Repella in regard to the drafting of the letter to the DMR?

MR KOKO: Chair, I am going to spend one minute and

say to you, I felt bad...[intervene]

CHAIRPERSON: Sorry, the email you are talking about can you identify it so that for the record, whoever reads the transcripts knows which email you are talking about.

ADV SELEKA SC: Thank you Chairperson, the emails are to be found in Eskom Bundle 18A, page 423

CHAIRPERSON: What is wrong with emails, you say he must explain the emails you want to put to him, what you want him to address with regard to the emails.

10 **ADV SELEKA SC:** Correct.

MR KOKO: Bundle?

ADV SELEKA SC: Bundle 18A.

MR KOKO: Page?

ADV SELEKA SC: Page 423, Chair again, the email trail is in reverse order. So one really has to start on page 424 to get the sequence of emails. But Mr Koko could explain why did he engage with Mr Joe Repella in a matter that was a transaction or related to a transaction between Eskom and a private entity, OCM.

20 **CHAIRPERSON:** Okay, these emails, let us identify them that you are talking about first, they are from page 423 to where, what page?

ADV SELEKA SC: Yeah, they start on page 424, if we go to page 423 and also page 425.

CHAIRPERSON: Is it only those two?

ADV SELEKA SC: Then Chair on page 428, it is part of -
it is a reply to the one on page 425 by Mr Joe Repella.

CHAIRPERSON: Okay, do you want to take these pages
one at a time or do they have the same theme that you
want to ask him about?

ADV SELEKA SC: They have the same theme?

CHAIRPERSON: Ja, okay tell us what the theme is and
put the question.

ADV SELEKA SC: The theme or the gist of what has been
10 discussed here is putting together a draft letter by Mr
Koko, which will be addressed to the DMR in order to seek
certain intervention by the DMR. So, on the face of it, it
seems to be him Mr Koko and one DMR official talking
about what should go into the letter, what the contents of
the letter should be, and the question is, why did Mr Koko
do that?

CHAIRPERSON: Yes, Mr Koko.

MR KOKO: Chair, I - because there was nothing wrong in
doing that, that is the answer. It was the right thing to do,
20 that is the answer. On the 20th of August 2015 the
business rescue practitioners through Eskom into a coal
emergency by suspending the coal supply agreement
between Eskom and Hendrina.

You will find that letter of suspension in PM affidavit
PMM 7, and that was pace went to the hardship notice or

quarter just pursuant to the Board resolutions of OCM and also on OCH on the 31st of August 2015. Paragraph - the affidavit of Mr Glasenberg says we entered into business rescue because we wanted to change the course of the agreement and they and he thinks and I want to give you the paragraph I think we're going to run out of time because I wanted to take you to the paragraph.

CHAIRPERSON: No, we can go there.

MR KOKO: Yes, so let us go their Chair.

10 **ADV SELEKA SC:** Is that of Mr Marsden?

MR KOKO: Glasenberg.

ADV SELEKA SC: Mr?

MR KOKO: Glasenberg.

CHAIRPERSON: From my point of view, we can still go up to nine and so on. All I wanted to do is just to get a picture so you do not have to rush as if...[intervene]

MR KOKO: Chair, if you go to paragraph 30 and 31 of Mr Glasenberg, it is in Bundle 18 page 168, please Chair let us go there because we see...[intervene]

20 **CHAIRPERSON:** Ja, what bundle is that, is that the same bundle?

MR KOKO: Bundle 18, page 352.168 I think.

CHAIRPERSON: Page 352.168, yes I am there.

ADV SELEKA SC: Paragraph?

MR KOKO: Paragraph 30, 31, I must find it Chair.

ADV SELEKA SC: Are you sure it is Mr Glasenberg?

MR KOKO: Glasenberg ja, Ivan Glasenberg I will not make a mistake Mr Seleka on this one it is very important to my kit.

ADV SELEKA SC: Paragraph 30 and 31 is found on page – of Mr Glasenberg affidavit.

MR KOKO: Yes.

ADV SELEKA SC: 352.168.

MR KOKO: Yes, 168, Chair I have got it, you will see it is
10 under the theme of placing OCH, OCM into business
rescue and he says he was aware of the OCM, OCH
decisions took place and that is paragraph 29:

“I was aware of the Board of OCH, OCM decision to
place these entities into business rescue and I was
accordingly in agreement with this decision. It was
thought that business rescue would not only
reconfirm to Eskom the dire financial positions in
which OCM and OCH were at the time but would
also give the business rescue practitioners of OCM
20 into an opportunity to renegotiate the CSA. We were
also of the view, and is a very important, we were
also of the view that perhaps that business rescue
practitioners will be in a better position to negotiate
with Eskom than Glencore and OCM where I also
understood that the BRP’s had the power to

suspend or cancel onerous contracts, which would potentially enable OCM to renegotiate their CSA.”

Now Chair, I wrote an opinion piece and it is in the bundle. I said in the opinion piece, Optimum and Glencore has made their bed and they had to lie on it. The CSA, and Chair I am

just rushing in there is fine.

CHAIRPERSON: No, no do not rush, just deal with matters.

10 **MR KOKO:** Chair, you need to understand the design of the course but Minister Mallika took you through the design of the coal supply agreement, including addendum 1, addendum 2 and addendum 3. This coal supply agreement are meant for the security of coal supply for Eskom. You build a power station for 40 years, you build next to the coal mine, you put a conveyor, none of the two parties in the coal supply agreement can walk away. It is the design of the of the coal supply agreement and I would refer to different clauses to that.

20 If there was any dispute be it of interpretation to the CSA of the effect to the CSA of the rights and obligations of parties in the arbitration, or any other dispute it is resolved in terms of Clause 30 of the coal supply agreement which is arbitration, and the outcome of the arbitrators is binding, no party can walk away.

The arbitration, that was the case – the last arbitration with Optimum was concluded on the 12th of April 2011. I have it here I will also send it to you, the arbitration of April 20 2012 signed by my former colleague, Mr Marokwane dealt with all the dispute that was in the contract and the rights and obligation, including the quote, quantities and the price.

Chair, one of the – okay let me not go there. So, there was a dispute and that is a dispute of hardship. That
10 dispute was - it was the dispute notice was on the 3rd of July 2013 and there was another notice on coal qualities on the 23rd of April 2013, either way Chair it had to be resolved through arbitration and I have to deal with this Chair, please.

ADV SELEKA SC: Chair, may I ask?

CHAIRPERSON: No I understand.

ADV SELEKA SC: Yes, and I wanted some direction from you Chair, because...[intervene]

MR KOKO: Yes, but I want to answer that letter because I
20 want to...[intervene]

CHAIRPERSON: Let me here what direction Mr Seleka wants?

ADV SELEKA SC: Yes, I wanted some direction Chair because he does not answer my question.

MR KOKO: No, Chair I am going to answer that question

but you are not - I answered that question, I said it was the right thing to do. It was the right thing for me to do.

CHAIRPERSON: Ja, you said that it was the right thing to do, ja, okay.

ADV SELEKA SC: Yes, because it goes - so if he answered the question, whatever he is saying now Chair it does not bear on that question and I suppose he can deal with it in due course, it is going to take...[intervene]

CHAIRPERSON: Yes, let me say this, I can stay here
10 until...[intervene]

MR KOKO: I can stay here until tomorrow, Chair. I can stay for this...[intervene]

CHAIRPERSON: Not until tomorrow from my side.

MR KOKO: For this I can stay until tomorrow.

CHAIRPERSON: But let us deal with matters, obviously, not slowly but I do not want anybody to feel that now they have got to rush like that, but still keep within, ja – Mr Barry?

ADV BARRY SC: Chair I think that it is too optimistic to
20 think that we are going to finish with Mr Koko.

CHAIRPERSON: No, no, I understand that Mr Barry.

MR KOKO: Chair, let us carry on.

CHAIRPERSON: My approach is simply that if we reach a certain point where we cannot proceed today let us reach that point if we agree as I think we have an understanding

that the rest would be dealt with by way of written responses and questions that is fine, but I do not want everybody rushing so much now.

ADV BARRY SC: Well, that is exactly my concern.

CHAIRPERSON: Yes, let us just deal with it.

ADV BARRY SC: And it would not be possible to arrange another evening, for Mr Koko to come back again.

CHAIRPERSON: Ja, no, no.

ADV BARRY SC: The unfortunate issue about the Tegeta
10 transaction is a very important issue before you.

CHAIRPERSON: Ja.

ADV BARRY SC: And we have had endless questioning on various other things and we have now, we are about the eighth or the ninth day and only now do we come to this particular point and now, Mr Koko as it were is being put under pressure to get on with it.

CHAIRPERSON: No, no, I have repeatedly said to him, he must just give his evidence because I do not want anybody saying...[intervene]

20 **MR KOKO:** Chair, can I do that, can we carry on, I really want to talk to this?

CHAIRPERSON: Okay, let him finish Mr Seleka, finish what you were saying.

MR KOKO: So, to summarise it, the relationship between Eskom and Glencore had broken down. Chair, and I must

tell you upfront...[intervene]

CHAIRPERSON: By when had it broken down because that may be important?

MR KOKO: Chair, when they put on the 20th of August 2015, when they stopped the belt from running, if I had a gun I would have pulled the trigger. No one, nobody when I am the head of Generation dealing with load shedding nobody switches off the belt.

10 Anybody who switches off the belt whether he is right or whether he thinks his right or wrong he breaks the relationship with me as the head of Generation. So the 20th of August 2015.

CHAIRPERSON: That is when the relationship broke down as far as you are concerned.

MR KOKO: Glencore broke the relationship, and all the benefit that I gave them I threw them out of the window and here is the benefit I gave them.

CHAIRPERSON: But hang on Mr Koko you say all of this to make what point?

20 **MR KOKO:** What I am saying, what I want to come to I am saying to you, I went rightfully to DPE which is not the first time, we do it in my 20 years we talk to DPE they sit with us. They are part of us, thee are part of the State to deal with the problems of supplying coal to Eskom.

I go to them and say I do not have coal.

CHAIRPERSON: You do not have?

MR KOKO: Coal.

CHAIRPERSON: Ja.

MR KOKO: I do not have coal. You are the department that...[intervene]

CHAIRPERSON: That is responsible for Eskom.

MR KOKO: They are responsible to get me coal. Glencore

a business partner of Mr Ramaphosa has switched off the
10 belt. So you have to work with me to get me the coal. These guys had the option, they had – they are obliged by the coal supply agreement. If they think I am difficult, if they think I am unreasonable they must arbitrate.

They must arbitrate, they cannot do what they are doing and now in the affidavit they say it is our intention to suspend the coal supply agreement, when the coal supply agreement is very clear, if you are unhappy, you arbitrate.

CHAIRPERSON: So part of what you are saying is because of the importance of a coal supply agreement,
20 because of the consequences of stopping supplying coal to not just as the whole country the CSA between Eskom and Glencore did not allow an aggrieved party...[intervene]

MR KOKO: To walk away.

CHAIRPERSON: ...to do anything other than go to arbitration.

MR KOKO: Exactly Chair.

CHAIRPERSON: And when they do anything other than going to arbitration because they are aggrieved that is wrong.

MR KOKO: Exactly.

CHAIRPERSON: That is a breach of the CSA.

MR KOKO: Exactly.

CHAIRPERSON: And if they were aggrieved, they were obliged to go to – to either do nothing and continue
10 performing or go to arbitration.

MR KOKO: Exactly but Chair, but there was an arbitration agreement that was signed already.

CHAIRPERSON: Yes, and they were supposed to pursue it. **MR KOKO:** Exactly, on the 13th of December 2013, there was an arbitration agreement that was signed pursuant to the hardship notice of July. So pursue the arbitration do not stop the belt.

CHAIRPERSON: Ja, no I think that is a point that I picked up from Mr Brian Molefe's evidence as well. He might not
20 have put it the way you put it but the question of why did they not pursue arbitration up to the last - up to conclusion was raised.

MR KOKO: Yes, and Chair just to finalise the answer. There is nothing in law or the Eskom framework that prevents me from going to the Department of Minerals and

Energy to work with them to solve the problem I have, we have done it many times and if Mr Seleka thinks it is wrong, he has to show me in law why I could not do that.

CHAIRPERSON: Yes.

ADV SELEKA SC: Thank you Chair, let us proceed.

CHAIRPERSON: You see Mr Koko is becoming a lawyer now.

ADV SELEKA SC: Yeah, I can hear that, Chair.

CHAIRPERSON: But his saying, approaching DMR well
10 there was nothing wrong with that, it is a department that is responsible for Eskom, and he had a problem relating to coal so he was entitled to go to them.

ADV SELEKA SC: Yes, Chair the wrongfulness or otherwise was not my question. My question was to him, he has to explain why he approached them, but he has said...[intervene]

CHAIRPERSON: Yes, his answer...[intervene]

ADV SELEKA SC: And that is what I wanted.

CHAIRPERSON: His answer implies right who do you
20 even ask me that question, because there is nothing wrong with it.

MR KOKO: Exactly, why you asking me that question.

ADV SELEKA SC: No, Chair that is a wrongfulness because he has answered that question.

CHAIRPERSON: Ja.

ADV SELEKA SC: He said, and that is what I need to test with him. I went to the DMR, because I do not have coal, I told them you have to work with me.

CHAIRPERSON: But he started by saying it was the right thing to do, you remember, that was his first answer.

ADV SELEKA SC: I will come to that the rightfulness or wrongfulness.

CHAIRPERSON: Ja.

ADV SELEKA SC: Let us deal with the purpose of this,
10 Chair and you need to deal with it in the context of the sequence of events. So let us start with the 20th of August 2015.

CHAIRPERSON: But you do not have to address it to me, you can continue asking him questions.

ADV SELEKA SC: Yes, Mr Koko so the 20th of August 2015 is the day you have identified you say Glencore stopped the supply of coal.

MR KOKO: Correct.

ADV SELEKA SC: But that was not Glencore, that was
20 the business rescue practitioners who wrote a letter and said they will not supply coal.

MR KOKO: Correct.

ADV SELEKA SC: Yes, that is not Glencore.

MR KOKO: Correct.

ADV SELEKA SC: Two, they made a proposal to Eskom

which, in respect of which they gave you a deadline of the 22nd for the 24th of August to come back to them with a response. You remember that?

MR KOKO: I know that is PMM 7, it is in a letter 24 August, it is in a letter of reference PMM 7 in Pierre Marsden affidavit, I know that letter very well Chair.

ADV SELEKA SC: Yes.

MR KOKO: I do not need to go to it because it is pain, it caused me pain.

10 **ADV SELEKA SC:** Yes, and then you did not immediately respond to that letter. Is that correct? What did you do?

MR KOKO: Alright, let us, let us carry on this.

ADV SELEKA SC: Yes, what you did was to...[intervene]

CHAIRPERSON: Hang on, I think he is trying to recollect.

MR KOKO: No, I am not, I must answer there.

CHAIRPERSON: Yes.

MR KOKO: He is asking me a question; I must answer you.

CHAIRPERSON: Yes, answer.

20 **MR KOKO:** So on the on the 23rd on the 20th of August until the 3rd of September, there was no coal going to Eskom and one of the things we did was to ask a senior counsels opinion on our rights and obligations, that was one of the first things.

On the 3rd of September, we had a meeting with

Glencoe and business rescue practitioners and Chair in that meeting, I not Mr Molefe refused the business rescue practitioners from coming to the meeting, I refused that. Chair, I can safely say now, I hated them. I hated anybody who wants me to switch off the coal and I said to Mr Molefe these guys they have never given us notice they stopped the belt is and in my meeting with them on the 17th of August it is out of that meeting that they went to write a letter of the 20th of August.

10 They told me and said, listen, Mr Koko, the only reason we will get this relationship, right is if you – is if we get an addendum to the coal supply agreement and we change the price from 154 to R442 per ton and we scrap the penalties. That is the basis of our interaction with you, if we do not do that, we will liquidate the mine.

CHAIRPERSON: Part of your I will say argument, part of what you are saying is that OCM/Glencore had no right if they were aggrieved by Eskom refusal to increase the price. They had no right to do anything other than going to
20 arbitration.

MR KOKO: Chair, exactly.

CHAIRPERSON: And them doing anything else was outside of the CSA.

MR KOKO: Yes, exactly.

CHAIRPERSON: Yes, and part of what you are saying is

Eskom and OCM/Glencore had an agreement in terms of which they had agreed that if ever there were any issues under that agreement, and they could not resolve them by talking the aggrieved party must invoke arbitration.

MR KOKO: Exactly.

CHAIRPERSON: And you say, the reason for that must have been because if you allowed such a party, for example, to stop supplying coal the consequences were far reaching for the economy of the country.

10 **MR KOKO**: Exactly.

CHAIRPERSON: It was - that was the rationale for saying, if you are aggrieved, you do not do what you would do in any normal contract that you have with somebody where you can terminate it or refuse to perform.

MR KOKO: Exactly.

CHAIRPERSON: Here because of the nature of the agreement and the issues and the fact that they affect the supply of coal, or stoppage of supplying coal results in hardship for the whole economy, you are not going to be
20 allowed to do those things that you would otherwise be allowed to do when you are in a contract relationship.

MR KOKO: Exactly, Chair.

CHAIRPERSON: Your only remedy is to go to arbitration and both parties agree that they will be bound by the arbitration award.

MR KOKO: Exactly.

CHAIRPERSON: Okay.

MR KOKO: But I will take you further and say I know why they did not want to do arbitration, because they were going to lose, because arbitration says there must be special circumstances and those special circumstances in terms of paragraphs 17.2 excludes the export market conditions.

CHAIRPERSON: And that is what they were going to rely
10 on.

MR KOKO: And there was this what they were going to rely on.

CHAIRPERSON: Ja.

MR KOKO: Which is specifically excluded and again, it is the design of the contract, it is not Eskom that says go and export coal it is them who says we have the coal contract that we said in 1983, we want to export allow us to export and then Eskom says we will allow you to export but do not bring export problems to us. So the context is well written
20 and they knew that they stood no chance to win in the arbitration.

CHAIRPERSON: Well, one of the issues I have raised is precisely that, I would like to know from Glencore, why they did not pursue arbitration in its conclusion, because it was a remedy available to them in terms of the contract

about the issues and I think that ties in also with the question of due diligence that arose when Mr Ephram affected evidence.

So when Mr Ephram does come back to give evidence he would deal with those issues.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay let us...[intervene]

MR KOKO: But Chair can I take you to Bundle 15C?

CHAIRPERSON: Bundle?

10 **MR KOKO:** 15C.

CHAIRPERSON: Well, tell me the point first because I might tell you...[intervene]

MR KOKO: I want to show you paragraph 17.2 of the coal supply agreement that specifically tells them.

CHAIRPERSON: Ja, just read it, even if I do not go to it, if you read it I know it is there, it is okay.

MR KOKO: And Mr Barry, can you take me to the contract, you see Chair I am panicking now.

20 **CHAIRPERSON:** Oh, do not panic. Okay, leave it to your counsel to look for it, let us continue when he has brought it he will let us know.

MR KOKO: Yes, Mr Barry if you lead us to the main contract CSA paragraph 17.3.

CHAIRPERSON: Okay, when he has got it, he will let us know then we can go to it, in the meantime, we can

proceed.

ADV SELEKA SC: Thank you, Mr Koko I hope you could get the facts right because your own attorneys CDH have given the Commission an affidavit. In 2013...[intervene]

CHAIRPERSON: That is Eskom's attorneys, right?

ADV SELEKA SC: Eskom's attorneys.

CHAIRPERSON: Ja, not his attorneys.

ADV SELEKA SC: Not his personal attorneys, Chair. In 2013 the hardship clause was invoked. Do you know that?

10 **MR KOKO:** In 2013?

ADV SELEKA SC: '13.

MR KOKO: Which addendum?

ADV SELEKA SC: This is from Mr Rishabun's affidavit...[intervene]

MR KOKO: No Chair, Chair.

ADV SELEKA SC: Let me read it to you.

CHAIRPERSON: But let him finish because he can answer you.

20 **ADV BARRY SC:** Because I am a bit uncertain exactly what clause Mr Koko is looking for.

MR KOKO: No, no Chair Mr Barry if you take me to the CSA, I will know how to navigate just take me to the CSA.

ADV BARRY SC: Now you will find that at page – well it is at 516...[intervene]

CHAIRPERSON: I am sorry let us have the bundle first

and then the page.

ADV SELEKA SC: Yes.

ADV BARRY SC: It starts at 15, 1646.

CHAIRPERSON: Does Bundle 15 have A and B or?

ADV BARRY SC: It is C.

CHAIRPERSON: Bundle 15C, what page?

ADV BARRY SC: Page 1646.

CHAIRPERSON: 1646, okay, let us get rid of that issue
Mr Seleka.

10 **ADV SELEKA SC:** That is fine, Chair.

CHAIRPERSON: And then do not forget what you were
on.

ADV SELEKA SC: Yes.

born with.

MR KOKO: But I am looking for the hardship clause in
this 17.2, 17.3, no Mr Barry. Chair, I have 15.

ADV SELEKA SC: Try 27.

MR KOKO: Yes, 27, not 17 I apologise, sir. It is the
hardship clause and it says:

20 “In entering into this argument the parties declare it
to be their intention that this agreement shall
operate between them with fairness and without
undue hardship to any party and says the provision
of this Clause 27 shall apply where any new
situation or circumstances arise which.”

And it lists them, and then it says at the bottom:

“Relevant circumstances may include without limitation, the imposition of any tax duty, other fees by any governmental or other authorising executive power, but shall not include any circumstances, resulting in TNC being unable to serve coal to the export market.”

CHAIRPERSON: Yes.

MR KOKO: So any reliance by Optimum on the
10 international market price of coal, they will lose daylight.
Now, Chair while we are on this, an arbitration agreement
was signed between Eskom and Optimum to go to
arbitration on the issue on the 12th December 2013.

Now, this is where I am laughing at Mr Seleka when
he says the arbitration clause was revoked because I will
take you to the arbitration agreement and now that Mr
Seleka tells me about CDH Chair, I have dying to deal with
CDH advice to Eskom I have, because Mr Seleka relies
only and it is so flawed.

20 I listened to the lawyers Chair, I do the right thing.
So let us go to the arbitration agreement.

CHAIRPERSON: But let us just finalise this, you wanted
to refer to Clause 27, the hardship clause on the basis that
there was - that it contains a specific exclusion.

MR KOKO: Yes.

CHAIRPERSON: Namely that you cannot rely on – or Glencore/OCM could not rely on challenges arising out of exports.

MR KOKO: Yes.

CHAIRPERSON: Its involvement in the export market and that was the reason which caused it, what is understood to be hardship.

MR KOKO: Yes.

CHAIRPERSON: And if it went to arbitration, it would
10 have to raise this and Eskom would say, but look at this clause. **MR KOKO:** Yes.

CHAIRPERSON: Okay.

MR KOKO: And Chair and the arbitration agreement that I will take you to now that Seleka has raised the issue, specifically refers to this clause. We are signing this arbitration agreement page 282, this clause.

CHAIRPERSON: Okay.

MR KOKO: So this clause is not revoked, so let us go there Mr Barry if you take me there.

20 **ADV BARRY SC:** That is at 15, 1801.

CHAIRPERSON: Page 15, your mic is not on Mr Barry, page?

ADV BARRY SC: Bundle 15, page 1801.

CHAIRPERSON: 1801.

MR KOKO: 18?

CHAIRPERSON: 1801.

MR KOKO: Right, Chair, this is an arbitration agreement that was signed and if you – it was signed if you go to 1807, it was signed on the 12th of December 2013.

CHAIRPERSON: Yes.

MR KOKO: By Cliff Decker, the same Cliff Decker and Werksman attorneys representing OCH. Now I have learned from my counsel that in arbitration can only adjudicate a dispute and a dispute must be defined
10 otherwise there is nothing to adjudicate.

CHAIRPERSON: Yes, so you are becoming a lawyer now.

MR KOKO: Chair, I have learned now, let us go and see in this arbitration, what the dispute was in this arbitration agreement what the dispute was.

CHAIRPERSON: Ja.

MR KOKO: It is recorded as a dispute.

CHAIRPERSON: Recorded where?

MR KOKO: Page 1802.

ADV SELEKA SC:

20 **CHAIRPERSON:** Okay, oh Clause 1.

MR KOKO: Clause 1.1, it is recorded that a dispute, the hardship dispute has arisen between the claimants and the defendant, in respect of the claimants saying that they have suffered hardship as contemplated in Clause 27 in the Hendrina coal supply agreement between the claimant and

the defendant, as amended. As Clause 27 that Mr Seleka claims was removed. So it could not have been removed, it is not removed, Chair.

ADV SELEKA SC: Sorry, did I say...[intervene]

CHAIRPERSON: No I am sorry you are referring to Mr Seleka having said what?

MR KOKO: That the hardship clause has been removed.

CHAIRPERSON: No, he said it was invoked.

ADV SELEKA SC: Invoked.

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

CHAIRPERSON: Ja, he said it was invoked.

MR KOKO: Yes, and what happened? This is the agreement.

CHAIRPERSON: Ja, no, no, that is fine, but the point you are making is that the dispute was about the hardship.

MR KOKO: Yes, yes.

CHAIRPERSON: And the hardship clause excludes the reliance on export markets.

MR KOKO: Correct.

20 **CHAIRPERSON:** Ja.

MR KOKO: Chair, you will notice and you picked it up and I was very impressed when you picked it up, while I was sitting at home, you asked the question, why did this arbitration agreement exclude coal qualities? Because this is a dispute of hardship only. It excludes coal qualities,

there is a reason Chair and I am going to take you to that reason. Mr Barry, if you take me to the second addendum.

ADV BARRY SC: Yes, we only received the document electronically while we sat here today. So if you go Mr Koko to the numbering in the middle of the page, right.

MR KOKO: Yes,

ADV BARRY SC: And the second addendum is at page 281 and I will give you the full appellation shortly, that is page 1780.

10 **CHAIRPERSON:** Just repeat that page?

ADV BARRY SC: 1780, that is the second addendum.

MR KOKO: Ja, second addendum.

CHAIRPERSON: Yes, have you got it Mr Koko?

MR KOKO: Yes, I have got it Chair, if you go to page 1795.

CHAIRPERSON: Let us start by saying what is this document starting at page 1780, the document for arbitration and second addendum to the Hendrina coal supply agreement between or amongst Eskom Holdings
20 Limited and Optimum Coal Holdings, Coal Mine Holdings and Pty Ltd. Okay, right we go to 1795.

MR KOKO: 1795, the arbitration outcome was signed on the 12th of April 2011.

CHAIRPERSON: Yes.

MR KOKO: Chair...[intervene]

CHAIRPERSON: I am sorry you have lost me, Mr Koko.

MR KOKO: 17...[intervene]

CHAIRPERSON: This was a settlement of that disputes?

MR KOKO: This was a settlement of dispute of rights and obligations of parties and I will take you through the dispute but I just want you to see when it was signed.

CHAIRPERSON: Ja, 2011.

MR KOKO: 2011, 12, April.

CHAIRPERSON: Yes.

10 **MR KOKO:** Right, now Chair if you go...[intervene]

CHAIRPERSON: I am trying to place this now in terms of we have just dealt with the hardship, what dispute is this now?

MR KOKO: Chair, this is the arbitration just before Optimum took over, Optimum, because they keep lying to you where they say we have always had a dispute.

CHAIRPERSON: Ja.

MR KOKO: We have always had a dispute since 2006, they do not tell you that the historical dispute of 2006 was
20 resolved in 2011, they do not tell you that.

CHAIRPERSON: Okay, and that dispute now that they resolve in 2011 was the dispute about coal as well?

MR KOKO: Yes, no it was both.

CHAIRPERSON: Both, okay.

MR KOKO: So the dispute, the arbitration of 2011 Chair,

dealt with three issues. One was the quantity and it resolved that the annual volumes to Eskom will reduce from 6.5million to 5.5million tons, that we find in 3.4.

The second dispute was on quality and on quality, it dealt with only one variable, abrasiveness index and Chair I am going to read because this is the most important part, let us call it the high-water mark.

CHAIRPERSON: Ja, okay.

MR KOKO: Chair, I am going to read...[intervene]

10 **ADV SELEKA SC:** Chair, this is re-examination. This is essentially re-examination.

MR KOKO: No.

CHAIRPERSON: No, but it is it is important, you see that part in regard to the hardship that Mr Koko pointed out about no reliance on export markets. I think it is very important.

ADV SELEKA SC: Yes.

MR KOKO: Right, page 1787.

CHAIRPERSON: 17?

20 **MR KOKO:** Page 1787.

MR KOKO: Mr, I have to tell my story and I should not be made to wait.

CHAIRPERSON: Ja, 1787.

MR KOKO: It is specifically recorded. It is saved and recorded in Clause 3.3. So we have to read this clause

which is Clause 3.3 which only applies to abrasiveness index.

CHAIRPERSON: Hang on you talk about save, whatever, whatever, I am looking at it, I am looking at 1787 that is the heading abrasiveness index, right

ADV BARRY SC: It is at the foot of the page, that the witness is referring to, sir.

MR KOKO: Save to Clause 3.3;

10 “There will be no change in the penalty premium and rejection regime, which will continue to be of force and effect on the basis as set out in the coal supply agreement.”

CHAIRPERSON: I do not see where you are reading.

MR KOKO: Paragraph 3.4.1.

CHAIRPERSON: Sorry?

MR KOKO: Paragraph 3.4.1 at the foot of the page 1787.

CHAIRPERSON: Oh, you see I think you – oh okay. Now I see, when you say it save I thought that is how the clause starts, then it starts with it is specifically recorded.

20 **MR KOKO:** Yes, so it is specifically recorded that save as recorded in Clause 3.3.

CHAIRPERSON: Ja.

MR KOKO: “There will be no change in the penalty, the premium and rejection regime, which will continue to be enforced and effect on the same basis as set

out as a coal supply agreement.”

CHAIRPERSON: Yes.

MR KOKO: So the arbitration outcome Chair, says save to the abrasiveness index the penalty premium and the rejection regime stays the same as in the coal supply agreement. So, there is no – there should be no dispute about coal qualities.

CHAIRPERSON: About?

MR KOKO: Coal qualities between Eskom and Optimum.

10 **CHAIRPERSON:** Is that what the premium refers to?

MR KOKO: Yes.

CHAIRPERSON: Quality?

MR KOKO: Yes.

CHAIRPERSON: Okay, and the rejection regime that means the circumstances under which coal can be rejected.

MR KOKO: Ja, so Chair...[intervene]

CHAIRPERSON: That should not change.

20 **MR KOKO:** I do not want to waste your time but in the contract and there is another part two of the design of the contract. The only remedy that Eskom has to coal that is not compliance is penalties and rejection. So, Eskom can either reject the coal...[intervene]

CHAIRPERSON: Or accept it and impose penalties.

MR KOKO: Yes, that is the only remedy that Eskom has.

CHAIRPERSON: Okay, so, this is saying that there will be no change on that.

MR KOKO: Exactly.

CHAIRPERSON: Which is in other words, it is in favour of Glencore in the sense that Eskom is tied to what the position was.

MR KOKO: Exactly, Chairman.

CHAIRPERSON: Yes, so, Eskom is being told you cannot seek another remedy for this situation, these are your only
10 remedy.

MR KOKO: Exactly.

CHAIRPERSON: Ja, okay.

MR KOKO: Exactly. Now, Chair, the most important part that I did not understand then that OCH really misled Eskom and if I had my way I will make them pay. Unfortunately, Mr Seleka he does not understand it, but I will make him understand it. It is paragraph 3.42 and 3.42...[intervene]

CHAIRPERSON: What clause?

20 **MR KOKO:** Clause 3.42.

CHAIRPERSON: Yes.

MR KOKO: 3.42 deals with what we call the deemed quality clause in Clause 9.6 because 9.6 says:

“Unless you serve non-compliance notices within 15 days the coal is deemed to be compliant.”

CHAIRPERSON: Now, Mr Seleka understands that very well Mr Koko, he understands that very well.

MR KOKO: Let me tell you why he does not understand that because this 3.42, it says and let us read it, it says:

10 “The parties specifically agree and record that the spreadsheet in respect of qualities of coal sold and delivered by Optimum Colliery to Eskom exchange between parties on a daily basis will constitute ongoing compliance with the provisions of Clause 9.6 of the CSA.”

CHAIRPERSON: Ja, but what does 9.6 deal with?

MR KOKO: With the deemed clause.

CHAIRPERSON: Oh, the one that you have just read.

MR KOKO: Yes, it is a deem clause. So this remedies.

20 **CHAIRPERSON:** So this Clause 3.4. 2 means that, as part of the settlement agreement, the parties referred to the spreadsheet which deals with qualities of coal sold and delivered by OCM to Eskom and it was saying the spreadsheet is exchanged between the parties on a daily basis.

MR KOKO: Yes.

CHAIRPERSON: And it was saying that, that spreadsheets will constitute ongoing compliance with the provisions of 9.6 of the CSA.

MR KOKO: Yes.

CHAIRPERSON: So, what did that mean, as opposed to what was there before the settlement agreement because before the settlement agreement as I understand the CSA, if Eskom failed to give notice to OCM, they have given us coal that is defective, or that is less than or whatever quantity.

If it failed to give that notice...[intervene]

MR KOKO: Within 15 days of delivery.

CHAIRPERSON: Within a specified period then the
10 results would be that it cannot complain later.

MR KOKO: Exactly.

CHAIRPERSON: It is accepted that the coal was fine that is why it did not give that notice.

MR KOKO: Exactly.

CHAIRPERSON: But if it wants to indicate that the coal is not fine, it must give that notice.

MR KOKO: Correct.

CHAIRPERSON: So that was the position before the settlement agreement.

20 **MR KOKO:** Yes.

CHAIRPERSON: How did this clause change that position if it did?

MR KOKO: So now, this clause says every day, Chair and I worked in the laboratory we exchanged spreadsheets for the coal qualities. So this clause says those

spreadsheets, constitute compliance.

CHAIRPERSON: Ja, but I mean, compliance in what way? Compliance on the part of Eskom to say we are not happy with your coal.

MR KOKO: Yes.

CHAIRPERSON: In other words, did this clause now say, provided that we have exchanged the spreadsheet and if the spreadsheet says the coal is not good enough, is not of the right quality, then Eskom did not have to give notice in
10 terms of the CSA.

MR KOKO: Yes.

CHAIRPERSON: So this Clause 3.4.2 change the regime in that way.

MR KOKO: Yes.

CHAIRPERSON: So that if Eskom did not give notice, after the settlement agreement, provided this spreadsheet had been exchanged, and the spreadsheet indicated that coal was defective, then that would be fine.

MR KOKO: Yes.

20 **CHAIRPERSON:** Eskom could rely on the spreadsheet to say, you gave us defective coal.

MR KOKO: Yes.

CHAIRPERSON: Okay, and well that part has never been raised.

MR KOKO: Exactly, Chair.

CHAIRPERSON: In evidence, nobody has raised that part.

MR KOKO: And it was never raised with me by CDH and I only learnt it later, when my counsel was arguing with me and says, but have you read this and all what CDH raises with you, is the next paragraph 3.4.3 which says:

“If you make a deduction a month in arrears, you must give the details of why.”

But that clause stands on its own, Clause 3.2 does not stand on its own, Clause 3.42 deals with 9.6, Clause 3.43 stands on it is own. The fact that – and it happens a month in arrears only when you make the deduction. The fact that I do not make a deduction does not mean I fulfilled them, because Clause 3.4. 2 stands on it is own.

CHAIRPERSON: So going back to 3.4.2, are you saying that the position therefore is that after the conclusion of the settlement agreement it would not have been open to OCM/Glencore in regard to the penalties claim of Eskom to say but you did not give notice as contemplated in the CSA within 15 days.

MR KOKO: Viola! Viola!

CHAIRPERSON: Ja.

MR KOKO: Viola!

CHAIRPERSON: Because that had bee superseded by this ...[intervenens]

MR KOKO: Viola!

CHAIRPERSON: But of course if Eskom did not give that notice and there was no spreadsheet exchanged Eskom would – still would be in trouble.

MR KOKO: Yes, but the switches are done every day.

CHAIRPERSON: Every day?

MR KOKO: Ja, every day, every single day Chair.

CHAIRPERSON: Ja.

MR KOKO: You go to any power station in fact the
10 affidavit of Gert Opperman, paragraph 59, says so.

CHAIRPERSON: The purpose of the – what is the function of the spreadsheet, is it to indicate among other things Eskom's assessment of the quality and quantity of the coal so that it indicates to OCM we are happy with your coal or we are not happy with your coal?

MR KOKO: Correct.

CHAIRPERSON: That is part of its function?

MR KOKO: That is the only purpose of it.

CHAIRPERSON: That is the only purpose ...[intervenes]

20 **MR KOKO:** Only purpose of it.

CHAIRPERSON: So in other words the parties must have realised that the question of whether there is – whether the coal is defective or not must be indicated on the same day.

MR KOKO: Correct Chair.

CHAIRPERSON: Okay, alright.

MR KOKO: And Chair while we are on that can we go to ...[intervenes]

CHAIRPERSON: Of course, of course your argument if it is correct Mr Koko would mean I suspect and Mr Seleka will be paying attention to this, may well mean that when Eskom settled the claim of penalties against Tegeta on a very low amount compared to the original amount, it could not rely on not having given that notice within fifteen days to say we had to settle this claim because we were going
10 to lose in the arbitration because Glencore was going to raise this issue and say where is your notice, you never gave us notice. I am raising that because that is one of the issues that ...[intervenes]

MR KOKO: Chair it will come, it is in my main affidavit, I am saying I settled at 577, based on Clause 9.6.

CHAIRPERSON: Yes, well you may be saying that but I don't think somebody else, other people have said that, I don't think Mr Molefe said that.

MR KOKO: No, I, we will go to it, I am saying it, I said it
20 at 577 on the basis of Clause 9.6 in the absence of those notices.

CHAIRPERSON: Ja, in the absence of those notices but how would you rely on ...[intervenes]

MR KOKO: But this is my point, and this is my anger now Chair at the CDH, I relied on a legal opinion and in the

memo of CDH of March 2017, which did not tell me about a second addendum 3.42 and what it told me was 9.6.

CHAIRPERSON: So – but then so in terms of what happened then and in terms of your understanding of the position at that time you relied on the absence of the notices.

MR KOKO: Yes.

CHAIRPERSON: But you say now actually the issue of notices was neither here nor there.

10 **MR KOKO:** Yes.

CHAIRPERSON: The issue was in the spreadsheets.

MR KOKO: Yes.

CHAIRPERSON: And the spreadsheets had been exchanged?

MR KOKO: Yes.

CHAIRPERSON: And therefore in terms of that ...[intervenes]

MR KOKO: And therefore we were ...[intervenes]

20 **CHAIRPERSON:** And Eskom was not – had not failed to comply with ...[intervenes]

MR KOKO: Yes.

CHAIRPERSON:anything.

MR KOKO: Yes Chair and therefore – Chair this is important because I am going to make a motivation to you that the R2.1billion was not bogus, it was real.

CHAIRPERSON: Ja.

MR KOKO: Chair please.

CHAIRPERSON: And therefore the whole amount should have been pursued against Tegeta?

MR KOKO: Yes! Yes1! And should have been pursued against Optimum too.

CHAIRPERSON: Ja. It was pursued.

ADV SELEKA SC: It was pursued.

CHAIRPERSON: It was pursued against Optimum.

10 **MR KOKO:** No against Optimum ...[indistinct] lose.

CHAIRPERSON: But you never – nobody has said that's what you were told against Optimum, you are the first one to tell me.

MR KOKO: Come again?

CHAIRPERSON: I am saying you are the first one to tell me that against Optimum/Glencore you were told you were going to lose.

MR KOKO: Yes.

20 **CHAIRPERSON:** None of the witnesses before you have told – has told me that.

MR KOKO: But the documents of ...[intervenes]

CHAIRPERSON: What they have said is that they were told when they sought to pursue the claim against Tegeta ...[intervenes]

MR KOKO: Ja, but Chair ...[intervenes]

CHAIRPERSON: They told you ...[intervenes]

MR KOKO: But Chair this is why I had a problem with the witnesses that have come before you.

CHAIRPERSON: Ja.

MR KOKO: I mean Ms Daniels goes an extra mile and I have got a document here, she says she was in a meeting with Mr Thulangu CDH when they briefed us that we are going to lose and we persisted because we were captured That is Ms Daniels who says that. The whole recipient of
10 this document of CDH, CDH writes in these documents that we are going to lose, CDH says so, he says – they don't say we are going to lose but they seem to be saying y9ou are going to have difficulty.

CHAIRPERSON: Ja.

MR KOKO: Now Chair please then go to page 18 – Bundle 15 C.

CHAIRPERSON: 15 C what page?

MR KOKO: 1811.

CHAIRPERSON: 1811.

20 **MR KOKO:** Right. Chair 1811 is ...[intervenes]

CHAIRPERSON: On a lighter note Mr Koko why do I suspect that after this episode you are going to feel like coming back.

MR KOKO: Chair I would be happy to come back because this is ...[intervenes]

CHAIRPERSON: [Laughing]

MR KOKO: Chair this is – Chair Ms Thuli Madonsela did us wrong, she did not look at this evidence.

CHAIRPERSON: Ja.

MR KOKO: And she labelled us and not looking at this evidence, and the comfort I have is that you are interacting with this evidence, therefore you will not conclude that Mr Molefe was brought into Eskom to force Optimum into hardship when the document speaks for itself. If Ms
10 Madonsela looked at this evidence Chair she would have reached a different, she would have cut us some slack, but please let's go to paragraph 56 of the – page ...[intervenes]

CHAIRPERSON: Ja, I am there.

MR KOKO: So page 56 ...[intervenes]

ADV BARRIE SC: Chair just for the record that is an extract from the affidavit of Mr Gert Opperman and I am not aware that that affidavit is before you in any other form, but it is an extract of Mr Opperman, the first page is
20 there for purposes of identification, and the last page I think for purposes of signature, we didn't include the whole of it.

CHAIRPERSON: Well I was – hang on second I was still asking what document we are dealing with that has got Clause 56. Oh you say – oh you say it's part of Mr

Opperman's affidavit but you don't know whether this affidavit is already before me?

ADV BARRIE SC: Yes, as you please.

CHAIRPERSON: Mr Seleka I know that there is an affidavit of Mr Opperman but I don't know if it is this one.

ADV SELEKA SC: Yes ...[intervenes]

MR KOKO: It is the only one Chair.

ADV SELEKA SC: I haven't checked this one Chair but I know he has testified ...[intervenes]

10 **CHAIRPERSON:** Oh, no there is an Opperman, there is an affidavit by Opperman ...[intervenes]

MR KOKO: Chairperson this is the only one.

CHAIRPERSON: Is it the only one, okay, no it is alright, okay just read paragraph 56 then.

MR KOKO: Paragraph 56 is the coal quality, how qualities were managed at Hendrina and it is no different to how we managed it everywhere. Chair one of my sins I was the corporate specialist on coal and that is why I am getting so passionate about it, I paint my ...[indistinct] on this.

20 **CHAIRPERSON:** Ja.,

MR KOKO: For the delivery of coal by OCM to – and Chair I am going to read this but the most important bullet point I am interested in is [i] at the bottom.

CHAIRPERSON: Okay. Well if the others are not important go to [i] but if they are important ...[intervenes]

MR KOKO: Yes, so the [i] having analysed the coal it says the result of the coal analysis are available to both Eskom and OCM simultaneously and what he did not put there is via the spreadsheet.

CHAIRPERSON: Sorry?

MR KOKO: What he did not put there is that the results are available simultaneously via the spreadsheet.

CHAIRPERSON: Oh, okay, but that is what – that is the basis on which he was saying this?

10 **MR KOKO:** Yes.

CHAIRPERSON: Okay.

MR KOKO: Right, Chair while we are on that page I don't want to come back to it, in the next page is paragraph 60.

CHAIRPERSON: Ja.

MR KOKO: Now the Optimum and other witnesses have really led you astray to want to believe that the CSA of Optimum was onerous, was unworkable and the fines could not be resolved which was wrong, was a lie, but let me give me what the project manager says and that is in paragraph
20 60. I am going to read 59 to 61.

“In hindsight it became clear that soon after 2012 refurbishment of ...[indistinct] the recorded size in parameters of the quote supplied by the conveyor did not meet the contract specifications. There were several initiatives to understand the science

and challenges and their – and this included assessment by both Eskom employees and a consultant ETC. Eventually on 1 October 2015 Mr Jan Hogis from Optima unilaterally decided to switch off the secondary crusher at the ...[indistinct] point of the Hendrina power station. When the secondary crusher was switched off Eskom noticed that there was significant reduction in the percentage of points reported in the daily coal results sheet. From October 1, 2015 the secondary crusher was never operational and it was clear that it had a significant effect on the increase of points reported by the two laboratories.”

10

In this transcript, page 60 of these transcripts – I forgot the date – it says this is how these points were shown in October 2015, so the whole story that the fines could not be solved and therefore made the contract onerous. It is wrong, the fact is Optimum did not operate the mine according to the best practices, the problem of the fines

20 was the secondary or the secondary – was the secondary crusher at assembly point which was solved by Mr Flaggers[?] on the 1st of October so there should not have been a problem, and here we are short, we are killed, we are told names for a mere technical problem that could not be resolved.

Chair the issue then becomes how did Tegeta solve this problem, so that is another discussion, but all that I am submitting to you is that the question of quality at Optimum was Optimum, was Glencore/Optimum's problem and that is why I wrote opinion piece which is part of here, that they have made their bed, they had to lie on it and when they switched off the bed and refused to go on arbitration they broke the relationship with me as the Group Executive of Eskom.

- 10 **CHAIRPERSON:** No, that is fine, I mean the – I will hear what Mr Ephron will say when he comes here, part of what is important is about some of the elaboration that you have given. It seems on the face of this – it seems on the face of it to explain why Glencore/OCM did not pursue arbitration to the end, a question that I have raised to say if they say they were aggrieved by your – by Eskom's conduct in not agreeing to raise the parts and the agreement CSA – the CSA said for that you can go to arbitration if you feel any hardship, and there did at some
- 20 stage appear to be going towards arbitration. Why did they not pursue it to the end, so you are saying out of – or what you think is they realised because of Clause 27 I think you said that they had no reasonable chance of winning the application because their problem, they would have to rely on the effects on them of export markets, of the export

markets, and that clause, ...[indistinct] clause excluded that.

MR KOKO: Correct.

CHAIRPERSON: And that is why they didn't pursue arbitration to the end.

MR KOKO: Correct.

CHAIRPERSON: And complained that Eskom was being hash on them by not agreeing.

MR KOKO: Yes. There's a second part to your question
10 that says when they signed the arbitration agreement in
December they excluded the coal qualities.

CHAIRPERSON: H'm.

MR KOKO: Again they did so because they knew that it
was dealt with already in the arbitration agreement of April
2011 and that they will – there's nothing new but the third
part that they lied to you about is they told you that we've
got a contract of 40 years and its fixed, the price is fixed.

CHAIRPERSON: H'm.

MR KOKO: They lied to you Chair, I won't go to it, Mr
20 Seleka can do that. The payment clause, the price and
payment clause is clause 7. Clause 7.1 says:

“Payment will be done according to Schedule 3 and
Schedule 4.”

I won't go to Schedule 3 and Schedule 4.

CHAIRPERSON: Well you might have to because you

might explain something that nobody has explained.

MR KOKO: Chair I really want to do that, because one of the issues I had raised when Mr Brian Molefe referred to when he came to give evidence was why did Glencore/Optima agree to a clause that tied them to the price for such a long time, why didn't they raise that issue from – why did they agree to that in the first place and Mr Brian Molefe's answer was that they didn't do due diligence and they were – I don't know whether he said they were
10 hoping to use their proximity to Mr Ramaphosa and he was not Deputy President at the time, in order to gain some advantage but you are saying no, no, no there is a schedule 3 and schedule 4 which says something about that, what do they say?

MR KOKO: Chair the problem with Mr Molefe is that he behaves like a Commander, he wants to take responsibility for everybody's problem, he should have easily said that's Mr Koko's problem.

CHAIRPERSON: Okay, okay.

20 **MR KOKO:** Because – and I have listened to him on many occasions, things that he has no personal knowledge of that I did he tries to defend, when he should just say but this is ...[intervenes]

CHAIRPERSON: Mr Koko will deal with it.

MR KOKO: Mr Koko will deal with that. Of course I

discussed it with him, but Chair there is a big difference there is a big difference between the owner of the problem and somebody explaining to you, especially when the explanations happened five years ago, so I think Mr Molefe tried to get himself ...[indistinct] but Chair let me ...[intervenes]

CHAIRPERSON: Where are we going to find what you are looking for?

MR KOKO: It is in Gert Opperman's affidavit Chair.

10 **CHAIRPERSON:** And let's – we were dealing with that just now, what ...[intervenes]

MR KOKO: No Chair what we were dealing with Chair is one the things I suspected is that ...[intervenes]

CHAIRPERSON: I am sorry what bundle was that where Mr Gert Opperman's affidavit is?

MR KOKO: 15c

ADV SELEKA SC: 15c Chair.

MR KOKO: No, no, 15c is my ...[intervenes]

ADV SELEKA SC: Yes it has Mr Gert Opperman's
20 ...[intervenes]

MR KOKO: Ja, but no I just took the pages, so this page I did not include, but – oh ...[intervenes]

CHAIRPERSON: Oh, okay so ...[intervenes]

MR KOKO: But I want to read to you ...[intervenes]

CHAIRPERSON: But I want to see what you are looking,

what you are going to read from?

ADV SELEKA SC: Give us the para number.

MR KOKO: Paragraph ...[intervenes]

CHAIRPERSON: In what bundle first.

MR KOKO: Well where is Gert Opperman's ...[intervenes]

ADV SELEKA SC: Chair it is – I think he would have pulled it out from ...[intervenes]

CHAIRPERSON: Ja, it was in this ...[intervenes]

ADV SELEKA SC: The bundle at page 1 yes.

10 **CHAIRPERSON:** So we don't have it here.

MR KOKO: Ja, but Chair you need to look at these ...[intervenes]

CHAIRPERSON: Read it, read it there.

ADV SELEKA SC: I have a copy which is not paginated.

CHAIRPERSON: Ja, okay no, read it because you have got what you want to read to me, even if I am not looking at it.

ADV SELEKA SC: Yes so ...[intervenes]

CHAIRPERSON: Just tell me ...[intervenes]

20 **MR KOKO:** It is on page, it is in Gert Opperman's page GJ0184 and it ...[intervenes]

CHAIRPERSON: Okay and what paragraphs of his affidavit, I think that would be ...[intervenes]

MR KOKO: But it is a ...[indistinct] and then I am reading the coal supply agreement, CSE agreement, Clause 7, 7.1,

it says:

“The contract price payable for coal to be supplied by TNC [and TNC is Optima] to Eskom under this agreement shall be determined in accordance with the provisions of Schedule 3 ...” ...[intervenes]

CHAIRPERSON: I am sorry, you say TNC is Optima?

MR KOKO: Yes.

CHAIRPERSON: Does that refer to ...[intervenes]

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

10 **CHAIRPERSON:** Ja, the earlier entity.

MR KOKO: The earlier entity.

CHAIRPERSON: Ja, okay ja, no if you say the earlier entity Optima’s predecessor I will understand, if you say it is Optima ...[indistinct], Optima’s predecessor, but Optima took over the rights and obligations.

MR KOKO: Correct yes.

CHAIRPERSON: Ja, okay.

MR KOKO: So the price shall be determined in accordance with provisions of Schedule 3 and Schedule 4
20 hereto.

CHAIRPERSON: The price of coal?

MR KOKO: The price of coal.

CHAIRPERSON: Ja.

MR KOKO: And if you go ot Schedule 3 you will find the contract price.

CHAIRPERSON: Ja.

MR KOKO: And the – it is on page 138 of Mr Gert Opperman's, GJO138 and then we find in monthly contract price payable by Eskom to TNC in terms of Clause 7 of the agreement to which this schedule is annexed as Schedule 3 and shall be determined in accordance with the following formula, and it gives you the formula and then in the formula there is an ...[indistinct] at A and the ...[indistinct] at A is equal to the escalation factor determined in accordance with schedule 3 to this agreement. So there is an escalation factor ...[intervenes]

10

CHAIRPERSON: So it is not the same price throughout?

MR KOKO: No, no, no, it is not, you were lied to Chair.

CHAIRPERSON: [laughing]

MR KOKO: You were simply lied to, people are just taking advantage of you.

ADV BARRIE SC: Chair the relevant pages of the agreement are before you in terms of the bundle C, 15C.

CHAIRPERSON: Ja.

20 **ADV BARRIE SC:** At page 1720.

CHAIRPERSON: 1720.

ADV BARRIE SC: Yes, in Bundle 15C.

CHAIRPERSON: Okay, right.

MR KOKO: Chair we haven't ...[intervenes]

ADV SELEKA SC: Ja, the clause itself which Mr Koko

read, 7.1 it is at 16.61.

ADV BARRIE SC: Yes the contract price is at 1715 and the escalation at the page that I referred you to.

CHAIRPERSON: Ja at Eskom Bundle 15C page 17, 270, I have seen the heading “escalation factor” and then I see X and so on, is it ...[intervenes]

ADV BARRIE SC: No that is Schedule 4, so Schedule 3 is the one it is before that one, 1715.

CHAIRPERSON: Okay alright, but Mr Koko do you seek to
10 ...[intervenes]

MR KOKO: 17 Mr Barrie?

CHAIRPERSON: Do you seek to contract price ja is it 1715, contract price, the monthly price tabled by Eskom – that is what you were reading just now Mr Koko?

MR KOKO: Yes.

CHAIRPERSON: Ja, I have got that, that’s in schedule 3?

MR KOKO: Yes, yes it is in ...[intervenes]

CHAIRPERSON: Is that Schedule 3?

MR KOKO: That is Schedule 3, what you see in page
20 1715 is Schedule 3.

CHAIRPERSON: Ja.

MR KOKO: And then if you go to 74 Chair it will be ...[intervenes]

CHAIRPERSON: Well let’s just finish with schedule 3 if we may, the monthly contract price payable by Eskom to

TNC in terms of Clause 7 of the agreement to which this schedule is annexed as schedule 3, and that agreement is SCA, shall be determined in accordance with the following formula. $P = 8 \times [B + C - C + E + F - D]$ and then it says where P, it refers to the monthly contract price payable by Eskom,

[a] the escalation ...[indistinct] determined in accordance with Schedule 4 to the agreement;

[b] the monthly base price;

10 [c] the bonus if any payable in terms of Part 1 of Schedule 1 to the Agreement;

[d] the penalty if any payable in terms of Part 1 of Schedule 1 to the agreement;

[e] the bonus if any payable in terms of Part 2 of Schedule 1 to the agreement;

[f] the consistency bonus if any payable in terms of Schedule 2 to the agreement;

[g] the penalty if any payable in terms of Part 2 of Schedule 1 to the agreement.

20 Yes, and then you say we must go to ...[intervenes]

MR KOKO: Chair if we go to page 1720.1

CHAIRPERSON: Yes.

MR KOKO: And you see the escalation factor.

CHAIRPERSON: Yes, continue.

MR KOKO: And you will see that the escalation factor it

is – the X here is that [a] that ...[intervenes]

CHAIRPERSON: It says the escalation factor.

MR KOKO: Yes.

CHAIRPERSON: The escalation factor is defined in the agreement, the agreement to which this schedule is annexed as Schedule 4 shall be determined in accordance with the following formula, and then there is a formula there that is given and the formula involves various factors. It goes up to page 1721.

10 **MR KOKO:** Yes.

CHAIRPERSON: So but the point you are making about all of this Mr Koko if I understand well is this, to the extent that anybody has said to this Commission or said at any time anywhere that the price, the coal price, to which – which was applicable when Glencore/OCM commenced its contractual relationship with Eskom was fixed and was – needed an amendment of the agreement in order to be increased that is wrong and that was based on a misunderstanding of the CSA agreement read with its
20 schedules?

MR KOKO: Correct.

CHAIRPERSON: Because in terms of the CSA agreement and schedule 3 and schedule 4 when the price could be increased in accordance with the escalation regime that was provided for in schedules 3 and 4 or schedule 4.

MR KOKO: Yes.

CHAIRPERSON: Is that ...[intervenes]

MR KOKO: Correct.

CHAIRPERSON: That is the point you are making?

MR KOKO: Correct.

CHAIRPERSON: And therefore insofar as Glencore/OCM felt that they needed the price to be increased this is one route they could have used?

MR KOKO: Yes.

10 **CHAIRPERSON:** And their failure to use it must mean that they didn't understand the agreement?

MR KOKO: Yes Chair but the dispute notice of July 23 says in that dispute notice that the escalations are – the actual escalations at the mine are higher than what the contract says, that is what I say, and my response to them is quite simple that – the escalations as we have them is an outcome of arbitration of 2011, you have to tell me what happened between 2011 April and July 2013, that was not part of the settlement agreement. You have to come and
20 tell me.

CHAIRPERSON: H'm, but now schedule 8 talks about a monthly price.

MR KOKO: Yes.

CHAIRPERSON: The agreement could not have contemplated that there would be a new price every month,

so why is it talking about a monthly price?

MR KOKO: Because the indexes, the producer price index is – you see it is linked to the producer price index.

CHAIRPERSON: Is the position that the formula used to determine the price is based among others on the consumer price index?

MR KOKO: Yes.

CHAIRPERSON: And that, or you could find that there are different prices for different months?

10 **MR KOKO**: Yes, you've got it Chair.

CHAIRPERSON: Ja, okay.

MR KOKO: You've got it Chair.

CHAIRPERSON: But how could Glencore/OCM not have known this?

MR KOKO: No they have known it Chair.

CHAIRPERSON: They knew it?

20 **MR KOKO**: They were taken Eskom provide and this is where I am saying to you Chair I have met these people, I have interacted with them, at one point if I was not in a business environment I would have reacted badly. These people took advantage of their proximity to Mr Ramaphosa, they thought they could come to Eskom and say increase the price and we will turn the other cheek. I mean my – Mr Bester when he resigned on the 20th of June or 20th July 2015, he says to me these people are in hardship, they are

friends of the future President of the Republic, why do you want to be on the other side, why do you want to offend the future President of the Republic and you will see in my emails to DPE to Jewell I said to him I want to keep this factual, because in my briefing with him I told him these people are touching us with Mr Ramaphosa and they think that we must accept and then Mr Jewell ...[indistinct] wanted me to write it, I said I am not writing it, but this is where I am saying Chair this Commission and Ms

10 Madonsela are caught up between the business interests of the former President and the current President and the difference with you is that you are following the evidence and you will hopefully make your decision based on the evidence when Ms Madonsela took the side without looking at the evidence.

These guys were so arrogant, they felt entitled, forget the contract, we are in hardship, give us the price.

CHAIRPERSON: Well you need to also remember that if I recall correctly she seems to have had a shorter time to

20 look at these matters than this Commission has had.

MR KOKO: Ja, but then she should not have called us captured. We are labelled captured because of her report. Mr Koko you are capture, why do you say I am captured, because Ms Madonsela said so.

CHAIRPERSON: Okay, alright. Well I will Mr Seleka I

think we need to hear a response from the Glencore/OCM side on all of this even if it is by way of responses to specific questions on affidavit and I emphasize on affidavit or affirmed declaration because there has been a complaint that Mr Ephron does not depose to an affidavit, he just sends statements. I have not gone to check whether this claim is correct but I know it has been made.

You see Mr Koko one has got to – one has got to ask the question why would they – that is Glencore/OCM –
 10 go to the extent of putting the company on business rescue or to the extent of even selling the company or the shares, all arising from this if they knew that they could address this grievance about price in this way.

MR KOKO: Chair they failed in ...[indistinct] they failed in ...[indistinct] you know what these guys used to tell me, he says Mr Koko who the hell do you think you are, we have always got the prices we wanted. We have always got the prices we wanted, why only now because of you, why only now, just give us the price we want and I said to them
 20 Eskom prices we are a reputable business and I go into – Chair when I wrote my affidavit I wrote is a ...[indistinct] I said to them we are a reputable business, NERSA regulates how much revenue I must get, MYPD3, in terms of MYPD3 I have applied for two R255billion, you know 223 to be exact Chair, R223billion on coal purchases within the

MYPD3 window, I got R200billion, I am R30billion short so if I agreed to your proposal, and Chair you must go to paragraph, to MMK50, the last page of MK50 your proposal will add R5.5billion to Eskom costs up to the end of the contract. I can afford it but I also have included – Chair let's go to that, paragraph 26 ...[intervenes]

CHAIRPERSON: Just make your point first before we – so that I see whether it is necessary.

MR KOKO: In the minutes of – in the meeting of IFC 2015
10 the IFC, the FD said Government is not going to give us money, government is not going to give us money, we are not in the position to raise more debt, so if you are an executive of Eskom and your CFO in the board meeting and it is minuted and it is there Chair, if you don't go to it now because Mr Seleka wants to finish it, I have included it.

CHAIRPERSON: But you know you say that is in what bundle?

MR KOKO: Bundle 15C.

CHAIRPERSON: 15?

20 **MR KOKO:** 15C yes.

CHAIRPERSON: C?

MR KOKO: Yes.

CHAIRPERSON: Well let's just see whether we have got what page – you want to try and find it?

ADV BARRIE SC: Mr Koko what document are you looking

for?

MR KOKO: The minutes of the 26th of February 2015. I have seen it. It's page 315.

ADV BARRIE SC: It is 315, page 315.

MR KOKO: No, we don't have ...

ADV BARRIE SC: Bundle 15C at page 1849.

CHAIRPERSON: 1849.

MR KOKO: Chair this is the minutes of the Investment & Finance Committee of the Board.

10 **CHAIRPERSON**: Hang on one second let me get there. Yes. Yes Mr Koko?

MR KOKO: It is the meeting of the 26th of February 2015 the Board members you see there Chair if you go to page 1850 and you see the inputs by the FD ...[intervenes]

CHAIRPERSON: That is the highlighted parts starting with the FD reported?

MR KOKO: Correct.

CHAIRPERSON: H'm.

20 **MR KOKO**: The FD reported that it was highly unlikely that a further equity injection from government to Eskom was forthcoming and raising further that was becoming a very expensive option, thus the only option for the recovery of the additional costs associated with these initiatives was for Eskom to approach the Regulator to selectively reappoint MYPD3 determination in order to

recover that.

So the CFO of Eskom is saying we are not going to raise that, we are not going to get equity from government so the only revenue to cover any wish list is to go to the regulator.

Now Chair the next – no it is 1851 I have already highlighted it for you.

CHAIRPERSON: 1851?

MR KOKO: 1851.

10 **CHAIRPERSON:** Ja, I see the highlighted part.

MR KOKO: The CE ...[indistinct] with the package which included a tariff increase and equity injection. Both could not be liquidated quickly to assist the cash flow. The Chairman stated that IFC had to write to the Board to request the Board to write to the shareholder and the War Room to appraise them of the fact including the fact that the EAF, the Energy Availability Fit that was at 70% and was still reducing while the cost is increasing. It was reported that it was highly unlikely that the business
20 productivity process would achieve a R60billion savings in the financial year.

The Chairman recommended that the following issues be included in the letter, about the dire Eskom financial position. Use other levers in parallel to find a gap that would assist Eskom. Consider MYPD4 now, know

that the government cannot assist Eskom with cash flow.

So if you go to the resolutions – if you go to the resolutions, and it is page 1853 of the resolution.

CHAIRPERSON: Ja.

MR KOKO: It says a letter should be prepared from the investment committee, investment finance committee, IFC, to request the Board to engage the shareholder and the War Room to appraise them of the facts about Eskom's dire financial position including the fact that the EAF was at
10 70% and reducing and costs were increasing. Eskom would use other levels in parallel to find a gap that would assist the cash flow. Consideration would be given to MYPD for now noting that Government cannot assist with cash flow. I will stop there.

So Chair I as a leader as Eskom was faced with a ...[intervenes]

CHAIRPERSON: Ja go closer to the mic.

MR KOKO: I as a leader of Eskom ...[intervenes]

CHAIRPERSON: Ja.

20 **MR KOKO:** ...and Molefe was confronted with this really to where the Board has resolved that we not going to get money from Government, we are not going to be successful in raising additional debt to cover the R5.5billion that Optimum Mine was going to cost us and the only way is to go to the Regulator.

We did that Chair, we went to the regulator on the 30th of April 2015 and we asked NERSA to give us R52.8billion to cover all these issues, we explained to NERSA that if you don't give us the R52.8billion we will not be able to keep the lights on. Chair on the next page is the response from NERSA. NERSA responds, if I can go to ...[intervenes]

CHAIRPERSON: Their response is dated 8 May 2015 and it is a media statement, if that is what you are looking at.

10 **MR KOKO:** Correct.

CHAIRPERSON: At page 1854.

MR KOKO: Yes.

CHAIRPERSON: H'm.

MR KOKO: And NERSA rejects that, NERSA rejects this, I heard you but I reject you. If I cannot find money from the government as equity I cannot raise debt and NERSA says no I will be foolish to agree to the proposal of Optimum that will the business R5.5billion, it will be against the PFMA, I will not be able to find it. Why am I being
20 criminalised, why am I being called corrupt for that, why am I being called captured for that, and Chair this is the point I am asking you, is that we have applied our minds, we were not corrupt, we were not favouring anybody, this is the situation we found ourselves in and Ms Thuli Madonsela really owes me an apology for doing the right

things.

CHAIRPERSON: Well you see some of the points you raise haven't been raised by anybody as far as I remember Mr Koko. I have noticed that we are at five to – six minutes to ten.

MR KOKO: Chair I am happy to come back the next day to finish.

CHAIRPERSON: [laughing] I like the idea Mr Koko, well I don't know where I will find time because there isn't, but I
10 from my point of view in the light of some of the things you have pointed out I will prefer if I could find time for you to come back, because it might be important to hear more.

MR KOKO Chair I want to – I have got a lot to say about the R1.6billion. I have got a lot to say about prepayment, the 650, I have got a lot to say about the penalties.

CHAIRPERSON: Ja, so I think we will need to stop for today.

ADV SELEKA SC: Yes. We need a separate Commission of Inquiry Chair.

20 **CHAIRPERSON:** That is point one, point two, we can explore, we can use the issue of – we can use the route of written questions and written answers by way of affidavit in the meantime, but if I do find a space I am going to what I can to assist Mr Koko to come back because this is an important part but we just have difficulties with time but I

don't want to say let's wait for when I find time or not. I would like that questions be formulated and be sent to him, that would have been asked and that he responds but if I find time he can come and explain and deal with that matters even if he has dealt with them in writing because sometimes that can have if you have got oral clarification.

ADV SELEKA SC: Yes.

CHAIRPERSON: So Mr Barrie you see what has happened, so that is what I propose now, that we continue
10 with the arrangement of written questions and written answers in the form of an affidavit but I do – I will look and try and see where we can find time for Mr Koko to come back, even if he has to provide the information on affidavit because it could make a difference and I am happy that from his side he now agrees that if that can be done he will be glad to come back.

ADV BARRIE SC: Chair in the context of what you suggested on Thursday regarding how we will deal with re-examination and whether that wouldn't best be dealt with
20 on affidavit. These aspects will – we will deal with that in an affidavit ...[intervenes]

CHAIRPERSON: I think you must just raise your voice, the aircon is making a noise.

ADV BARRIE SC: Ja, we will deal with that ...[intervenes]

CHAIRPERSON: In the way that ...[intervenes]

ADV BARRIE SC: In that sort of format.

CHAIRPERSON: Okay.

ADV BARRIE SC: We intend to do it comprehensively.

CHAIRPERSON: Ja, ja.

ADV BARRIE SC: As Mr Koko is happy to come back.

CHAIRPERSON: Ja.

ADV BARRIE SC: And to respond to questions if they are put in writing, in terms of that document.

10 **CHAIRPERSON:** Ja, ja, no that is fine. It is just that Wednesday is short notice, there is some space on Wednesday but it is short notice, probably you have other things also.

ADV BARRIE SC: I am available Wednesday, is it in the evening sir?

CHAIRPERSON: You are available?

ADV BARRIE SC: Is it in the evening or during the day?

CHAIRPERSON: During the day.

ADV BARRIE SC: I can do that.

20 **CHAIRPERSON:** You can do it

ADV BARRIE SC: Yes.

CHAIRPERSON: Oh, okay, then maybe we should – let's say, let's confirm tomorrow, is that fine? So you will get confirmation about Wednesday tomorrow through Mr Seleka or the Secretariat.

ADV BARRIE SC: As you please.

CHAIRPERSON: But if Wednesday doesn't happen we stick to the arrangement we have agreed to. Okay, alright. I realise that Mr Seleka you have been denied an opportunity to say much, but I think that some of the issues are important and I don't know about you but my recollection is that some of the points that Mr Koko has brought up haven't been brought up before.

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

10 **CHAIRPERSON:** During oral evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: So okay let's stop for – let's adjourn for today so tomorrow one way or another communication will need to be given to Mr Koko's legal team about whether Wednesday can happen. If it doesn't happen we stick to the arrangement that written questions will be put and comprehensive answers will be given and by way of affidavit but on top of that if I can find time I will try and find time for him to come back.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: You understand Mr Koko?

MR KOKO: Yes.

CHAIRPERSON: Thank you to you Mr Koko, thank you to Mr Berry and your whole legal team, thank you Mr Seleka and your junior and the whole team, thank you to the

investigation team, thank you to the staff, the technicians and everybody, thank you to all of you for your cooperation and for staying until so late.

Thank you very much. For the benefit of the public tomorrow I will hear the evidence of witnesses who come from Travel Excellence who will give evidence about travel bookings and arrangements that they made for various persons at the instance of Mr Salim Essa most of the time I think they say and in the evening I will hear the evidence
10 of the former Speaker of Parliament, Ms Baleka Mbete on Parliamentary Oversight, thank you.

For today we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 18 MAY 2021