

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

**21 MAY 2021**

**DAY 400**



**Gauteng Transcribers**  
Recording & Transcriptions

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

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 21 MAY 2021**

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

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

**CHAIRPERSON:** We are going to proceed this morning. Good morning, Ms Gigaba.

**MS GIGABA:** Good morning, Chair.

**CHAIRPERSON:** We are going to proceed this morning, but before we do I want to start with Mr Gigaba's  
10 application for leave to cross-examine Ms Gigaba. His legal team, are they here, Mr Myburgh?

**ADV MYBURGH SC:** Mr Gigaba's legal team is not here. There is a link established with Mr Solomon.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Apparently it has been done, but he has not been linked up.

**CHAIRPERSON:** Ja. Well, I hope they are listening. Maybe what we should do is let me not start with it. If they are listening when Ms Gigaba finishes hopefully they will  
20 be here.

**ADV MYBURGH SC:** Yes, I understand from Mr Solomon that Mr Gigaba is due to arrive at 10:00.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And I think that Mr Solomon would be available and perhaps we can then formally link up with

him then if that suits you, Chair.

**CHAIRPERSON:** Ja. Okay, let me deal with re-examination later on.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Okay. Alright, let us continue. Ms Gigaba, the oath you took yesterday will continue to apply this morning. Okay. Alright, let us continue.

**ADV MYBURGH SC:** Thank you. Ms Gigaba, we were going through the schedule and we have got up to page 30  
10 and I was dealing with paragraph 55. You might remember that just before that I had dealt with the ENCA interview which Mr Gigaba refers to at paragraph 111 and 112. You will remember that a glitch arose because you did not have the bundle of documents with the transcript of the ENCA interview yet.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** We now have that. It is that small file. We refer to it as SEQ18/2021. Can I ask you please  
20 to go right towards the back and to page what is numbered in red numbering 70? It is about two or three pages from the end of that bundle. At the end. Are you at page 70?

**MS GIGABA:** No, 70, seven zero.

**ADV MYBURGH SC:** Pagination is at the top in red and I am referring to the last numbers.

**MS GIGABA:** Okay, sure.

**CHAIRPERSON:** That is SEQ18/2021-070.

**MS GIGABA:** Okay. Okay, I found it.

**ADV MYBURGH SC:** Now I read to you – I just ask you to confirm this. If you count five lines up from the bottom on the right hand side there is a sentence starting although I was. Do you see there? Ms Gigaba?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Five lines from the bottom there is a sentence starting although I was not there. Do you see  
10 that?

**MS GIGABA:** I am still looking for it.

**ADV MYBURGH SC:** Alright, well do you see the figure 850 in the middle of that paragraph?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Okay. You go one line below that and on the right hand side of that do you see there is a sentence starting although?

**MS GIGABA:** Yes, I see.

**ADV MYBURGH SC:** “Although I was not there when they  
20 give the money, but I will see him when we leave because every time when we go there he used to carry a bag and they will give him money and when we get home he will take the money and put it in the safe and pack it. So, yes, it was there. He is the one who will answer better for what it was for

because I was not there when it was given.”

**MS GIGABA:** Yes, I see that.

**ADV MYBURGH SC:** Confirm that that is what you said.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Could I then return please to the schedule? Now in paragraph 55 you gave evidence about the fact that Mr Gigaba paid for suits in cash and what he says at paragraph 15 – sorry, 115 is that:

10 “In the event that I bought suits I would pay for them over time and in certain instances at discounted prices from stores in Sandton City. In many instances such suits would be sponsored by local designers wishing me to advertise for them given my public profile. I deny that I paid with cash from the boot of my official vehicle. This has been inserted to provide some type of support for discredited witness number 3.”

What do you say to that?

20 **MS GIGABA:** As far as I know there is only one suit that was sponsored out of more than 200 suits that he has. So most of the suits were paid and I know that they were paid. So there is only one suit that it was sponsored for him.

**ADV MYBURGH SC:** Did you say 200?

**MS GIGABA:** No, it was just an estimation.

**ADV MYBURGH SC:** Alright. Well, is it more or less than

that?

**MS GIGABA:** Yes, he has a lot of them.

**CHAIRPERSON:** What would be a realistic estimation?

**MS GIGABA:** There are more than 100 because... [intervenes]

**CHAIRPERSON:** More than 100?

**MS GIGABA:** Ja, because we have them in two rooms at home and a lot of them he kept them - from this year he took them to the storage, so he has a lot of them at the  
10 storage.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And then he goes on to say at paragraph 119 effectively that he denies that he gave you a credit card. He talks about a debit card. What is your position in relation to that?

**MS GIGABA:** When he says it was a debit card with 3 000, there is nothing in my life that I can do with 3 000 and he knows that. So when he says it was a debit card, that seems that for me what I know it was a credit card.  
20 He said it was his credit card, but it did not have his signature. But it was a credit card.

**ADV MYBURGH SC:** And what was the limit on that credit card?

**MS GIGABA:** What he said to me, he said I must not use money more than 100 000. So I do not know how much

was the credit card – how much was the limit because it was not linked to me. But when I go overseas sometimes I will use it to buy a bag, like to make an example, bag maybe will cost like 30 to 40 000, so it is a lie that it has 3 000. Also in my life there is nothing I can do with R3 000.

**ADV MYBURGH SC:** Alright and then at paragraph 56, this is the... [intervenes]

**CHAIRPERSON:** Sorry, he had given you a limit which  
10 was 100 000, a limit for you, but you did not know what the... [intervenes]

**MS GIGABA:** Yes, I did not know how much was in it... [intervenes]

**CHAIRPERSON:** ...the limit for him was.

**MS GIGABA:** Yes.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And 100 000 over what period, Ms Gigaba?

**MS GIGABA:** You mean like period of time?

20 **ADV MYBURGH SC:** Yes, to use 100 000 in what space of time.

**MS GIGABA:** So he said in a month.

**ADV MYBURGH SC:** Alright. Now in paragraph 56 this is the incident where you described that you found him packing money into his safe and that he said to you that he



had been given the money by AJ or ANC election activities. This is something that you have repeated quite often in your evidence. I just want to take you to 125. Mr Gigaba says:

“I emphatically deny the contents hereof. If Mr AJ Gupta wanted to donate money to the ANC towards the election campaign, why would he give it to me for my private possession instead of giving it to the ANC directly?”

10 Do you want to comment on that, his denial of what you say?

**MS GIGABA:** That is what he told me when I was asking him what was the money for because I was shocked why he was having a lot of money like that. So that is what he said to me.

**ADV MYBURGH SC:** Then if I could take you now to a different topic and that relates to Nozipho Gigaba, the heading at page 33 of the schedule. You will see it is reproduced from the pleadings. Payment of a bad debt and  
20 employment at Sahara Computers. Now what you say in paragraph 58 of your affidavit is that Mr – there was a family meeting, there was a discussion about the sister being in debt and you said at 58 that:

“At a later stage Mr Gigaba told me that Mr AJ Gupta had agreed to give him 850 000 and that Mr

Mahlangu would collect the initial amount of 425. He also told me that Mr Mahlangu would assist the family with the process to have the sister's name removed from adverse listing by Credit Bureaus."

At paragraph 128 Mr Gigaba says:

10 "I do not know who my sister was indebted to, but I do know that she disposed of her assets that she had in order to discharge her liabilities. I admit that my sister's debts were discussed with me by my father and sister, but to the extent that I assisted somehow it was with basic things such as groceries, petrol until her car was finally repossessed, that could be catered for from my own salary. My parents also contributed the same. The allegation that I would ask AJ Gupta for money is denied as scurrilous and sounds like a convenient untruth."

What do you have to say to that?

20 **MS GIGABA:** So I remember that meeting. So his father called him to come to KZN, then he said there was something very urgent that he wanted to discuss with him and then when Malusi tried to say he was busy at work, he would not be able to go, then his father insisted that he needs to come. So Malusi asked me to come with him.

So we went there. It was me and our kid. So when

we got at his home so his father called him and the sister to go in another room and he left – I was left with his mom and they took like hours, I think like an hour or two hours discussing that and then we left. Malusi said we must go back to Joburg and we drove back to Joburg.

Then I asked him, I was like what was this thing so pressing for your dad, like for you to come from Joburg and also why I was not allowed to go to the meeting because we are a couple. So then Malusi explained to me, he said  
10 no, his father called him. He said he needed to assist his sister because his sister was stressing. I know that he was going to [indistinct] stress.

So then he told me that his sister, because his sister is an optometrist by profession, so he used to have a practice in Port Shepstone and that practice was in debt. It did come in a time where it was closed, so the sister could not pay off. And then their father was telling Malusi that he needs to assist his sister so that she can find another job, because now the reason the sister is not  
20 employable is because she is blacklisted.

So then I asked him how much is she owing. So Malusi said she is owing 850. Then I was – 850 000. Then I was shocked. I was like your father is asking you to pay 850 000. Where are we going to get that money? Then he said, ja, that is the only way because the sister needs to

be taken out of Credit Bureau so that she can be able to apply for a job.

Then I said what did you say to your dad. He said no, I am going to help her out. I was like, how are you going to help her out? Where are we going to get that kind of money? So he said he is going to raise it with AJ. Then he will go discuss with them. He will see what they can do. Then the discussion ended there on that day. We drove all the way.

10           Two days later then Malusi said he is going to talk to them and then when he came back he said to me they agreed but they said they would not give him the whole amount at a time. They will only give him half. Then I said when are they going to give that money to you. He said firstly he will talk to Siyabonga Mahlangu. Siyabonga was his legal advisor at the time. Because he said there are process of removing someone from Credit Bureau which is sister would not be able to do it by herself at the time.

20           So I think two days later Malusi had a meeting with Siyabonga and then he came back. He told me that Siyabonga was going to go pick up the half of the money. He will meet with the sister. Then he will help the sister to remove her name. I think two weeks later I asked him how is that process going. So then Malusi told me that like the process of removing someone from Credit Bureau is not an

easy process, but Siyabonga knows how to assist, so he will assist the sister.

So then he would go fetch the half and then he will do the payment and assist the sister with all the process, which I do not know how the processes of Credit Bureau because I have never been on Credit Bureau. And at that time the sister was not working and later on the sister came to stay with us. Malusi told me that the sister is going to come stay with us and that time he was giving her  
10 I think 20 000, sometimes he will give her 30 000 just to buy herself stuff.

So later the sister came to stay with us in Pretoria and then Malusi told me that she will go to work at Sahara. So I think two months later then she started working at Sahara. So when she was working at Sahara then I asked him, so now is she going to be able to work because previously you said she is not employable because of she is being blacklisted and stuff like that. Then he said he sorted it out.

20 So then I asked him because I wanted him to explain how this whole thing. Then he said Siyabonga is doing the whole thing, then everything is going to be completed. So I was not part of the whole process. Siyabonga was – and Malusi they were helping the sister.

Then the sister came to stay with us in Pretoria,

worked for Sahara for a few months because it was not more than five months. Because when they gave her a position to do marketing and the position I remember she got frustrated about it because she is an optometrist by profession and she was hired to do a marketing position. And I remember she used to raise that with Malusi that the job is kind of difficult for her, because she is working in a marketing field and she was a doctor by profession.

10 So and then we had an argument once the day - it was at night, then she just drove at night. She left our house. That was how she left. So when she left the house she left the job, she drove all the way to KZN. So the following day we were called by the dad, telling us that we need to come home. So he called Malusi, not me. Malusi told me that the father was calling us in KZN, which we went.

20 We had a family meeting where the father was addressing us, especially me, because the sister told that she had an argument with me. So I explained myself what she was doing at my house that I did not like, which was her religious things that I do not agree with that I do not want to talk about to protect her privacy.

So then that is how she left the job. She did not resign. And then I remember Malusi was talking to AJ, because AJ was asking Malusi why the sister does not

resign, because when she left she did not resign. She just left, took her stuff at home, pack at night. When we woke up in the morning she was not there. So that is how everything ended.

**ADV MYBURGH SC:** Could I please take you to paragraph 60? You deal here with the renovations to Mr Gigaba's home on the family plot as it is stated in the heading. And Mr Gigaba says... [intervenes]

**CHAIRPERSON:** Sorry, Mr Myburgh. Has Mr Gigaba  
10 admit that his sister did work at Sahara in his affidavit or is that... [intervenes]

**ADV MYBURGH SC:** Yes, at paragraph 130 Mr Gigaba does admit that his sister worked at Sahara for a period of no more than four months.

**CHAIRPERSON:** Okay. Okay, alright. Thank you.

**ADV MYBURGH SC:** He does go on to say an employment that she got herself without my assistance. I want to just direct your attention then please to paragraph 132.

20 "The Mandeni property belonged entirely to my late father. Any extensions and renovations that had been done to the property were funded by my late father."

What do you have to say to that?

**MS GIGABA:** That one is not true. So when the house was built during that time his father was very sick and

there was a point where I went to his home to fetch his father to stay with us so that I can be able to take care of him, because the sister was not okay as well and Malusi was very busy with his work.

So then his father later admitted here at Milpark Hospital. Then it was me who was traveling every day. And I remember at his medical aid could not pay some of the machines because of his BP, the breathing machine and everything. So he did not have that kind of money,  
10 like because some of the stuff he used to pay for was like maybe 2 000 or 3 000. Malusi used to pay for his dad. Or when Malusi was not around, he was in Cape Town I used to pay for his father.

So it is very strange to me that someone who cannot pay R2 000 can just build that entire house and also on top of that if his father had money to extend the house, why he called us previously to go all the way to KZN to assist his sister to take him out of Credit Bureau. Because at that time his sister was the last born, because  
20 two kids behind her passed away. She was the last born and also she is very close to the father.

So why would the father take the 850 000 and pay for the sister to take her out of the Credit Bureau, then he will rather – and the sister did not have a house at the time, but why would the father would just extend the house



for someone who stays in Pretoria who has a house and who has a two room in Durban and then now he will just go and build another house for the same person, but you have someone who have nothing. So for me that does not make sense. And also we used to pay for his medication because I was there. It is me who took care of his father.

**ADV MYBURGH SC:** Can I ask you what work did Mr Gigaba's father do?

**MS GIGABA:** His father was just a reverend. So that was  
10 the – that is the other thing that is shocking to me when he said his father built a house, because of his health. Even when I met Malusi his father was not working. He already retired long time ago as a reverend, which was someone who was living on tithing from the church. So how can that person can build an entire house?

**ADV MYBURGH SC:** Then at paragraph 61 of your affidavit you dealt with the fact that you said that Mr Gigaba contracted his brother-in-law as the builder and that you came to learn that AJ Gupta funded the  
20 renovations. Mr Gigaba says at paragraph 134 that this is a blatant lie that Mr AJ Gupta funded the building renovations. He says:

“It is noteworthy that Nomachule... [intervenes]”

This is at 135.

“...does not indicate in what circumstances she

allegedly obtained this knowledge.”

You want to comment on that?

**MS GIGABA:** So since he says his father, this one is just easy for him to prove. If he says I am lying, then if he says it is his father who was the one who was paying his brother-in-law, because his brother-in-law is still alive and it is his family member who was building the house. Because I remember most of the time Malusi will be so frustrated that he feels like his brother-in-law is  
10 overpricing him in terms of the prices.

And most of the time when we go to KZN he will give him cash and he will sit with him because they are very, very close. So if he says it is his father who paid that, he can still go to his father-in-law and then take the receipts and then he brings them here in the Commission.

**ADV MYBURGH SC:** Alright and then at paragraph 62 you said that or you say:

“I was present on at least three occasions where Mr Gigaba paid the builder in bundles of cash for the  
20 tiling and plumbing. I do not know how much money was given.”

Mr Gigaba’s response at 137 is that this is a blatant untruth. Do you want to comment on that?

**MS GIGABA:** So the easiest way because everything is untrue to him, he can just give the proof of everything,

especially when you build a house. It is either he can produce an EFT that maybe he had done that it has those dates or he can ask the building to give him the receipts, because as far as I know Malusi never done any EFT to pay his brother-in-law. He was paying in cash.

So if I am lying and he is telling the truth, he can just call him because it is his brother-in-law. They are very close. Then he can bring the receipts to the Commission.

**CHAIRPERSON:** Which year did this happen, the  
10 building?

**MS GIGABA:** It was... [intervenes]

**CHAIRPERSON:** When did it take place?

**MS GIGABA:** 2013 and early 2014, because it was before our wedding.

**CHAIRPERSON:** Okay. Alright.

**ADV MYBURGH SC:** Then if I could take you please to paragraph 65, that is the paragraph where you were addressing the fact that you were taken on a tour of the Gupta residence and that in the process you saw an ATM,  
20 automated teller machine. What Mr Gigaba says at paragraph 140 is:

“I do not recall being part of a small group that toured a newly renovated house in the Gupta compound, neither have I been shown any automated teller machine. It seems bizarre to me

that Nomachule would be shown an ATM at a private residence that could dispense an entire R10 000. I emphatically deny that she witnessed this.”

What do you say to that?

**MS GIGABA:** That was one of the functions we can call it or an event based on the Diwali. Even yesterday I said I only attended two functions in 10 years I was with him. So on that day we were there with him and he was fascinated like I was fascinated. Everyone who was there, especially  
10 me, I thought that was an ATM, but it was a different kind of ATM because it does not have a lot of buttons like an ATM especially on the screen and it is a bit smaller than an ATM.

So when we saw that everyone stopped, because firstly they saw this sauna. For me it was the first time I see a house someone has his own sauna at home. Or it was not my first time to see a cinema, but to see a bigger cinema also it was in someone else’s house it was something else. So I was shocked because they were  
20 taking us to a tour to show us that.

So when all of us people were there, that small group of people we saw that machine, everyone was just fascinated. Even him he was fascinated. So I do not even understand why he will – why he is just denying this because that machine was not his machine. It belonged to

the Gupta family and also he was – all of us were standing there when AJ was demonstrating to us how it works. Although I did not see him loading money on it, I only saw him when he was just pressing, telling us that you just press how much you want and then it just take the money out.

So at that time I thought it was an ATM, but when we were doing the preparation to come here when we were looking at the internet then I saw it was a cash machine.

10 **ADV MYBURGH SC:** Alright. So now I want to take you to your paragraph 66 and 66.1 where you say that you asked Mr Gigaba for a divorce and then at 66.1 Mr Gigaba asked me to delay the divorce proceedings until he appears before the Commission. So what – what Mr Gigaba says in response is that you have an ulterior motive. He says at 143:

“In this regard during January 2021 when Nomachule returned from her study advised me as follows:

- 20
1. I should request my divorce attorneys to contact her attorneys and engage in settlement discussions (which involve paying her a considerable settlement fee).
  2. I must immediately withdraw the criminal complaint that had been opened in July 2020

against her for malicious damage to property; and  
3. she had been approached by the Commission to testify against me following her ENCA interview but would refuse to testify if I complied with conditions 1 and 2.”

What do you say to that?

**MS GIGABA:** That one the meeting happened, so that was after my arrest and also a couple of appearances which when the school sent an email to both of us saying  
10 our kids are affected about what was happening, because what affected our kids it is them seeing the Hawks arresting me in the house and then they told the teachers that and then the teachers called us.

So on going forward I saw how my kids were feeling about that and also appearing to court, doing all the processes in court and our lives being in the media. So in December when I did the interview, because how Malusi did the whole thing, so when my arrest as orchestrated Malusi acted like I did something which everything they did  
20 it so that they can have access to my gadgets and my arrest as well.

So when I did the interview with ENCA I wanted to highlight to the public that everything was just orchestrated. It is not what Malusi acting it was. When the divorce – when I approached Malusi earlier in the year

I said to him can we have a divorce for my personal reasons and I explained all the reasons to him why I want us to divorce and I wanted us to do a divorce amicably and silently. So when Malusi decided to file for the divorce he went to Sunday World.

So after my arrest it was in August I saw myself on the front page that Malusi is divorcing me. And I went to him, I was like how come Sunday World is saying we are getting a divorce because we have not taken that decision  
10 yet. You said I must pause. Then he said he does not know, they are lying.

So I said to him, I remember in September before the summons – I received the summons, I said to him after my court appearances I am going to go to Ombudsman and I will open a case against Sunday World to ask them why they are publishing our divorce because both of us we have not filed for the divorce.

And the same week I received – and I was going to court, I received a phone call from a sheriff saying he is  
20 delivering something where I am, then I was at home and it was the divorce. That was in August. I think it was in September, two months later after my arrest.

And then now I could not go challenge the Sunday World because the divorce was already there and the court proceedings carried on. So in December when I was at

home I sat down, I thought about everything about the kids, how they were going through the therapy and everything around us as a family.

So in January – so on the 18<sup>th</sup> of December after my interview I received a call from the Commission. They said based on my interview would I like to come and appear to the Commission because I said if the Commission called me I would not mind to come. Then I told them, I said no, I do not have a problem, as long I will  
10 be allow to have my legal team to guide me. So they said the Commission is closing, when they open on the 11<sup>th</sup> they will contact me again.

Then I left home. Then I thought about everything. So on the 11<sup>th</sup> of January the Commission called me. They said they would want to meet with me discussing based on the call we had in December. Then I said I do not have a problem, but at the moment I cannot meet with them because I do not have the legal team yet because the people that I am using for my criminal case and the civil  
20 case they have not opened yet. They are still on holiday.

So when I met with Malusi, firstly here he is talking about I showed them the WhatsApp messages. Myself and the Commission at the time were have not communicated via WhatsApp. Commission did not have any WhatsApp communication between me and them. It was only two



calls that happened. So it is a lie when he says – when he said I showed him the WhatsApp messages, one.

Two, when he says I said I would go to the Commission based on when I was talking to him I said to him, Malusi, I feel like us going back and forth, because I do not know what you want from me, because the other thing he wanted, he wanted the kids. He wanted me to move out of our home. Then I said to him I cannot just leave our kids, but if that is what you want you are fighting  
10 me for the kids, I will leave the kids and then let us sit down. Every weekend the kids must come to me and every holiday the kids must come to me.

Then I said if all this noise because you know deep down that I did not do anything, can we just like we call our lawyers and then you – I go approach my legal team for the civil case, I drop the case, you drop the case, then we focus on the divorce out of the media. That is what I offered him.

When I was doing that I said to him I want us to  
20 have our divorce like peacefully out of the media and I was offering that based on the concern of our kids. Because I did not want the two of us to have our divorce, because to me even today it does not make sense the whole thing why Malusi will want me to go through all this thing, why I must be arrested, why my information must be taken, why must I

go through all this. And I said – I even said to him, I said rather for me to pay for lawyers, I rather to pay for myself just to survive and you do the same.

So the discussion was based on that. And what he said to me, he said I understood why you did the interview. One day you will get – you will find it in your heart to forgive me. I am really grateful that you come with this discussion. I am sorry about everything. I will talk to my lawyer, which is Billy, that is his lawyer for the divorce,  
10 then I will talk to my lawyers.

So two days later I came back to him, I said did you talk to your lawyer. Then he said his lawyer is sick. Then I said why do you not send him a text because I need to go to court in February. Then he said no, I will talk to my lawyer. A week later I asked him again did you talk to your lawyer. Then Malusi said yes, he spoke to his lawyer.

I told my lawyers – my lawyers called his lawyer was black, did you even know about that discussion. So everything it was just so different. Then I came back to my  
20 lawyers. I was like you know what, let us just leave this whole thing because now which Malusi lied. So if that is what he wants and I went to him, I said if this is what you want I am going on with the case. You can go on because he knows like my whole arrest was unlawful. Then I said I will go on to challenge it, but it is just so unfortunate that

this is what you want out of our family.

So the whole meeting it was from the good heart. I wanted to protect our family and I wanted us to have an amicable divorce. When he put like Adv Ngcukaitobi here... [intervenes]

**ADV MYBURGH SC:** Sorry, Ms Gigaba, I am not dealing with paragraph 140... [intervenes]

**MS GIGABA:** Sorry?

**ADV MYBURGH SC:** I am not dealing with 143.4 now.

10 **MS GIGABA:** Okay.

**ADV MYBURGH SC:** Okay. So I would like just to go back 143.

**MS GIGABA:** Okay.

**ADV MYBURGH SC:** In January of 21 – 2021, did you seek to bribe Mr Gigaba by saying to him that if he pays you a big settlement and withdraws the criminal complaint against you, you would refuse to testify in the Commission? That is what he is saying. Did you do that?

20 **MS GIGABA:** I did not do that. So me appearing at the Commission got nothing to do with our divorce and it was never at hand. It is either we were doing the settlement, I was still going to come to the Commission because it was me clarifying my arrest that is put out there why my gadgets were taken. That was me doing my duties as a South African whatever ...[intervenes]

**ADV MYBURGH SC:** Alright. Could I now turn to... [intervenes]

**CHAIRPERSON:** Citizen.

**MS GIGABA:** Citizen – was just like this thing upset me. So it was never about this and the reason I said to him one of us must leave the house, it was just because of the tension between the two of us that our older son it is affecting him because he does not like the tension when we do not talk. So that is the reason I said Malusi, can  
10 you please go stay to our other house, I stay with the kids or I take the kids, I go stay to the other house.

He said he is going to talk to his financial advisor who is Smith and then he will see what he is going to do. So then later Malusi came back. He said to me his lawyer said he cannot move out in the house because we are both married out of community of property. If he is moving out he is waving his right per our contract of our marriage, so he refused.

So I said to him I am not leaving either, because I  
20 cannot leave my kids with him for personal reasons. He knows that he cannot take care of the kids.

**ADV MYBURGH SC:** Could I then ask you please to go to 143.4? He says:

“In support of what she had advised me, she showed me WhatsApp communications between

herself and the Commission representatives pertaining to giving evidence against me.”

Did you do that or did you not?

**MS GIGABA:** So everyone is here that I was communicating with in the Commission. I have never had a WhatsApp communication between the members myself and the Commission people.

**ADV MYBURGH SC:** So did you show him WhatsApp communications between you... [intervenes]

10 **MS GIGABA:** There was no WhatsApp communication because I have never communicated with the Commission via WhatsApp.

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

“She also said to me that Adv Ngcukaitobi SC was very excited about this opportunity for her to testify against me and had offered to assist her. She further told me that Adv Ngcukaitobi SC is part of the Commission and was extremely close to the chairperson through his assistance of the  
20 chairperson in another matter.”

Did you say that to him or did you not?

**MS GIGABA:** I did not. Also this is a lie. Malusi just like kicking on Adv Ngcukaitobi because that time I had not even spoken to him. His offices were still closed and he was still on leave.

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

“Actually prior to this she had repeatedly informed me that she had been – she was being lured by several high ranking officials in the State Security Department within the ANC and other opposition parties to assist them in destroying me politically on the promise of money, house and vehicle incentives.”

10 So he says you repeatedly informed him of that. Did you do that?

**MS GIGABA:** I did not do that and that is a lie that I said to him there were people on the top six. The first time I heard that it was from him before our – even the arrest. Malusi said someone from the top six leaked the video. There was a porn video of Malusi that he did and he came to me, he said one of the top six members leaked the video for him.

20 And also when he resigned he said to me he was forced to resign. He did not do it voluntarily and one of the top six members he was told by someone else in the top six that in the meeting of top six someone was pushing the President to make him resign. So that was the only time I had the discussion about the top six.

**ADV MYBURGH SC:** He goes on to say that:

“As we speak she is currently driving a car bought

for her as part of that scheme, probably as a reward for her having dragged my name in the media and having come forward to testify against me in the Commission.”

Are you driving a car bought for you as part of this scheme?

**MS GIGABA:** Can you please repeat the question?

**ADV MYBURGH SC:** Could you have a look at paragraph 143.4.

10 **MS GIGABA:** Okay.

**ADV MYBURGH SC:** The last sentence.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** “As we speak she is currently driving a car bought for her as part of that scheme.”

**MS GIGABA:** So this is a lie. No one has ever bought me a car and gave it to me. And Malusi, I never went to any media to drag his name. The only media people that I went it was ENCA and I was clarifying my arrest. Two, when it comes to the car, it is not the first time I drive cars by  
20 myself. He is the only person who never had a car in the 10 years we have been together. So for me it is not a new thing that I have a car that has got nothing to do with him.

**ADV MYBURGH SC:** What car are you currently driving?

**MS GIGABA:** Is it relevant for you to talk about that?

**ADV MYBURGH SC:** Well, I mean like where did it come

from? Did you buy it?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Alright. So the car that you are currently driving you purchased it yourself?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Alright. 143.5:

10 “Around September 2020 she had a meltdown as she again mentioned the names of some of those people who were involved, all politicians, and said she would not want to be involved in their political ploy against me and that she would let them know. In return she asked me to find her an apartment in Johannesburg, pay for her studies which she subsequently abandoned and assist her with some allowance until she found a job.”

Do you want to comment on that briefly?

20 **MS GIGABA:** That is a lie when it comes to September. Malusi stopped giving me allowance that was last year March and from March last year until today I am doing everything for myself and it is not the first time. From 2014 until 2018 I took care of myself.

**ADV MYBURGH SC:** Alright. Then he goes on to say:

“Whilst I was busy with that she changed her mind and told me that she did not... [intervenens]

**CHAIRPERSON:** I am sorry, Mr Myburgh. Did you say



from 2014 to 2018 you took care of yourself?

**MS GIGABA:** Yes, when Malusi – when the car did not come back, the car that Malusi was given by the Guptas, the 5 Series.

**CHAIRPERSON:** The BMW?

**MS GIGABA:** Yes, the BMW. I went to buy a car myself at Mercedes which I have given the details of that car to the Commission, because all the deductions for that car how I was paying for the car I was paying myself. And  
10 besides the car only, from 2007 the phone that I am using, my contract, I have been paying for my contract phone. I pay everything myself.

Malusi is the only one in the house who does not pay anything because the State does it. Even the phone that even he is using now, all his flights it is paid by the State. Then I pay for my flight tickets. So it is very strange for him to act like it is the first time now going through the divorce he is shocked how I am surviving because I have been surviving by myself while he was  
20 there. The only time he will assist me it is when I am going to a holiday, that is all. But I take care of myself.

**CHAIRPERSON:** So the credit card that you said he made available to you, was it for you to only use when you were on holiday or only to use for certain things and other things you were taking care of yourself or what was the position?

**MS GIGABA:** So at that time when we were married in 2009 and 10 I was not working. That is when he had given me the credit card. Then when I started working then he took the credit card. So he will only give me the credit card when I am going overseas. So when I was working I was using my own salary to do stuff.

Also we do not pay for much. We are not paying for much in the house because in the State house the State was paying for everything in terms of water, because they even paid for – the helper is paid by Public Works. So the only thing that Malusi used to pay for was the DSTV. So my money I was using my money to do my own shopping, to do my own stuff. But when I go overseas he will give me money.

Also there is nothing wrong when he was doing that because I was his wife. He was supposed to take care of me as much as I was take care of myself.

**CHAIRPERSON:** Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you. At 145 he says that he resisted your attempts to strongarm him into a settlement. He goes on to say at 146 that you became extremely agitated and annoyed by his response. He says:

“It is now clear that had I agreed to her proposed settlement agreement she would not have gone to the Commission and on this basis alone her

evidence should be struck from the record.”

You have already commented on that. Have you got anything further to add?

**MS GIGABA:** This is a lie. The Commission has got nothing to do with our divorce.

**ADV MYBURGH SC:** At 147 he says:

10 “Thereafter right up to the present time Nomachule has repeatedly stated that if I offered her my house at Blue Valley or a cash equivalent she would drop the whole Commission issue and pretend that the divorce proceedings had been withdrawn and that we intended to remain married until the Commission wrapped up its business.”

What do you have to say about that?

**MS GIGABA:** So to respond on that, for me to say it is either him – it is either him or me go to Blue Valley, I wanted us not to stay in the same roof. And also when that house was bought in 2015 Malusi said he was buying the house for me. And because of what the incident that  
20 happened I did not want to take the house at the time because I was very angry at him.

Then so when I was offering that I wanted us – I wanted the kids to be in a positive environment, it has got nothing to do with the Commission. Two, there was no way myself even today I will have so much discussion about the

divorce because our divorce does not affect me that much, because Malusi only filed for the divorce. Until today he has never said anything to my lawyers. So there is no way where my divorce like it is on my neck or it is only my lawyers who keep on sending emails to his lawyers and they take time to respond. They do not even respond. So the divorce is not a big deal to us.

Malusi only did that to cover up for Sunday World when I was going to challenge that. And also everything in  
10 the house it is me who paid it. I have the whole receipts. I sent it to my lawyer. So if either we are divorcing or not, I am not affected that much by the divorce, because everything that is there it is owned by me and the house that we are staying there Malusi is renting and he is doing that for his kids.

So if either we are going through a divorce or not, Malusi will still pay his part for our kids. So it is not a big deal. It is not like I am going to lose much because he does not even have that much. Also Malusi does not have  
20 even one car. I am the one who always own cars in my name. Malusi does not own cars. So divorce is not a big deal. He is making it a big deal, but it is not a big deal.

**ADV MYBURGH SC:** At 148 he says:

“I contacted my attorneys the following day to advise them of what had occurred.”

Now that relates to the Blue Valley house or the cash equivalent and him saying that he would rather persist with the divorce proceeding. He says at 148:

“They subsequently contacted her attorneys. That evening she was extremely upset that I told my attorneys that it was she who had made this offer to me and said I should have said it was our agreement.”

Do you have any comment on that?

10 **MS GIGABA**: Also this part it is a lie. That was after myself and the Commission started the proceedings and then I got a call from City Press. They wanted my affidavit and I told them that I do not have an affidavit. They said it is very strange I do not have my affidavit, because everyone who is going to appear to the Commission have an affidavit.

And I told them that at that moment I was not sure I am going to go to the Commission because I did not want them to confirm. And I also said to them everything was  
20 confidential. So if they want my affidavit they can contact the Commission. So that has got nothing to do with them.

When it comes to this I even said to them I do not want to talk to them because Malusi is the one who went to City Press when the media was putting a lot of pressure to him why I was arrested by the Hawks. Then City Press put

a story that the reason I was arrested by the Hawks it is just because there was a conspiracy to murder against Malusi which I was linked on.

When we go to Court that page was not even there on the docket. Until as we stand City Press and Malusi accused me of the conspiracy to murder and that is nowhere to be found and I wanted that to be said to me why I was linked on the conspiracy to murder.

**ADV MYBURGH SC:** And then at 149. I am not sure that I  
10 followed precisely what is being said, but Mr Gigaba says:

“A few days later she told the City Press the same lie she has now repeated to the Commission, except that in the City Press article she claimed that I had offered to withdraw the criminal case against her in exchange of her not testifying at the Commission. I would attempt to obtain a copy of the article.”

Do you have any comment on that?

**MS GIGABA:** That is him and the City Press you can -  
because they have a relationship of writing stories beside  
20 me. When City Press called me they never asked me such  
questions.

**ADV MYBURGH SC:** Then at 66.2 around June 2020 Mr Gigaba asked for me for all my electronic advices – devices, sorry, because he had brought someone to our home who he introduced as an IT expert. You refused to

hand them over, etcetera. Now this is something that you have repeated to the Chairperson in the course of your evidence already. He emphatically denies this. Have you got anything to add to what you have already said? He says it is not true that they demanded her gadgets. She says – he says that the gadgets were collected on the day the Police came to arrest her. What do you say about that?

**MS GIGABA:** Firstly, if this is not true, why the Hawks  
10 were involved in my case whereas is the Brooklyn Police Station which is like less than 10 minutes away from my house. So if I did something that was supposed to be reported to the Police, Malusi was supposed to go to the Police Station and the members of the South African Police were supposed to come to my home. But the fact that like members of the Hawks from Mpumalanga all the way they came to arrest me at home, Malusi knew what he was planning.

Two, on their affidavit they lie to NPA. They said  
20 they were Police who were stationed at Brooklyn which they lied on their affidavit. They were members of the Hawks. When you look at the nature of my case, let's say since Malusi said I was arrested because - by the members of the Hawks because I sent a message to his friend, members of the Hawks they do not hold that mandate to

arrest people, that is one.

Two, since he said I scratched the car, even that still was a domestic incident. It does not even involve the Hawks. Even if it does I was supposed to be arrested by the Hawks maybe who stays around in Pretoria. The fact that Malusi called the Hawks all the way from Mpumalanga, came all the way to home, denied my rights to call the lawyer, he knew what he was doing.

There is no way I would give all my gadgets for one  
10 message voluntarily. I am the person who loves my phone. Two, there is no way I will take my passwords and my pins and I was writing exams at that time and he knew how much I wanted to finish my exams and then I would just deliver that – give all my five gadgets to the members of the Hawks, the people that I do not even know.

Third thing, Malusi knows how much my bedroom and my walking in closet it is such a privacy, but members of the Hawks already knew where which phone was kept, which means it is him who told them. The iPad that I used  
20 to use where I used to work and I have not used that iPad for two years and it is staying in our – in another room, not in my bedroom, but members of the Hawks when I gave them everything they were like where is your iPad. And how would they ask where is the iPad when I have not used the iPad for two years?



And I even said to them like that iPad I do not even know where is the charger, because they wanted the passcode. I said I do not even know where is the charger and I have not used it. Why you want? Because the WhatsApp message was sent via the iPhone. But why they demanding an iPad and the laptop, why they took my laptop?

So all of this was just orchestrated by him with these friends of him. I call them his friends because the  
10 person who opened charges against me it is his friend who stays in Middelburg who knows those Hawks and Malusi at some point I remember I think it was 2013, 2012 Malusi was deployed in Mpumalanga.

So there is a big possibility that he is the one who knows those people, because if then I did something wrong Malusi was supposed to go to the Police Station which is just down the road and open the case there, not to call the members of the Hawks. And even today I will never give my phone to anyone to just invade my privacy like that.

20 **CHAIRPERSON:** I do not know whether, Mr Myburgh, you had raised this. I see that at paragraph 150 he challenges you to name the IT expert who came to your home and asked for your – or where he asked you for your gadgets. You may have mentioned his name before.

**MS GIGABA:** I did not mention his name before, because

I did not even know who was the guy. Because when he came he came to my bedroom because Malusi stays in the east of the house, I stay in the west of the house. So when he came there he said to me there is a guy in my study who is here to take our gadgets and delete the stuff someone who knows him.

**CHAIRPERSON:** Okay. You do not know the name that he... [intervenes]

**MS GIGABA:** No, I do not know the name of the guy.

10 **CHAIRPERSON:** Okay. Alright. Mr Myburgh.

**ADV MYBURGH SC:** Thank you. I want to... [intervenes]

**CHAIRPERSON:** But you would recognise him if he came in here?

**MS GIGABA:** I did not go to his study. He told me that there was an IT expert.

**CHAIRPERSON:** Oh, you did not see him.

**MS GIGABA:** Yes, yes.

**CHAIRPERSON:** Oh, okay.

20 **MS GIGABA:** I did not even go with him, because I just dismissed that. I said I do not want everything – I do not want things to be deleted in my phone.

**CHAIRPERSON:** Okay. Alright.

**ADV MYBURGH SC:** Then I want to take you to one final thing in the schedule. Paragraph 66 you deal with the disappearance of passports. 66 and 67 and at 154 Mr

Gigaba says:

“What has the disappearance of the passports got to do with me?”

Do you want to comment on that?

**MS GIGABA:** It has got a lot to do with him, because I am the one who keep the passports and also a day before my passport got disappeared I made the copies because I wanted to bring the copies to the Commission so that when we talk about the dates I will know which trip happened  
10 when. Because I have two passports. One is an ordinary passport and the other one it is a diplomat passport. So the diplomat passport I have never – the department keeps it for us. Then the other one I keep it myself.

So I went to do the copies. Then when I came back I put it there. So when I went to meet with the Commission I forgot the copies and because I wanted to give them the proper dates which trip was taken when so that when we prepare with the Commission we have proper dates.

So when I was leaving because I forget that when  
20 we had the meeting with the Commission, I called his former PA. I asked her because I wanted to have that diplomatic passport so that I know which one was the State visits, which one was – I do not know where I can say, like your normal visits.

**CHAIRPERSON:** Private visits.

**MS GIGABA:** Private visits.

**CHAIRPERSON:** Ja.

**MS GIGABA:** So I called her. Then I asked her like do you know what is the process of me getting my diplomat passport then – or do you have any sequence of my travelling. Then he said yes, I have. I will call you now in five minutes. So I waited. In that time I was living in Sandton.

Then I drove all the way halfway. When I was  
10 halfway I felt like this is more than 10 minutes or 15 minutes. He still has not called me back. I called her again. I was like did you receive everything. Then he was like no, I do not know how you are going to get your passport. I do not know. I do not have the sequence anymore.

And then when I was trying to talk to her, then she did not sound like she sounded before, because when I called her before she was sorry, then she was like oh, do not worry, I have everything in my system, I will give it to  
20 you. And he knew how and when I get my passport. But all of a sudden in a few minutes she was just shaking, she could not even know. She said I do not have anything. Then I was like no, it is okay. When I get home I will check with my private passport.

So when I got home my passport was not there. At

the same time I took the picture because my passport had a cover. The copies were not there and my passport was not there and the two passports of my kids were not there in my shelf in my bedroom. And he is the only one who can just come in the house.

Thirdly I went to the helpers, then I asked them where is my passport. Both of them they were like no, Sisi, we did not know. We did not take your passport. Then I went to him. Then when I went to him I said I see  
10 that you took the kids' passports. Can I please have mine back? Then he said what passport. What passport are you talking about? I was like I am talking about my passport. They were there yesterday and there were copies and is aw them.

Then he said no, I do not know them. I did not take them. I was like Malusi, I see the game you are playing. Why are you taking my passports? Then he said he did not and I told him that I know why you are taking that because you do not want me to have the sequence of my trips.  
20 Then he kept quiet, he did not say anything.

I took the picture. I sent to the people, the Commission. I was like the new thing just happened right now my passport got stolen and I think a week later I went to apply for my passport. I did an affidavit which I have a new passport right now. So what I did I called someone

who is a former official in the Home Affairs. I asked him how can I get my trips because I want to assist the Commission so that when I talk about the dates I give the proper date.

And that is where Malusi in his response, that is where he is challenging how I am putting the wrong dates, which he did that deliberately that I must not have the proper dates because we did a lot of travelling. There is no way I will know we were in this country at this time and  
10 also we had our own private visits and we had the State visits. I cannot keep all that in my head.

So when I called that Government official he said to me you need to send an email to this person. I sent an email, then they said they will give me my whole – from the Immigration they will give me the whole history. So from now on I have not received that, but they said if I need to they will give me all that.

**CHAIRPERSON:** Why do you think Mr Gigaba, why do you think there may – there were trips that Mr Gigaba might not  
20 have wanted to be conveyed to the Commission?

**MS GIGABA:** Because firstly on his affidavit he denied that we – Ms Dudu Myeni paid the trip for us. So he does not want that trip to be there, which she did pay our trip to Mauritius. She even emailed the whole itinerary for us and I remember when we were in Mauritius Malusi did not even

know where to get the car and everything because he is not used to travel without his staff. And that time when we were travelling it was the two of us.

Two, when we went to Dubai and there are certain trips I travelled with him, there are certain trips I travelled alone, so he did not want me to have the proof of those trips that it happened, hence he took my passport.

**CHAIRPERSON:** But why would he not want there to be proof of those trips?

10 **MS GIGABA:** Because the trip that I remember when we stayed at the – in Hilton in Dubai and even the trip that we stayed in Waldorf in Dubai, there was a trip that Malusi said AJ will sort out the trip for us. And when we were in Dubai AJ came with another guy, called Malusi that they want us to – he want Malusi to meet people there and then they went. So I said to Malusi I do not want to go where they are going. I want to do my own things alone.

20 So when he came back Malusi was telling me that AJ, because he was just so excited that he said AJ took him in a floor where there was jewellery. I do not know is it owned by him or his own by a friend, so he went to this place and when he came back he came back with watches. I think they bought him two watches and then he was just so taken about this jewellery. Because I am not a jewellery person. I do not like jewellery.

So that trip what I know it was them who paid it for us. So that is the reason he deleted those itinerary on my emails, because most of my emails are deleted. And also when we went on those trips also I took pictures and all those pictures are deleted because he is denying that we went on the trip. So that hence he took my passport as well.

**CHAIRPERSON:** When was that trip if you are able to remember?

10 **MS GIGABA:** The trip was like some happened in 2014. Some happened in 2013. Then some happened in 2015. The one happened in 2015 I remember then I was there with a friend. 2016 I was there by myself, but Malusi paid the trip for me.

**CHAIRPERSON:** Now the – so are there trips that were deleted from your gadgets?

**MS GIGABA:** Yes.

**CHAIRPERSON:** By the Hawks? Deleted by the Hawks... [intervenes]

20 **MS GIGABA:** Yes.

**CHAIRPERSON:** ...from the gadgets. How many trips are those that were deleted, do you know?

**MS GIGABA:** I do not remember exactly how many, but I know it is like three/four trips that happened not with the State. Because he did not delete the trips... [intervenes]



**CHAIRPERSON:** The State official.

**MS GIGABA:** The State trips. The only thing that he deleted it was when we went to India I took pictures in Mumbai and I am not sure why he deleted those pictures because that is the only trip that State visit pictures that were deleted.

And also for me it is very funny or very strange if I can put it that way, the members of the Hawks they never travelled with us and I have a lot of pictures on my phone  
10 but they know which picture to delete. Because if – with Malusi we went in different places – in Washington which we went with the State, we went to New York with the State, how would the members of the Hawks know they need to delete this certain picture.

And there were pictures that like I travelled with my friend like when I went in my birthday to Greece and I paid for the trip and those pictures are not deleted. So why they know this certain pictures that were paid by the Guptas must be deleted in all the pictures?

20 **CHAIRPERSON:** Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes, thank you. I would like to take you to two other thankfully shorter affidavits. Would you please go to Bundle BB26?

**MS GIGABA:** On this one?

**ADV MYBURGH SC:** Yes and right towards the end, if I

could ask you to turn – now this would be about 10 pages or so from the end to page 1127.6.

**MS GIGABA:** To what page must I go?

**ADV MYBURGH SC:** 1027.6 about 10 pages from the end.

**CHAIRPERSON:** I am sorry, Mr Myburgh, I thought it was a new bundle, so but it was this one in front of me. What is the page?

**ADV MYBURGH SC:** This is bundle – I beg your pardon. Transnet Bundle 7... [intervenes]

10 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Page 1027.6.

**CHAIRPERSON:** Thank you.

**ADV MYBURGH SC:** Ms Gigaba, it is about 10 pages from the end. Actually if you open... [intervenes]

**CHAIRPERSON:** Is there somebody who can help her?

**MS GIGABA:** Yes, please.

**CHAIRPERSON:** Yes, somebody will help you.

**ADV MYBURGH SC:** 1027.6.

20 **CHAIRPERSON:** While they are looking, have the Hawks responded to your allegation that they deleted certain information from your gadgets and, if they have, what have they said as far as you know?

**MS GIGABA:** They have not responded to that, but per the judgment from [indistinct], so he said from the Judge that you are lying, he told them that they have to bring

back my information, because all the information that was taken it was unlawful. So they were supposed to bring back my information from February. Until today that information has not been brought back to me and my legal team tried to push that for me to get my information back, but the members of the Hawks they have not returned my information until today.

**CHAIRPERSON:** Okay. Mr Myburgh.

**ADV MYBURGH SC:** Alright, so are you at page 1027.6?

10 **MS GIGABA:** Yes.

**ADV MYBURGH SC:** That is an affidavit of Mr Msomi. He is someone that you mentioned in your affidavit.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** I am going to take you to two paragraphs. He says:

“Throughout my visits to this family...”

He is talking about the Gupta family.

20 “...I have never met Mr AJ Gupta and do not even know the sound of his voice. The only person I held meetings with was Mr Tony or Atul Gupta. I know how Mr AJ Gupta looks like because his picture has been all over the media, otherwise I would not know how he looks like. Therefore it is not true that she, Ms Mngoma, saw me joining meetings with Mr AJ Gupta.”

Do you want to comment on that briefly?

**MS GIGABA:** I do not say that he was meeting whoever it is, Atul or whoever, but he was there. So I never said he was going there to meet AJ. What I said he was there. So whoever he was meeting that is up to him, but he was there at the Guptas' house.

**ADV MYBURGH SC:** Okay. At paragraph 5 he says:

10                   “Never even on a single occasion had I facilitated a phone call between the Gupta family and former Minister Gigaba, nor arranged a meeting between Guptas and former Minister Gigaba.”

You want to comment on that?

**MS GIGABA:** I remember when Malusi started to ignore AJ's calls, then Thami used to come at home and tell Malusi and ask Malusi why he is not answering the phone. He needs to answer AJ's calls because AJ was calling. And also it is very strange that he says he was there to meet Atul at the Gupta compound he never saw me, but I – and he was there, I saw him.

20                   **ADV MYBURGH SC:** And if I could take you, Ms Gigaba, forward.

**MS GIGABA:** Sorry?

**ADV MYBURGH SC:** I want to take you forward in the file by about five pages to page 1027.1. So I want to take you – sorry... [intervenes]

**MS GIGABA:** Forward or the other way?

**ADV MYBURGH SC:** Go backwards.

**CHAIRPERSON:** I think backwards.

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Backwards.

**ADV MYBURGH SC:** 1027.1.

**MS GIGABA:** Okay.

**ADV MYBURGH SC:** That is an affidavit of Mr Mahlangu.

Do you see that?

10 **MS GIGABA:** Yes.

**ADV MYBURGH SC:** Can I take you to paragraph 7 at the next page 1027.2? He says at paragraph 7:

“I deny that I visited the Gupta residence frequently with Mr Gigaba and that Ms Gigaba frequently met me at the Gupta residence.”

Do you want to comment on that?

**MS GIGABA:** Siyabonga was there, so I remember a couple of times he was there.

**ADV MYBURGH SC:** At sub 2:

20 “I deny that I was ever invited or required to attend a meeting with Minister Gigaba and AJ Gupta, nor did I ever hold a meeting on my own with AJ Gupta.”

Do you want to comment on that?

**MS GIGABA:** That is up to him to comment on that, but he was there. So regardless who was he meeting, I do not

know who was he meeting, but he was there at that house.

**ADV MYBURGH SC:** He says:

“I deny that I ever held a meeting with Mr Gigaba and Mr Msomi and AJ Gupta.”

**MS GIGABA:** Because when they are there there are times where Thami will be there alone or there were times where Siyabonga will be there alone and sometimes they will be there together. Every time when Malusi come they will wait for him. When they go they will go all of them  
10 together. So I do not know what the meeting will be about inside.

**ADV MYBURGH SC:** He says further that:

“I deny that...”

Sub 4:

“...I ever discussed matters of Transnet, Eskom or SAA in any meeting with the Minister, Mr Msomi and AJ Gupta.”

What do you say to that?

**MS GIGABA:** So I cannot comment on that because what  
20 I know it was AJ was briefing Malusi about that. So he never briefed Siyabonga in front of me. But when they go have the meeting he will be there. So I do not know he will comment on the meeting or not.

**ADV MYBURGH SC:** And then at paragraph 9 Mr Mahlangu deals with meetings that he accepts that he had

at the Guptas. He says in the last sentence, this is at page 1027.3:

“To the best of my recollection on none of these occasions did I encounter Ms Gigaba. I have no recollection of ever seeing her at the Gupta residence.”

Do you want to comment on that?

**MS GIGABA:** So, assuming he did not see me, that is what he is saying.

10 **ADV MYBURGH SC:** Well, that is what it says.

**MS GIGABA:** Okay, I saw him. So he did not see me, but I saw him. That he was meeting Rajesh or whoever, but he was there.

**ADV MYBURGH SC:** He says at 10:

“I never attended a meeting with Mr Gigaba at the Gupta residence.”

What do you say to that?

**MS GIGABA:** He was there with him.

**ADV MYBURGH SC:** Then at paragraph 12:

20 “I was never required by Minister Gigaba to resolve a Credit Bureau blacklisting for his sister as alleged by Ms Gigaba. At some stage, I do not recall when, Mr Gigaba requested me to advise his sister about the legal challenges that she faced as a result of the closure of her optometry practice. The Minister

did not mention or ask me to deal with any issue of her blacklisting. I had a discussion with Minister Gigaba's sister in which I explained to her the legal options available to her to resolve her challenges, including procuring the services of an attorney to assist her with the matter. That was the extent of my involvement."

You want to comment on that?

**MS GIGABA:** What he is saying is what I said, because  
10 Malusi said to me Mr Mahlangu will assist the sister to be taken out of Credit Bureau and he will assist the sister to – because she was on Credit Bureau based on her practice which I mentioned earlier. So if that is what he is saying, that is what I said as well.

**ADV MYBURGH SC:** Sorry?

**MS GIGABA:** So this what I said, that is what he did. He assisted the sister to be taken out of Credit Bureau.

**ADV MYBURGH SC:** Yes, well what he is saying is that he  
20 Credit Bureau blacklisting. I suppose you can only testify to what Mr Gigaba told you. You cannot testify as to what Mr Gigaba may or may not have told Mr Mahlangu.

**MS GIGABA:** Yes, because when Mr Mahlangu met with Nozipho I was not there. It is Malusi who told me that Siyabonga is assisting the sister.



**ADV MYBURGH SC:** At paragraph 13:

“I have no knowledge of what Minister Gigaba told Ms Gigaba that I would do for him or for the sister. Notwithstanding that, I deny that the Minister requested me to collect R425 000 or any amount at all from Mr Gupta as alleged by Ms Gigaba.”

Your comment on that?

**MS GIGABA:** So Malusi told me that Siyabonga will go collect the half of the money, because they said they would  
10 not give him the whole amount at once. So then he said Siyabonga will go collect it and then Siyabonga will assist the sister with the whole proceeding. So that Malusi told me.

**ADV MYBURGH SC:** Alright. Now I would like to deal with the final aspect that I need to deal with and that relates to certain criticisms of the Commission. Could I ask you firstly please to turn right to the end of the bundle to page 1027.23? Are you there?

**MS GIGABA:** Not yet. 10?

20 **ADV MYBURGH SC:** It is the third last page, the last three pages in the file.

**CHAIRPERSON:** Page 1027.3.

**ADV MYBURGH SC:** Point 23. Are you there?

**CHAIRPERSON:** Oh, point 23. I am sorry.

**ADV MYBURGH SC:** Yes. Ms Gigaba, are you there?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Alright. So this is an affidavit of Sakhile Masuku. You know him?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And what he deals with are three things. The preparation of your affidavit, then security concerns and the leak of your affidavit. I just want to take you through this if I may. He says I was approached – sorry.

10            “I approached...”

At paragraph 4:

“...Ms Mngoma on 18 December 2020 following her interview with ENCA the previous day about her relationship with her husband, Mr Gigaba, the interactions with the Gupta family and matters falling within the mandate of the Commission.”

You confirm that he did approach you. I think you have mentioned that on the 18<sup>th</sup>.

**MS GIGABA:** Yes.

20    **ADV MYBURGH SC:** Then he says:

“In face-to-face interactions between Ms Mngoma in the presence of her then senior counsel, Adv Ngcukaitobi, and the Commission personnel started...”

I beg your pardon.

“...commenced on 21 January 2021.”

Do you confirm that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** “The interaction culminated in two affidavits filed on Ms Mngoma with the Commission, both of which are dated 6 March 2021. The one affidavit deals with the substance of her evidence and the other affidavit deals with the threats to her personal security.”

10 Would you confirm that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Paragraph 7:

“Since 21 January 2021 the Commission has had several meetings with Ms Mngoma which took place at all times in the presence of Adv Ngcukaitobi up until about mid March 2021.”

Do you confirm that?

**MS GIGABA:** Yes.

20 **ADV MYBURGH SC:** “Following which Ms Makhathini, Ms Mngoma’s new legal representative, was introduced to the Commission in whose presence further consultations took place.”

Do you confirm that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** “The process of drafting Ms

Mngoma's main affidavit emanated from her meetings with the Commission. The development of her main affidavit to final drafts was through a process engaged with her through her counsel, Adv Ngcukaitobi."

Do you confirm that?

**MS GIGABA:** Can you rephrase that part?

**ADV MYBURGH SC:** "The development of her main affidavit to final draft..."

10 In other words the first draft to the final draft.

**MS GIGABA:** Yes, okay.

**ADV MYBURGH SC:** "...was through a process of engagement with Adv Ngcukaitobi."

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** "The final drafts of Ms Mngoma's main affidavits were provided to Adv Ngcukaitobi in an electronic copy format for finalising with his client, Ms Mngoma."

Do you confirm that?

20 **MS GIGABA:** No.

**ADV MYBURGH SC:** Well, you may not know that.

**MS GIGABA:** I do not know, because what I remember firstly he dropped off the USB at Adv Ngcukaitobi's office and then he said I must ask the PA to print it out. The PA refused because outside the envelope where the USB was

put and it was stapled it was written confidential. So she said she does not want to print it out because if she prints it out it will have the trace on their computer.

**ADV MYBURGH SC:** Alright.

**MS GIGABA:** So then I called them to say. So what happened then they – as far as I remember they dropped off the hardcopy.

**ADV MYBURGH SC:** But I think you may be saying the same thing, because when you get to paragraph 10:

10            “My role...”

Says Mr Masuku.

“...was to deliver the electronic copies of the affidavit to Adv Ngcukaitobi, the last version of which I delivered to his residence on 25 February 2021.”

And then at 11:

“The Commission received the two commissioned original main affidavits of Ms Mngoma on 6 March.”

I think you have accepted that.

20    **MS GIGABA:** Yes.

**ADV MYBURGH SC:** “Since the Commission’s receipt of Ms Mngoma’s main affidavits on 6 March 2021 one consultation was held on 20 March 2021 with Ms Mngoma in the presence of Adv. Ngcukaitobi specifically to address her concerns about the leak

of her one main affidavit which deals with her evidence to the media and to address any security concerns which is dealt with below.”

Would you confirm that there was a consultation dealing with those two issues at which Adv Ngcukaitobi was present on the 20<sup>th</sup> of March?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** “At no stage during the meeting did Ms Mngoma raise issues with the veracity of the contents of her main affidavit that was leaked which she now takes issue with. She first raised issues about the contents of such affidavit at a consultation held on 8 April.”

10

Would you agree with that?

**MS GIGABA:** I will agree.

**ADV MYBURGH SC:** Alright. When did you first raise issues about the contents of your affidavit?

20

**MS GIGABA:** So when I received a call from City Press I called the senior counsel. I told him that I received a call from the City Press and they were asking about my affidavit. It is not City Press. I am making a mistake. So it was Sunday Times.

**ADV MYBURGH SC:** Sunday Times?

**MS GIGABA:** Sunday Times. They said they have my entire copy of my affidavit and they want me to comment of

my affidavit. So for me I was shocked that how can they have my entire affidavit.

**ADV MYBURGH SC:** Yes.

**MS GIGABA:** Because when we are doing preparations with Adv Paul Pretorius he said my affidavit is confidential and will be kept confidential until I appear before the Commission. So there was no anywhere that my affidavit leaked to the media before I appear.

So when that came I was shocked and I called  
10 Tembeka about that and Tembeka told them and also he was upset about it as well. So on the same day they said let us meet, let us talk about it, which the meeting took place.

**ADV MYBURGH SC:** And is that the 20 March meeting? I think it was on a Saturday from what I am told.

**MS GIGABA:** Ja, it was on the Saturday afternoon.

**ADV MYBURGH SC:** Right. Okay. Got anything else to say in relation to that paragraph?

**MS GIGABA:** Yes, because in the meeting I told them how  
20 I was not happy because they promised me that my affidavit is confidential. It is confidential, but now when my affidavit was leaked to the media I felt like my trust with the Commission was broken and Tembeka as well raised those issues.

So what Paul Pretorius said, he said they are going

to do an investigation and they will tell us the feedback because each and every copy of the affidavit has mark on it. So they will know who leaked it.

**ADV MYBURGH SC:** Yes.

**MS GIGABA:** It is either it is within the Commission or it is Malusi or AJ. So until today so I have not received the feedback, but I know that there is still an investigation.

**ADV MYBURGH SC:** Alright. So that is your response to this paragraph?

10 **MS GIGABA:** Yes.

**ADV MYBURGH SC:** Okay. And the paragraph concludes by saying that the meeting was held also in the presence of your attorney. Is that correct?

**MS GIGABA:** Yes, Tembeka was there.

**ADV MYBURGH SC:** Well, it says that Ms Makhathini was also present.

**MS GIGABA:** Yes, she was... [intervenes]

**ADV MYBURGH SC:** I beg your pardon. That is a reference to the 8 April meeting.

20 **MS GIGABA:** Oh, no. So what happened when we were talking about that leak of my affidavit Ms Makhathini was not on the meeting.

**ADV MYBURGH SC:** That accords with the paragraph. Sorry, I lead you astray. Alright and then security concerns of Ms Mngoma.



“The Commission initially consulted with Ms Mngoma in the presence of Adv Ngcukaitobi on 20 and 21 January.”

Would you confirm that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** “On both days Ms Mngoma was...”  
... [intervenues]

**UNKNOWN FEMALE:** I am sorry. I apologise. I am trying to get a bit of attention.

10 **CHAIRPERSON:** Yes.

**UNKNOWN FEMALE:** Chair, I thought it was important to probably go back to that paragraph, because you will realise, Chair, that we highlight there not only in the affidavit but in the letter filed as a clarificatory affidavit to the Commission on the three concerns that Ms Mngoma raised in the two meetings that are being dealt with in this particular paragraph and she says in the clarificatory affidavit that the first issue was the fact that her affidavit was leaked. Secondly that certain information that she did  
20 not know was then contained in the affidavit and further the issues of security concerns, etcetera.

Now the only reason I am raising, Chair, is so that it does not become from the question that is raised by Mr Myburgh, it just only seems to illustrate two concerns, in the security concern and the issue of the leak of the

affidavit and I think it ought to be clarified to Ms Mngoma that the issues that she had raised in those meeting and the second time with the attorney, Ms Makhathini, was the issue of the change in the content of the affidavit. I think it is important to clarify that, Chairperson.

**ADV MYBURGH SC:** Sorry.

**CHAIRPERSON:** I do not know whether you have got the affidavit that Mr Myburgh is going through. Ja, because in the next section that he would be dealing with it has got  
10 the heading security concerns of Ms Mngoma and when it deals with security concerns it goes back to January. So, it is going to deal with that... [intervenes]

**ADV MYBURGH SC:** If I may. Yes, well I think my learned friend's point is about the meeting of the 8<sup>th</sup> of April.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** What this paragraph says is that Ms Mngoma at 12 did not raise concerns about the content of her affidavit at the Saturday meeting. On the 8<sup>th</sup> of April  
20 she did raise concerns and, yes, we are going to come to that. Mr Sakhile does not deal with it here... [intervenes]

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** But I am going to take her just to allay my learned friend's fears. I am going to take her back to her affidavit when I have completed this one.

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

**UNKNOWN FEMALE:** Thank you. Thank you, Chair.

**CHAIRPERSON:** Thank you.

**ADV MYBURGH SC:** Then at paragraph 14 on both days, this is on the 20<sup>th</sup> and the 21<sup>st</sup> of January:

“On both days Ms Mngoma was offered security if she felt that her life was in danger.”

Would you confirm that?

**MS GIGABA:** In the beginning they asked me do I need a  
10 security and then I said no, because there was nothing that will make me wanted security. When I wanted the security I told them when I needed it and they said they will contact me and they did not.

**ADV MYBURGH SC:** So let us go through the chronology because you seem to be agreeing with what Mr Masuku says.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** On 15 – paragraph 15:

20 “On both those dates Ms Mngoma indicated that she was not scared and will continue with the preparation of her main affidavit.”

That is – I understand what you say.

**MS GIGABA:** Yes, I did.

**ADV MYBURGH SC:** Then he goes on to say:

“Subsequent to the meetings in paragraph 13

above, I had a number of telephonic interactions with Ms Mngoma regarding threats she had received via her telephone and in person.”

You confirm that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** “I immediately took up these matters with the Commission’s Head of Security. On 10 March 2021 I held a discussion with Ms Mngoma following additional threats she had received and I also reminded her that the Commission is awaiting for her to elect a security arrangement that she requires so that the arrangements can be actioned.”

Would you confirm that?

**MS GIGABA:** So, I can confirm but the way he is putting it, that is not the way he put it to me.

**ADV MYBURGH SC:** Alright, but you confirm the paragraph?

**MS GIGABA:** I confirm the paragraph, but it was the security was going to contact me, not the other way around.

**ADV MYBURGH SC:** The security would contact you?

**MS GIGABA:** Yes, that is what he said. He said he is going to talk to his Head of Security and the Head of Security will call me and the Head of Security did not call me.

**ADV MYBURGH SC:** Well, you see what he says. He was waiting for you to elect a security arrangement.

**MS GIGABA:** So which means that it was miscommunication then. Also how I was going to contact the Head of Security because I did not have their numbers and I do not even know them.

**ADV MYBURGH SC:** You were not going to contact the Head of Security. You were going to contact him.

**MS GIGABA:** But I called him.

10 **ADV MYBURGH SC:** Alright, well there as you say there must be some kind of miscommunication.

**CHAIRPERSON:** On the issue of security arrangement, what was your understanding? He talks about he says the Commission was waiting for you to elect a security arrangement. What was your understanding about security arrangement if you had any understanding?

**MS GIGABA:** So my own understanding, so Sakhile said to me I am going to talk to the Head of Security. I will hear what they can provide, because we do provide security. So  
20 based on what is happening they will lead us what we need to do. It is either it is a place of safety or they give me the bodyguard. So it was most of that and then he said he will come back to me and he did not come back to me. So I was waiting for him to come back to me what did the Head of Security say.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Alright and then at paragraph 19:

“On 20 March a meeting was arranged with Ms Mngoma in the presence of Adv Ngcukaitobi at which the Commission’s Head of Security took her through various security options available to her. The meeting concluded with informing Ms Mngoma that she needs to contact me once she has decided on a security arrangement.”

10 Did you have this meeting on the 20<sup>th</sup> of March with Adv Ngcukaitobi and the Head of Security?

**MS GIGABA:** Yes... [intervenes]

**ADV MYBURGH SC:** So that is the Saturday meeting.

**MS GIGABA:** Yes, he was there also, but also still the same. In the meeting Tembeka raised those concerns. I raised the concern as well and the Head of the Security was there. Then they said they will contact me how everything will be structured and they did not contact me.

20 So I am not sure where the miscommunication was, because for me I was waiting for them to tell me. Because even on the meeting no one gave me the number of this Head of Security to contact them.

**ADV MYBURGH SC:** Yes, but Ms Mngoma, look at what it says at 19.

**MS GIGABA:** What it says.

**ADV MYBURGH SC:** The meeting concluded with informing Ms Mngoma that she needs to contact me, not the Head of Security, once she has decided on the security arrangement. That is what Mr Masuku says that you should contact him, not the Head of Security.

**MS GIGABA:** But in the meeting the Head of Security was there. They said to me he is the guy who deals with the security and they explained two ways of the security how the security is being offered to witnesses and then they  
10 said they will contact me, then we will discuss which one is good for me.

Because we did not agree on the meeting which one is good for me in terms of I am going to a place of safety or they are giving me the bodyguard. So I was waiting for their call when they are done that what are we doing. So it was not like I was supposed to contact them.

**ADV MYBURGH SC:** At paragraph 20:

“On the 8<sup>th</sup> of April a further meeting between the Commission and Ms Mngoma and her legal  
20 representative, Ms Makhathini, occurred. At the end of these meetings I again advised Ms Mngoma that the Commission is still awaiting for her to advise on which security option she chooses and she informed me that she will get back to me.”

What do you say about that?

**MS GIGABA:** So that was after I appeared at the Commission. My lawyer called me. He said Sakhile called. He was asking do I still want the security, which I said because I already appeared at the Commission so I do not need the security.

**ADV MYBURGH SC:** The 8<sup>th</sup> of April was before you appeared before the Commission.

**MS GIGABA:** What happened before I appeared?

**CHAIRPERSON:** Mr Masuku says this was on the  
10 8<sup>th</sup> of April there was a meeting he says between the Commission and yourself and your legal representative at the time, Ms Gwali Makhathini. He says there was a meeting.

He says at the end of that meeting he again advised you that the Commission was still waiting for you to advise on which security option you were choosing and he says you informed him that you would get back to him.

**MS GIGABA:** I do not remember that.

**CHAIRPERSON:** You do not remember that.

20 **MS GIGABA:** No.

**ADV MYBURGH SC:** You do not remember?

**MS GIGABA:** No, I do not remember that kind of conversation that I would get back to Sakhile about this.

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

**MS GIGABA:** I do not remember that part. Maybe my



lawyer does. I do not.

**CHAIRPERSON:** Okay. You do not remember meeting on the 8<sup>th</sup> of April?

**MS GIGABA:** I remember the meeting but I do not remember the... [intervenes]

**CHAIRPERSON:** Much of the discussion.

**MS GIGABA:** Yes, like I do not remember that.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Then it says:

10           “Ms Mngoma appeared at the Commission on  
26 April and up to such date Ms Mngoma had not  
advised me of the security option she wanted.”

**MS GIGABA:** I am not sure where the Commission was waiting for me to advise on that, because for me I was waiting for the Commission. So they were waiting for me. I was waiting for them.

**ADV MYBURGH SC:** Can I just ask you something, Ms Mngoma? 26 April, was that the evening that you gave evidence remember late into the night?

20 **MS GIGABA:** Say that again.

**ADV MYBURGH SC:** 26 April, was that the evening that you gave evidence late into the night? Remember giving evidence?

**MS GIGABA:** Say that again.

**ADV MYBURGH SC:** On the 26<sup>th</sup> of April, was that the

evening that you gave evidence late in to the night?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Right. Do you remember that I read into the record my instructions from Mr Masuku that he had asked you put options, that you did not come back, you did not come back? You remember me putting that on the record?

**MS GIGABA:** Yes, but when we were discussing that on the meetings it was not up to me to come back to them.

10 **ADV MYBURGH SC:** Yes, but even after you gave evidence you still did not go back to Mr Masuku. I mean, you then knew what his position was.

**MS GIGABA:** What his position was?

**ADV MYBURGH SC:** That he was waiting for you to come back to him with which option you wanted.

**MS GIGABA:** I do not know that, that they were waiting for me. What I know they were supposed to call me and tell me.

20 **ADV MYBURGH SC:** No, you see, you are misunderstanding me. When you say you did not know they were waiting for you, that is what I told the DCJ, I placed on record that evening, I had a spreadsheet where I read into the record what Mr Masuku was saying.

**MS GIGABA:** What Mr Masuku was saying?

**ADV MYBURGH SC:** He was saying that he asked you to

come back to him, that you had not come back to him repeatedly.

**MS GIGABA:** What is repeatedly? Is it different times when he... [intervenes]

**CHAIRPERSON:** Let me put it this way. You remember when you gave the evidence for the first time.

**MS GIGABA:** Yes.

**CHAIRPERSON:** You did say that or you expressed concerns, maybe criticism that the Commission had not  
10 taken care of your security concerns. You remember that?

**MS GIGABA:** Yes.

**CHAIRPERSON:** And during your evidence Mr Myburgh said at some stage he had been informed by Mr Masuku what the position was as far as Mr Masuku was concerned.

**MS GIGABA:** Yes.

**CHAIRPERSON:** And he said that Mr Masuku's version was that they were waiting for you to come back to them about which I think security option you were choosing. And you did say if I recall correctly what you say now, namely  
20 that they were supposed to contact you, but he was saying you were the one who was supposed to come back to them.

So what Mr Myburgh is putting to you is he wants you to confirm whether you remember that that evening he did tell you that Mr Masuku's version was that they were waiting for you to come back to them about which security

arrangement you were choosing and that they had been asking you to come back to them. That is what he wants you to confirm whether you remember him saying that to you on that evening.

**MS GIGABA:** I remember him asking me that, but there was no way where I knew that I had to tell them which option am I choosing. Because I thought the Commission was going to call me and say there is this and this, which one are you choosing. Because every time when there was  
10 a threat because there was a time where I was supposed to come to the Commission and then that time I was receiving a lot of threats and also I told Sakhile about it.

So when there was something happening I used to call Sakhile and Sakhile will say I will go to them, then I will come back to you and he hardly come back to me. So I did not know when – what I was supposed to do because if I call him I said there is something like this, then he said I am going, then he does not come back to me. So I am not sure how I was supposed to come back to him because I  
20 already told him.

So for me on my side in my own understanding I was waiting for someone from the Commission to tell me. I received a call from Sakhile, he said we must contact you and here is the – what we can offer as the Commission. Which one are you choosing? Then I was waiting to

choose from that. So I think maybe it was a miscommunication, but this is what I know.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** Thank you. He then says at paragraph 22 at page 1027.26:

“I only learnt through Ms Mngoma’s supplementary/clarification affidavit dated 18 May 2021 that Ms Mngoma no longer requires security.”

10 **MS GIGABA:** Yes, that is true. After I appeared they called my lawyer and my lawyer told me that Sakhile asked that do I need the security and the Commission wants to offer, then I said I do not think I still need it because I already appeared to the Commission.

**ADV MYBURGH SC:** Then he deals with the leak of your affidavit at paragraph 23:

20 “On 12 March 2021 the Commission emailed Ms Mngoma’s one main affidavit which deals with the substance of her evidence in its entirety to the legal representatives of Mr Gigaba and Mr AJ Gupta. This was done in compliance with Rule 3.3 of the Commission’s published rules. The remaining parties who may be implicated by her evidence only received extracts of such affidavit attached to Rule 3.3 notices which related to each of them.”

So I think you do know that the affidavit, the full affidavit was sent to Mr Gigaba and Mr AJ Gupta and that caused you some concern. Correct?

**MS GIGABA:** I myself and Adv Tembeka, we only knew that they would send it to Malusi and Tembeka told me that. So that my affidavit was sent to AJ, it is me who told Tembeka because I heard from someone from the Commission who said there are two people who has my affidavit, it is AJ and Mr Gigaba and then I told Tembeka.

10           Then Tembeka was like Paul did not tell me that he will give your affidavit to AJ and why he is giving your affidavit to AJ because AJ does not want to cooperate with the Commission. And Tembeka raised that on the meeting why my affidavit was given to AJ Gupta because both of us were not told. So we only learn about that when my affidavit was already leaked.

**ADV MYBURGH SC:** But you do not profess to know about the workings of Rule 3.3 of the Commission's rules?

**MS GIGABA:** This Tembeka told me about the rule, but  
20 based only in my affidavit was given to Malusi and I asked him why. So he explained what Rule 3.3 meant.

**ADV MYBURGH SC:** At paragraph 24:

“On 20 March I was called by Ms Mngoma when she informed me that she was contacted by the Sunday Times journalist wanting her comments on her one

main affidavit which deals with her evidence that Ms Mngoma submitted to the Commission and which was in the possession of the journalist.”

I think you have already dealt with that.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** At 25:

10 “I then immediately commenced the process of investigating the source of the leak of Ms Mngoma’s affidavit to the media. The Commission also successfully took steps necessary to prevent the publication of such affidavit that would have been in violation of the regulations governing the Commission.”

Would you confirm that?

**MS GIGABA:** Yes.

20 **ADV MYBURGH SC:** “I performed various investigation procedures including obtaining the copy that was in possession of the Sunday Times and conducted detailed investigations on the Commission’s internal processes prior to and up to sending out Ms Mngoma’s main affidavit to implicated parties in compliance with Rule 3.3 and also got assistance from the Commission’s Data Forensic Technology Department.”

Will you accept that?

**MS GIGABA:** I do not know. I think it was an investigation.

**ADV MYBURGH SC:** “My final conclusion is that...”

Says Mr Masuku:

“...is that I am not able to identify which of the two affidavits mentioned in paragraph 23 above was leaked as both documents’ electronic stamp/identifiers are the same. The limited resources of the Commission does not permit  
10 conclusive verification.”

I assume that also falls outside of your knowledge.

**MS GIGABA:** Yes, it is outside of my knowledge.

**CHAIRPERSON:** So but you understand that last paragraph?

**MS GIGABA:** I understand it, but it just it is shocking because in the meeting they said to me each and every copy of the affidavit has a mark on. When they will do the investigation they will know who leaked the affidavit, because I said to them I thought it was the Commission  
20 who leaked it and they wanted to know why I thought it is the Commission.

So I said I thought it was the Commission because myself and Tembeka did not have the copy and then we did not know that AJ has the copy. We thought it was Malusi. And then Tembeka raised concerns about Malusi leaking



the affidavit because he was like it does not make sense for him why would Malusi leak the affidavit because he is implicated on the affidavit.

And the fact that when I was called by City Press before, not the Sunday Times, when they called me they said where is your affidavit and that time we were still putting together. I did not even have my affidavit and that time it was just the information. We did not even take an agreement that we are going to the Commission or are you  
10 going to use it.

So when they called me, so the lady, the journalist said to me we want your affidavit. Where are you? We can come and take the copy. We will bring it back. We do that with the other people. And I told the Commission that the journalist said to me they have their own people at the Commission who leaked the affidavit. So that was my reason I thought the Commission leaked my affidavit.

**CHAIRPERSON:** Okay. Mr Myburgh.

**ADV MYBURGH SC:** Chairperson, I see that it is almost  
20 11:30. Would this be a convenient time perhaps to take a short break and I can then see what other questions I have for Ms Mngoma? I do need to take her to a few paragraphs in her supplementary or correcting affidavit.

**CHAIRPERSON:** Okay, we will take the tea adjournment now and we will resume at 11:45.

We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

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

**ADV MYBURGH SC:** Thank you Chairperson. Ms Gigaba you will be happy to know that I have only a few questions left for you. You will be happy to know that I have only got a few questions left for you. Alright. Is your microphone on? Can I ask you to go to your supplementary/clarifying  
10 affidavit? That is at page 1027.8

**MS GIGABA:** Which one is it? Is it this one?

**ADV MYBURGH SC:** Ja. Towards the end of that file again.

**MS GIGABA:** What number? 1027.

**ADV MYBURGH SC:** 1027.8. Are you there?

**MS GIGABA:** I am there.

**ADV MYBURGH SC:** Alright. I just want to deal with one or two of the concerns that your raise here but perhaps I could just start off by asking you to go to 1027.11 and to paragraph 4. There you say that you submitting this affidavit – you  
20 should be understood to waive any your rights but you go on to say:

“I confirm that some of the concerns expressed therein were also raised by me during my oral testimony and partly addressed by the Chairperson.”

You see that?

**MS GIGABA:** No is that what number?

**ADV MYBURGH SC:** Paragraph 4 at page 1027.11. It is – I think it is the next page.

**MS GIGABA:** Okay I am there.

**ADV MYBURGH SC:** I think the only point that I make is I do not want to have to rehash things that you expressed in your oral testimony and were as you say partly addressed by the Chairperson.

10 **MS GIGABA:** Yes.

**ADV MYBURGH SC:** I mean - amongst those things was you recall as you do in this affidavit complaining about a change in evidence leaders. You will remember that the Chairperson explained to you the circumstances under which that occurred.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** I do not 00:03:18 we need to – we need not re-traverse that now.

**MS GIGABA:** I remember.

20 **ADV MYBURGH SC:** And so that was addressed, correct?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Okay. So I just want to then pick on one or two things. If I can take you to paragraph 2.2 you deal there with the circumstances under which your affidavit was signed and you will confirm that that was an interaction

between you and Advocate Ngcukaitobi SC.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And he was at all times up until you signed your affidavit and even thereafter for a while your counsel, Correct?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** If you go to paragraph 2.4 you say that you had raised concerns with the commission's decision to change evidence leaders that we have dealt with. And you  
10 go on to say later that through no fault of his own I was not given a proper handover resulting in you having to rehash consultations I had. And then what I want to deal with is the result of this was that the concerns I originally raised with Pretorius were not known to Myburgh.

Now if I can just take you to paragraph 2.5 it seems that the concerns that you say you raised with Mr Pretorius were more specifically the very fact that the affidavit contained information that I had no independent knowledge of and as a result created discomfort that I had addressed  
20 with Pretorius SC.

Is that correct.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** so those were the concerns that you say you raised with Mr Pretorius.

**MS GIGABA:** Ys.

**ADV MYBURGH SC:** Now I take it that that was before you signed your affidavit because we know that after you signed the affidavit there were two consultations. There was the 20 March the Saturday and the 8<sup>th</sup> April. So I take it that these concerns you say you raised were before you signed your affidavit?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Alright. Now what Mr Pretorius says is he cannot recall this but what the position was that was adopted by the commission was that you were represented  
10 independently by your own senior counsel – that senior counsel was responsible for settling and finalising the affidavit and it was up to him to do so. Can you dispute that that was the position that was adopted by the commission?

**MS GIGABA:** Chair may I come in briefly?

**CHAIRPERSON:** Ja.

**MS QOFA SC:** I would think that the question being raised to the witness would be rather unfair for two reasons. The rules and the provisions and regulations of how the  
20 commission is run once there are legal representatives representing a particular witness to the commission may not in their particular detail be known to the client and I say this without having – without having to say that Ms Gigaba would say well I knew I did not know to the detriment of Mr Ngcukaitobi whom I believe did what was necessary at the

time and in his consultations with client felt that I am consulting I am assisting the client and not because he would say to him the commission provides that Rule what – what that this is how I must do it.

**CHAIRPERSON:** Just hang on one second. Please remind what the question was Mr Myburgh?

**ADV MYBURGH SC:** Well what I put to the witness was that the commission adopted the position as it does in all of these similar cases that the witness was independently  
10 represented by senior counsel who was tasked with finalising and settling the affidavit and ultimately it was for him to do that and affect whatever changed he considered appropriate. That is a simple proposition and that is how the commission works as you know Chairperson so I might be unfair in putting that Ms Gigaba.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** But I am going to put the...

**CHAIRPERSON:** Well I am not sure how – why it is unfair. Let me now hear what you say.

20 **MS QOFA SC:** Chair I was ..

**CHAIRPERSON:** Is there any problem with that?

**MS QOFA SC:** No what I was saying was maybe the fairer way of putting it is to probably inform Ms Mngoma how this commission works.

**ADV MYBURGH SC:** Yes.

**MS QOFA SC:** Rather than to say this is the position that the commission takes in dealing with a particular matter because my submission will be she would not know the position that the commission has taken in dealing with witnesses in particular.

**CHAIRPERSON:** In which case she will say so.

**MS QOFA SC:** In which case but Chair for her to be said you accept that this is the position that the commission has taken.

10 **CHAIRPERSON:** She might say I do not accept because I do not know which would be fair is it not?

**MS QOFA SC:** Thank you Chair.

**CHAIRPERSON:** Ja. Okay. Ms Gigaba ...

**MS GIGABA:** You really like people's (inaudible).

**CHAIRPERSON:** No well last time – last time you remember I asked you whether you prefer Mngoma or Gigaba and you either it is fine. Okay I am going to change now.

**MS GIGABA:** Okay.

20 **CHAIRPERSON:** But I think you – you probably did not get time to have your tea I think we must adjourn and give you a chance to finish your tea because I do not want you to be...

**MS GIGABA:** Because I am too (inaudible).

**CHAIRPERSON:** Drinking tea while you are giving evidence. Let us take a five-minute adjournment and then when we come back she will be done. We adjourn.

**HEARING RESUMES**

**CHAIRPERSON:** Okay shall I say Ms Mngoma now or Ms Gigaba maybe the problem is Ms Gigaba.

**MS GIGABA:** Eish you can say Ms Mngoma.

**CHAIRPERSON:** Ms Mngoma. Okay alright. Okay. I think the issue that was raised by Ms Mngoma's counsel has been clarified.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Yes you want to...

10 **ADV MYBURGH SC:** Then I will move on.

**CHAIRPERSON:** Put the prop – ja okay alright.

**ADV MYBURGH SC:** I just want to put to you Ms let me call you Mngoma as well then that the commission when people are represented by independent representatives the commission respects and values that. Do you understand what I mean? So you get people that comes to the commission in different ways. Some people come there and we assist them but where they are represented externally then we acknowledge and we respect that that  
20 representation and we let those lawyers do their jobs. You appreciate that.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** So I then only have two other things to deal with. So you raised with Mr Pretorius you say that you did not have independent knowledge of certain things. Can



we get to the similar point that you raise in relation to me. If you go to page 127.9 right at the end of the page you see it says:

“That the result of this was that the concerns that I had originally raised with Pretorius SC we know what they are were not known to my Myburgh SC to my detriment. Even when similar concerns were raised with Myburgh SC they were still not dealt with.”

10 Now there you referring to the consultation on the 8<sup>th</sup> of April that we had together. Is that correct?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And I do remember in particular that table where you set out Mr Gigaba’s various ministerial appointments.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** You indicated that you did not have personal knowledge of that. I just want to get you to confirm this. You will agree that at the end of that consultation I  
20 encouraged you to make contact with your counsel with a view to perhaps making certain corrections in your affidavit. You remember that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And did you then do that?

**MS GIGABA:** Who was supposed to do the corrections? It

is us or were the commission not?

**ADV MYBURGH SC:** No.

**MS GIGABA:** Because that information was not told by  
00:03:03 it was put by the commission.

**ADV MYBURGH SC:** Ja. So what happened we talked about  
your counsel preparing a correcting affidavit, contact was  
made with Mr Ngcukaitobi and we know that ultimately this  
affidavit is the correcting affidavit is it not?

**MS GIGABA:** Yes.

10 **ADV MYBURGH SC:** And it in fact corrects a number of  
things that we discussed at that meeting.

**MS GIGABA:** Yes but remember on that consultation  
00:03:24 was supposed to join us on line and he did not.

**ADV MYBURGH SC:** No I appreciate that. And even when  
your counsel stood up at the beginning of your evidence this  
session where she changed dates.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** In relation to the domestic incident.  
She changed those dates on my advice was that not so  
20 where I said if you go and read the judgment I had concerns  
about whether your dates were correct.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Alright. I want to just take you if I may  
to the letter that you attach to your affidavit and that you find  
at page 1027.19. If I could take you then to the third page of

the letter and I think this is something we might have dealt with before. 1027.21.

**MS GIGABA:** I am there.

**ADV MYBURGH SC:** At paragraph 8.3 you say:

“During the consultation on 8 April my client pointed out to the evidence leaders that there were certain facts that were not in her personal knowledge.”

You see that?

10 **MS GIGABA:** Yes.

**ADV MYBURGH SC:** When these issues were raised with the evidence leading team you say that the tone of one of the members of our team was accusatorial. You see that?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And then you say well you felt that that was unfair given the circumstances under which you signed the affidavit and then the last sentence says:

“Instead as previously suggested by Advocate Myburgh and agreed to by our client these could have been clarified in a supplementary affidavit.”

20

Correct?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And ultimately you produced a supplementary affidavit where all those issues were clarified

or have been. Is that correct?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** And then just the last question I have is – is this. And that is if I could ask you please to go to paragraph 5.2 of your correcting affidavit. That is at page 1027.11.

**MS GIGABA:** Okay.

**ADV MYBURGH SC:** You talk about the fact at paragraph 5.2 the specific position of Mr Gigaba – Ms Gugu Gigaba  
10 who is employed at Transnet is provided.

“This information was not within my personal knowledge and as a result I cannot vouch for it. I have been informed however by Advocate September that the information has been the subject of testimony before this commission.”

I just want to put to you that – that Advocate September has no recollection of informing you of this.

**MS GIGABA:** So what happened on the meeting I was there  
20 with Advocate Salema and I told them when we were going through the affidavit that I said to the commission Gugu works at Transnet because I remember Malusi said he is going to talk to Gama to give Gugu the job and I know that she works at Transnet but I do not know what was her position.

**ADV MYBURGH SC:** Yes.

**MS GIGABA:** And I raised that on the meeting. So I said this was not my words the position that he held and I even said on the meeting I rather want to be held accountable if Gugu comes back and she says I am not the manager I am the specialist or something.

**ADV MYBURGH SC:** Yes.

**MS GIGABA:** Because I do not know what role she plays. Then that Thabega raised those concerns so I do not know  
10 who put it there.

**ADV MYBURGH SC:** Well I suppose if we need to – to determine that who put it there and who gave that information was actually one of the investigators.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Ms P Leonard.

**MS GIGABA:** Yes because it was not me.

**ADV MYBURGH SC:** Yes.

**MS GIGABA:** Because I do not know what the job she does.

**ADV MYBURGH SC:** No that I appreciate but just that I  
20 understand it you say that when this issue was raised Advocate Ngcukaitobi was present. Is that right?

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Right. And he is the one who finalised and settled your affidavit.

**MS GIGABA:** Yes.

**ADV MYBURGH SC:** Chairperson that concludes our – our questions.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Yes. Okay. Ms Gigaba this is the end of the questioning that Mr Myburgh wanted to do. There has been pending before the commission Mr Gigaba – I am sorry Ms Mngoma.

10 **MS GIGABA:** No it is fine you can use – you can use any one.

**CHAIRPERSON:** What has been pending before the commission is Mr Gigaba's application for leave to cross-examine you. Subject to one thing with that I need to clarify with his counsel. I am ready to make a decision on Mr Gigaba's application for leave to cross-examine you.

**MS GIGABA:** Okay

20 **CHAIRPERSON:** As I understand the position Mr Gigaba's legal team had been alerted that after he would have given evidence this morning you – they should be ready to cross-examine you if I grant their application sometime this afternoon.

**MS GIGABA:** Okay.

**CHAIRPERSON:** But Mr Myburgh will tell me what the latest is that he knows and if Mr Gigaba's legal team is here they will also tell me. But I just want to check with you if it was

conceded that – or let me first ask. You would be – you would have no problem if leave to cross-examine you was granted then you had to be cross-examined sometime today?

**MS GIGABA:** But not today because according to what happened yesterday.

**CHAIRPERSON:** Ja.

**MS GIGABA:** I did not have enough sleep.

**CHAIRPERSON:** Oh okay.

**MS GIGABA:** And I am 00:10:36 okay emotionally because..

10 **CHAIRPERSON:** Okay.

**MS GIGABA:** I am still stuck on what happened yesterday.

**CHAIRPERSON:** Okay.

**MS GIGABA:** So to be here and wait for Malusi

**CHAIRPERSON:** No, no that is fine. No, no that is fine. That is fine.

**MS GIGABA:** No.

**CHAIRPERSON:** Well I was asking simply because there was the possibility that if for certain reasons it would be convenient that if I grant him leave to cross-examine his  
20 lawyers to cross-examine you it may be that should happen immediately after you have finished rather than later so that when you leave you are done. But I am raising simply the question whether you would be ready even for that but from what you said you are not – you prefer to – for that to happen on another day if it has to happen.

**MS GIGABA:** Can – yes.

**CHAIRPERSON:** Oh your counsel wants to say something ja.

**MS QOFA SC:** If I may Chair.

**CHAIRPERSON:** Okay. Yes. Yes.

**MS QOFA SC:** Maybe the chronology would help.

**CHAIRPERSON:** The sequence ja.

**MS QOFA SC:** The sequence yes Chair.

**CHAIRPERSON:** Ja.

10 **MS QOFA SC:** So Ms Gigaba would say lead evidence today after which she makes the application or rather termed prefer that the application be made first.

**CHAIRPERSON:** Well the application is with me. I have studied it. As I say it is subject to one qualification I am ready to make a decision but I – we are talking if I grant the application.

**MS QOFA SC:** And Chair because I – I would have wanted maybe Chair if to also give the person ...

**CHAIRPERSON:** Have some time.

20 **MS QOFA SC:** Including suggestions probably just to say well if it is a matter of time maybe if we can have some little time maybe give 30 minutes to an hour to prepare. But that then determines how far does that kick us out of today's program.

**CHAIRPERSON:** Ja. Ja.



**MS QOFA SC:** But more particularly Chair we would have wanted to probably try and request the Chair to consider in the judgment and I am hoping if should the Chair say yes I grant the order that the Chair would at least be kind enough to illustrate the areas upon which Mr Gigaba is allowed to cross-examine.

**CHAIRPERSON:** Ja.

**MS QOFA SC:** And I am not dictating to the Chair I – I...

**CHAIRPERSON:** No, no I – I always fix the time to say how  
10 much – how much time.

**MS QOFA SC:** Thank you Chair then – then my concerns would be sorted if we..

**CHAIRPERSON:** Yes. But in – must I take what you say to be that provided she is not going to have to wait for Mr Gigaba to finish his evidence if she is to be cross-examined the preference would be that it should be before Mr Gigaba gives evidence.

**MS QOFA SC:** Indeed Chairperson.

**CHAIRPERSON:** Is that the preference?

20 **MS QOFA SC:** Because I fear that if – because naturally we would have wanted to be present to...

**CHAIRPERSON:** Ja.

**MS QOFA SC:** Deal with Mr Gigaba's evidence.

**CHAIRPERSON:** Ja.

**MS QOFA SC:** What we have done and the Chair had given

us the latitude last time to say if we feel so it would be good for us to be examined Ms Gigaba – but we felt it is not necessary.

**CHAIRPERSON**: Okay.

**MS QOFA SC**: Given the information that was listed by Mr Myburgh we are comfortable with that.

**CHAIRPERSON**: Ja. Ja.

**MS QOFA SC**: But unfortunately when our client gets cross-examined by Mr Gigaba it would be important for us to be  
10 able if necessary.

**CHAIRPERSON**: Ja, no, no that is fine. Well it – it – is Mr Solomons here?

**ADV MYBURGH SC**: Mr Solomons is on the screen.

**CHAIRPERSON**: Oh okay.

**ADV MYBURGH SC**: There – there is Mr Solomons.

**ADV SOLOMONS**: I am Chair good morning or rather good  
afternoon Chair.

**CHAIRPERSON**: Good afternoon – good afternoon. I do not  
20 know whether you have been hearing the conversation for  
the past five/seven minutes.

**ADV SOLOMONS**: Yes I have – I have indeed Chair.

**CHAIRPERSON**: Yes. What is your situation?

**ADV SOLOMONS**: Chair just to try and summarise it briefly  
we received some notification approximately a week or so  
ago from Mr Myburgh indicating to us may have been more

than a week ago that he wished Mr Gigaba to – to be available to give evidence today. We had arranged to – for him to start at nine o'clock. I had explained to Mr Myburgh that I would be available only until four o'clock for religious reasons. He indicated to me that that would be accommodated. What he did say is that if you were Chair inclined to grant the application for leave to cross-examine the – Ms Gigaba that that would take place after Mr Gigaba had given evidence. So that is as we understood the  
10 position.

**CHAIRPERSON:** Ja.

**ADV SOLOMONS:** Then we were a bit taken by surprise by Ms Gigaba's re-appearance at the commission. I think we were advised – we were given on Wednesday evening her supplementary clarifying affidavit. We did not receive a notice in terms of Rule 3.3 – 3.3 inviting us to deal with the affidavit and then I was advised by Mr Myburgh that she would be giving evidence I think he had said at three o'clock yesterday afternoon or thereabouts so we have not really  
20 had an opportunity to deal with this further affidavit. Also we noticed towards the end of Ms Gigaba's evidence that she – an affidavit or statement as to the circumstances in which her affidavit came to be prepared and commissioned was – was put to her. We have not seen that document. It – it did not form part of the record that was furnished to us and that

is a document that is quite important. So from our perspective we – we are a bit ill-prepared on this latest affidavit. Also my client is – is anxious to complete his testimony and we had hoped that that would happen today. You will recall Chair the – the – on the previous occasion he did wait around for almost the entire week.

**CHAIRPERSON:** Yes.

**ADV SOLOMONS:** So our position is probably preferable for him to give his evidence now and then to stand the cross-  
10 examination over. If we do start her cross-examination now we would still need some time to consult on and confer with our client in respect of the supplementary and we would need to see this other document that was put to her that statement.

**CHAIRPERSON:** Okay.

**ADV SOLOMONS:** So that is our position Chair.

**CHAIRPERSON:** Okay. Okay. The – the long and short is that you are ill-prepared for cross-examination should I grant leave to cross-examine today. Ms Mngoma would prefer to  
20 finish everything if – if possible today but she did not have enough sleep as well. Let me ask the question that I wanted to ask. Your client Mr Solomon says that his affidavit in support of his application is I think he says provisional or something to that effect. It is provisional – it is a provisional response to Ms Mngoma’s affidavit. What does that mean?

**ADV SOLOMONS:** Chair I think at the time there was documentation that we still wanted to see but – but I think one can take that response as subject to what I have just said about the supplementary but that response can be taken as adequate for the purposes of – of the application.

**CHAIRPERSON:** Okay. Okay. Alright. Well let me deal with the cross-examination application and then we can talk. We can talk further. I have read the application that was brought by Mr Malusi Knowledge Nkanyezi Gigaba. I  
10 previously dismissed the application insofar as it related to 00:21:15 but left or deferred the application insofar as it related to leave to cross-examine Ms Mngoma.

I have considered the application and I have concluded that I will grant Mr Gigaba leave to cross-examine Ms Mngoma.

I therefore grant the following order.

1. Mr Malusi Knowledge Nkanyezi Gigaba is hereby granted leave to cross-examine Ms Mngoma.
2. I will determine the duration of the cross-examination  
20 on the occasion of the cross-examination or shortly before the cross-examination starts.

That is the order.

Now I want to indicate Mr Solomons that I would not be inclined to grant a long time for cross-examination. I will hear what you might have to say then but when one has

regard to the contents of the affidavits of the two parties one can see that in respect of a lot of averments made by Ms Mngoma Mr Gigaba's response is a denial and that it is a fabrication.

Of course there are parts where he elaborates in regard to what he – in regard to his response. So – so I will not be inclined to grant a lot of time. But I will hear what you have to say then and then we will take it from there.

With regard to today.

10 **ADV SOLOMONS**: Thank you Chair.

**CHAIRPERSON**: Thank you. With regard to today counsel for Ms Mngoma has said that if the cross-examination were to proceed today they would like some time with Ms Mngoma I think she said about an hour.

I think in all of the circumstances let us not have the cross-examination today. Another date might – will have to be arranged. I just want to ask all sides to cooperate that date might be a Saturday – that date might be a Sunday – that date might be very early in the morning because we just  
20 do not have the time so – or very late in the evening. I just ask everybody to understand and cooperate with the commission in that regard.

But it is going to have to be somewhere in the next – before the end of the month. It will have to be somewhere before the end of the May and we – and we are left with one

week in May.

So Mr Myburgh I think – I think that is what should happen. If certain circumstances require that Ms Mngoma testifies via Zoom that would – that would be fine but if her situation permits her to be here and to come that is fine as well.

**MS GIGABA:** Thank you Chair.

**CHAIRPERSON:** Ja. So – so Mr Myburgh it seems to me that – that is a better way of using our time because then Mr  
10 Gigaba can take the witness stand as soon as possible after Ms Mngoma has vacated the witness seat and we can make quite some progress particularly because at four Mr Solomons will need to leave.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja. Okay alright. Let us leave it at that. Do you want to say anything?

**ADV QOFA:** Indeed Chair.

**CHAIRPERSON:** Yes.

**ADV QOFA:** Well seeing that we now have the time table at  
20 least insofar as the possibility of the cross-examination is concerned.

**CHAIRPERSON:** Yes.

**ADV QOFA:** I would say and Chair I am not taking you back but the critical part for us which you raised Chair having examined the affidavit of Mr Gigaba versus the affidavit filed

by Ms Mngoma is that indeed Chair 70% is not 80 and you have done that exercise on a table 00:27:26 that we used as a 00:27:29 from Mr Myburgh. In all essence bare denial and we would want – and Chair it does not matter whether a bare denial is long winded at the end of the day the question become the response of that now to the allegation made. And we say 70 to 80% of the responses or the answers he provides to the allegation is a bare denial. And we would want to impress upon the Chair to please consider that.

10 **CHAIRPERSON**: Ja, no, no.

**ADV QOFA**: In granting an order as to the limitation of the – the narrowing down of the scope.

**CHAIRPERSON**: You will be here. You will be here.

**ADV QOFA**: Thank you Chair.

**CHAIRPERSON**: So I will hear what Mr Solomons has to say. I will hear what you have to say.

**ADV QOFA**: Thank you Chair.

**CHAIRPERSON**: And then decide ja.

**ADV QOFA**: Thank you Chair.

20 **CHAIRPERSON**: Okay alright. Ms Mngoma thank you very much for availing yourself. We are done for today and you know what has been discussed in terms of what is still to come but thank you very much for availing yourself once again. You are now excused.

**MS GIGABA**: Thank you Chairperson.



**CHAIRPERSON:** Thank you. Mr Myburgh I guess I must just take – your – her legal team is also excused if they wish to be excused.

Thank – thank you Chair that was the request thank you.

**CHAIRPERSON:** Okay alright. I will – let me take a short adjournment – 10 minutes.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** For – for you to be ready for Mr Gigaba.

**ADV MYBURGH SC:** Thank you.

10 **CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay. Are you ready?

**ADV MYBURGH SC:** Yes, we are, Chairperson.

**CHAIRPERSON:** Good afternoon, Mr Gigaba.

**MR GIGABA:** Good afternoon, Chairperson.

**CHAIRPERSON:** Thank you. We will need to do the oath.

**ADV MYBURGH SC:** Mr Gigaba.

20 **CHAIRPERSON:** Please administer the oath or affirmation.

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

**WITNESS:** My name is Knowledge Malusi Nkanyezi Gigaba.

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

**WITNESS:** No, I do not.

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

**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.

10 **KNOWLEDGE MALUSI NKANYEZI GIGABA:** (d.s.s)

**CHAIRPERSON:** Thank you. You may be seated. I understand that you have longed wanted this opportunity.

**MR GIGABA:** [Speaking vernacular]

**CHAIRPERSON:** Ja, okay. Now you have got the opportunity. [laughs] Okay alright.

**MR GIGABA:** If you may excuse me. I just need to remove my ...[indistinct]

**CHAIRPERSON:** Oh, do you want me to adjourn or are you fine?

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

**CHAIRPERSON:** Oh, okay. You are ready?

**MR GIGABA:** Yes, Chairperson.

**CHAIRPERSON:** Okay alright. You may keep your mic on. It will be fine. At all times, if you can keep it on.

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

**CHAIRPERSON**: Okay.

**EXAMINATION BY ADV MYBURGH SC**: Thank you. I could not have the opportunity to tell you, Mr Gigaba, that what we start with here are some formalities where we get your affidavit formally introduced into evidence. So I am going to go through that process first alright?

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

**ADV MYBURGH SC**: Could I ask you, please, to turn to Exhibit 24, BB-24. That is Transnet Bundle 7, DCJ.

10 **CHAIRPERSON**: Ja.

**ADV MYBURGH SC**: If I could ask you, please, Mr Gigaba, to go to page 271? Two, seven, one.

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

**CHAIRPERSON**: And it will be the black numbers that you have to rely on when ...[intervenes]

**ADV MYBURGH SC**: Yes, I have explained that.

**CHAIRPERSON**: ...page numbers are given.

**MR GIGABA**: Yes, I am there.

**CHAIRPERSON**: H'm.

20 **ADV MYBURGH SC**: Alright. There is a statement that commences at that page 271. It is a – although a statement, really, that is in a form of an affidavit, because you deposed to it formally but I just want to get you to confirm that that statement, it begins at page 271. If you go to page 364, you will see that that is the page where

you signed it.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And then I would ask you to confirm that. As we know, this statement includes a large number of annexures. Perhaps you can keep your finger at page 364 and then page all the way to page 942. You will see that the annexures run all the way until that. 942.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Alright. If you can then go back to  
10 page 364? I just ask you to confirm that you signed and swore to this affidavit or this statement.

**MR GIGABA:** Yes, I do.

**ADV MYBURGH SC:** Sandton, on the 4<sup>th</sup> of January 2021. Is that correct?

**MR GIGABA:** Yes, it is correct.

**ADV MYBURGH SC:** And would you confirm then the truth and accuracy of this statement?

**MR GIGABA:** Yes, I do confirm it.

**ADV MYBURGH SC:** Chairperson, may I ask you please  
20 to admit Mr Gigaba's statement dated the 4<sup>th</sup> of January 2021, commencing at Transnet Bundle 7, page 271 as Exhibit BB-24.3.1?

**CHAIRPERSON:** The affidavit of Mr Malusi Knowledge Nkanyezi Gigaba that starts at page 271 will be admitted as an exhibit and will be marked as Exhibit Bb-24.3.2.

**FIRST AFFIDAVIT OF KNOWLEDGE MALUSI NKANYEZI IS  
ADMITTED AND MARKED AS EXHIBIT BB-24.3.1**

**CHAIRPERSON:** Before you proceed, Mr Myburgh. Can I ask the technicians or somebody to arrange that I can see Mr Solomon here on this screen, rather than on that one. That one can remain for other people. It is more convenient from me to see him on this one in case he has anything to say as we proceed. Okay, you may proceed Mr Myburgh.

10 **ADV MYBURGH SC:** Yes, we have deployed our technician, DCJ.

**CHAIRPERSON:** [laughs]

**ADV MYBURGH SC:** [laughs]

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Then, Mr Gigaba, there is a second affidavit in your exhibit. Could I ask you to turn all the way to page 945?

**MR GIGABA:** I am there.

20 **ADV MYBURGH SC:** You will see there is another affidavit of yours.

**MR GIGABA:** Yes.

**CHAIRPERSON:** Oh ...[intervenes]

**ADV MYBURGH SC:** And ...[intervenes]

**CHAIRPERSON:** Hang on one second. It may be that we are not recorded or something happened. Let us see if the

technicians will tell us anything.

**TECHNICIANS:** [No audible reply]

**CHAIRPERSON:** We can continue?

**TECHNICIANS:** [No audible reply]

**CHAIRPERSON:** Okay alright. Let us continue.

**ADV MYBURGH SC:** Thank you. At page 945, you will find another affidavit. You see it runs up until page 973 and it includes two annexures which go up to page 977. You confirm that?

10 **MR GIGABA:** Yes, I am there.

**ADV MYBURGH SC:** And could I ask you turn back to page 973? And would you confirm that you signed and swore to this affidavit at Sandton on the 3<sup>rd</sup> of November 2020?

**MR GIGABA:** Yes, I confirm it.

**ADV MYBURGH SC:** And would you confirm the truth and accuracy of this affidavit?

**MR GIGABA:** Yes, I do.

20 **ADV MYBURGH SC:** Chairperson, could I ask you to admit Mr Gigaba's affidavit dated the 3<sup>rd</sup> of November 2020 commencing at Transnet Bundle 7, page 945 as Exhibit BB-24.3.2?

**CHAIRPERSON:** Are there no letters before 24?

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

**CHAIRPERSON:** A letter of ...[intervenes]

**ADV MYBURGH SC:** BB... Yes, BB-24.3.2.

**CHAIRPERSON:** Ja. The affidavit of Mr Malusi Knowledge Nkanyezi Gigaba that starts at page 945 is admitted as an exhibit and will be marked as Exhibit BB-24.3.2.

**SECOND AFFIDAVIT OF KNOWLEDGE MALUSI NKANYEZI IS ADMITTED AND MARKED AS EXHIBIT BB-24.3.2**

**ADV MYBURGH SC:** Thank you. Mr Gigaba, perhaps we can start off by discussing your various ministerial  
10 appointments. If I could ask you, please, to turn to Exhibit BB-26 and go to page 1000? So that should be after your exhibit, BB-26.

**MR GIGABA:** BB-26, page...

**ADV MYBURGH SC:** This is the affidavit of Ms Mngoma, page 1000.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And I take you there, simply because it seems to contain a useful table. Perhaps with reference to that table, you can explain to the Chairperson the  
20 various ministerial positions that you held over the years.

**MR GIGABA:** Yes, it is true. Between 2004 and 2010, I was Deputy Minister of Home Affairs from the 1<sup>st</sup> of November until the 25<sup>th</sup>. I was Minister of Public Enterprises from the 26<sup>th</sup> of May until the 31<sup>st</sup> of March 2017.

Yes, I was the Minister of Home Affairs. I became the Minister of Finance between those periods indicated there. And from the 28<sup>th</sup> of February 2018 until November... Is it November 13<sup>th</sup>? So...

Ja, I think November 13<sup>th</sup>, 2018 I was Minister of Home Affairs again and that is when I resigned from the National Executive.

**ADV MYBURGH SC:** Could you perhaps just describe for us ...[intervenes]

10 **CHAIRPERSON:** Well, did you have three terms at Home Affairs? One as Deputy and two as Minister?

**MR GIGABA:** Well, technically, Mr Chairperson, I was – I had two terms as Deputy Minister.

**CHAIRPERSON:** Oh.

**MR GIGABA:** So the one of 29 April ...[intervenes]

**CHAIRPERSON:** Ja.

**MR GIGABA:** ...to the 31 November covers two administrations.

**CHAIRPERSON:** Oh, okay.

20 **MR GIGABA:** The administration when I was appointed in 2004 by President Mbeki as Deputy Minister and when I was appointed after the 2009 Elections ...[intervenes]

**CHAIRPERSON:** Oh, okay.

**MR GIGABA:** Under President Zuma.

**CHAIRPERSON:** Okay.



**MR GIGABA:** So, yes, I was Deputy Minister and then I became Minister after 2014 and I came back in 2018. So I had three terms.

**CHAIRPERSON:** Yes.

**MR GIGABA:** Yes.

**CHAIRPERSON:** Okay, okay, okay.

**ADV MYBURGH SC:** But perhaps you could just sketch for us briefly, Mr Gigaba, your CV and what you did before you took up the first position of Deputy Minister of the  
10 Department of Home Affairs.

**MR GIGABA:** Probably, without going too far back. I was President of the ANC Youth League from 1996, March 1996 until August 2004 but in 1999, whilst I was still President of the ANC Youth League, because it was a fulltime post, the National Executive Committee of the ANC Youth League decided that I should become a member of Parliament.

So I joined the list and I was one of those elected into Parliament in 1999. In 2001, the ANC Youth  
20 League decided that I should resign from Parliament to return to the ANC Youth League on a fulltime basis which I did until 2004.

So in 2004, which – during which I was serving my last terms as President of the ANC Youth League, I was then permitted to also join the list of MP's and that is when

in April, I became the Deputy Minister of Home Affairs.

So, the long and short. I was the President of the ANC Youth League prior to 2004 and then prior to that I had served at different levels in the ANC Youth League at provincial and regional levels in KZN and prior to that I was a student.

**ADV MYBURGH SC:** I would like to start by exploring with you your relationship and dealings with the Gupta family. When did you first meet members of the Gupta family.

10 **MR GIGABA:** I do not have the specific recollection, Chairperson, but I was still President of the ANC Youth League. It would have been at different occasions. It was not direct meetings and interactions with them because that then, I think as Mr Gwede Mantashe indicated when he was here, they were quite involved in the ANC, helping the ANC to fundraise.

So they were well-known among the leadership of the ANC. I think from records, they had served in the – one of them had served in the International Investment  
20 Council during President Mbeki's time and I do not know whether it is the Investment Council or the IT one. And they were quite close with the leadership of the ANC. So that is when I first met them.

**ADV MYBURGH SC:** So in what year, approximately, would that have been?

**MR GIGABA:** It would have been around the 2000's. I do not exactly have recollection.

**CHAIRPERSON:** Early 2000's?

**MR GIGABA:** Early 2000's, yes.

**CHAIRPERSON:** Ja, okay.

**ADV MYBURGH SC:** And then when you occupied the position of Deputy Minister, Department of Home Affairs, what dealings did you have with them?

**MR GIGABA:** Well, I did not have dealings. I do not  
10 exactly know what the word dealing means because I did not have any business or other dealings... I got to know them and I used to be invited to attend various social and cultural events which I did. You would understand that coming from KZN, some of those events are quite popular among the people who live – and then I have been an activist for quite a long time.

So if I was invited to a Deepavali celebration, I would attend it. Besides the great meals that are offered, there would be various other religious things and as a  
20 gesture of support for a cultural and religious function, one would attend. So I would not call that dealings.

**CHAIRPERSON:** Interactions?

**MR GIGABA:** Interactions.

**CHAIRPERSON:** Ja, okay.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Chairperson, I see it on the strike of one o'clock.

**CHAIRPERSON:** Ja, let us adjourn. I was tempted to suggest that we take a shorter lunch but in the end, I think it is not going to make much difference. We probably will need more time. We probably will not finish today. But that is fine. Let us take the lunch adjournment. We will resume at two o'clock. We adjourn.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us continue.

**ADV MYBURGH SC:** [No audible reply]

**CHAIRPERSON:** Your mic, Mr Myburgh.

**ADV MYBURGH SC:** Thank you. Now before lunch we had been discussing your – and you are quite correct that the correct word is interaction. Perhaps a better term, than dealing. In discussion your interactions with the Guptas and you had started out by explaining it in relation to your first ministerial appointment as Deputy Minister of  
20 the Department of Home Affairs. And as I have it, you attended some social functions at the Guptas, social and cultural functions. Is that right?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Did you have any other interactions with them during that time that you were the Deputy

Minister of the Department of Home Affairs?

**MR GIGABA:** I do not exactly recall. I do recall that on several occasions I would have gone to pick up an invite I think at Sahara Computers but I do not have the exact, you know, recollection of those incidents because, obviously, had I known that I would have to explain them what more than ten years – well, ja, almost ten years later, then I would have kept record of it but because they were just social interactions, they did not bother me and I did not  
10 record them.

**ADV MYBURGH SC:** And when we talk about social and cultural interactions. Are we talking about things like the Diwali functions, et cetera?

**MR GIGABA:** Yes. So this would have been over a certain period, not only confined to the time when I was Deputy Minister. So it would be over a period which would have included, I think at a later stage, an invite to the wedding and there were some other luncheons that we attended. It was just a social luncheon. There were a  
20 number of other people. We sat, we had lunch, we finished and we left.

**ADV MYBURGH SC:** Now when you became the Minister of the Department of Public Enterprises.

**MR GIGABA:** Yes?

**ADV MYBURGH SC:** Did you interact more or less with

the Guptas?

**MR GIGABA:** Well, I continued interacting with them. You see, there were different forms of interactions. As I explained in my – in one of my affidavits, Mr Chairman, it would have been while I attended the New Age SABC Breakfast Programmes, either when I was speaking or I was accompanying the President. And once I accompanied the officials after the 2014 January 8<sup>th</sup> Rally of the ANC.

10 It should have been at state dinners where they were invited or it would have been at – what was the occasion – ja but it – so it would have been on several occasions under different circumstances.

**ADV MYBURGH SC:** And whilst you were the Minister of the DPE ...[intervenes]

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Uhm ...[intervenes]

**MR GIGABA:** So whilst I was the Minister of the Department of Public Enterprises, my interactions with them did not increase or decrease. You know, they  
20 continued. Because as I say, I knew them. So what I am not denying here is that I knew them. As many people knew them. I also knew them. So I continued interacting with them. On several occasions, I would have, as I said, visited their residence and interacted with them at different functions. So there was no increase in the interactions.

Yes.

**ADV MYBURGH SC:** And when you say that you knew them, who in particular did you know and who did you interact with?

**MR GIGABA:** I knew all the brothers. I knew all the brothers. And on one occasion I was introduced to their mother. I think she had just come back into the country. I think so. So they introduced me to the mother. So I knew all of the brothers, yes.

10 **ADV MYBURGH SC:** You mentioned that during this time when you were the Minister of the Department of Public Enterprises, you would visit their residence and I mean, I am talking now enquiring into other instances than social or cultural functions. In what circumstances would you otherwise visit their residence?

**MR GIGABA:** It was socially or cultural. There were no other functions. As I have indicated right at the beginning of the cross-examination, Mr Chairman. I had no dealings. So I had no reason to visit and for dealings. I am not a  
20 businessman. I have never been a businessman even now. I work for the African National Congress. I am not a businessman.

So I have had no need to discuss businesses with anyone. And certainly, you know, I – as the previous witness indicated. I live quite a modest life. I do not have

businesses. So there was no juggling that I do whilst I was in government because I think my departure from government in 2018 was somewhat unexpected even by myself.

**ADV MYBURGH SC:** So, if I understand your evidence correctly. Whilst you were the Minister of Public Enterprises, you would only have attended the Gupta residence for purposes of social and cultural functions?

**MR GIGABA:** Yes, sir.

10 **ADV MYBURGH SC:** And in that four year period or so, how many times would you estimate you went to the Gupta residence?

**MR GIGABA:** I am putting it, I cannot recall. I cannot recount how many times that would have been. It – because the – I was quite busy and the interactions would have been, you know, mitigated by the fact that when you become the Minister, your responsibilities also increase. And so your time to visit people you know, acquaintances, friends or so, does get limited because you have got quite  
20 enormous responsibilities in your hands. So I, unfortunately, Mr Chairman, cannot specifically say how many times or even try to estimate.

**CHAIRPERSON:** Over what period did you say, Mr Myburgh what period?

**ADV MYBURGH SC:** During the period that Mr Gigaba



was the Minister of Public Enterprises from November 2010 to May 2014.

**CHAIRPERSON:** Okay that is a five year period. Okay.

**ADV MYBURGH SC:** So you would not even be able to estimate? Was it once a year, twice a year?

**MR GIGABA:** No, I would not be able to estimate and I think I would be unfair to the Commission if I try to do so because the most important thing, Mr Chairman, is not how many times you meet, interact or visit a friend or an acquaintance. The most important thing is, what do you do  
10 with them? And as I say, I had no business dealings.

So whatever interactions with them were just social and there were no expectations of me. Probably, if you go, even by the testimony of the previous witness, I did not believe of anything. I just simple did my work and whomsoever I knew, I knew them and my knowledge of them had no impact on the work I was expected to deliver. I am also quite a stubborn person.

**CHAIRPERSON:** If the period that Mr Myburgh asked  
20 about, is a period of five years from when you became the Minister of Public Enterprises in 2010, which I think was from 1 November ...[intervenes]

**MR GIGABA:** Yes, almost four years, Mr Chairman, if I may jump into your mouth.

**CHAIRPERSON:** Oh ...[intervenes]

**MR GIGABA:** Ja.

**CHAIRPERSON:** Did you leave before the end of the five year term?

**MR GIGABA:** Non I started at the end of 2010.

**CHAIRPERSON:** Oh, okay. No, you are right.

**MR GIGABA:** And left at the beginning of 2014.

**CHAIRPERSON:** Ja-no, you are right. You are right, ja. If one were to ask, not over a four year period or so, but over the entire period, would that make it easier for you to  
10 estimate? Maybe it is difficult to estimate if you are looking at a particular time but if you look at the entire time, it might be easier.

**MR GIGABA:** In the entire time, Mr Chairman, from ...[intervenes]

**CHAIRPERSON:** From whenever you started in doing there. Whatever it is when you started going to their residence. I think he was asking about visits to the ...[intervenes]

**MR GIGABA:** Ja.

20 **CHAIRPERSON:** ...Gupta residence.

**MR GIGABA:** No, I would not – again, I would not be able to indicate to you how many times ...[intervenes]

**CHAIRPERSON:** Yes.

**MR GIGABA:** ...over that period.

**CHAIRPERSON:** Ja.

**MR GIGABA**: Because as I say, you know, you go for a specific purpose, that thing is finished, you leave.

**CHAIRPERSON**: Yes.

**MR GIGABA**: And social functions or cultural activities are not that much.

**CHAIRPERSON**: Yes.

**MR GIGABA**: Even in a year. So.

**CHAIRPERSON**: But you recall, maybe, when your first visit may have been, roundabout when it may have been to  
10 the Gupta residence?

**MR GIGABA**: No, I do not recall when the first visit was.

**CHAIRPERSON**: H'm.

**MR GIGABA**: I do not recall when it was.

**CHAIRPERSON**: You do not recall?

**MR GIGABA**: Ja.

**CHAIRPERSON**: Okay, no that is alright.

**MR GIGABA**: Ja, ja.

**CHAIRPERSON**: Mr Myburgh.

**ADV MYBURGH SC**: Yes, thank you. And was there then  
20 a time that you stopped going there or made a conscious effort not to go there anymore?

**MR GIGABA**: I think around 2014, I scaled down the interactions. I scaled them down. I would not say it was a conscious effort that I have decided to scale the interactions down. I think, on my part, I was quite very

busy and the elections campaign at the beginning of 2014 had taken a toll in terms of my – in terms of the burden of responsibilities which I carried. So I think around 2014, our – my interactions with them scaled down quite significantly.

**ADV MYBURGH SC:** Now, did you ever have occasion to meet Mr Salim Essa?

**MR GIGABA:** I only met Mr Salim Essa after the appointment on the Board of ...[indistinct] Infraco when I  
10 was being introduced to the board or vice versa when the board was being introduced to me as the shareholder. Private meetings with him, no.

**ADV MYBURGH SC:** And were you responsible for appointing that board?

**MR GIGABA:** Yes, the board and Infraco is under the shareholder, the Ministry of Public Enterprises.

**ADV MYBURGH SC:** Now during your tenure as the Minister of Public Enterprises. That was at a time when Transnet acquired the 1064 locomotives, correct?

20 **MR GIGABA:** Indeed.

**ADV MYBURGH SC:** And also during the time when it acquired ...[intervenes]

**CHAIRPERSON:** Or maybe... I am sorry, Mr Myburgh. Now that you seem to be moving away from the visits to the Gupta residence. You, obviously, heard Ms Ngoma's

evidence and when she was asked to indicate how many times you visited the Gupta residence, she said many times and in terms of the number, she said it could not have been less than 20 times. I think she said more than that. You think – or what was your reaction to that estimate?

**MR GIGABA:** Mr Chairman, I am bit conflicted here. Let me be clear.

**ADV MYBURGH SC:** Ja.

**MR GIGABA:** Because I would want an opportunity and  
10 the opportunity to respond comprehensively to Ms Ngoma's creative imagination.

**ADV MYBURGH SC:** H'm?

**MR GIGABA:** I want to deal with what she testified here. The extensive lies, the inaccuracies and the fabrications. But it suffices for now to say it was not more than 20 times.

**CHAIRPERSON:** It was not more than 20 times?

**MR GIGABA:** It was not more than 20 times, as she claims.

20 **CHAIRPERSON:** Ja.

**MR GIGABA:** Because that is the question. How did she arrive at that calculations given that the instances she refers to at which she claims she was present do not even amount to more than two or three times. That being the case, if she was not there, over the next 16 to 17 times,

then how does she know? She was not there.

**CHAIRPERSON**: Okay alright. Mr Myburgh, you may proceed.

**ADV MYBURGH SC**: Ja. I am just, so that you are aware Chairperson. I will deal separately in some detail, obviously, with Mr Ngoma's evidence.

**CHAIRPERSON**: Ja-no, that is fine.

**ADV MYBURGH SC**: So if – and that is just to put – any concern you may have addressed mister ...[intervenes]

10 **CHAIRPERSON**: I am sorry, Mr Myburgh. Ms Mngoma – it came across as if you said Ncobo(?).

**ADV MYBURGH SC**: I beg your pardon. [laughs]

**CHAIRPERSON**: [laughs]

**ADV MYBURGH SC**: Ms Mngoma.

**CHAIRPERSON**: Ms Mngoma, ja.

**ADV MYBURGH SC**: Alright.

**CHAIRPERSON**: Okay alright.

**ADV MYBURGH SC**: So just to put to your mind at rest. We are going to deal with that in some detail. So going  
20 back to the locomotives.

**MR GIGABA**: Yes.

**ADV MYBURGH SC**: So it was under your watch that the 1064 locomotives were acquired. Is that right?

**MR GIGABA**: Yes, indeed.

**ADV MYBURGH SC**: And the same would apply to the 100

locomotives?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Now you, no doubt, had been following the events of the State Capture Inquiry quite carefully. The evidence that has been lead, Mr Gigaba, and that will be lead further by the Money-Flow Stream is to the effect and let me give you a high-level summary and then we can perhaps go into some more of the details. It is to the effect that, if it is to be accepted, that the Gupta,  
10 really, pulled off a huge heist at Transnet.

The evidence is to the effect that to date they have been paid some R 3.5 billion in kickbacks that were laundered into the Gupta Enterprise. You are familiar with that evidence? You would have heard about it.

**MR GIGABA:** I have heard about the evidence but obviously it is - what I heard about it only now because prior to this, I had no such knowledge since I was not involved in the procurement – in the procurement process of the 1064 and the 100 diesel locomotives. My  
20 responsibility and role only was limited to the shareholder responsibility which I detailed in the BB-24 affidavit.

**ADV MYBURGH SC:** But, I mean, presumable it shocks and troubles you to hear that that sort of heist was pulled off in relation to the locomotives?

**MR GIGABA:** I think, Chairman, I probably – you know, to

the extent that that may be true, surely, it would shock me because it would have been something that we had not intended. When I became Minister of Public Enterprises, the decision to procure the 1064 locomotives was already there. So it was not invented by myself.

The decision was there. The process was there. You will notice that in some of my interactions with Transnet Board, I raised concerns about the delays because in my opinion they would have been – they would  
10 have several consequences but we are going to deal with that a little bit later.

So to the extent that there may have been any wrongdoing, it was certainly not the intention of the decision process and it was not to my knowledge.

**ADV MYBURGH SC:** So perhaps I could just give you thumbnail sketch of what actually happened. To begin with. You know that Transnet appointed transaction advisors to advise them in relation to this large acquisition?

20 **MR GIGABA:** Yes.

**ADV MYBURGH SC:** And they appointed the McKinsey Consortium. McKinsey worked alongside Regiments and that was a tainted contract because Mr Essa took 50 cents in every rand that Regiments earned and the Money-Flow Stream has also shown that that income gave rise to



money laundering. Did you – presumably, knew nothing about that?

**MR GIGABA**: Indeed.

**ADV MYBURGH SC**: What the evidence also reflects is that Mr Essa, through certain of his companies, concluded so-called Business Development Services Agreements with both CSR and CNR in terms of which he took 21% commission of the value of the acquisition of 359 electric locomotives to the value of R 18 billion and 232 diesel  
10 locomotives to the value of R 9.9 billion. 21% kickback in relation to more than half of the 1064 locomotives.

Similar, BDSA was concluded in respect of the maintenance contract. He also concluded those BDSA's with SCR in relation to the 95 and the 100 locomotives. Do you have any comment on that?

**MR GIGABA**: Yes, thank you. Thank you, Mr Chairman. Mr Chairman, I was not privy to the Mr Essa's involvement in this locomotive procurement process. My understanding was that it was the Board of Transnet through its various  
20 committees including the procurement sub-committee that was involved in this process and so there is nobody else.

My communication, you will take note from BB-24, my communication was directly with the Chairman of the Board of Transnet and on the other side, with the Minister of Finance when we were dealing with PPPFA, the

Public Procurement Policy Framework Act challenges that we were experiencing that we wanted resolved between ourselves as the shareholder Minister and our colleagues at National Treasury.

So insofar as the involvement of Mr Essa, I was not aware of it. I am only hearing it through the Commission process.

**ADV MYBURGH SC:** And then just to complete the funny old sketch. You may know that what happened then is that  
10 CNR relocated from Pretoria to Durban and they were paid some R 650 million and another BDSA was concluded with and entity called Becks who got R 67 million kickback and that many, too, was laundered through the Gupta Enterprise. Any comment on that?

**MR GIGABA:** Well, I am hearing it – sorry. Mr Chairman, I am also hearing this from the Commission process. I was not aware of it. Certainly, the involvement of the Minister – I want to emphasise this. The involvement of the Minister with this process was limited to shareholder  
20 responsibilities. You approve the Section 54. I negotiated the GPPSA challenges that the notion(?) of the GPPSA glitches that we were experiencing with National Treasury.

I approved the 100 diesel locomotives with the stringent conditions which I attached to it, a process which, unfortunately, would be finalised after I had left the

Department of Public Enterprises. But insofar as my involvement in this, it was limited to the issues which are contained in my memorandum.

And I want to again reiterate that I was not aware of Mr Essa's involvement or alleged involvement in this process including the issues the Evidence Leader has just provided, the movement of a company to Durban and other negotiations that were taking place, apparently, illicitly. I was not aware of those things.

10 And certainly, had they been brought to my attention, I would have put it on record in my conversations with the Board of Transnet that there is a huge anomaly that is taking place here. I do not think these things were happening in broad daylight even that the board itself comprise of many very outstanding South Africans and leading figures in business.

They would not have allowed themselves to be involved or anybody to involve themselves on their behalf in activities of that nature. So far as I am concerned. I  
20 was not aware. I was not involved. I was not involved in this. And I would have taken steps had it been brought to my attention at the time.

**ADV MYBURGH SC:** Well, just to pick up on the point that you made about the board because you were – you are – you were responsible for appointing Mr Sharma as a

Director of Transnet. Correct?

**MR GIGABA:** Indeed I was.

**ADV MYBURGH SC:** And when you talk about non-involvement. Mr Sharma, as you know, was the Chairperson of the BADC, the Acquisition Council, that sat at the very centre of the authorisation of this acquisition. You knew of that council, the BADC?

**MR GIGABA:** Yes, the Board Sub-Committee.

**ADV MYBURGH SC:** Yes.

10 **MR GIGABA:** But there were also other board members that were involved and I am sure they would have exercised their fiduciary duties to ensure that any wrongdoing taking place is either brought to the attention of the board chairman, the board itself or to the attention of the Minister and none of that happened.

**ADV MYBURGH SC:** I just want to complete the point about Mr Sharma.

**MR GIGABA:** Yes.

20 **ADV MYBURGH SC:** Was being the Chairperson of the BADC. The evidence reveals that he had a matrix of business relationships with Mr Essa.

**MR GIGABA:** Yes, I – that has also been brought to my attention post facto.

**ADV MYBURGH SC:** Alright. We will come back to Mr Sharma . And let me just finish off by alerting you to

two other things. Of course, once the locomotives service agreements had been signed, the acquisition then had to be funded and Regiments were paid a success fee of R 189 million for arranging the China Development Bank loan.

R 122 million of that was laundered onto Sahara Computers, the Gupta company. And then another part of the funding involved arranging a so-called ZAR Club Loan. Here, Trillian was paid R 93 million for arranging it.  
10 Mr Essa was a 60% shareholder in Trillian and four days later, 80% of that money was paid to the laundering company called Albertine.

So, really, from the beginning to the end, Mr Gigaba, things were, if this evidence is to be accepted, tainted from the beginning to the end.

**MR GIGABA:** I am sure that the people involved would still get an opportunity to clarify that first. Secondly. I would be interested to know the timelines of some of those incidents that took place but I think the most important  
20 thing is that, the people involved, I am sure they would have to provide account of these allegations which are being presented here so that they are statements are taken into consideration.

**ADV MYBURGH SC:** Well ...[intervenes]

**MR GIGABA:** I want to emphasise, Mr Chairman, that the

Minister as the shareholder was not involved in those processes. The Minister as the shareholder was involved, yes, in setting up the board in approving the acquisition process through Section 54 PFMA and ensuring that they attach stringent conditions to ensure that that process is completed successfully. But that is as far as the responsibility of the shareholder and nothing else beyond that.

**ADV MYBURGH SC:** You still point that you hope that the  
10 people involved are afforded the opportunity to have a say. Well, of course, the Guptas and Mr Essa, you know where they are.

**MR GIGABA:** Do I?

**ADV MYBURGH SC:** Well, they are in Dubai. No, I am not accusing you of anything.

**MR GIGABA:** Oh.

**ADV MYBURGH SC:** I am saying, they are not exactly knocking down the door of the Commission to come and give their version.

20 **MR GIGABA:** And unfortunately, Mr Chairman, I cannot give their side of their version on their behalf. I can only give Malusi Gigaba's version.

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

**CHAIRPERSON:** Well, the one thing that I can add to Mr Myburgh has said about some of those people that you

were saying you hoped they will account. Whenever any witness who is going to give evidence here implicates somebody or it looks like may be implicating somebody, the Commission makes sure that the person who is implicated gets a copy of that affidavit or statement or the relevant portions and they are advised of their rights to say you can apply to come and put your side of the story and explain and so on, you can apply for leave to cross-examine this witness and some of those people choose not to do any of  
10 that. Others we have to force to come. So I just mention that while you may say that you are hoping that some of them would be given a chance, some of them have been given a chance but they have chosen to stay as far away from the Commission as possible.

**MR GIGABA:** Which is unfortunate, Mr Chairman, but I hope that the other members of the board adjudication subcommittee might have given their version of what they saw or knew, what they saw transpired or new to be transpiring during the process so that they assist the  
20 Commission. I am sure, Mr Chairman, I am on the good books of the Commission for having responded to all the issues that brought to my attention.

**CHAIRPERSON:** No, you have. Ja, you have to the extent that you have filed quite a number of affidavits, ja.

Mr Myburgh?

**ADV MYBURGH SC:** Just on that, Mr Gigaba, yes, we have enquired from them, Mr Molefe, Mr Gama and Mr Singh and like you, they say they have no knowledge of this.

**MR GIGABA:** Well, I am unable then to confirm or deny whether they had any knowledge because they were much closer to the process. I guess if they say they had no knowledge of it then it is up to the Commission to decide whether to accept that version or not but insofar as I am  
10 concerned, I was not involved in the process, I was not close to it at all.

**ADV MYBURGH SC:** I suppose it is that context in which the evidence you have given about your visiting the Guptas if only for cultural and social functions in these years needs to be assessed because this is what on your version was going on behind the scenes that you were unaware of. It – Mr Chairman, you know, knowing someone and presuming that they do something wrong later or they are doing something wrong whilst you know them does not  
20 make you an accomplice. I think the Commission has to take my word that I was not involved in this – all this that the evidence leader has provided and that the Commission to the extent that it might have different knowledge that points to me at the centre of what was happening, then the Commission must do so and provide me with that



information so that I am able to respond to it. I think trying to connect the dots that you knew this, you appointed the board, these were doing some wrong, I think all of us sitting inside here might or might not know somebody doing something wrong or might know somebody who is doing something wrong without our knowledge does not mean that we are involved with what they are doing but that they are doing it, to the extent that they do it, we certainly do not condone it.

10 **ADV MYBURGH SC:** Mr Gigaba, just perhaps one last question on this. You would be aware of the fact that there was a very large increase in the estimated total cost of the 1064 locomotives, I think, went from some 36 billion to 54 billion. Were you aware of that?

**MR GIGABA:** I think we addressed that in the BD24 and I do not know whether we are referring to that specifically because there was a letter – oh no, sorry, if you do not mind, let me try – let me see if I can find this.

**CHAIRPERSON:** If you say what letter it is Mr Myburgh  
20 might help you to find it.

**ADV MYBURGH SC:** I was looking to deal with it at a higher level and not with the specific detail. Really, I only had one question to ask you and that is, were you ever involved in authorising that increase in the ETC?

**MR GIGABA:** If I am not mistaken, and I stand to

correction, the increase in the price of the 1064 was done at board level, I probably might have written – and that is what I was trying to check here, a letter to the Chairman raising this – raising concerns about this and the fact – and ask whether the board was taken on board. So again, the rise in the cost of procurement and acquisitions in state owned enterprises to the extent that it falls within the – oh, what is the name of...

**CHAIRPERSON:** Delegation of authority?

10 **MR GIGABA:** Yes, well, I was looking for the technical term for it but it has been a long time. In terms – the extent that it falls within the delegation of authorities, you expect the board to write to the shareholder and say Mr Minister, because of the following reasons the costs have escalated and we request your approval and I think the instance that the evidence leader is referring to is when the board had not written to the minister and the minister raised sharp concerns about this.

**ADV MYBURGH SC:** I want to move to the first topic,  
20 main topic that I want to deal with. That relates to the reinstatement of Mr Gama as the Chief Executive of Transnet Freight Rail. Chairperson, there are a number of affidavits that are relevant to this. What we have done ...[intervenes]

**CHAIRPERSON:** I remember from last time.

**ADV MYBURGH SC:** Ja, what we have done is we have bundled them together into what we might refer to as an evidence bundle. If I could hand it up. I do not think it has to formally introduced, we have paginated it at the foot of the page.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** But on each occasion I will refer to the affidavit with reference to – its actual exhibit number and the bundle that it is to be found in.

10 **CHAIRPERSON:** Okay, alright.

**ADV MYBURGH SC:** At least that way we do not have to go through from one file to the other.

**CHAIRPERSON:** No, that is fine.

**ADV MYBURGH SC:** Mr Gigaba, I have given you a copy of it, I think it is just the other side of your file. That black file, ja. I want to start off by asking you about Ms Hogan's evidence. Now you will see there is lots of different page numbers in this bundle. When I refer to a page number I will refer to the bottom left hand side, do you see?

20 **MR GIGABA:** Oh yes.

**ADV MYBURGH SC:** Chairperson, you will – or you may recall that Ms Hogan's ...[intervenes]

**CHAIRPERSON:** Mr Myburgh you have got to be careful when you indicate – you have just said bottom and I was thinking last time when you said forward, I thought you

meant backward.

**ADV MYBURGH SC:** Ja, no, this time I do mean the bottom.

**CHAIRPERSON:** When you say just go up, I think you mean down.

**ADV MYBURGH SC:** Yes, sorry. It is at the bottom on the left hand side.

**CHAIRPERSON:** So you say when you referred him to numbers it will be at the bottom?

10 **ADV MYBURGH SC:** Yes and that is just our pagination, DCJ.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** So that paginates this evidence bundle.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** But you will see from the index – as you know that Barbara Hogan’s affidavit is EXHIBIT L1.

**CHAIRPERSON:** Yes.

20 **ADV MYBURGH SC:** And what you find at the top on the right hand side, those are the original paginated numbers as per the record of the Commission.

**CHAIRPERSON:** You say at the top?

**ADV MYBURGH SC:** Well, let me perhaps take you to an example if I could.

**CHAIRPERSON:** She is number item 6 on the index, is it

not?

**ADV MYBURGH SC:** Yes that it is right and her exhibit is L1.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And you find it in our bundle at page 68.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** And those page numbers are at the foot of the page.

10 **CHAIRPERSON:** Oh, on the bottom of the file as opposed to this bundle?

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** When you say at the...?

**ADV MYBURGH SC:** At the bottom of the page.

**CHAIRPERSON:** Of this page?

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Oh, of this bundle. Okay, no, that is fine. Okay.

20 **ADV MYBURGH SC:** And we have to put it at the bottom so as not to interfere with the original pagination.

**CHAIRPERSON:** Ja, okay, alright.

**ADV MYBURGH SC:** So Ms Hogan's affidavit which is EXHIBIT L1 before this Commission, you will find at page 68. Could I ask you to go paragraph 33 which you find at our page 76.

**MR GIGABA:** I am there.

**ADV MYBURGH SC:** Now Ms Hogan says that:

“Approximately a month after my appointment...”

She was appointed in May of 2009.

10 “...as the Minister of DPE, I met with President Zuma and gave him a full background about the developments in Transnet. I informed him that the Transnet AGM was coming up very soon and that a GCE and Chairperson of Transnet would have to be appointed as a matter of urgency. I briefed him about the board’s candidate and choice (who I too endorsed) and the inquiry potentially implicating Mr Gigaba.”

So that is the disciplinary inquiry. And over the page at paragraph 34:

20 “I was shocked and disappointed when President Zuma informed me that he was adamant that Mr Gama was his only choice for GCEO. In informed that that was not possible and that Mr Gama was not the board’s choice and could not override the board as they had undergone a very professional selection process. I further informed President Zuma that Mr Gama was the subject of an inquiry into procurement irregularities and it would very messy to appoint a GCE who could potentially

facing fairly serious charges. President Zuma said that if that was my view, no appointment whatsoever was to be made at Transnet until Mr Gama's disciplinary process was over. We agreed that I provide him with more detailed information for him to further apply his mind to."

Do you see that?

**MR GIGABA:** Yes, I do.

**ADV MYBURGH SC:** Is this something that you came to  
10 learn about subsequently?

**MR GIGABA:** I only learnt about subsequently indeed. Only recently, maybe not – let me not say subsequently, let me say recently when the Commission asked me to comment on this and brought Ms Hogan's testimony to myself. When I became Minister of Public Enterprises, no such instruction was given to me by President Zuma and certainly, as you will see, the evidence of Ms Hogan is contradicted by the experience that I appointed the GCE or the recommended the appointment of the GCE of Transnet  
20 whilst Gama's disciplinary process was still being dealt with.

And secondly, even if you were to look at – I am sure the other matter that the evidence leader is going to refer to, the letter – the email sent to me by Mr Mahlangu, it indicated that Mr Gama cannot possibly be considered

for the position of GCE of Transnet. Of course I did not respond to that letter and I am sure we are still going to discuss it, but what I am trying to highlight here is that there was no instruction given to me by President Zuma to this effect and I certainly - if he had, I certainly did not appoint the candidate that Ms Hogan alleges President Zuma had said is his only candidate for the position of GCE of Transnet. Mr Gama eventually become GCE of Transnet I think in 2016 after having acted in the position  
10 in 2015 when Mr Molefe had moved to Eskom.

**ADV MYBURGH SC:** If I could just carry on with Ms Hogan's evidence. If you turn to page 80 at paragraph 51:

After Mr Gama had been guilty, a separate independent hearing on what sanction should be applied found that the charges were serious enough to warrant dismissal on each charge. Accordingly, on 28 June 2010 Mr Gama was fired from Transnet."

She goes on to say at paragraph 52:

"I together with then Deputy Minister Mr  
20 Godongwana proceeded to put together a cabinet memorandum finally dated 27 October 2010, which is attached..."

Etcetera.

"...for the appointment of a new Transnet board who would then commence a fresh search for a new CEO



as the last proposed candidate had withdrawn. The Transnet board Acting GCEO and Chairperson at the time had shown remarkable resilience.”

Etcetera. Then at 55 towards the bottom of that page:

“The Transnet Memorandum (9/2010.Cabinet memo 9/2010) did not appear on the cabinet agenda on 15 September 2010.”

Next paragraph:

10 “On 27 October 2010 I sent a letter to the presidency requesting his assistance to expedite the placing of the Transnet cabinet memo on the cabinet agenda. I did not get a reply.”

And then she says at 57, over the page:

20 “A few day later on Sunday 31 October 2010 the President’s office called me to a meeting with him in the President of Gwede Mantashe, the General Secretary of the ANC. President Zuma said the NEC had decided to redeploy me as an ambassador or the Ambassador to Finland. I declined the redeployment and informed them that I would be resigning as a member of parliament.”

Then at 59:

“My cabinet memo appeared three days later as an agenda item. It was withdrawn.”

And then she goes on to explain that on the 8 December

cabinet approved Mr Gigaba's recommendations for the board of Transnet. So that is her version. You, as I understand it, say that Mr Zuma gave you no instruction. Did you discuss Mr Gama and all with Mr Zuma?

**MR GIGABA:** No.

**ADV MYBURGH SC:** Upon your appointment.

**MR GIGABA:** No, we did not discuss it.

**ADV MYBURGH SC:** So if we can have a look at some of these other affidavits, going to start with ...[intervenes]

10 **MR GIGABA:** Just excuse me.

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

**MR GIGABA:** I would like to have sight of – is it annexure K within the bundle?

**ADV MYBURGH SC:** No, it will not be in there but I am happy to provide it to you at the next sitting, if you would like. What would you like to have sight of?

**MR GIGABA:** Annexure K.

**ADV MYBURGH SC:** Alright.

20 **MR GIGABA:** I guess that is the Transnet memorandum that Ms Hogan claims or alleges that she submitted. Now – and I wonder if she was no longer in cabinet three days of the 31 October. How does she know that the memorandum was submitted and withdrawn? But it naturally would have been withdrawn, if it was, given that there had been changes in the National Executive, Mr Chairman, that

required the new minister to have sight. The last information I got was that the then board of Transnet had been appointed by Ms Hogan on – she extended their term of office for a year pending the completion of a board resolution report at which point then a new board would be appointed.

Now it seems contradictory to me that that decision was taken at the AGM which she claims was in September but then in October prior to the completion because she  
10 does not say here that when she submitted a new memo – is it on the 27 October?

**CHAIRPERSON:** Of October.

**MR GIGABA:** When she says she submitted a new memo in cabinet or to cabinet, she does not indicate whether the board evaluation process had been completed so it would seem ...[intervenes]

**CHAIRPERSON:** Well, in paragraph 56 at page 14 she says:

“On 27 October 2010 I sent a letter to the  
20 presidency requesting his assistance to expedite the placing of the Transnet cabinet memo on the cabinet agenda. I did not get a reply.”

I think that is what you were looking for.

**MR GIGABA:** Yes, that is what I am referring to so which means, as she says I think in paragraph ...[intervenes]

**CHAIRPERSON:** 57 at page 15 she says ...[intervenes]

**MR GIGABA:** 62, in paragraph 62.

**CHAIRPERSON:** Oh.

**MR GIGABA:** That:

10 “I together with then my Deputy Minister proceeded to put together a cabinet memorandum finally dated 27 October 2010, which is attached hereto marked annexure K for the appointment of a new Transnet board who would then commence a fresh search for a new CEO as the last proposed candidate had withdrawn.”

Perhaps I am just being pedantic but the decision taken at the AGM of 2010 was that your term of office is extended for a year pending the completion of a board evaluation process. Once that report is finalised a new board is going to be appointed. Now I am not aware and I was not aware at the time of my appointment on the 31 October that that decision had been changed because upon my appointment and in discussion with the top management of the 20 department, in particular the Transport enterprises, it was brought to my attention that the board evaluation process would soon be completed and it was after that completion that we submitted the new memo to cabinet to appoint a new board retaining some of the members of the previous board and adding new members on the board which

included quite a number of people. So I do not know if by the time this submission by Ms Hogan was done the board evaluation process had been completed.

**ADV MYBURGH SC:** Alright, so just going to where you ended in relation to former President Zuma, you say that you did not – you no discussions with him at all in relation to Mr Gama.

**MR GIGABA:** No, we did not. Even when we brought the memorandum for the appointment of Mr Molefe he did not  
10 say to me that oh no, but I had told your predecessor that it is Mr Gama that I want. He did not raise that with me at all.

**ADV MYBURGH SC:** So if we can got to some of the other affidavits, could I ask you to go to Mr Mkhwanazi's affidavit? That you find at our page 49 and let me ask you to go to 50.

**MR GIGABA:** I am there.

**ADV MYBURGH SC:** At paragraph 43 deals with a meeting that he has with you. He says:

20 "In my meeting with Minister Gigaba in October 2010..."

I assume that – well, let me ask you, it seems to be common cause that you met with him. When would you have met?

**MR GIGABA:** In November.

**ADV MYBURGH SC:** That would have obviously followed your appointment.

**MR GIGABA:** Yes, following my appointment.

**ADV MYBURGH SC:** He says that ...[intervenes]

**CHAIRPERSON:** Would it – I am sorry, when Mr Mkhwanazi was giving evidence he was questioned rather extensively about the date.

**MR GIGABA:** Yes.

**CHAIRPERSON:** Because he – I think he was saying it  
10 was probably 31 or 30 October, I cannot remember, and  
what was raised with him was that your appointment as  
Minister of Public Enterprises was with effect from the 1  
November and how could you have met him to discuss  
Public Enterprises' issues before your appointment took  
effect. My recollection – I do not know whether Mr  
Myburgh is different, my recollection is that to some extent  
he seemed to be firm that it was before the 1 November but  
I think I was left with the impression that it could have  
been the 1 November but I am not sure whether he said it  
20 could not have been the 1 November or he said it may have  
been but he thought it was 31<sup>st</sup>. Is it possible that it may  
have been the 1 November or your...?

**MR GIGABA:** No, it is not possible, Mr Chairman, thank you very much for assisting. On the 30 October I was in Durban to watch the Super – no, no, not the Super Cup

Final, I was watching the Curry Cup Final between the Stormers, the Western Cape Stormers and the Natal Sharks. I remember it because I was quite excited. I think it was the first time I was attending a rugby final ...[intervenes]

**CHAIRPERSON:** I assume you supported the Sharks?

**MR GIGABA:** Of course. And then we flew back in the morning or midday on the 31<sup>st</sup>. That is when, as we landed at OR Tambo International Airport, I received a text from  
10 Ms Lakela Kuanda to call her immediately, which I did, and she told me that the President wants to meet with you. I asked when? She said now. Or first she said I hope you are not far out of Gauteng? I said oh, luckily, I just landed. So I rushed to Mahlamba Ndlopfu where I also found President Zuma sitting with Mr Gwede Mantashe and then they informed me of my impending appointment and said you will be sworn in tomorrow at two.

I went home after that and the following day I was - you know, I only went to Mahlamba Ndlopfu to be sworn in  
20 as the staff that I had worked with at Home Affairs were busy packing up my card boxes, you know, from – and my files from Home Affairs.

Now, Mr Chairman, even if you look – I think Mr Mkhwanazi made a genuine confusion of dates because even if you look at – is this 4.3 or 43.3? Is it 4.3.3 on

page 6? Sorry, sorry, sorry, Mr Chairman, I was advised to look at the Chairman.

**CHAIRPERSON:** No, no, no, that is fine.

**MR GIGABA:** So I am just trying to confirm the...

**CHAIRPERSON:** Yes, you can confirm that.

**ADV MYBURGH SC:** Page, ja, paragraph 4.3.

**MR GIGABA:** I take it is 4.3.3. Even if you look at these issues that Mr Mkhwanazi says we discussed, these would not have been possible to discuss at a first meeting especially not prior to your appointment, not prior to your  
10 briefing. The Durban Harbour entrance widening, the national multi-product pipeline, the Cape Town Container Terminal. These are issues that you can only raise when you are well-briefed by the department and according to my own version of this, we did not discuss the detail which Mr Mkhwanazi says that we had discussed. To my recollection I raised a few broad issues with him because the main issue was not to discuss what to do as Chairman of Transnet, the main issue – I knew that Mr Mkhwanazi  
20 knows Transnet very well, he had been Group CEO, he had been MD, he had been Deputy MD to Mr Zaki Matazoma(?) but what I intended to say to him is that look at a broad level there are the following issues which you need to deal with and obviously we need someone of your intimate knowledge and your leadership and trustworthiness to be



able to handle these issues in a manner that is not going to leave any loopholes, so you deal with them, I am not instructing you how to deal with them but I am bringing them to your attention as issues which need the attention of the new board.

But you will also notice, Mr Chairman, that unfortunately I do not think I submitted that as evidence or was an annexure. In my address to the board of Transnet the following here, the new board of Transnet – no, no, no,  
10 I think it was in December 2010.

When I addressed them I raised six strategic priorities and they had obviously changed significantly because I was now dealing with issues in terms of the briefing I had received from the department which we thought were strategic issues which need to be brought to the attention of the board. I think, the Chairman permitting, I would like through my attorneys to submit that as an annexure to supplement my submissions.

**CHAIRPERSON:** Ja. No, that can be done.

20 **MR GIGABA:** Yes.

**CHAIRPERSON:** Mr Myburgh?

**ADV MYBURGH SC:** Yes. So just – it may very well be that Mr Mkhwanazi was wrong in relation to the date but what he says was discussed at this first meeting are the items listed in paragraph 4.3. The final one, 4.3.4, he says

– this is about you, that:

“He was under the impression that disciplinary matters at Transnet were racially biased and that there was a condonation process at Transnet because generally he used to deal with deviations within Transnet.”

Did you have a discussion with him about that, did your discussion include that?

**MR GIGABA:** My discussion insofar as Mr Gama was  
10 concerned was drawn from media reports that was circulating at the time, and I was highlighting to him how sensitive, how controversial this issue was, it was a burning issue. A number of organisations including the allies of the ruling party had made comments about it, I think a few Ministers also spoken out publicly about the matter and so I was raising with him, an issue that they need to deal with and ensure that it's resolved. I had no knowledge of the condonation processes at Transnet or deviations that take place and to the extent that I raised  
20 such things, it would have been purely based on what reports were there in the media with no instruction to him as to how to deal with the matter but it was evident that the matter was to be dealt with and finalised in a manner that was going to take it away from bringing the company under duress or under public pressure.

**ADV MYBURGH SC:** So, you say, to the extent that you spoke about condonation processes, to deal with deviations at Transnet, that you had read about in the press?

**MR GIGABA:** I'm saying, Mr Chairman, that I had no knowledge of this, these condonations, and deviations so, if I were to raise it, it would have been based on media reports but what I'm saying firmly is that I had no knowledge of condonation processes at Transnet and  
10 deviations. Those were very intimate issues that you could only know about when you are being briefed about the process. I was never briefed about the Transnet process, not to any great detail, I think the briefings to me, about the Transnet – about Mr Gama process were based on the two emails from Mr Mahlangu to which I did not respond because my view was very firmly that these are internal Board matters, and the Board must be left to deal with them. That's why nowhere else is it then said that, oh Malusi, or Minister Gigaba then said this about this, raised  
20 this in a formal meeting, we provided the report to Minister Gigaba about how the matter had been resolved. My only, one interaction with Mr ...[indistinct] on this issue was based on what I said, there are media reports about this the new Chairman of the Board is going to come under pressure and the Board itself to have to deal with these

issues. I have no intimate details of these issues, I suggest that you handle them in a manner that's in the best interest of the company.

**ADV MYBURGH SC:** If I could take you to another of his affidavits, also dealing with this meeting. If you turn to page 109.

**MR GIGABA:** 109?

**ADV MYBURGH SC:** 109, the bottom left-hand side.

**MR GIGABA:** Yes.

10 **ADV MYBURGH SC:** At paragraph six he says – he's talking about the same meeting,

“At this meeting...[intervenes].

**CHAIRPERSON:** Hang on Mr – somehow, I feel there is still something I haven't understood about the...[intervenes].

**ADV MYBURGH SC:** Chairperson, what we had to do is because this is a collection of affidavits.

**CHAIRPERSON:** Yes.

20 **ADV MYBURGH SC:** That have their own page numbers within these files, we of course, can't refer to the top number because it wouldn't be consecutive.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So, to consecutively paginate these bundles so that we can find our way through it, we've put a number at the foot on the left-hand side.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** From the beginning to the end.

**CHAIRPERSON:** Yes, but right now you said...[intervenes].

**ADV MYBURGH SC:** 109.

**CHAIRPERSON:** Okay, alright, now I think now I'm going to follow, okay I'm there, thank you.

**ADV MYBURGH SC:** Thank you, so at paragraph six,

10 "In this meeting Minister Gigaba also requested that the incoming Board must also review the fairness of the dismissal of Mr Gama",

What do you say to that?

**MR GIGABA:** I think in the – in Mr Mkhwanazi's cross-examination, I hope I'm using the right words...[intervenes].

**CHAIRPERSON:** Questioning will be more accurate ja.

**MR GIGABA:** Questioning, thank you Mr Chair.

**CHAIRPERSON:** Questioning is more general.

20 **MR GIGABA:** Yes, thank you very much. In the questioning when he was leading his – when he was presenting his affidavit, he dealt extensively with what was the issue at the meeting and his understanding because he indicates there, that he did not understand me to be giving them an instruction as to how to resolve this issue but I was saying to him, the matter is of high public profile, it

needs to be addressed we can't just ignore it because it distracts the company from what it needs to do. The company had specific challenges to deal with in 2010 and that was the ...[indistinct] under which the new Board was appointed. There had been a leadership vacuum for quite a time, since the resignation of the previous CE, Group CEO, the CFO had acted as the Group CEO and he resigned on the 1<sup>st</sup> of November, just as I was driving from my swearing in it was just one of those backlaps on your  
10 face before you even do anything. So, the company had no CE, Group CE it also had no CFO. The Board was on a year's extension subject to the finalisation of the Board evaluation report. A number of other vacancies were vacant for – my apologies Chairman, I meant no disrespect to you (cell phone ringing).

**CHAIRPERSON:** No that's fine.

**MR GIGABA:** Can someone take this away from me, my sincerest apologies Mr Chairman.

**CHAIRPERSON:** It's fine, yes?

20 **MR GIGABA:** I was saying that – so when I raised this – so there were a number of challenges that the Board of Transnet was facing and I said to them, you've got a capital expenditure programme, a five year rolling capital expenditure programme that you need to be implementing. For you to go to the capital markets to raise funding for

this you need to have stability at the level of the Board and the Executive Directors of the company. So, deal with these issues, remove all the uncertainty so that the company is able to focus on its immediate challenges. There were other challenges which had been brought to my attention by the Department which included inability to meet the key performance indicators it included the complaints from various key stakeholders of Transnet especially around the export lines. The fact that many of  
10 the trains of the company were derailing, there was poor performance at the ports. So, when I raised this with Mr Mkhwanazi, prior to his appointment, I was saying deal with the leadership uncertainties so that the company is able to be - not to be distracted by the uncertainties, there is clarity as to who is who and what role they are playing.

**CHAIRPERSON:** Well, the one thing which you have mentioned was something I was going to raise with you with regard to when this meeting probably took place. You said, prior to his appointment and I think that's what he  
20 said to me, that meeting took place prior to his appointment. Would you be able to say, you think maybe it was within the first week of November when you have been appointed, from your recollection when you met with him or later than that or – in other words, is your recollection in terms of the date quite far from his recollection in terms of

when or is it not so far?

**MR GIGABA:** It's quite far, Mr Chairman because the Cabinet decision was taken on the 8<sup>th</sup> of December 2010. Now – which means that the submission to Cabinet would have happened two weeks prior the 8<sup>th</sup> which would have been around the 24<sup>th</sup> or so of November. So, the meeting would have taken place just prior to my submission of this mail...[intervenes].

**CHAIRPERSON:** So, just prior to 24 November or there  
10 about?

**MR GIGABA:** Yes, because prior to 24 November because that's when I would have approached Cabinet with a request for him to be appointed on the Board and made Chairperson.

**CHAIRPERSON:** Ja.

**MR GIGABA:** Now, there are different ways in which different Ministries deal with these issues of appointments. Other Ministries recommend a Board and leave it to the Board to appoint the Chairperson. Others like DPE  
20 recommend a Board and nominate the Chairperson for the Board so that Cabinet has full sight of what's going to transpire at the level of the leadership of the company. So, that's what – that's the standard practice I found when I became Minister of Public Enterprises and this being the first Board and the issues that were in the public domain, I



felt it was necessary to just meet Mr Mkhwanazi, apprise him of our intention to recommend his appointment as Chairperson of the Board and to say to him, you know, when you meet someone, Mr Chairman, you don't meet with them and say, hey how are you Mr Mkhwanazi, I'm fine thanks, look man, we want to nominate you as Chairperson of the Board, oh thank you very much I'm honoured, okay thanks, bye bye. You know, you raise other issues so that it's not just that brief, clinical meeting without a soul. So, I  
10 would have said to him that, you know, there's various challenges like these, we're recommending you as Chairperson of the Board would you accept your appointment, should Cabinet agree with us?

**CHAIRPERSON:** Okay, alright, so at least there is clarification so it would have been, at some stage, prior to the 24<sup>th</sup> of November, from your recollection?

**MR GIGABA:** Yes.

**CHAIRPERSON:** Okay, Mr Myburgh?

**ADV MYBURGH SC:** Thank you, now just going back to  
20 this paragraph, did you tell Mr Mkhwanazi that the Board must review the fairness of the dismissal of the participants that had gone?

**MR GIGABA:** The word review, and I think in his questioning he made very clear, so I think we are dealing with two things here. We're dealing with paragraph six and

we are dealing with what he said before the Commission because he said at the Commission, I said that they need to review the fairness or unfairness of the dismissal and he said that no, I didn't take Minister Gigaba to be saying, Mr Gama must be reinstated and that is the accurate recollection of events.

**ADV MYBURGH SC:** But I'm asking you what you said, Mr Gigaba.

**MR GIGABA:** What I said is that they need to review the  
10 fairness or unfairness of the dismissal and they must ensure that they take a decision which puts the leadership uncertainties in the company at Executive Director level to bed, so that the company is able to carry on with its work undistracted. I gave no instruction, I did not use the word, that Transnet must rescind the dismissal of Mr Gama, I think that would have been much more firm had I used those words but, in this instance, I was not giving them an instruction in terms of what they need to do. I was saying that deal with this issue, make sure that the company is rid  
20 of the controversies surrounding it.

**CHAIRPERSON:** At that stage had your department briefed you on where the dispute – dismissal dispute relating to Mr Gama was?

**MR GIGABA:** No.

**CHAIRPERSON:** In terms of whether, here he had

challenged the dismissal and there was a process that was being followed in terms of which he sought to be reinstated?

**MR GIGABA:** No, Mr Chairman, the Department did not brief me.

**CHAIRPERSON:** Okay.

**MR GIGABA:** We regarded it as an internal matter at Transnet.

**CHAIRPERSON:** Yes.

10 **MR GIGABA:** More so because CEOs of subsidiaries of the divisions of Transnet are appointed by the Group CEO in...[indistinct] or with the approval of the Board. I think my understanding, of course I may be wrong, given that there's been a substantial amount of time which has passed since I was Minister of Public Enterprises. My recollection was that the Group CE actually just announces to the Board. The Group CE has the power to reorganise the heads of divisions, to move the CEO of this division to that one and – to redeploy them, if I may use the word but  
20 the appointment of the CEs of divisions of Transnet is a function of the Board led by the CEO it doesn't belong to the Minister. So, the Minister can't express an opinion as to who should be a CE of a division and that was my spirit.

**CHAIRPERSON:** Mr Myburgh?

**ADV MYBURGH SC:** Thank you. Let me take you to

another affidavit this time of Mr Mapoma, you find at page 15 at the bottom of the page.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And I'd like to direct your attention to paragraph eight over the page.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Now, he was the legal manager that assisted Mr Mkhwanazi, he says,

10 "I mentioned in this regard that from the outset of my interactions with Mr Mkhwanazi, he made it clear to me that he had been instructed to reinstate Mr Gama and that he wanted to find a way to do so cleanly",

Have you any comment on that?

**MR GIGABA:** I don't know, Mr Chairman, I was not in those conversations and I had not given Mr Mkhwanazi an instruction and Mr Mkhwanazi did not say that such an instruction had come from me.

20 **CHAIRPERSON:** I don't know, Mr Myburgh, what your recollection is, I may be wrong, for what it's worth, I seemed to have an impression, when Mr Mkhwanazi gave evidence to us, I think I still have that impression, that initially, in his evidence he had said that that Mr Gigaba had instructed him to reinstate Mr Gama but as the questioning progressed he later said, no, no, no he had

been – Mr Gigaba asked him or instructed him to review the fairness of the dismissal and I think in my own mind I was then thinking about the fact that Mr Mapoma, he had said he had been instructed to...[intervenes].

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** So, I'm just raising that simply because Mr Gigaba mentions that Mr Mkhwanazi didn't say he instructed him, but I don't know what your recollection is.

**ADV MYBURGH SC:** No, you're absolutely correct, of course, you will, ultimately have to decide.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** As to whether that instruction was given. The enquiry was that, whilst Mr Mkhwanazi said he wasn't given an instruction there were certain indications that he was and one of them was this contradiction.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** But you will remember – and I'm going to put this in fairness to Mr Gigaba in a moment, I think the high water mark of Mr Mkhwanazi's evidence is that after he had given a series of concessions about, perhaps it could be summarised as an irrational decision, to reinstate Mr Gama and to pay him a settlement agreement that he did, and when I say rational, I mean, given the concessions that he made.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** He then found himself in a very difficult position because the proposition was put to him, he would only have acted that way if there had been some shareholder instruction. So, Mr Gigaba is right that that's what Mr Mkhwanazi said whether that's actually true is a matter that you will have to decide at the end of the day.

**CHAIRPERSON:** Ja okay.

**MR GIGABA:** And if I might comment because I also read, Mr Mkhwanazi's interview quite – with keen interest Mr  
10 Chairman, as you would expect.

**CHAIRPERSON:** Yes, ja.

**MR GIGABA:** It dealt a lot with me, I'm now trying to find – I'm confused, in my own files, I'm trying to find the transcripts of this interview because the Commission spent a long time with him, discussing this matter whether I had said he must review the fairness only or the fairness or unfairness and whether I had used the word, harsh, that Gama's dismissal was harsh or not.

**CHAIRPERSON:** Yes.

20 **MR GIGABA:** And he made – I don't recall where he says, specifically, that I had given him an instruction because from what I was reading, from what he was saying was that he understood me – that I had said review the fairness or unfairness and he said, I didn't take this to be an instruction.

**CHAIRPERSON:** Ja.

**MR GIGABA:** I used to put it, Mr Chairman, very emphatically that I gave no instruction to Mr Mkhwanazi to add in – to influence the Board or lead the Board to act in any way. They could, very well have come back to me to say, Mr Minister there are the following things, and we leave them where they are. I think there could have been a number of people, perhaps, who were putting pressure on the Board outside of me to take the decision that they  
10 eventually took or – and that’s what could have influenced the view that, look, I’m being put under pressure to do this thing and do it cleanly but from the Minister of Public Enterprises, who was me at the time, there was no such instruction.

**CHAIRPERSON:** No, no, no the only reason why I raised it was that I noted that it was the second time you mentioned that Mr Mkhwanazi didn’t say he was instructed and I thought it’s important to indicate that subject to checking, initially he may have said so but it is true that, in  
20 the end he was saying, no he did not – the Minister did not instruct me to reinstate Mr Gama but I just wanted to make sure that you are aware that there may be. So, it can be checked later, alright, I think we can move on ja.

**ADV MYBURGH SC:** Yes, Mr Gigaba, what Mr Mapoma does is he attaches a consultation note, perhaps I could

just take you to that, page 19. So, this is a consultation note. Transnet was represented by Deneys Reitz, Mapoma and Mkhwanazi attend this consultation and it involves also a meeting with Mr Gama. I just want to show you, how Mr Mkhwanazi then conducted himself. Now, this is before legal advice is given, this is early stages of the matter. The consultation notes – and Mr Mkhwanazi accepts that this is correct, reads,

10           “Mr Mkhwanazi explained that he would like to assist Mr Gama, where reasonably possible. His intention was to bring him back to his Chairman’s office. He wants Mr Gama to assist him in a number of strategic issues. He, however, needs a good motivation to do so. His view is, that if he’s provided with an opinion, setting out that there has been some unfairness towards Mr Gama. At the Board meeting of 16 February, he would persuade the other Board members to make the decision to bring Mr Gama back into the organisation”,

20           And that’s actually what happened and what was put to Mr Mkhwanazi, and I’m going to ask you for your comment in a moment, is that you must have been given some instruction, if this is the way you conducted yourself. Here it reads in black and white that he had decided the man must come back, he wanted an opinion showing some



unfairness and then he would persuade his fellow Board members. Why on earth would someone do that unless there had been some shareholder ...[indistinct – dropped voice]?

**MR GIGABA:** The shareholder instruction was not there, it did not exist, I think, Mr Chairman I've made that very – I put that categorically clear, there was no shareholder instruction to that effect. It is my understanding that other Board members also wanted Mr Gama back and there were  
10 discussions. It could be, that the pressure that might have been there had emanated from other members of the Board who also wanted Mr Gama reinstated, who had opinions about the matter but insofar as the shareholder is concerned there was no instruction that was given to the effect that Mr Gama must be reinstated. I think Mr Gama, in his own testimony before the Commission made reference to the fact that there was no pressure that had been exerted through me to have him reinstated. Mr Mkhwanazi's own submissions to the Commission do, quite  
20 clearly, indicate that there was only one time that I discussed this with him, I, being the shareholder representative. It could very well be, that there were other Ministers that had discussions with him, formally or informally I'm not aware but insofar as I am concerned, I did not put any pressure towards any direction, and I

considered the matter to be an internal matter. Even the fact that it dealt with a CEO of a division which was not a matter within the memoranda of incorporation which belonged to the person of the shareholder representative who was the Minister of Public Enterprises.

**CHAIRPERSON:** H'm well, in terms of the content of the discussion that you had with him, and you have indicated that you would have had a broad, kind of, discussion at a certain level after having been briefed by your department.

10 What he definitely did say, if I recall correctly, is that – and you would have picked this up in the transcript, is that it was quite clear that the – that you regarded Mr Gama's dismissal as unfair and he said you made reference to how white Executives and managers and black managers were treated at Transnet and you said that Mr Gama had been treated unfairly and something along the lines that, if it was a white manager, he would not have been dismissed for what Mr Gama had been dismissed for. Now, I hope my recollection, Mr Myburgh, is reasonably, correct?

20 **ADV MYBURGH SC:** Yes, it is Chairperson, because it goes to the first paragraph that, I think I took Mr Gigaba to, in relation to the first meeting where he says, that Mr Gigaba was under the impression that disciplinary matters at Transnet were racially biased.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And there was, then, a line of questioning where, I think you might have even have asked him.[intervenes].

**CHAIRPERSON:** Yes, I asked him the question ja.

**ADV MYBURGH SC:** What – implicit in that what was being said.

**CHAIRPERSON:** Yes, yes, so I asked – and I think he may – there was the question of whether you said the dismissal was harsh as a sanction or something like that.

10 What do you say to his evidence about that, did that transpire, leaving out the question of whether you instructed him or you didn't instruct him because we have dealt with that but in terms of the rest of the discussion on the Gama issue?

**ADV MYBURGH SC:** I think, Mr Chairman, crucial – maybe not crucial details let me say Mr Mkhwanazi's recollection of our meeting may be lacking in a number of instances. First it was a brief meeting, secondly, I had just been appointed Minister of Public Enterprises, I was a few  
20 weeks into the job I was responsible – back then we were responsible for nine entities which included the...[indistinct] Act, the PDMR and we only disposed of that function later, I think round 2011 or 2012. So, we were receiving extensive briefings, there is a number of other things that were taking place and none of the

briefings from the Department would have included a briefing about Mr Gama and therefore I would not have had, even a opinion on whether other white managers are being treated differently, I didn't know that and that only emerged later, later when, you know, from public engagements, people were making reference to some other managers and one manager who was cited was actually not white. So, it – at the time of our meeting with Mr Mkhwanazi all of these very intimate details of Gama's  
10 dismissal did not exist to me. I wasn't aware of that, I was just raising a broad issue which I thought needed to be dealt with and how I – in why I thought it needed to be dealt with, it had nothing to do with whether I wanted Mr Gama to be reinstated or not. It had everything to do with the broad strategic issue of ensuring that there's leadership stability the companies not distracted, the negative public discourse on Transnet is dealt with and that negative public discourse would not be made to go away, merely by reinstating Mr Gama, because the Board  
20 could you know have said look we have looked at the following things we believe that his dismissal remained valid and therefore we provide certainty as to the leadership issues within Transnet. I did not have a preference for the CEO of Transnet Freight Rail and I certainly was not involving myself in the discussions about the Group CEO. I

think the board in our meetings with them after – this is after the meeting with Gama – after they were appointed by cabinet. I think later in December when I met with the new board I then said to them I am giving you three months to work on and conclude the process of the Group CEO. Now these three months did not mean that in three months a new Group CEO must be in office. It just simply meant that within three months you need to submit to me your recommendations. So the issue of the CEO of the – of  
10 Transnet Freight Rail was not really at the time of our meeting prior to the – the submission of the memorandum to cabinet was not known to me in the intimate detail that Mr Mkwanazi is raising. So I just think that he is missing certain crucial details of that meeting. It was also a brief meeting.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** So do I understand you to say you did not say to him that you considered dismissal harsh.

**MR GIGABA:** No, no, no I did not say that. It was not my  
20 opinion.

**ADV MYBURGH SC:** And you did not say to him that you felt that disciplinary processes at Transnet were racially biased?

**MR GIGABA:** No I did not know anything about disciplinary processes at Transnet. That is – is a matter that is brought to the shareholder only insofar as it involved key executive

directors who are – who are board members but insofar as disciplinary processes at Transnet are concerned the department had not briefed me that they are racially biased or not or whether they are fair and harsh in any particular direction or not.

**ADV MYBURGH SC:** Alright can I take you to another affidavit of Mr Mpoma please.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Now that you find commencing at page  
10 29 pagination at the bottom of the page and perhaps I could  
ask you then to turn onto page 38.

**MR GIGABA:** Yes. I am there.

**ADV MYBURGH SC:** At paragraph 27 at the top of the page  
Mr Mpoma says:

“Mr Mahlangu called and put pressure on me  
to finalise the reinstatement of Mr Gama  
accusing me of causing the delay, telling me  
Number 1 wanted to get it done quickly. He  
never mentioned any name he stopped  
20 calling me when I sternly told him to stop  
calling me and that I did not report to him nor  
to the Minister nor to Number 1 and that I  
was assisting Mr Mkwanazi to implement the  
board decision and told him never to call me  
again.”

You see that.

**MR GIGABA:** Yes I see that.

**ADV MYBURGH SC:** Now I just ask for your comment but in fairness I must alert you to the fact that Mr Mahlangu you may know.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Denies that this – that he said this because that was also something that was contested as you will remember.

10 **MR GIGABA:** Yes. I

**ADV MYBURGH SC:** Do you have any comment on this.

**MR GIGABA:** I am aware that Mr Mahlangu had denied this. I was not aware of – if this call happened I would not have been aware of it and I certainly never was instructed by – if presumably Number 1 is Mr Zuma and Mr Zuma never gave me any such instruction either to the extent of reinstating Mr Gama or appointing him as his only candidate for Group CEO so I am aware that Mr Mahlangu has denied this call and explained the context of his interactions with Mr Mpoma.

20 **CHAIRPERSON:** Well maybe – maybe one of the things that should be mentioned to you Mr Gigaba in relation to Mr Zuma and his alleged insistence that Mr Gama was his only choice or Group CEO is that Ms Barbara Hogan's evidence was put to him when he gave evidence here in June or July 2019 and he – he denied having taken that approach of

saying his only choice for CEO for Transnet was Mr Gama. He denied that evidence. Unfortunately he is – you know is not coming back – we – I had hoped that when he came back he would be questioned further on some of these aspects. But one of the things that Ms Barbara Hogan said is this. She said this – the choice for Group CEO for – of the board of Transnet at the time was another candidate. And she said she supported that candidate having been given enough information about the candidate and the other candidates  
10 and it was a black candidate. And she said Mr Zuma when she told Mr Zuma that there were investigations against Mr Gama which could lead to even a disciplinary process. In other words saying you know if we ineffective we have to wait for your choice it might never happen or it might take long. She said Mr Zuma's response was to say then the process of appointing will have to wait until those processes have been finalised. And indeed no appointment of Group CEO was made. Ms Ramos had resigned I think at the beginning of 2009 and Ms Barbara Hogan was speaking to  
20 Mr Zuma around mid-year 2009 if I recall correctly. For over a year or a year and a half that position was not filled. Mr Gama was of course dismissed in June 2010 and then he launched an – he challenged his dismissal. So we – we have not explanation because Mr Zuma did not come back to the commission as to why the candidate who had been



recommended by the board who appeared to be a credible candidate, who was black was therefore not appointed and why this position was left unfilled for so long if it is not because of what Ms Barbara Hogan says namely Mr Zuma wanted nobody else except Mr Gama for this position.

So I am mentioning that because it – I think it is fair to mention to you to say when you look at for example how Mr Mkwanazi may have been questioned when he was giving evidence about whether there was an instruction or...

10 **MR GIGABA:** Yes.

**CHAIRPERSON:** Or what it is against that background you know. An entity such as Transnet could not pay for such a long without a permanent CEO – Group CEO. But he stayed for a long time the candidate who had been recommended by the board and the Minister had to finally leave because there was – he was not being appointed.

So I mention that - you might – you might not be able to say anything but I am just bringing it to your attention.

20 **MR GIGABA:** Indeed Mr Chairman. I take note of what you are saying and remind the Chairman that during my appoint – after my appointment or during my appointment at which Mr Mantashe was there I was not given an instruction to either reinstate Mr Gama or have him appointed as the only candidate for Group CEO of Transnet. He actually eventually became Group CEO two years after I had left

public enterprises I think in 2016 having acted in the position in 20 – from 2015 when Mr Molefe moved to Eskom.

But I think it is also necessary to indicate that I unfortunately did not know the preferred candidate of 2009 and that was also not brought to my attention.

**CHAIRPERSON:** Ja.

**MR GIGABA:** So I still would not that it would make any difference now in 2021.

**CHAIRPERSON:** Ja.

10 **MR GIGABA:** But you know it was not brought to my attention.

**CHAIRPERSON:** No that is fine. Mr Myburgh.

**ADV MYBURGH SC:** Yes thank you. Could I then take you to Mr Mahlangu's affidavit and perhaps I can just go directly to the email that I think you mentioned a little earlier. That you find at page 10 of the bundle.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And the key paragraph as you know – this is a – an email dated the 18<sup>th</sup> of January 2011 headed  
20 Heads Up.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** The second bullet point.

“I understand that Transnet may be nearing a settlement with Gama. I will obtain the details of the settlement and brief you

accordingly. I suggest that you socialise the President's – sorry – the President and his key aides (formally and informally) on the proposed settlement. It is intended that the forthcoming board meeting should consider and authorise."

You want to comment on that.

**MR GIGABA:** Ordinarily Mr Chairman advisors sent all manner of Heads Up updates to Ministers. Mr Mahlangu had  
10 just assumed his responsibility as my special advisor legal around I think December 2010 and was still familiarising himself with his responsibilities and the parameters of those responsibilities.

A lot of these issues raised here emanated from that him trying to familiarise himself with the parameters of his – of his assignment.

Now then to come specifically to bullet 2 or to the email as a whole. I – you know as you are aware I did not respond to this. It contained among other issues which I  
20 thought were not – we do not – were not within our person and the Gama issue being one of those. So I did not ask him how did you obtain the details of the settlement. I did not socialise the President as I think I have said this both in my affidavit as well as in my previous – I have repeated it several times here that I did not discuss the Gama issue with

the President. He did not raise it with me. I did not raise it back – I did not raise it with him. I did not know this proposed settlement as he does not – he says himself that he was only going to obtain the details of the settlement and brief me accordingly so I did not know the details of the settlement. It - you know whether the board meeting that was – that was the forthcoming board meeting to which this email referred to – to which this email referred whether it – it considered and authorised the proposed settlement I am not  
10 aware.

My view to Mr Mahlangu which I discussed with him was that we need to stay out – stay out of the issues of Transnet Freight Rail and the resolution of the Gama issue because the board I thought was well capable of handling that issue.

**ADV MYBURGH SC:** What do you think would have caused him to advise you that he felt that you should socialise the President?

**MR GIGABA:** One as I have suggested earlier he was still  
20 familiarising himself with his new responsibilities and the parameters. What can he do? What can he not do? What must I do? What must I not do? There was a feeling probably if you ask what do I think because I do not know for a cert so if you ask me what do I think I will say I think it is because the matter was of a high public profile. There was a

major public wrangle about the issue and so he thought that it was of such importance that the President needed to be briefed about it.

But the President of the country has got way too many responsibilities. You do not run to the President to brief him about every nook and cranny of your work. Even I did not want to be briefed about this. So I did not think that the President needed to be briefed about it either.

If we were talking about the appointment of a Group  
10 CEO that would be different. If the issues involved the board that would be different. But even then there are so many and I have had many instances where CEO's of boards or the board – CEO's of companies or the board themselves have various challenges but we never had to go to the President. We only briefed the President perhaps if a CEO of a major SOE has resigned you do not want the President to read it in the media. Or if a board has resigned or Chairperson of the board has resigned you do not want the President to read that in the media you usually we just say Mr President so  
20 and so has resigned the board will be undertaking the process and you leave it there.

**CHAIRPERSON:** Would you agree however – would you agree however that if and this is only an if because you have made it clear that – that the then President did not discuss this with you – the issue of Mr Gama.

If what Ms Barbara Hogan said about Mr Zuma's attitudes is correct – is true namely that he was – he only wanted Mr Gama be appointed as Group CEO of Transnet and if he was prepared to let that position of Group CEO of Transnet remain unfilled for so long because he was waiting for Mr Gama's disciplinary processes and so on to finalise then that kind of President or let me put it this way. It would be reasonable to expect that that kind of President would be interested in knowing developments about the possible  
10 reinstatement of his person that he so much wanted to be Group CEO. In terms of logic.

**MR GIGABA:** I cannot comment on that Mr Chairman because I was not briefed by President Zuma that he wanted Mr Gama as his only candidate. So I – you know for me to deal with (African language) For me to deal with that.

**CHAIRPERSON:** I do not believe that Mr Gigaba but you must...

**MR GIGABA:** For me to deal with that...

**CHAIRPERSON:** You must tell Mr Myburgh what you were  
20 saying.

**MR GIGABA:** I was saying Mr Myburgh that my English has run away – there is a word I am looking for. But if I were to deal with what possibly could have been heard President Zuma said that to Ms Hogan it had not been brought to my attention either by Ms Hogan or by Mr Zuma himself so I

cannot deal with what could have been.

**CHAIRPERSON:** Ja. Okay. Mr Myburgh.

**ADV MYBURGH SC:** Yes thank you. But I suppose Mr Gigaba we – on this issue what then became of President Zuma’s support for Mr Gama? If he did not give you an instruction – if he no discussion with you then it appears that it should simply evaporated. He had held out – you were – seemed to be a devout supporter of Mr Gama’s – of Mr Gama at least on Mr Hogan’s version what became of that support?

10

**MR GIGABA:** I think the commission would be fair not to take Ms Hogan’s perspective as the gospel truth. She may be absolutely correct and she may be absolutely incorrect. So I cannot again speculate on whether Mr Zuma had a preference for Mr Gama and therefore on whether that preference evaporated. I am dealing with what I know based on my involvement at the time that I was not given an instruction to reinstate Mr Gama. I was not given an instruction to appoint him as Group CEO. I did not submit a report to President Zuma about this matter. We never discussed it with him and as a matter of fact as things stand in 2011 somebody else was appointed as Group CEO of Transnet and there was no resistance in cabinet about that situation. So ...

20

**CHAIRPERSON:** Of course as soon as that person left

Transnet Mr Gama was appointed to act as Group CEO.

**MR GIGABA:** I can never...

**CHAIRPERSON:** But 00:20:54 you had left by then.

**MR GIGABA:** I had left by then.

**CHAIRPERSON:** Yes. Ja.

**MR GIGABA:** Because when – when I was still at Public Enterprises just I think it was – okay no just before I left – or after I had left – just after I had left someone else was appointed as CEO of Eskom Mr Tshediso Matona and so  
10 right throughout my term there was no discussion about Mr Gama becoming Group CEO or opportunity created for that to happen I think he – he was reinstated as the CEO of TFR and to my understanding regardless of the certain email from Mr Mahlangu about Mr Gama not having to be considered for Group CE should he apply. To my understanding he did not apply for 00:21:57.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Just going back to this – the second bullet point Mr Gigaba. Had you discussed Mr Gama with Mr  
20 Mahlangu?

**MR GIGABA:** No. We did not discuss it with Mr Mahlangu. So he was giving me heads up about a number of issues that I took it – you can see here in this email is – he was talking about a whole range of things. Mr Manye may be nominated. Ayanda and I – I do not - Ayanda I think was the



spokesperson of – of DPE at the time. He was talking about the Chief of Staff of the then – of the Minister of Higher Education. So it was a – really a broad email that dealt with all the things. Now it is inconceivable and actually it is not true that any of these things including meetings with Dr Khulu Mbatha from the former Deputy President’s office that I had discussed all of these issues with him. It was heads up as the subject is entitled it was not report back. Heads up is volunteered by the person giving you the information.

10 A report back is based on the conversations that you have had.

**ADV MYBURGH SC:** And did you then not go on to have a discussion with Mr Mahlangu about it.

**MR GIGABA:** I did not respond to this. I think in my – in my conversations with him I said leave the matter to the board.

**CHAIRPERSON:** I see that in that first bullet point and the second last or second sentence of sentence he says:

“I therefor suggest that we take full advantage of it.”

20 He is talking about the trip that he was going to have to India. Do you know who he was talking about when he said “we’?

**MR GIGABA:** I do not know Chairperson who he was talking about.

**CHAIRPERSON:** You do not know.

**MR GIGABA:** And I would hope that he has responded to this matter when he came before the commission.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** And then let us deal perhaps finally or today with the second email. On the 4<sup>th</sup> of February this is at paginated page 13 at the bottom.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** He sends you another email. And the heading this time is Transnet Dynamics. And this relates to  
10 the GCE position, disciplinary proceedings and potential settlement with Mr Gama. Did you think this was a well-directed report? Is this something that you accept he should have apprised you of or was it also something that really was not of interest to you?

**MR GIGABA:** The matter of the appointment of the GCE was obviously of interest given the directive I had given to the board to finalise the issue as a matter of urgency. I think there are two things that Mr Mahlangu deals with in relation to this – in this email.

20 One is an update on how the process is going and secondly is sort of an alert that which he had come across howsoever that Mr Gama might have wanted to challenge the process. I think if you read bullet 3 and then he gives me his view about this.

Again my view was that you are – you are taking

upon yourself responsibilities which belong to the board. I believe that the board was well treated and well-armed in terms of the skill set within the board and within Eskom the company to be able to deal with an eventually to where Mr Gama might have applied for the post of CEO.

But Mr Mahlangu's views expressed here very firmly was that he had been informed through his lawyers of an – or through Mr Gama's lawyer of an offer – oh no that – he says to me that Mr Gama had been informed through his  
10 lawyer of an offer to reinstate him. He says it is recommendation that regarding his discipline and the appointment of the GCE the processes be dealt with separately and that should he challenge his dismissal that should not delay the appointment of the new GCE because in – the board should go ahead and deal with the appointment and should he challenge it he believed that there were solid grounds for him not to be appointed

Now again this is getting – it was getting too much in detail with the internal processes at Transnet and in our  
20 subsequent discussions with Mr Mahlangu then I then advised him to step back and allow the board to deal with these issues because ultimately the appointment of the GCE is the responsibility of the board and the board does not respond – does not report to me with regards to the nitty gritty's of the entire process. But what the board does is to

say to me Mr Minister we concluded the process and this is our recommendation to you. Then they give me the detail which they think is relevant for me to make a recommendation to cabinet based on the process they had undertaken. But all of these other details do not get involved in that process.

**ADV MYBURGH SC:** So Mr Gigaba maybe just two or three other points. You have – you say you read the transcript of Mr Mkwanazi's evidence and there are various lines of inquiry. You would have seen that he made a series of concessions amongst them ultimately that the board's decision to reinstate was indefensible and that in hindsight he should not – Mr Gama have been reinstated. I think the high water mark of those concessions is that Mr Mkwanazi went so far as to state that he would not be opposed to the chairperson recommending to the President in his report that steps should be taken to recover the costs of the settlement with – oh sorry from members of the board. That is how far he went. And so I suppose the question that I want to raise with you and that confronted Mr Mkwanazi is that if you accept that this decision was indefensible to the extent that you would not even oppose us having to pay back the costs what could have motivated you if it was not for some higher instruction? That you would have read that line of inquiry and you would have seen of course it is a difficult question

to answer certainly from his perspective.

**MR GIGABA:** What did he say was – what did he say when that was put to him?

**ADV MYBURGH SC:** Well what he said is the chairperson put the question to him and I think if my memory serves me correctly it was one those answers along the lines of well – Mr Chairperson it wasn't a "I'm going to give up" [laughs] but I mean, once you have said that you will not be opposed to the chairperson recommending that we pay back the  
10 money. I mean, that is a – that is the extent to which he accepted it, at least from his perspective, that it was indefensible.

**MR GIGABA:** Well, I think Mkwanazi - and I cannot speak for him – I think he was much closer to the action than I was. I am not in a position to even make a singular determination as he did or to justify it or oppose it in any significant manner. I think he was taking his position, his opinion to the Commission or the Commission to determine as it deems necessary. He was much closer to the action  
20 than I was.

So he would be in a much better position to make that determination because if I were to make a similar determination as he did, it would mean that I would have had sight of all the records that were before them as they were making the decision and so – but unfortunately, I

did not have and still do not have.

Even if they were brought to me, I would still believe that I am an irrelevant person to have considered those issues and make that determination. I was not on the board.

**ADV MYBURGH SC:** But I think what I am putting to you, on Mr Mkwanazi's concessions, is that the decision and terms of the settlement agreement was so indefensible that it must have been driven by a shareholder instruction.

10 That is what it points to.

**MR GIGABA:** No, that is what the Evidence Leader is pointing to. Mr Mkwanazi does not say that. I think you are now putting words into his mouth and I do not think it is correct because I have stated it here. Unless the argument becomes: No, Mr Gigaba, here is the refutable evidence that you gave an instruction for this decision to be taken.

I stated it here quite clearly that I made no such instruction to the Board of Transnet because the issues  
20 that they dealt with in this regard were intimate to the company and belonged to a division which was a matter that belonged to the board. So I do not want to be implicated in this issue. I think that the Evidence Leader should not put words into Mr Mkwanazi's mouth.

**ADV MYBURGH SC:** Yes, ja. Perhaps I – you

misunderstood me. What was put to Mr Mkwanazi was that it was so indefensible that it points to some sort of shareholding instruction. How else would you explain this? And I think that his answer, as we have discussed, is that it was one of those things which he distant. And I am just putting it to you. I am not saying that that is what Mr Mkwanazi said. Please.

**MR GIGABA:** I am also putting it on record, Mr Chairman that there was no shareholder pressure on Transnet and  
10 nobody can point to that.

**ADV MYBURGH SC:** And then I think, just finally. I mean, in fairness, we must also bring it to your attention that a number of other directors filed affidavits where they appeared to support the reinstatement of Mr Gama. The reason why Mr Mkwanazi, ultimately, was the person who was questioned about this at length is because it is quite clear that he was instrumental, ultimately, in the decision and in persuading the board but I do not want it to be said that there are not – we are not bringing it to your attention  
20 that there are a series of affidavits by other directors who did support Mr Gama’s reinstatement. Chairperson, I see that it is a few minutes after four o’clock.

**CHAIRPERSON:** Yes. I guess we have got to stop here with Mr Gigaba’s evidence because his counsel asked that we stop because he would not be available beyond four

o'clock for religious reasons. I am going to fix another date. It seems to me that we would have to preferable just continue with Mr Gigaba's evidence and finish it ...[intervenes]

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** ...before the cross-examination of Ms Ngoma takes place. So, as I said, you know, I could say it is a Sunday. It is a Saturday. [laughs] I could say let us meet at six o'clock in the morning and... [laughs]

10 So, but I just hope that we will all do the best we can to make time. So we will adjourn your hearing of your evidence, Mr Gigaba. And a new date will be communicated to your legal team. But Mr Solomons.

**ADV SOLOMONS:** Yes, thank you, Chair.

**CHAIRPERSON:** Yes. So we will stop now in regard to Mr Gigaba's evidence and then you will be notified of another date and time.

**ADV SOLOMONS:** Thank you, Chair.

20 **CHAIRPERSON:** Okay alright. We are going to have another section, Mr Myburgh.

**ADV MYBURGH SC:** Yes, we are.

**CHAIRPERSON:** Unfortunately, some of us must continue. [laughs]

**ADV MYBURGH SC:** Yes. [laughs]

**CHAIRPERSON:** You are ready to continue? [laughs]



**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Okay. The arrangement is that during the evening session, I will be hearing Ms Faith Muthambi's evidence.

**ADV MYBURGH SC:** That is correct, Chairperson.

**CHAIRPERSON:** Yes. I will take a 15-minutes adjournment to enable you to set up and then I will ...[intervenes]

**ADV MYBURGH SC:** Thank you.

10 **CHAIRPERSON:** ...come back. Thank you. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are we ready?

**ADV MYBURGH SC:** Yes, I understand we are.

**CHAIRPERSON:** Is she supposed to unmute herself?

**ADV MYBURGH SC:** There we are.

**CHAIRPERSON:** Okay.

**MS MUTHAMBI:** I am here.

**CHAIRPERSON:** Good afternoon, Ms Muthambi.

20 **MS MUTHAMBI:** Good afternoon, Deputy Chief Justice, Chairman of the Commission.

**CHAIRPERSON:** Thank you, thank you. Is she legally represented?

**ADV MYBURGH SC:** Yes, she is represented by Mr Mantsha. He is also connected, I understand.

**CHAIRPERSON:** Oh. Mr Mantsha, are you there?

**MR MANTSHA:** Good afternoon, Deputy Chief Justice.

**CHAIRPERSON:** Good afternoon, Mr Mantsha. You represented Ms Muthambi, is that right? Is that correct?

**MR MANTSHA:** That is correct, Chairperson.

**CHAIRPERSON:** Yes. Okay, no, thank you very much.

We will now then have the oath administered or affirmation administered and then we will start. Ms Muthambi, yes, okay, the oath or affirmation will now be administered to  
10 you and thereafter we can start.

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

**MS MUTHAMBI:** Azwihangwisi Faith Muthambi.

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

**MS MUTHAMBI:** No.

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

20 **AZWIHANGWISI FAITH MUTHAMBI:** I truly affirm.

**CHAIRPERSON:** Thank you, registrar.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** One second, Mr Myburgh? Alright, okay, you may start, Mr Myburgh. Thank you.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Okay, can we have Ms Muthambi on the screen back? Maybe she can unmute herself?

**ADV MYBURGH SC:** Chairperson, Mr Mantsha phoned me shortly before we went on line and he indicated to me, as is contained in Ms Muthambi's statement that they have a preliminary point that they wish to raise.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** As I understand it, it is that Ms Muthambi should not be required to give evidence in  
10 circumstances when there is a pending disciplinary inquiry. I might have it wrong.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** But perhaps Mr Mantsha can be afforded the opportunity to deal with that.

**CHAIRPERSON:** Can deal with it.

**ADV MYBURGH SC:** If you would like me first to get you to admit her statement we can do that or...

**CHAIRPERSON:** No, I think let him raise the point now if he wishes to raise the point. Mr Mantsha? Mr Mantsha?  
20 Yes, Mr Myburgh ...[intervenes]

**MR MANTSHA:** Thank you, Chair.

**CHAIRPERSON:** Yes. Mr Myburgh tells me that you might be having a point that you want to raise before we proceed. If you ...[intervenes]

**MR MANTSHA:** Indeed, Chairperson.

**CHAIRPERSON:** Yes. I will give you a chance now to raise that point.

**MR MANTSHA:** Thank you, Chairperson. All we seek is your guidance in this matter. As we have set out in the affidavit of Ms Muthambi she is currently undergoing parliamentary processes in terms of the members ethics and that parliament process is triggered by the same affidavit which has been filed with the Commission, the affidavit of Ms Fick. Those parliamentary proceedings are  
10 not yet completed. That is number one.

And number two, as we set out in the affidavit of Ms Muthambi is that matters relating to the SABC board inquiry report are also matters which are subjected to a judicial review but I must say, Chairperson, I am indebted to my learned friend because he has of course specified in his email matters which he wants to raise with Ms Muthambi which, of course, excluded the matter relating to the SABC inquiry. If I am correct, this email correct, the basis of these is that if a doctrine of separation – the  
20 Commission, which is part of the executive, the legislature who is the parliament has already initiated a process so we request your guidance on the matter because we feel that for a Commission to actually intrude on issues which are pending before another arm of government, it offends the doctrine of separation of power and the same argument

goes to those matters which are before the judiciary, the matter of judiciary review where the matters are pending before another arm of government and as Chairperson sets as the head of the Commission, which is part of the executive, we just need guidance on those matters because we are of the view that the separation of power is being infringed upon if matters which are pending before an independent arm of government are then dealt with by the Commission while that independent arm of government  
10 has not concluded its process. So we have a problem with that and we wish the Chairperson to actually give us a guidance on those matters. I think in summary, Chairperson, I do not want to take lot of time.

**CHAIRPERSON:** Yes.

**MR MANTSHA:** Those are the points.

**CHAIRPERSON:** Yes, yes. Okay, you said you wish to have guidance which seems to be different from a ruling. My view is that the fact that there may be processes of a disciplinary nature that are still pending do not prevent the  
20 Commission from hearing evidence relating to the same matters. Of course, we are all aware that, for example when it comes to matters of a criminal nature, the law does allow a witness the opportunity to invoke the privilege against self-incrimination within certain parameters but there is no such opportunity in regard to matters that are

not of a criminal nature and, of course, if the Commission were not to hear evidence that relates to important and critical matters that fall within its terms of reference just because there are disciplinary matters pending, it would disadvantage the Commission in a very serious way in determining issues of great national interest, issues of great public interest that it is investigating. So, as I said, you said you are just asking for guidance, that is my guidance.

10           So my guidance is that I think that Ms Muthambi would be well-advised to take the attitude that although she would have preferred not to be required to give evidence or answer questions on these matters because they are pending elsewhere, she understands the national interest and importance of the work of the Commission and the fact that the Commission needs to complete its work shortly and these matters may be important and, therefore, she will participate. That is my guidance.

**MS MUTHAMBI:** Okay.

20   **MR MANTSHA:** Chair, thank you very much. There is just the issue of the separation of power because it is just not the process, disciplinary process pending, it is also a question of proceedings pending in another arm of government, so I do not delay you, if the Chair can just give a guidance on that.

**CHAIRPERSON:** Yes. Ja, no, even with that I would not say that there is a problem, I would not say it creates a problem. Of course you will recall that the Commission is established in terms of the Constitution, Section 84, Section 84 is established in terms of the Constitution and there is nothing, as far as I know, that says when it investigates it cannot investigate matters that are pending in the processes of another arm of the state, that is why if, for example, there are civil proceedings pending in regard  
10 to a particular issue in a court of law, the Commission will still be able to look into those matters if those matters fall within the terms of reference and if in order to answer the question that is before the Commission, the Commissioner needs to know about those things. So, as you say, you do not want just to spend too much time on this, that is my guidance.

**MR MANTSHA:** I am indebted to the Chairperson.

**CHAIRPERSON:** Yes, yes, thank you. Thank you, Mr Mantsha. Ms Muthambi, I guess you are going to be back  
20 – ja, you are back now. You were following that discussion, Ms Muthambi? You were following the discussion?

**MS MUTHAMBI:** Yes, Chairperson.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** Yes, I followed the discussion,

Chairperson.

**CHAIRPERSON:** Yes. Okay, alright, we will now proceed, is that alright?

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** Okay, alright.

**MS MUTHAMBI:** Yes, Chairperson.

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

**ADV MYBURGH SC:** Yes, thank you. Good afternoon, Ms Muthambi.

10 **MS MUTHAMBI:** Good afternoon, Mr Myburgh.

**ADV MYBURGH SC:** You filed a statement in the Commission. You should have a bundle of documents that we provided you with. The statement is right at the end, page 701. Do you have a copy of the statement with you?

**MS MUTHAMBI:** Let me check. Page 100 and what?

**ADV MYBURGH SC:** 701, it is the black numbers on the left hand side.

**CHAIRPERSON:** It is the last document on the – in the bundle.

20 **MR MANTSHA:** Sorry, Chairperson?

**CHAIRPERSON:** Yes.

**MR MANTSHA:** And my colleague, Mr Myburgh. Chairperson, I made a request to my colleague that before any question can be posed to the witness.

**CHAIRPERSON:** Ja.



**MR MANTSHA:** The witness requested just to make some opening address, not more than five minutes.

**CHAIRPERSON:** Yes.

**MR MANTSHA:** I think my – ja, my colleague just omitted that.

**CHAIRPERSON:** Okay.

**MR MANTSHA:** If that pleases the Chairperson, that is our request.

**CHAIRPERSON:** No, that is fine, we will allow her to do  
10 that.

**MS MUTHAMBI:** Thank you so much, Chairperson, for the indulgence.

**CHAIRPERSON:** Yes, I will allow you to make your statement or remarks.

**MS MUTHAMBI:** Thank you, Chairperson. I think I want to thank you for the opportunity for me to come before you to clarify allegations against me that has been all over the media that the allegedly shared confidential documents with people who were not supposed to see those  
20 documents.

Chairperson, I want to put it up front and to place it on record that I have never shared any state confidential documents with people I was not supposed to share such information with.

When I took office in 2014 the old Ministry of

Communications had just been reconfigured and it was then divided into two ministries being the Ministry of Communication and that of Telecommunications and Postal Services. Chairperson, this division has created a lot of confusion in government and in the industry. The assignment of legislation between the two ministries was cumbersome, Chairperson, it is has created a lot of panic amongst the industry players.

In this regard, I engaged with various stakeholders  
10 in the industry who had questions, inputs and suggestions that also included for record with the evidence that has been led here, the Gupta family who, at the time, were the owners of TNA and ANN7 television at the time.

So those are the issues that I wanted to just share with the Chairperson and then I can assure Mr Myburgh that on that page 664, as he has directed me to.

**CHAIRPERSON:** Okay.

**MS MUTHAMBI:** Thank you, Chairman.

**CHAIRPERSON:** Thank you, Ms Muthambi. Mr Myburgh?

20 **ADV MYBURGH SC:** Yes, thank you. So, Ms Muthambi, do you have in front of you the page 701 where you find your statement?

**MS MUTHAMBI:** Page 701. Which page, the one on the right or the one at the left side?

**ADV MYBURGH SC:** The one on the left.

**CHAIRPERSON:** The black numbers.

**MS MUTHAMBI:** On the left? They are both black, Chairperson.

**ADV MYBURGH SC:** Alright, well then let us go for the left.

**MS MUTHAMBI:** Okay.

**CHAIRPERSON:** The one on the top left corner.

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** Have found 701?

10 **MS MUTHAMBI:** Yes, Chairperson.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So there you find a statement. If you go to the end of that statement it ends at 707. Is this the statement that you submitted to the Commission?

**MS MUTHAMBI:** Yes, they are with my signature. That is page 7 of the document itself, on page 707, yes.

**ADV MYBURGH SC:** I see that it is undated and also that it is not sworn to affirmed but would you confirm the truth and accuracy of this statement?

20 **MS MUTHAMBI:** Yes, I do confirm I am the author and the signatory of this statement.

**ADV MYBURGH SC:** Chairperson, would you admit into evidence Ms Muthambi's statement commencing at SABC01-701 as EXHIBIT CC47.11?

**CHAIRPERSON:** The statement of Ms Azwihangwisi Faith

Muthambi which starts at page 701 is hereby admitted and will be marked as EXHIBIT CC47.11.

**STATEMENT OF AZWIHANGWISI FAITH MUTHAMBI  
STARTING AT PAGE 701 HANDED IN AS EXHIBIT  
CC47.11.**

**CHAIRPERSON:** I hope – I tried, Ms Muthambi, to pronounce your first name correctly but I do not have confidence.

**MS MUTHAMBI:** It is absolutely so, Chair.

10 **CHAIRPERSON:** Okay, alright.

**MS MUTHAMBI:** Unlike you, if you pronounce that name being a Zulu man, Chairperson, I am so humble.

**CHAIRPERSON:** Thank you. Yes, Mr Myburgh.

**ADV MYBURGH SC:** Thank you. Ms Muthambi, in this statement of yours what you do in effect is you advance the two points that your attorney has advanced and, for example, if you go to paragraph 20, it says:

“In the circumstances, the recommendation...”

20 This was of the *ad hoc* committee and you took that decision on review.

“...is constitutionally invalid, unlawful and ought to be set aside. However, this is for the review court to decide. Since this matter is *sub judice*, for this reason I do not wish to dwell in detail with the matter.”

And then the other point that you raise is at 21:

“As indicated above, Ms Fick’s affidavit is the basis of disciplinary proceedings that I am currently facing in parliament and the Commission should allow the parliamentary process to run its course since such process has been initiated well before this Commission had received Ms Fick’s affidavit. It is my respectful submission that the Commission should not allow Ms Fick to abuse its time and resources by bringing the matter.”

So you would confirm those are the two points ultimately that you advance in your statement?

**MS MUTHAMBI:** Yes, Chair.

**ADV MYBURGH SC:** You do not in your statement then address the Gupta Leak emails at all.

**MS MUTHAMBI:** No, Chair, because as I said, it is part of the package on the file that has been submitted to parliament on the same letters.

**ADV MYBURGH SC:** Yes. So could I take you then to Ms Fick’s affidavit and that you find at the beginning of this bundle of documents and can I ask you to go to page 42? The beginning of Ms Fick’s affidavit. Do you see that?

**MS MUTHAMBI:** Yes, I am getting there. Yes, page?

**ADV MYBURGH SC:** 42.

**MS MUTHAMBI:** 42?

**ADV MYBURGH SC:** Yes.

**MS MUTHAMBI:** Yes, I have got it.

**ADV MYBURGH SC:** Okay. So what Ms Fick says at paragraph 4 at page 43:

10 “In recent months South Africa has been rocked by the Gupta emails and documents, Gupta emails which were retrieved from the server of Sahara Computers (Pty) Ltd. These Gupta emails have substantiated most of the allegations pertaining to state capture and have unveiled evidence of misconduct by the Gupta family and many high-ranking government officials. OUTA received a copy of these emails from an unknown source, established the authentic of such and released an extensive report on state capture titled No Room to Hide, the President Caught in the Act.:

Paragraph 5:

20 “Amongst the Gupta emails were evidence of misconduct on the part of Muthambi that constitutes crimes of corruption and high treason. Muthambi is the Minister of Public Service and Administration of the Republic of South Africa. The misconduct occurred during Muthambi’s tenure as Minister of Communication.”

Do you see that?

**MS MUTHAMBI:** I see that though you can see this is a very old affidavit. I am not a Minister of Public Service and Administration.

**ADV MYBURGH SC:** Yes. This is, as you say, this is an old affidavit, it was deposed to, if my memory serves me correct, I will check it up, on the 17 July 2017. Correct?

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:** If you go to paragraph ...[intervenes]

**MS MUTHAMBI:** That was signed.

10 **ADV MYBURGH SC:** Yes, if you go to paragraph 6 over the page, it says that:

“On the 25 May 2014 President Jacob Zuma appointed Muthambi to cabinet as the Minister of Communications.”

Would you confirm that?

**MS MUTHAMBI:** Yes, I do confirm that, Chairperson.

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

20 “In the cabinet reshuffle of 30 March 2017 President Jacob Zuma retained Muthambi as a member of cabinet appointing her as Minister of Public Service and Administration.”

Do you confirm that?

**MS MUTHAMBI:** Yes, I do, Chairperson.

**ADV MYBURGH SC:** As I understand, Ms Muthambi, you are no longer a minister but you remain a member of

parliament, is that correct?

**MS MUTHAMBI:** Yes, Chairperson.

**ADV MYBURGH SC:** Now what Ms Fick then does is she sets out some background to certain findings that were made against you by the National Assembly at paragraph 7, some findings that were made against you by the High Court in relation to the Hlaudi Motsoeneng matter and then confirmation of that decision at paragraph 12 by the SCA and then at paragraph 14, over the page, some findings  
10 that were made or comments that were made about you by the Constitutional Court in another case. So that seems to me very much by way of background and she then gets to the heart of the matter and that is the Sahara email leaks. Do you see that at page 47? Ms Muthambi?

**MS MUTHAMBI:** Yes, Chair. (indistinct – recording distorted)

**CHAIRPERSON:** It looks like there is a technical problem. Can you hear us, Ms Muthambi? Can you hear me?

**MS MUTHAMBI:** Yes I can, Deputy Chief Justice, I can  
20 hear you, Chairperson.

**CHAIRPERSON:** Yes, it looks like there is some technical problem, I do not know whether it is on your side or it is on this side but may let us try and continue.

**MS MUTHAMBI:** [indistinct] at some point it happened, the [indistinct].



**CHAIRPERSON:** Okay, no, we can hear you now, let us continue, we will see how it goes. Okay.

**ADV MYBURGH SC:** So if we go to paragraph 16 at page 47.

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:**

10 “The Gupta emails obtained from the Sahara Computer server show that between July and August 2014 shortly after President Zuma appointed her to cabinet as the Minister of Communication, Muthambi sent a series of emails to Tony Gupta on confidential matters of executive policy and matters in the scope of her ministerial powers.”

We are going to come to the emails in a moment but do you accept that you sent these emails to Mr Gupta?

**MS MUTHAMBI:** No, Chairperson.

**ADV MYBURGH SC:** Alright, we will deal with that when we deal with each of them. Paragraph 17:

20 “These emails were either sent directly from Muthambi to Tony Gupta or indirectly from Muthambi to the Sahara Company’s CEO, Ashu Chawla, Mr Chawla in turn forwarded Muthambi’s correspondences to Tony Gupta and Duduzani Zuma, President Zuma’s son.”

What do you say to that? Ms Muthambi?

**CHAIRPERSON:** Hello Ms Muthambi?

**MS MUTHAMBI:** I have all the detail Chairperson.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** I think what is critical Chairperson on my side ...[intervenes]

**CHAIRPERSON:** Ja.

**MS MUTHAMBI:** I want to then deal with this as we said this leaked emails but then the issue is that where I am seated, the issue here with regard to this paragraph is that  
10 I am saying - I am denying having sent to anybody that I was not supposed to send this documents. So I have sent this to the people who were in the inside, who see me.

**CHAIRPERSON:** I think what will be important, then is to establish whether Mr Ashu Chawla of Sahara and Mr Tony Gupta, would be one of those people that you do say you were entitled to send such documents or information to?

**MS MUTHAMBI:** Chair we deal with the original email that is Mr Chawla as indicated.

**CHAIRPERSON:** Okay, just unmute yourself again - I do  
20 not know whether you mute yourself and unmute yourself. Just keep it unmuted, I think just keep it unmuted so that we can always have your picture on the screen.

**MS MUTHAMBI:** Okay.

**CHAIRPERSON:** Yes, okay do you want to respond to that?

**MS MUTHAMBI:** Yes, Chairperson, I am saying we are dealing with legal documents here and then these are some of the emails that we picked up from the Sahara Computer itself earlier, but the here issue he absent this documents to Mr Chawla based on the fact that they own the TV station called ENN7 and on this email they will later forward it to other people. So I need that service to Mr Chawla as a stakeholder who is interested on the side that we dealing with broadcasting.

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

**ADV MYBURGH SC:** Well perhaps what I could do, if you take out because Ms Fick deals with these emails over the space of two, four, six pages, perhaps you could maybe take out of your bundle, pages 47 through to 54, and then we try and read it in conjunction with the emails which I will take you to.

So the first email that Ms Fick deals at paragraph 18, she deals with an email, of the 18<sup>th</sup> of July. She says:

20 “On 18 July 2014, Muthambi emailed a copy of the President's proclamation on the transfer of administration and powers to certain cabinet members to Ashu Chawla who in turn forwarded the email to Tony Gupta. Proclamation 47 of 2014 provided, inter alia that all powers under the Electronic Communications Act and the Sentech Act

were to be assigned to the Minister of telecommunications and postal services Minister Chwele. Previously it was assigned to the Minister of Communications.”

So can we please go to that email, that email is at page 267.

**MS MUTHAMBI:** 267, yes – Comm 1?

**ADV MYBURGH SC:** Comm 1, yes.

**MS MUTHAMBI:** Yes.

10 **ADV MYBURGH SC:** So you confirm then as per 267 that on the 18<sup>th</sup> of July 2014 you sent this email to Ashu Chawla at Sahara, is that correct?

**MS MUTHAMBI:** Yes, Chairperson.

**ADV MYBURGH SC:** And attached to it, then was...[intervene]

**CHAIRPERSON:** I am sorry Mr Myburgh did you say 267?

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

**CHAIRPERSON:** Because my 267 that I came to does not have an email - I will tell you what my 267 has a judgment  
20 of the Constitutional Courts but in the middle of it, my 267.

**ADV MYBURGH SC:** Yeah, I think there may be a problem with the numbering but perhaps I could help you this way Chairperson, if you get to the end of that...[intervene]

**MS MUTHAMBI:** It is the numbers on the left-hand side Chairperson, not the left hand side maybe that is the

centre of it, Chair.

**CHAIRPERSON:** Oh, is it the red read numbers now?

**ADV MYBURGH SC:** Yeah, this is on the right hand side.

**CHAIRPERSON:** Oh, okay then I must have missed that because I was still looking at the – thank you Ms Muthambi.

**ADV MYBURGH SC:** So after the judgment, you then see a divider that is SF5.

**CHAIRPERSON:** Yes.

10 **ADV MYBURGH SC:** That is where all the emails are Chairperson, and then they are paginated on the left hand side and those are the emails that we are going to go through now run from 266 through to 335, that is SF5.

**CHAIRPERSON:** Yes, okay that is fine. You did say let us use the red numbers.

**ADV MYBURGH SC:** Well this particular portion of the file is only paginated on one side.

**CHAIRPERSON:** Oh, well on mine the 267 has got also page 304 red and black.

20 **ADV MYBURGH SC:** But then if you go over the page my 267 has only got one.

**CHAIRPERSON:** Oh, ja no, mine has got both numbers. I think the whole of this bundle my one has got the pagination is both black and red numbers but I have been able to find the email that you are talking about.

**ADV MYBURGH SC:** So could we then use the numbers on the right hand side, SF5 runs from 267 through to 335.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** I think what we finding is that when you print this on an ordinary printer, I think it probably only prints out one set of numbers, the red might be obscured.

**CHAIRPERSON:** Okay, but I think what we will say is, when you refer to emails the pagination, you will use will be the red numbers.

10 **ADV MYBURGH SC:** Is that on the right hand side?

**CHAIRPERSON:** Ja, on the right hand side.

**ADV MYBURGH SC:** Alright, so Ms Muthambi, are you at 267?

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:** And you accepted this is the email that Ms Fick talks about at paragraphs 18 and 19 of her affidavit?

**MS MUTHAMBI:** I cannot say that; I cannot say that Chair.

20 **ADV MYBURGH SC:** Right, well, let us just see what she says she says;

“The 18<sup>th</sup> of July, Muthambi emailed a copy of the President's proclamation to Ashu Chawla who in turn forwarded it to Mr Gupta.”

We will come to that and she deals with the proclamation.

If you go to page 267, do you accept there is an email from you on the 18<sup>th</sup> of July sent to Ashu, do you confirm that?

**MS MUTHAMBI:** Yes, Chairperson.

**ADV MYBURGH SC:** And attached to it is a document headed Proc PSA and communication to is a proclamation, the proclamation in issue, correct?

**MS MUTHAMBI:** Yes, Chairperson.

**ADV MYBURGH SC:** Now what that proclamation does if you go to page 271. It reflects in those, in the schedule, in  
10 the column dealing with legislation, the third entry it says:

“Sentech Act, previous cabinet Minister, Minister of Communications new cabinet Minister or member Minister of Telecommunications and Postal Service.”

Is that right?

**ADV MYBURGH SC:** And then you will see over the page, also the third entry in the left hand column:

“Electronic Communications and Transaction Act, certain powers that were previously afforded to the  
20 Minister of Communications that now transferred to the Minister of Telecommunications.”

Is that correct?

**MS MUTHAMBI:** What page is that, Mr Myburgh again?

**ADV MYBURGH SC:** Page 272.

**MS MUTHAMBI:** Okay, yes, you referring to the Electronic

Communication Act.

**ADV MYBURGH SC:** If you go to page 292 you will see there that as Ms Fick says...[intervene]

**MS MUTHAMBI:** 292, yes I am at 292.

**ADV MYBURGH SC:** Ms Fick said that you – that Mr Chawla forwarded the email to Tony Gupta, do you see there at 292 there is an email from Ashu dated 18 July to Tony Gupta attaching the proclamation, do you see that?

**MS MUTHAMBI:** I see that but can I say it Chairperson,  
10 that I cannot say that on behalf of Ms Fick.

**ADV MYBURGH SC:** Yes.

**MS MUTHAMBI:** And I will explain why later.

**CHAIRPERSON:** Yes, okay.

**ADV MYBURGH SC:** Then, if you go back to Ms Fick's affidavit she says:

20 "A few minutes after emailing the proclamation 47 of 2014 to Chawla, Muthambi sent him a second email, attaching a document describing the effect of the Proclamation. The document contains the following statement. The ability to make broadcasting policy and issue broadcasting policy directions are set out in Section 3 of this Act. These powers have been transferred from the Minister of Communications to the Minister of Telecommunications and Postal Service. It is therefore the Minister of



Telecommunications and Postal Services who will make policy and issue policy directives to ICASA for broadcasting, including public service broadcasting.”

Do you see that?

**MS MUTHAMBI:** That one, yes. If you go to page 293, you find that email and the attached documents, do you see that? Do you confirm that you sent that email to Ashu?

**MS MUTHAMBI:** Yes, Chairperson.

10 **ADV MYBURGH SC:** And the documents that Ms Fick quotes, you find at 294 and what she does is she quotes the second part of the paragraph under the heading powers of the Minister of Communication as set out in the Proclamation, do you confirm that?

**MS MUTHAMBI:** Yes, Chairperson I confirm at the bottom of this document.

**ADV MYBURGH SC:** Then you go back to Ms Fick's affidavit at paragraph 21:

20 “On 25 July Muthambi sent two emails to Mr Chawla. In the first email with the subject line proclamation new July of 18. She wrote, these sections must be transferred to the Minister of Communications. The document describing the statutory provisions to which she referred was attached to the email under the file name

proclamation new 2018 sorry, 20 July 2014. The document name proclamation new 2018, sorry new 18 July 2014 clean, proposed the retransfer of certain powers under the Electronic Communications Act from the Minister of Telecommunications and Postal Services to the Minister of Communications.”

Do you see that?

**MS MUTHAMBI:** Yes, refer me back to the paragraph  
10 again?

**ADV MYBURGH SC:** Yes, to fix affidavit paragraphs 18 and 19.

**MS MUTHAMBI:** 18 and 19.

**ADV MYBURGH SC:** Yes.

**MS MUTHAMBI:** Okay, I think I was a step ahead of you, okay, yes I can see this.

**ADV MYBURGH SC:** Sorry I was referring you not to 18 and 19 to 21 and...[intervene]

**CHAIRPERSON:** I thought so, and 22.

20 **ADV MYBURGH SC:** ...22 I beg your pardon.

**CHAIRPERSON:** Paragraphs 21 and 22 Ms Muthambi.

**MS MUTHAMBI:** Yes, Chairperson.

**ADV MYBURGH SC:** So we are talking about an email on the 25<sup>th</sup> of July.

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:** Now that email, that emails you find at page 295, would you confirm that?

**MS MUTHAMBI:** Before that, Chairperson can I deal with paragraph - I did not want to interrupt each paragraph to give my version, so that I do not loose thread.

**CHAIRPERSON:** Okay, I am sorry.

**MS MUTHAMBI:** So the more you read all those paragraphs then yes.

**CHAIRPERSON:** Oh, you want to give your version per  
10 paragraph?

**MS MUTHAMBI:** Yes, per paragraph.

**CHAIRPERSON:** Oh, okay.

**MS MUTHAMBI:** If you can assist me to read it and the annexures, you can refer to one annexure.

**CHAIRPERSON:** But you want to respond to each paragraph.

**MS MUTHAMBI:** Then go to the other one in that folder.

**CHAIRPERSON:** Okay.

**CHAIRPERSON:** Mr Myburgh is that fine?

20 **ADV MYBURGH SC:** Yes, it is.

**CHAIRPERSON:** So she is asking that, even if you refer to the emails she will prefer it if she can just respond to each paragraph that is relevant.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** Ja, she says she does not want to lose

track of...[intervene]

**ADV MYBURGH SC:** Fair enough.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So Ms Muthambi we are dealing with paragraphs 21 and 22 and that email...[intervene]

**MS MUTHAMBI:** There is something that sorry sir, I had something to comment on it is...[intervene]

**CHAIRPERSON:** Earlier, starting from 18, did you say you want to comment earlier?

10 **MS MUTHAMBI:** Ja, it started from that paragraph Chairperson.

**CHAIRPERSON:** Okay, tell us which paragraph you want to comment on?

**MS MUTHAMBI:** 18.

**CHAIRPERSON:** 18, okay.

**MS MUTHAMBI:** And 17, Chair.

**CHAIRPERSON:** And 17 okay, alright.

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** 17 says:

20 "These emails were either sent directly from Muthambi to Tony Gupta or indirectly from Muthambi to the Sahara company CEO, Mr Ashu Chawla, Mr Chawla in turn forwarded Muthambi's correspondence to Tony Gupta and to Duduzani Zuma's President Zuma's son. The letter appears

to have acted as a caveat between the Gupta's and President Zuma."

What do you say about that?

**MS MUTHAMBI:** Yes, Chairperson, I wanted to comment on the last part, that reads:

"The letter appears to have acted as a caveat between the Gupta's and President Zuma."

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** And I want to put it on the record that I  
10 have no knowledge of this Chairperson.

**CHAIRPERSON:** Okay, no that is fine. Is that the only part you wanted to deal with in paragraph 17?

**MS MUTHAMBI:** And then, yes, yes.

**CHAIRPERSON:** Okay, paragraph 18 says:

"On 18 July 2014 Muthambi emailed a copy of the President's proclamation on the transfer of administration and powers to certain cabinet members published as proclamation 47 of 2014 in Government Gazette number that that, to Ashu  
20 Chawla who in turn forwarded the email to Tony Gupta."

What do you wish to say about that?

**MS MUTHAMBI:** The issue, Chairperson on this one like I indicated earlier, the industry, this proclamation when go through, as I said it was cumbersome and we all know that

the proclamation does not say, it is a document that we have access. So this was tasked of my engagements with stakeholders Chairperson, every stakeholder within the broadcasting space, because like I said earlier industry was confused at the time, this was part of my stakeholder engagement and that is why I am saying, I send this to whoever was supposed to receive this, it is the thing we are dealing with this here, Chairperson.

And then there is – those are the ones that went to  
10 this - a company where if they go and have it there. So this was part of my stakeholder engagement, Chairperson on the policy and also for me to explain the regulation because I was inundated with a lot of queries about this regulation as to who does what. And then - so that is the issue that I am trying to reach to say I sent it to whoever was supposed to receive these including this one. So that is the issue that I wanted to talk to on the matter.

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

**ADV MYBURGH SC:** Yes, thank you. So going back to  
20 paragraphs 21 and 22. I just wanted to ask you to confirm...[intervene]

**CHAIRPERSON:** Or maybe check whether she wants to say anything on 19 and 20 unless she already did so, Mr Myburgh.

**ADV MYBURGH SC:** Ms Muthambi, do you want to say

anything about paragraphs 19 and 20 or is it the same point?

**MS MUTHAMBI:** Yes, Chairperson, I must say this Chairperson when you do that, when you consult, you also say your views what needs to happen, my interpretation of the situation at the time. So on 19, on this matters on the attachment that I referred to, I shared it with the industry also what I think needs to be updated reading the same proclamation what is called to on page 268.

10 **CHAIRPERSON:** Okay, alright. So, but can we take it that whenever in this affidavit of Ms Fick whenever she says you sent an email to people outside of government, your response is that you did so as part of your engagement and consultation with stakeholders on policy issues, can we take it that that is the position for all emails that you send to people who are outside of government?

**MS MUTHAMBI:** Yes, Chairperson.

**CHAIRPERSON:** Yes, okay and maybe for the sake of completeness, this might expedite matters. Can we take it  
20 that you have gone through Ms Fick's affidavit and whenever she says you sent an email to somebody who is outside of government, you admit that you did send it but your explanation is that you sent it as part of consultation and engagement with stakeholders on policy matters. Can we go that far?

**MS MUTHAMBI:** Yes, Chairperson.

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

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** I hope that has helped.

**ADV MYBURGH SC:** Yes.

**MS MUTHAMBI:** Then I wanted to comment on 20?

**CHAIRPERSON:** Yes, comment on 20.

**MS MUTHAMBI:** Maybe Mr Myburgh must assist me with  
10 annexure that is tied to 20, so that I can talk on that one.

**CHAIRPERSON:** Okay, he will tell you just now.

**ADV MYBURGH SC:** So that email Ms Muthambi you find  
at page 293.

**CHAIRPERSON:** 293 is – page 293, Ms Muthambi, that is  
where you will find that annexure.

**MS MUTHAMBI:** Yes, Chairperson, I want to explain this  
annexure Chairperson.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** This is my own document that I attached.

20 **CHAIRPERSON:** Yes.

**MS MUTHAMBI:** After reading the ICASA Act and also  
dealing with the proclamation. So whatever is quoted  
there it is my own wording having read the ICASA Act and  
the Broadcasting Act. So that is the issue that I had to  
deal with and you will take that as you go further, I also



highlighted that there it still uncertainty that exists and then these - that relates to the uncertainty as to how the division will part especially in respect to ICASA while the Minister of Communication appoints, removes and it deals with the performance of management team of ICASA why it does not have an input as I was commenting on the Proclamation.

One, it is not yet an input into the substantive work to be done by ICASA and then I further on say that, it is  
10 like having an employer being able to hire, fire and performance manage the employee but having no ability to send direct mail input, or give guidance on the way forward and then I later on said what needs to happen.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** This is on annexure, you can read it Chairperson, there.

**CHAIRPERSON:** Yes, okay. So the ending of annexure...[intervene]

**MS MUTHAMBI:** So I am the author of this document  
20 Chairperson.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** What I was sharing with the industry to say this is my thinking on what this proclamation is, that have been addressed.

**CHAIRPERSON:** Yes, so the document you are reading is

the one that appears at page 294, is that correct?

**MS MUTHAMBI:** Yes, Chairperson.

**CHAIRPERSON:** Okay, it is a one-page document, is that right?

**MS MUTHAMBI:** Yes, it is Chairperson.

**CHAIRPERSON:** Okay, Alright, Mr Myburgh.

**ADV MYBURGH SC:** Thank you. So Ms Muthambi that then brings us to paragraphs 21 and 22.

**MS MUTHAMBI:** Yes.

10 **ADV MYBURGH SC:** That document there 25 July, you find that at page 295, would you confirm that?

**MS MUTHAMBI:** Yes, Chairperson, I did confirm that.

**ADV MYBURGH SC:** It says these sections...[intervene]

**MS MUTHAMBI:** I further say that these are the online own document that I wrote also looking at the various aspects of the Electronic Communication Act, which describe the proclamation. Do you remember, the Electronic Communication Act that sections that I dealt with, broadcasting. So that is the issue that I had to pick  
20 up those sections and then I decided to them, especially those ones and so on.

Those were the ACT on page 298, Chairperson. In essence what I did was it was supposed to be transferred to me by me by the President because the ECA regulate broadcasting. Remember I was the custodian of the

Broadcasting Act then the Broadcasting Act does not act alone it has this sections that is picked up from the Electronic Communications Act, Chairperson.

**CHAIRPERSON:** Okay.

**MS MUTHAMBI:** And then I took them, and then I had to explain them and also to indicate what needs to happen.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** So what Ms Fick says at paragraph 22, is that:

10            “This document proposed, and I think it is what you say, the retransfer of certain powers under the Electronic Communications Act from the Minister of Telecommunications and Postal Services to the Minister of Communications.”

Correct?

**MS MUTHAMBI:** So I will not say on her behalf, Chairperson yet we are well aware that she never came to this Commission and gave evidence but like I said, I am saying what this document means now Chairperson.

20    **ADV MYBURGH SC:** Alright.

**MS MUTHAMBI:** As the author of the documents.

**ADV MYBURGH SC:** At paragraph 23 of Ms Fick’s affidavit she says:

          “A second email sent minutes later with the subject A Responsibility for Infraco and

Sentech Thambi wrote quote Sectec signal distribution must rest with the Ministry of Communications. The attached document motivates of the transfer of the powers and functions over Sentech (who is responsible for broadcasting signal distribution to the SABC and commercial broadcasters) from the Minister of Telecommunications and Postal Services to the Minister of Communications under the Sentech Act.”

Now that document you find at page 299 that email. You confirm that you sent that on the 25<sup>th</sup> of July to Ashu.

**MS MUTHAMBI:** Yes Chairperson I want to confirm that 00:01:14 on 300 is my document. Having read and this what – these were my views on reading the proclamation.

**ADV MYBURGH SC:** So you say Sectec signal distribution must rest with the Ministry of Communications.

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:** Alright.

20 **MS MUTHAMBI:** And I have explained one if you read on those issues the one that on the 10<sup>th</sup> why I thought so.

**ADV MYBURGH SC:** And then Ms Fick says at paragraph 24:

“Both emails of 25 July were subsequently forwarded by Ashu Chawla to Tony Gupta and

Duduzane Zuma in separate emails.”

So let us just deal with the email from Chawla.

**MS MUTHAMBI**: Chair – Chair may I come in on that?

**ADV MYBURGH SC**: If I could just show you those emails.

**MS MUTHAMBI**: Chair can I come on that point? Okay.

**CHAIRPERSON**: Mr Myburgh would like to show you the emails before you respond, is that fine?

**ADV MYBURGH SC**: So the forwarding of the emails.

**MS MUTHAMBI**: Sure Chair.

10 **ADV MYBURGH SC**: The forwarding of the emails by Ashu to Tony Gupta you find them at page 301, do you see that? That is from Ashu to Tony Gupta.

**MS MUTHAMBI**: I can see that Chairperson.

**ADV MYBURGH SC**: And there is another document.

**MS MUTHAMBI**: I can see that.

**ADV MYBURGH SC**: At 305. You see that again from Ashu to Tony Gupta. Ms Muthambi.

**MS MUTHAMBI**: Chairperson I can see the document up to 305.

20 **ADV MYBURGH SC**: And then if you go to 307 you will see the forwarding from Ashu to Duduzane Zuma, you see that? 307

**MS MUTHAMBI**: Yes I can see this on the email Chairperson.

**ADV MYBURGH SC**: And then if you go to page 311 you see

the second document being forwarded from Ashu to Duduzane Zuma, do you see that?

**MS MUTHAMBI**: I see the forwarding Chairperson.

**ADV MYBURGH SC**: Now if I could take you please to paragraph 25 of Ms Fick’s affidavit. She says:

“The use by Muthambi of the word both – sorry must in both of her emails is particularly disturbing.”

You see that?

10 **MS MUTHAMBI**: Yes Chairperson.

**ADV MYBURGH SC**: She says:

“It suggests one of two possibilities.

a. Either she was conveying to Tony Gupta that these changes had to take place if the interests of the Gupta family were to be protected or

b. She was instructing Tony Gupta and or Duduzane Zuma to use his influence with President Zuma (the only person who could  
20 reassign the functions in question) to ensure that the proposed changes did take place.”

Do you want to comment on that?

**MS MUTHAMBI**: Yes I would say I disagree with the content of this paragraph and I am saying my answer this is not correct. No one has the power to instruct the President. No

board has got that power.

Even these people that are maintaining they did not have the power to instruct the President. So it is the word must I have been used to the extent of the President must do what is written on a and b that is why I disagree with the contents of this paragraph.

**ADV MYBURGH SC:** Alright and then at paragraph 26 Ms Fick says:

10           “Included in the powers which Proclamation  
New 18 July 2014 proposed to have  
retransferred to Muthambi was the power  
under Section 3 of the Electronic  
Communications Act to make national policy  
for the information communications and  
technology sector to the extent that it deals  
in any way with broadcasting service or an  
electronic communications network service  
used for or in the provision of broadcasting  
services.”

20           Would you agree with that?

**MS MUTHAMBI:** Hm.

**ADV MYBURGH SC:** Do you have any comment on paragraph 26?

**MS MUTHAMBI:** Can you refer me to the annexure Chair.

**CHAIRPERSON:** Ja he will tell you the page number for the

annexure just now.

**ADV MYBURGH SC:** That you find at 295. That is the document Proclamation New.

**MS MUTHAMBI:** Yes you saying it is page 295?

**CHAIRPERSON:** 295.

**MS MUTHAMBI:** Mr Myburgh

**CHAIRPERSON:** You said 295 Mr Myburgh?

**ADV MYBURGH SC:** Yes 295.

**MS MUTHAMBI:** 295.

10 **ADV MYBURGH SC:** Yes that is the email – the document itself is at 296.

**MS MUTHAMBI:** No this document as I said Chairperson it cannot be the document referred to on page 26.

**CHAIRPERSON:** On paragraph 26.

**MS MUTHAMBI:** Because this is a document as I said earlier Chair is the document wherein I took the Electronic Communication Act and then take all those sections that are related to broadcasting then I have put them there.

20 So that is why it was very – going to be very important that Ms Fick could have come here and explain this because read this with this annexure they actually not inter-related Chairperson.

**CHAIRPERSON:** Hm. Okay.

**ADV MYBURGH SC:** And if you – if you look at 26 what Mr Fick says:



“Is included in the powers which Proclamation New 18 July 2014 proposed to have transferred to Muthambi was the power under Section 3 of the Electronic Communications Act.”

Now if you go to page 296 there you are dealing with the Electronic Communications Act and the first paragraph deals with Section 3.

**MS MUTHAMBI**: Yes as I said.

10 **ADV MYBURGH SC**: The first paragraph deals with Section.

**MS MUTHAMBI**: Yes as I said yes.

**ADV MYBURGH SC**: Does that not reflect what Ms Fick is...

**MS MUTHAMBI**: And I – I..

**ADV MYBURGH SC**: Sorry go ahead.

**MS MUTHAMBI**: No, no as I said this is the document I prepared.

**ADV MYBURGH SC**: Yes.

**MS MUTHAMBI**: Myself and then when I read this paragraph it is what the Act says Chairperson. It is not my own making.

20 This is what the ECA says and then the issue here was around the roles and responsibility of the Minister of Postal and Telecommunications including the Minister of Communication. As is read the gazette itself as per page 2 – I am (inaudible) page 2628.

**CHAIRPERSON**: Let me ask you this before ...

**MS MUTHAMBI:** You will see that the whole page Chairperson. It does not start on page 268 but I am on 272 Chairperson.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** It says:

“This role at Electronic Communications Act and Transaction Act of 2002 is coming from the Minister of Communications and the Minister of Telecommunications and Postal  
10 Services.”

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** So what I am saying here the President has transferred the whole Act the ECA Act. Not specific sections of the ECA Act. So when we read this because there was a complaint from the industry at large that is when we want – went to extra collate all those sections of the Act that was supposed to have been transferred. That was supposed to have remained with the Minister of Communications.

That is the essence and under all parts of this  
20 document Chair as I said these documents was done by myself where I was trying to pick up all those sections of the ECA that must be transferred but that must remain with the Minister of Communications.

**CHAIRPERSON:** Hm.

**MS MUTHAMBI:** So this affidavit – this paragraph says

something that is why it is difficult to speak on behalf of Ms Fick.

**ADV MYBURGH SC:** Well Ms Muthambi I am going to move on but what I want to suggest to you is that Ms Fick's paragraph 26 in fact accords with page 296 that what was proposed was a re-transfer of the powers under Section 3 of the Electronic Communications Act to the Minister of Communications as she says. Do you want to comment on that?

10 **MS MUTHAMBI:** I want to comment on that Chair.

**ADV MYBURGH SC:** Alright. Can I take you then please to paragraph 27 of Ms Fick's affidavit.

“On 6 December 2013 Muthambi's predecessor as Minister of Communications Minister – is that Carrim had started the process.”

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:**

20 “Of exercising his powers under Section 3 of the Electronic Communications Act by issuing for public comment draft amendments to the broadcast digital migration technology under government notice 954 of 2013. For present purposes we emphasise two features of the amendment proposed by Minister Carrim.

- a. The first is that it proposed fixed dates for certain stages in the digital migration process and
- b. The second is that it proposed that government would subsidise set top boxes capable of receiving encrypted signals. This proposal was in accordance with ANC policy on the issue.”

You want to comment on that?

10 **MS MUTHAMBI**: Yes I can comment on that Chair.

**ADV MYBURGH SC**: Please go ahead.

**CHAIRPERSON**: Yes go ahead.

**MS MUTHAMBI**: To put the record straight Chair.

**CHAIRPERSON**: Yes go ahead.

**MS MUTHAMBI**: I think let me talk on the contents of the revised broadcasting digital migration policy. And it goes back beyond the tenure of Minister Carrim. In December 2012 I will take you back to December 2012.

**CHAIRPERSON**: Yes.

20 **MS MUTHAMBI**: This policy was a revised and adopted by cabinet. In the main the reason for these revisions Chairperson was to avoid challenges in implementing the digital migration program caused - caused mainly by the differences then between the broadcasters and the manufacturers relating to the news of a controlled system.

And then the Department then opted to remove I am talking this to prior Mr Carrim to remove the mandatory access control on set top boxes except for those that were subsidised by government as a means to protect government investment. The part I want to raise Chairperson what – what is factually correct is this.

I think these Ms Fick on this matter she has erred – she has erred – she has unfortunately erred on this because this – the other policies she is referring to of the 2013 this  
10 one was just a draft policy. It was not a final policy.

Yes cabinet approved the draft the Digital Migration Policy which was supposed to be consulted to public consultations. So it is only in 2015 that the Digital Migration policy was approved by cabinet and I will say that we implemented that. But the way it is put here it is incorrect. I think I have dealt with all those issues thus far.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Then at paragraph 28.

20 “As pointed out in the document that Muthambi forwarded to Mr Chawla on 18 July 2014 in terms of the assignment of functions in Proclamation 47 of 2014 responsibility for Broadcast Digital Migration Policy now lay not with Muthambi but with Minister Cwele. On 29 July 2014 Muthambi sent an email to

Cwele with the following message.

Despite my request the CDE is determined to table the matter in cabinet tomorrow. He called me that he was coming to Cape Town this morning. I hope he is still on his way.”

Now before you – I ask you to comment on that could I take you please to that email which you find at page 313.

**MS MUTHAMBI**: Yes Chair.

**ADV MYBURGH SC**: Would you confirm that that is the  
10 email from you to Ashu subject Letter to Minister Dr S Cwele and it says:

“Hi Tony.”

Are you there?

**MS MUTHAMBI**: Yes Chairperson.

**ADV MYBURGH SC**:

“Despite my request the CDE is determined to table the matter in cabinet tomorrow. He called me that he was coming to Cape Town this morning. Hope he is still on his way. “

20 Now what is – what does CDE stand for?

**MS MUTHAMBI**: CDE stands for Comrades.

**ADV MYBURGH SC**: Comrade. Okay. So you accept that you sent this email?

**MS MUTHAMBI**: Yes I want to read though I have got a difficulty on its 00:19:05. Yes the contents might be correct

but the way it is – it is a document – yes it is a document then it is fine I confirm that.

**ADV MYBURGH SC:** Alright. And then if you go to paragraph 29.

“Muthambi attached.”

**MS MUTHAMBI:** Before that...

**CHAIRPERSON:** I am sorry – I am sorry.

**MS MUTHAMBI:** Before that Chair. Before that Chairperson.

10 **CHAIRPERSON:** Yes before you say that. The – the letter – the attachment to that email Mr Myburgh.

**ADV MYBURGH SC:** We are about to deal with that now.

**CHAIRPERSON:** Is that what you are coming to? Okay.

**ADV MYBURGH SC:** Ja I dealt with that paragraph 29 DCJ.

**CHAIRPERSON:** Oh okay. Ms Muthambi you wanted to say something before Mr Myburgh?

**MS MUTHAMBI:** Yes I am glad if he is coming back because I wanted to talk to the document itself.

**CHAIRPERSON:** Oh to – okay alright.

20 **MS MUTHAMBI:** We thought we are going to another part of this.

**CHAIRPERSON:** He is coming back to it ja.

**MS MUTHAMBI:** Yes.

**ADV MYBURGH SC:** Okay.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Now let us go to paragraph 29.

“Muthambi attached a memorandum that she had sent as Minister of Communications to the Minister of Telecommunications and Postal Services to Mr Cwele. In the memorandum Muthambi noted that Minister Cwele proposed to table final amendments to the Broadcasting Digital Migration Policy in cabinet and expressed concerns about the proposed amendments.”

So you accept that the documents that accompanied this email at page 313 is the document that you find at page 314.

**MS MUTHAMBI:** The document that we find at 314 yes Chairperson that is the document referred to.

**ADV MYBURGH SC:** That was attached.

**MS MUTHAMBI:** This is the letter that I have written to my colleagues and this was part of the – that this was part of the stakeholder investment because this letter gets with that and I want to say this is not a memorandum or a cabinet document because it is very (inaudible) that we must do the (inaudible) because the way it is written here but the letter it was part of my content and it would be prudent that I read so that we give context to – if Chair allows me I want us to read through this record because it addresses all these issues that are being raised here.



**CHAIRPERSON:** You want to read the letter at page 314?

**MS MUTHAMBI:** Sure Chairperson.

**CHAIRPERSON:** Okay.

**MS MUTHAMBI:** That will explain a lot of things that has also been raised earlier there.

**CHAIRPERSON:** Okay. Go ahead.

**MS MUTHAMBI:** I will try to read it from – ja I will read the whole letter.

**CHAIRPERSON:** Okay just for the...

10 **MS MUTHAMBI:** (Inaudible).

**CHAIRPERSON:** Just for the sake of ...

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** Convenience this is a letter from yourself which you signed.

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** On the 26<sup>th</sup> of July 2014 and which you addressed to Dr Siyabonga Cwele MP Minister of Telecommunications and Postal Services.

**MS MUTHAMBI:** Yes.

20 **CHAIRPERSON:** It is dated 26 July 2014 and it was delivered by hand and the heading is Cabinet Memo 1 of 2014 dated 23<sup>rd</sup> July 2014. Final Amendments of Broadcasting Digital Migration Policy.

Yes you want to read from what paragraph?

**MS MUTHAMBI:** Yes then you will see we will start from

one.

“I was raising concerns that I noted the inclusion in an ancillary file of the proposed amendments to the draft Broadcasting Digital Migration Policy it being the policy. And then I was raising concerns that this policy was not discussed at cabinet of the 23<sup>rd</sup> but it is clear from the reading of the draft that it has got serious and material. implications for the management and sustainability of the South African Broadcasting Corporation both in terms of budget and human resources.

And then I – government has embarked on a process of stabilising the SABC and I am concerned that what is (inaudible) in the policy when read with the Broadcasting Digital Migration Regulations 2012. By the way of example I refer to the proposal in the policy to a revised commencement date of the 1<sup>st</sup> of November 2014.

The Digital Regulations require that the SABC commence digital broadcasting on the commencement date. Due to the numerous delays and the stop start nature of

the DDT process broadcasters have scaled down their preparation for digital migrations and the date starts as in November start date previously proposed by broadcasters in their state of readiness meetings were based on what are now outdated plans.

10 The SABC will not be ready to commence on this date and I have serious doubts as to whether any other commercial broadcaster will be read. The SABC may well then find itself in contravention of the DDT regulations. There are other areas of specific concern which affect the SABC. The policy indicates in Item 6.3 that a minimum lead time of 3 months is required to produce the first batch of set top boxes. But this is for the retail the unsubs is a side market.

20 Those who can afford to pay for a box in full. This period does not appear to include a time for retail distribution just for manufacturers. It makes no sense for the SABC to rush to commence digital broadcaster whereas there are no set top boxes in the market.

The policy further indicates that the

public are position of subsidised as TV's will happen as soon as the policy is finalised. This has to go through a public procurement process and no time frame has been given for this process.

10 The policy indicates that there are approximately 13 million households of which 65% that amounts to 8.45 million rely exclusively on free to air broadcasting. The rest subscribe to talk TV, DSTV and now Open View HD the ETV Free to view certain like service.

20 Those who can afford the set top boxes already migrated the digital free to view and pays the (inaudible) platforms. Of the 8.45 million the policy indicates that 6.2 million will find it very difficult to afford the set top boxes. We are only supporting 5.2 million of those and on a sliding scale between 29 and 77%. These 6.2 million people are the (inaudible) of the SABC.

While serving on the Parliamentary Portfolio Committee of Communication it became clear to us that then the migration policy should focus on those 6.2 million

people and switching off the analogue signal depend on them. We cannot simply derive – deprive our people of the services of the Public Broadcaster in June 2015. The iTunes date. We will have delivery protesting the streets and play into the hand of our detractors.

10 The policy also imposes obligations on the Minister of Communication. So in the proposed amendment of paragraph 30 of the policy which the page were unfortunately not numbered the switch off date for the analogue signal is to be determined by me after engaging with cabinet and the relevant stakeholders.

20 And I have not been consulted on this provision either. I have not canvassed in detail the concern I have with the policy given the serious consequences it has for the SABC except details of the example.

I here request that you Minister consult with myself before re-tabling the policy ex cabinet for approval so that we may address these concerns in at once. Yours faithfully.”

And I signed the letter Chair.

**CHAIRPERSON:** Yes. Thank you. Okay Mr Myburgh.

**ADV MYBURGH SC:** Thank you. So this was a communication between you in your capacity as Minister of Communications to Dr Cwele the Minister of Telecommunications and Postal Services, correct?

**MS MUTHAMBI:** Yes Chair.

**ADV MYBURGH SC:** Now what Ms Fick of OUTA says:

10            “At paragraph 30 is the forwarding of this document to Mr Chawla was a gross violation of cabinet confidentiality. Mr Chawla forwarded the email and document to Tony Gupta later that day.”

What do you say about her statement that this was a violation of cabinet confidentiality?

**MS MUTHAMBI:** I should say this is a misplaced assertion put under oath. I am saying this, because this letter is not confidential. I hope, Chairperson, at that time when we were informing about the ...[indistinct] that deals with the  
20    classification of documents. So this letter is not confidential and that is why it is not much(?) confidential. So if paragraph is misplaced, I deny that.

**ADV MYBURGH SC:** Alright. Can we move to paragraph 31?

**MS MUTHAMBI:** Yes, Chair.

**ADV MYBURGH SC:** “Minister Cele did not obtain

Cabinet approval for his proposed amendments to the Broadcasting Digital Migration Policy, be that the Cabinet meeting of 30 July 2014 or any time thereafter...”

Would you confirm that?

**MS MUTHAMBI:** Now that Minister(?) seeks assertion(?).

**ADV MYBURGH SC:** Alright.

**MS MUTHAMBI:** I will not comment on this one.

10 **ADV MYBURGH SC:** At paragraph 32:

“On 1 August 2014, Muthambi sent an email to Cele to which she attached a draft of a proclamation in the name of the President for the transfer of administration powers and functions under the Electronic Communications Act from the Minister of Telecommunication and Postal Services to the Minister of Communication.

20 The email message was: “See attached proclamation that President must sign”.

Again, the use of the word must in the email from Muthambi relating to the proposed exercise of the presidential power is disturbing...”

Before I ask you to comment on that. Can I just

show you that document? You will find that at page 317.

**MS MUTHAMBI**: 317. Chair, grant me the indulgence. I have messed up my papers, but I am going to get it now.

**ADV MYBURGH SC**: And the draft proclamation appears to be at 319.

**MS MUTHAMBI**: Ja, 319. I have got it.

**ADV MYBURGH SC**: Do you have any comment on paragraph 32?

**MS MUTHAMBI**: Which paragraph must I comment on?

10 **ADV MYBURGH SC**: 32. Three, two.

**MS MUTHAMBI**: Three, two on 319? Oh, paragraph thirty two of the affidavit?

**ADV MYBURGH SC**: Yes.

**MS MUTHAMBI**: Yes. You want me to comment?

**ADV MYBURGH SC**: Yes, if you have any comment.

**MS MUTHAMBI**: It is the same comment I made on paragraph 25.

**ADV MYBURGH SC**: You made before, yes.

20 **MS MUTHAMBI**: This is not correct. This is not correct. And I will repeat it. It is not correct because no one has got the power to instruct the President. Nobody can do that. And if they must it is the use of the – it was truly to an extent the use the language. [Speaker not clear]

**CHAIRPERSON**: So to the extent that she says you emailed – you sent an email to Mr Chawla on the



1<sup>st</sup> of August 2014 to which you attached the draft proclamation that is at 319. Is it 319?

**ADV MYBURGH SC:** [No audible reply]

**CHAIRPERSON:** 319:

10 “In the name of the President for the transfer of administration powers and functions under the under the Electronic Communications Act from the Minister of Telecommunications and Postal Services to [yourself] the Minister of Communications...”

You have no quarrel with that? You accept that that is what you did? What you are disputing is where she says the use of the word must in the email indicates that the President... She says:

“Again, the use of the word must in the email from Muthambi relating to the proposed exercise of the presidential power is disturbing...”

20 That is the part that you have an – take issue with. Is that right? The last part of the paragraph.

**MS MUTHAMBI:** That is the issue, Chair. That is the issue, Chair.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** Because I also have issues with the same attachment. I have got issues with the same

attachment Chairperson.

**CHAIRPERSON:** Ja.

**MS MUTHAMBI:** Which I want to bring to your attention.

**CHAIRPERSON:** Okay let us do that.

**MS MUTHAMBI:** ...319, Chair.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** 319.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** You can treat the document as written  
10 and then you go to 320.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** That is the ...[indistinct – distorted] sill  
the same document up to 321?

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** You can see here, Chairperson.

**CHAIRPERSON:** H'm? I can see the document. You want  
to say something on it?

**MS MUTHAMBI:** There is a discrepancy, I think it is clear,  
it is evident for everybody who can read to say this is a  
20 separate document that is been attached from – it is  
different from the other three pages that I referred to  
Chair.

**CHAIRPERSON:** So you - are you saying that the  
document that is at page 319 up to page 321 is not the  
same document, or is it up 322? Is not the same document

that you signed that you attached to the email to Mr Chawla? Is that what you are saying?

**MS MUTHAMBI**: That is what I am saying, Chair.

**CHAIRPERSON**: Yes. And you say the one that you ...[intervenes]

**MS MUTHAMBI**: And I think you will note the difference. It does not need a genius to see that, Chair.

**CHAIRPERSON**: Well, I have not scrutinised it. You say the one that you ...[intervenes]

10 **MS MUTHAMBI**: You have not scrutinised it? Let me help you, Chair.

**CHAIRPERSON**: Hang on one second. The one that you say you did attach is the one that appears on what page?

**MS MUTHAMBI**: 319 up to 320... 32.

**CHAIRPERSON**: Ja, but you say that is the one that you did not attach to your email, is it not?

**MS MUTHAMBI**: No, the 322.

**CHAIRPERSON**: Oh, the 322?

20 **MS MUTHAMBI**: Because the whole annexure ends up at 322.

**CHAIRPERSON**: Oh.

**MS MUTHAMBI**: H'm.

**CHAIRPERSON**: So 319 to 321 ...[intervenes]

**MS MUTHAMBI**: So if you had said three...

**CHAIRPERSON**: Okay hang on one second. The – you

say the document that ...[intervenes]

**MS MUTHAMBI**: Can you see the difference, Chair?

**CHAIRPERSON**: You say the document that you attached to your email is the one that ...[intervenes]

**MS MUTHAMBI**: Yes.

**CHAIRPERSON**: ...is the one that appears from 319 to 321?

**ADV MYBURGH SC**: Yes.

**CHAIRPERSON**: And you say

10 **MS MUTHAMBI**: Yes, Chair.

**CHAIRPERSON**: ...you did not attach the document at 322? That is what you are saying.

**MS MUTHAMBI**: Yes.

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

**MS MUTHAMBI**: And Chair note the difference between the documents?

**CHAIRPERSON**: Yes, I can see the difference between the two.

**MS MUTHAMBI**: Is Chair to see that?

20 **CHAIRPERSON**: Yes.

**MS MUTHAMBI**: Okay. You can see that?

**CHAIRPERSON**: I can see the difference between the two documents namely ...[intervenes]

**MS MUTHAMBI**: Ja, that said – at the act(?) of Ms Fick.

**CHAIRPERSON**: 319. The one at 319 to 321 and the one

at 322. Mr Myburgh.

**ADV MYBURGH SC:** Yes. So we were at paragraph 32.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Then 33.

**MS MUTHAMBI:** Chair, I am still on 33, Chair.

**ADV MYBURGH SC:** Ja, I have not dealt with 32.

**MS MUTHAMBI:** On the same document, Chair.

**CHAIRPERSON:** Oh, you ...[intervenes]

**MS MUTHAMBI:** Because I need to ...[intervenes]

10 **CHAIRPERSON:** ...still want to say something?

**MS MUTHAMBI:** To relate something.

**CHAIRPERSON:** Okay you may comment.

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** Ja?

**MS MUTHAMBI:** It is a consequence when the issues that I have raised to say when emails are taken selectively ...[intervenes]

**CHAIRPERSON:** H'm?

**MS MUTHAMBI:** ...like I have indicated earlier, Chair.

20 **CHAIRPERSON:** H'm?

**MS MUTHAMBI:** And then it is when this affidavit – because this is under oath, Chair.

**CHAIRPERSON:** H'm?

**MS MUTHAMBI:** This affidavit.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** And then I want to dispute this document that is part of the annexure. It is, in fact, misplaced. You can see the false – it is a different document all together.

**CHAIRPERSON:** Okay. Thank you. Mr Myburgh.

**ADV MYBURGH SC:** Ja. If you can go to paragraph 33.

“On 8 August 2014, Enron of Fortune Holdings emailed Muthambi in reply, thanking her for the proposed proclamation that the President must sign.

10 The email was signed by Sandile...”

Sandile is presumably Sandile Ellen Shabala, the Chairperson of the SABC at the time.

“Sandile copied Mr Cwele and certain Khumalo(?) at the SABC on the correspondence...”

Now that email you will find at page 323. Could you confirm that?

**CHAIRPERSON:** At three...?

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

20 **CHAIRPERSON:** Okay alright. Can you see that, Ms Muthambi?

**MS MUTHAMBI:** Yes, Chair.

**CHAIRPERSON:** Can you see the email at page 323?

**MS MUTHAMBI:** Yes, Chairperson, I can see it.

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

**ADV MYBURGH SC:** Do you have any comment on paragraph 33?

**MS MUTHAMBI:** Paragraph 33. I am there.

**ADV MYBURGH SC:** Alright. Then if I can take you to paragraph 34.

**MS MUTHAMBI:** [Indistinct - mechanical interruption in transmission]

**ADV MYBURGH SC:** “The draft Presidential Proclamation  
was never promulgated in the self-contained  
10 form attached to the emails between  
Muthambi, Mr Cwele and Tony Gupta.

However, on 2 December 2014, the President promulgated Proclamation 79 of 2014 which transferred to the Minister of Communications a range of powers including the power to make national policy on information, communications and technology under Section of the Electronic Communications Act insofar as it relates to broadcasting...”

20 And that promulgation or that proclamation you will find at page 327, Proclamation 79 of 2014.

**MS MUTHAMBI:** Chair, what is the number?

**ADV MYBURGH SC:** 327, Proclamation 79 of 2014.

**MS MUTHAMBI:** Yes. What 327?

**ADV MYBURGH SC:** Yes.

**MS MUTHAMBI**: Okay, Chair.

**ADV MYBURGH SC**: Do you have any comment on that?

**MS MUTHAMBI**: Yes, let me comment on this paragraph. As I have said earlier and I think now Ms Fick was coming to her senses now here on this letter because now she confirms what I have said earlier to say it means that no one has go the power to instruct the President. And then on the first part of the affidavit.

10 You know that saying that the proclamation was never proclaimed in the self-contained form attached. So it is very clear and evident that no one has the power to instruct the President what to do. Secondly. On the latter part of the paragraph, I think this was the right decision in terms of broadcasting matters because the main act in broadcasting is that Broadcasting Act which our... [mechanical interruption in transmission] The SCA also had certain elements of [mechanical interruption in transmission] ...position on the matters.

**ADV MYBURGH SC**: Alright. And then if I can take you,  
20 please, to paragraph 36.

“With policy on Broadcasting Digital Migration safely now under her control, Muthambi published her amendments to the policy on 18 March 2015 under Government Notice 323 of 2015...”



Can we just go to that page or that document?

You will find that at 324.

**MS MUTHAMBI**: Yes, Chair.

**ADV MYBURGH SC**: Alright. And then Ms Fick goes on to say:

“The final policy included neither of the two features mentioned above in Minister Karim’s published draft in December 2013...”

She says:

- 10
- (a) The policy no longer tied the government to any dates for the Digital Migration Process, and
  - (b) Policy provided at government subsidise set top boxes, would not be capable of receiving encrypted signals...”

It does ...[intervenes]

**MS MUTHAMBI**: This is incorrect, Chairperson.

**ADV MYBURGH SC**: Yes.

20

“...it does revised Minister Karim’s proposal which had been in accordance with ANC policy and replaced it with a decision that was contrary to ANC policy.

In changing the policy in this manner, Muthambi provoked criticism in a public statement issued by the Tripartite Alliance in

February 2015...”

Do you want to comment on that?

**MS MUTHAMBI**: Chairperson, I want to deny what is written here to say it is incorrect and misleading and let me explain that was this.

**CHAIRPERSON**: Yes?

**MS MUTHAMBI**: As I have said earlier. As I have said earlier, Chairperson. The policy, the draft policy – it was a draft policy. Ms Karim left office, there was a draft policy  
10 but had to be consulted on.

**CHAIRPERSON**: Yes.

**MS MUTHAMBI**: And then, the issue here what we tried to address, contrary to what she is saying here. If you read paragraph 5.1 of the policy, which is attached in totality. It talks to these matters... And I will read it. Then it talks to the issue that talks to say, it - we are talking about the control system here because that was the matter that was the bone of contention.

**CHAIRPERSON**: Ja?

20 **MS MUTHAMBI**: Then paragraph 5.1, it requires the policy to ...[intervenes]

**CHAIRPERSON**: I am sorry.

**MS MUTHAMBI**: [Indistinct]

[Parties intervening each other – unclear]

**CHAIRPERSON**: 5.1 ...[intervenes]

**MS MUTHAMBI:** ...of the policy.

**CHAIRPERSON:** Is ...[intervenes]

**MS MUTHAMBI:** Of the policy ...[intervenes]

**CHAIRPERSON:** Is it ...[intervenes]

**MS MUTHAMBI:** [mechanical interruption in transmission]

I wonder if I cannot ...[intervenes]

**CHAIRPERSON:** Is that page what?

**MS MUTHAMBI:** I wonder if it is attached to  
...[intervenes]

10 **CHAIRPERSON:** 326?

**MS MUTHAMBI:** ...because I only see here on the  
...[intervenes]

[Parties intervening each other – unclear]

**CHAIRPERSON:** Is it 326?

**MS MUTHAMBI:** On the... Let us check it, Chair.

**CHAIRPERSON:** [No audible reply]

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** Where it says paragraph 8 and then ad  
paragraph 5.1.2?

20 **MS MUTHAMBI:** Yes.

**CHAIRPERSON:** Yes, okay. Ja, continue.

**MS MUTHAMBI:** Then the issue there. The reason why  
we added this paragraph on the – where it - is it the same  
policy that draft form is it that of Minister Karim?

**CHAIRPERSON:** Yes.

**MS MUTHAMBI**: Inserted?

**CHAIRPERSON**: Yes.

**MS MUTHAMBI**: Safe to say that we had to put this paragraph. And I want to explain it in simple terms under what is written here.

**CHAIRPERSON**: H'm?

**MS MUTHAMBI**: What we were saying here is. This issue of control the state addressed here, Chair. And then the – the rationale behind that was to prevent the set of boxes  
10 from being the most outside the country and to this able the usage of standard(?) set of boxes. Secondly, we wanted these set of boxes to enable... and then to also accommodate broad, current and future free to add broadcasting, as it must.

And then also to be accessible, the future free to air digital television broadcasting messages(?) through iSikua(?)... making it accessible by government and also to ensure that the set of boxes conform to the national standards so that it can work in the entire South African  
20 value chain of Electronic Communications Network.

So that was the intention. So you read this. You read it in line with all those things. Those submissions that were raised in paragraph 5.

**CHAIRPERSON**: Okay.

**MS MUTHAMBI**: Yes.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** Then if we go to paragraph 37 of Ms Fick’s affidavit. She says:

10 “As pointed out above, when Muthambi was taken to court by e.tv for the failure to consult publicly in relation to the changed provisions regarding encryption, the Constitutional Court commented on her evasive and suspicious responses relating to the identity of the persons with whom she had consulted in relation to the changes that she made.

In the light of the emails described above, the reason for this evasiveness are evident...”

Do you want to comment on that?

**MS MUTHAMBI:** You see, Chairperson. When you are dealing with organisations like OUTA that are anti-transformation and then they want to get certain like individuals who are for transformation, that is where you will find things(?) like this. Because how – she then  
20 selectively chooses what is written in that Concourt judgment. The beauty about it, Chairperson, you sit myself there as the Deputy Chief Justice on the matter and then the Concourt found this policy to be correct. So I do not know where these issues come from because if you read – I think there is somewhere where there is reference on the

court judgment on the bundle here ...[intervenes]

**CHAIRPERSON:** Of course ...[intervenes]

**MS MUTHAMBI:** If they can get it to me.

**CHAIRPERSON:** ...if I ...[intervenes]

**MS MUTHAMBI:** I just ...[intervenes]

**CHAIRPERSON:** ...if I recall correctly.

**MS MUTHAMBI:** H'm?

**CHAIRPERSON:** The court only dealt with the question whether you had power to make the policy, is it not? It  
10 said you had not ...[intervenes]

**MS MUTHAMBI:** Yes.

**CHAIRPERSON:** ...it talked about whether it was the correct policy or not but it – I think it said you had power to make the policy. Is that right?

**MS MUTHAMBI:** Sure, Chairperson.

**CHAIRPERSON:** H'm.

**MS MUTHAMBI:** And then, that is why the issue, as contested, if you read paragraph 86 of the judgment.

**CHAIRPERSON:** H'm.

20 **MS MUTHAMBI:** Do we have the judgment? I was trying to get it quickly for you. Let me quickly get it for you, Chairperson.

**CHAIRPERSON:** Okay.

**MS MUTHAMBI:** It is – I think this will be 188...

**CHAIRPERSON:** Is my recollection correct, Mr Myburg?

**MS MUTHAMBI**: If I am not mistaken.

**ADV MYBURGH SC**: The judgment, you will find  
...[intervenes]

**MS MUTHAMBI**: It is 188.

**ADV MYBURGH SC**: Yes.

**MS MUTHAMBI**: On page 188, Chair.

**CHAIRPERSON**: 188?

**MS MUTHAMBI**: Yes, Chair.

**CHAIRPERSON**: Okay.

10 **MS MUTHAMBI**: And then I want to refer you to  
...[intervenes]

**CHAIRPERSON**: Oh, yes.

**MS MUTHAMBI**: ...paragraph 88.

**CHAIRPERSON**: Yes.

**MS MUTHAMBI**: I am trying to get paragraph 88, Chair.  
Just hold on.

**CHAIRPERSON**: H'm. Oh, paragraph 88.

**MS MUTHAMBI**: I see it is not here in this document. I  
do not know for what reasons, on the attached documents.

20 But at least I have got ...[intervenes]

**CHAIRPERSON**: Well, paragraph 88 of the judgment is  
the order.

**MS MUTHAMBI**: I got it on my own time because... The  
judgment, I think it is – end up to page thirty... Ja, but  
there is paragraph 80. Let me for the purpose of record

because on the bundle that was sent to us, that is now how you will see what the advocate selectively opt to read certain aspect that suits him

**CHAIRPERSON:** H'm.

**MS MUTHAMBI:** I do not know for what purposes, Chair.

**CHAIRPERSON:** H'm?

**MS MUTHAMBI:** But the issue is here. This issue, where they were challenging the substantive(?) rationality, it failed on both grounds. That is what paragraph 86 said.

10 And as you have said earlier. The court affirmed my policy(?) on two(?) counts.

**CHAIRPERSON:** H'm.

**MS MUTHAMBI:** And then on the order – you will find the order on paragraph 88.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** Then that is where then the leave to appeal was granted. My appeal was upheld and the order of the supreme court was set aside and those ones were even ordered to pay costs including the cost of the two  
20 counsels.

**CHAIRPERSON:** H'm?

**MS MUTHAMBI:** So for Ms Fick to come here and... this, I find it very disturbing, honestly. I find it very disturbing.

**CHAIRPERSON:** Yes. Okay.

**MS MUTHAMBI:** And this was leading this... who was



leading this... Chairperson. I do not know for what reasons. [Speaking unclear]

**CHAIRPERSON**: Mr Myburgh.

**ADV MYBURGH SC**: Yes, I just want to, whilst you are on the judgment, just point out the one paragraph that Ms Fick was referring to in paragraph 37.

**CHAIRPERSON**: H'm?

**ADV MYBURGH SC**: Where it talks – she says evasive and suspicious.

10 **CHAIRPERSON**: H'm?

**ADV MYBURGH SC**: That paragraph is paragraph 61, Chairperson, of the judgment.

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

**ADV MYBURGH SC**: Perhaps I can just take you there, please, Ms Muthambi. This is the judgment of Mogeng CJ. He says – said His Justice:

“...that this does not mean that a blind eye is to be turned to her concern evoking evasive and suspicious responses or lack thereof to pertinent questions raised by e.tv.

20

We live in a constitution of democracy whose foundational value include openness and accountability.

It is thus inappropriate for the Minister to not have volunteered the identities of those she

consulted with and what the consultation was about as if she was not entitled to solicit enlightenment and did same pursuit of an illegitimate agenda.

This conduct must be frowned upon and discouraged.

It does not, however, constitute the necessary and unavoidable constitutional basis for judiciary...”

10 Do you want to comment on that?

**MS MUTHAMBI**: Chairperson ...[intervenes]

**ADV MYBURGH SC**: So that goes to the issue of consultation with stakeholders.

**MS MUTHAMBI**: Chairperson, I will say this thing is very irrelevant. It is irrelevant. That is why - I have got a problem when somebody ops to selective reads what suits them because this issue is irrelevant to the issue. The issue that stands here, Chairperson. I was vindicated by the Constitutional Court on this matter. So it is irrelevant  
20 for me to also to comment on this, Chairperson, because I will not comment on something that is irrelevant to the issue. Next question, Chair.

**ADV MYBURGH SC**: So you say this finding by the Chief Justice is irrelevant?

**MS MUTHAMBI**: It is not a finding, Mr Myburgh.

**CHAIRPERSON:** I am sorry.

**MS MUTHAMBI:** The findings ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Myburgh. Just – you said it is paragraph 37 point – you were reading?

**ADV MYBURGH SC:** At paragraph 61.

**CHAIRPERSON:** Okay. I am sorry. Let me go there.

**ADV MYBURGH SC:** [No audible reply]

**CHAIRPERSON:** Oh, okay, ja. Well, Ms Muthambi?

**MS MUTHAMBI:** Yes, Chairperson?

10 **CHAIRPERSON:** What do you say to this paragraph of the judgment? You remember that you said that the emails that you sent to the people who were outside of government, you sent them as part of stakeholder engagement? You remember that?

**MS MUTHAMBI:** I remember very well, Chair.

**CHAIRPERSON:** Yes and here the court is saying you did not disclose when called upon to disclose the people that you were consulting with, you remember that?

**MS MUTHAMBI:** Yes, Chair.

20 **CHAIRPERSON:** And why – what do you say about that because if you were consulting stakeholders for purposes of policy obviously that cannot – that should not be a secret, that should be transparent because whatever views they give you about policy are views that other stakeholders must know about and you need to make sure

that other stakeholders can make an input, they need to also know who in the sector takes what positions on the policies of government?

**MS MUTHAMBI:** Chairperson, I will still maintain that this is not a finding, maybe the background of this matter can also assist you, Chair.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** That was the comment of the judge, I can put you that, Chairperson, but I want also to share you  
10 something that will also assist you to understand this matter.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** Especially on the eTV matter, if you are to – based on our submission. eTV initially ...[intervenes]

**CHAIRPERSON:** But before you do that, Ms Muthambi, let us just get this part that I am asking about clear. Do you accept that proposition that if you consult stakeholders about government policy there should be nothing secret about that, there should be transparency. Do you accept  
20 that?

**MS MUTHAMBI:** Yes and there was no secret about this, Chairperson, I will tell you.

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

**MS MUTHAMBI:** There was nothing secret about that.

**CHAIRPERSON:** Do you accept that you did not disclose

when you were asked to disclose who you were consulting with in this regard?

**MS MUTHAMBI**: Chairperson...

**CHAIRPERSON**: Yes?

**MS MUTHAMBI**: That is why I am saying if you are to look at page 195, I want to respond on what you are saying, Chairperson.

**CHAIRPERSON**: 195, okay.

**MS MUTHAMBI**: Yes. Paragraph 14.

10 **CHAIRPERSON**: 195 is the red one or the black one?

**MS MUTHAMBI**: The one on the right.

**CHAIRPERSON**: On the right, okay.

**MS MUTHAMBI**: Paragraph 14 of the judgment, Chair.

**CHAIRPERSON**: Okay, yes.

**MS MUTHAMBI**: Is that not what you were talking about, eTV?

**CHAIRPERSON**: 195, I am there, paragraph 14, yes.

**MS MUTHAMBI**: Yes, that is the issue that also – that thing must be read in line with this paragraph 14, Chair.

20 **CHAIRPERSON**: Yes.

**MS MUTHAMBI**: And for the purpose of the record I am going to read it for you.

**CHAIRPERSON**: Ja, please do.

**MS MUTHAMBI**:

“eTV made a 180 degree about turn from its

previous strongly-held and fully-motivated position. It supported the incorporation of decryption capabilities into the set top box and was pleased that “free-to-air broadcasters could now decide how they wished to manage their signal and whether that signal would be encrypted.” eTV viewed (indistinct – recording distorted) their signals.”

So this is the issue that I was trying to raise, Chairperson, to say they were consulted and I will say without fear of  
10 contradiction they were the reason that these whole projects was delayed. Maybe some of us would have found these projects having been implemented.

**CHAIRPERSON:** H’m.

**MS MUTHAMBI:** So I do not want to also, Chairperson, to debate the judgment comments further on this matter.

**CHAIRPERSON:** No, no, you cannot ...[intervenes]

**MS MUTHAMBI:** Because that is why I said ...[intervenes]

**CHAIRPERSON:** No, no, no, you cannot choose what to talk about and what not to talk about, Ms Muthambi. I go  
20 back to my question.

**MS MUTHAMBI:** Okay.

**CHAIRPERSON:** Do you accept that when you were called upon to disclose who the parties were that you had been consulting you did not disclose. Do you accept that that is what happened?

**MS MUTHAMBI:** No, Chair, I do not accept that.

**CHAIRPERSON:** Did you disclose?

**MS MUTHAMBI:** No, this the comment I do not even remember, these things happened long ago.

**CHAIRPERSON:** Sorry, please just repeat your answer?

**MS MUTHAMBI:** Yes, Chairperson, I am saying this is a comment, the comment of the judge.

**CHAIRPERSON:** No, no, no.

**MS MUTHAMBI:** That the judge's comment, this would  
10 ...[intervenes]

**CHAIRPERSON:** No, no, no, Ms Muthambi, let us leave out the judgment for the time being. Is it not true that you were called upon to disclose the identity of the parties that you had been consulting with but that you did not disclose or you refused to disclose and that is part of the complaint that was raised in the litigation?

**MS MUTHAMBI:** Chairperson, what I remember is that I consulted.

**CHAIRPERSON:** Ja?

20 **MS MUTHAMBI:** So I do not know – yes, I consulted, yes.

**CHAIRPERSON:** Do you not recall being asked to disclose who you had consulted with?

**MS MUTHAMBI:** No, Chairperson, I do not remember that.

**CHAIRPERSON:** And you do not remember not being prepared to make that disclosure? You do not remember

that either?

**MS MUTHAMBI:** No, no, no, Chair.

**CHAIRPERSON:** Mr Myburgh, you might have your finger on the relevant parts. Do you want to take it from there?

**ADV MYBURGH SC:** Yes, thank you. Well, there are other passages, paragraph 59, Ms Muthambi:

“The minister solicited the views of some undisclosed persons.”

And then ...[intervenes]

10 **CHAIRPERSON:** Do you see that, Ms Muthambi?

**MS MUTHAMBI:** Chairperson, what page is that one?

**CHAIRPERSON:** Page 214 on the numbers on the right hand side, paragraph 59 of the judgment.

**ADV MYBURGH SC:** And then perhaps also at paragraph 60, page 215, just above paragraph 61, second sentence:

“More would be required to conclude that the only reasonable inference...”

And I think the important part:

20 “...then is to draw from the minister’s ill-advised and unfortunate nondisclosure.”

**CHAIRPERSON:** Ja.

**MS MUTHAMBI:** But then when you further read that, Chairperson ...[intervenes]

**CHAIRPERSON:** Sorry/

**MS MUTHAMBI:** On 60. When you further that same



paragraph, Chairperson...

**CHAIRPERSON:** Ja?

**MS MUTHAMBI:** “Her disclosure...”

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** You see that paragraph, line one, two, three, four, the – ja, line 4, where it starts with:

“Her disclosure...”

**CHAIRPERSON:** On which paragraph?

**MS MUTHAMBI:** 60.

10 **CHAIRPERSON:** Ja?

**MS MUTHAMBI:** 60, line four.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** That paragraph reads:

“Her disclosure or nondisclosure does not necessarily undermine any broadcaster or interested person’s rights or undermine that.”

Chair.

**CHAIRPERSON:** Please repeat because – repeat what you just said, you want to do what in regard to the...?

20 **MS MUTHAMBI:** Chairperson...

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** Is that not – we are reading page 27 of the judgment, paragraph 60.

**CHAIRPERSON:** Yes, yes.

**MS MUTHAMBI:** Line 4, line 4.

**CHAIRPERSON:** Ja. Yes, I see that.

**MS MUTHAMBI:** Yes, Chair, I want to also further read it.  
Yes, Chair.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** It was in response to what that said, so let us not selectively read this paragraph, let us read all of them.

**CHAIRPERSON:** No, no, no, that is fine but what I wanted to confirm with you, which you confirmed, is – well, you  
10 said you do not recall being asked to disclose the identities of the persons or parties you consulted and you did not recall not being prepared to disclose the identities and then I asked Mr Myburgh if he has his finger on some of the relevant parts. He pointed out to the – he drew my attention to – and your attention to the first sentence of paragraph 59 of the judgment which is at 214 and there the judgment says:

“The minister solicited the views of some undisclosed persons.”

20 And then he referred to paragraph 60 to which you have also referred. So the judgment makes it clear, it seems to me, that it says you did not disclose the persons whose views you solicited and it seems to me that the person that you did not disclose were the persons to whom you sent these emails. That is what I am thinking. Am I wrong? Is

it other people, not these ones?

**MS MUTHAMBI**: I said I did consulted, Chair.

**CHAIRPERSON**: Yes, yes. But what I am ...[intervenes]

**MS MUTHAMBI**: Yes.

**CHAIRPERSON**: I am raising a different point. I am raising the point of whether these are the people that you did not – whose identities you did not disclose.

**MS MUTHAMBI**: Chairperson...

**CHAIRPERSON**: Yes?

10 **MS MUTHAMBI**: I think on this one I will say no. I am saying no because also the same paragraph, Chair, 59 – if I am to take you through it, Chair?

**CHAIRPERSON**: Yes. I am at paragraph 59.

**MS MUTHAMBI**: It says:

20 “In the policy development process the minister may, if she so wishes, consult some interested person or experts on broadcasting digital migration policy. Broadly speaking, the minister may seek more enlightenment on any aspects of policy formulation exercised beyond the parameters of the prescribed consultative process.”

And then what I want us to underline as well that:

“The legislation neither forbids nor regulates her zest for clarification for additional information from whomsoever it might be beneficially sourced. This

is so because some latitude or reasonable measure of flexibility ought to be allowed in the exercise of executive authority, without effectively undermining the values of openness and accountability and this extends to the development of policy although she was under no obligation to consult.”

**CHAIRPERSON:** What would you say to the proposition that when regard is had to all the facts in relation to this litigation that culminated in this judgment that when regard  
10 is had to all of that, the probabilities are that the parties whose identities you did not disclose were the parties to whom you sent the emails that we have dealt with this evening and that you did not disclose their identities because you knew that you were not supposed to share that information with them and this was not ...[intervenes]

**MS MUTHAMBI:** That, Chairperson ...[intervenes]

**CHAIRPERSON:** And that the reason why you did not disclose their identity was because you knew that you were not supposed to share the information you sent to them  
20 with them and it was not part of a transparent stakeholder engagement or consultation. What would you say such a proposition?

**MS MUTHAMBI:** I will disagree with you, Chairperson.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** I disagree with you, Chairperson, in that

respect.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** And the big issue, I will say to what is being said...

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** Because also those parties that you have mentioned, the owned a TV station, they were entitled to be consulted, Chairperson.

**CHAIRPERSON:** Okay. So if you say that the persons to  
10 whom you sent these emails are not the persons whose identities you were not prepared to disclose, who then were the parties whose identities you were not prepared to disclose at the time that you had consulted?

**MS MUTHAMBI:** I never said that, Chairperson, I was not prepared to disclose the entity, Chair.

**CHAIRPERSON:** Mr Myburgh?

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

**MS MUTHAMBI:** And I do not know that.

**ADV MYBURGH SC:** Perhaps I could just take you to the  
20 concluding paragraph of what I want to deal with at paragraph 38 of Ms Fick's affidavit. She says:

“The communications described above between Muthambi, Mr Chawla and Tony Gupta amounted to an abuse of her office. There is no reasonable explanation for communications of this nature

between the Minister of Communication and members of the Gupta group who controlled a television station subject to a regulatory jurisdiction.”

What do you say to that?

**MS MUTHAMBI:** You see, Chairperson, I have not been made aware that the brought the TV through irregularity, that the issues that also -this also is misplaced based on the fact that the regulatory jurisdiction lies with the  
10 Independent Communication Authority of South Africa called ICASA, so I would then – I disagree with this paragraph, Chair.

**CHAIRPERSON:** Okay.

**MS MUTHAMBI:** Because at the end of the day, I think – yes, I really disagree. And then there is one issue that I did not comment on with regard to the ANC, despite being the ANC policy, this matter being the ANC policy.

**CHAIRPERSON:** Yes?

**MS MUTHAMBI:** Chairperson, on this matter, I even –  
20 because this is an issue wherein there was a grouping of people, I must say it now, who had the said interest on these matters and then I am also a member of the ANC.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** I want to say this. I have went through the ranks.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** I have attended most of the ANC conferences that dealt with this matter, more so prior to me being the Minister, I served in the Communication Portfolio Committee, Chair.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** So this issue – you know how ANC matters are processed, Chair, it can be a subcommittee of the NEC, say for instance that, but then when we are  
10 subcommittee of the NEC, once we do the work we must get it processed through the channels. In this case it goes to the NWC, the it is the NEC for a decision. When I was confronted with this issue I demanded also a hearing with the top six of the ANC because I had looked around, I could not find anything in the ANC proviso that says do this, you must encrypt.

**CHAIRPERSON:** Yes.

**MS MUTHAMBI:** So when I went there, I asked – I demanded a hearing to say this is my thing, can somebody  
20 share with me that decision because I will share with you again post promulgation of the policy, we - there was meeting that we attended at Luthuli House where we were asked to explain what have we done on this matter and then in that meeting of that subcommittee we emphasised the issue that this proposed policy was presented to the

officials of the ANC during the month of February 2015.

We further responded and provided the challenges, we had the problem with the hybrid model as proposed then by Minister Carrim in 2013 and indicated to that meeting that it is not desirable for South Africa to adopt an encrypted DGT model since it has serious implications on the sovereignty of the country, security of the country, the cost of preparing such a step as well as the cost of maintenance of the system.

10           Then we had that meeting and then in the end of that meeting we were asked to even prepare the talking points for the members and then we also then in that meeting also provided a briefing where we were in the implementation of the project, also to indicate that at the time the project had reached a critical stage wherein at that particular time we were awaiting to receive the set of boxes from manufacturers..

20           So that is where we were trying to share this issue to say at that time and when the time – it is the time when eTV took us to the High Court in Pretoria and then it was indicated that yes, we are on course and we believe what we have done is correct and hence the High Court of Pretoria ruled in our favour to that effect and at time then we were implementing the projects until that rule and, like I said, at the end of the day we managed to migrate the



country from analogue to digital, but this is what happened, Chairperson.

**CHAIRPERSON:** Thank you. Mr Myburgh?

**ADV MYBURGH SC:** We have no further questions, thank you, Chairperson.

**CHAIRPERSON:** Okay. Thank you very much, Ms Muthambi, we are done. Thank you for availing yourself and thank you to your attorney, Mr Mantsha. Thank you very much, you are now excused.

10 **MR MANTSHA:** Thank you, Chairperson.

**CHAIRPERSON:** Thank you, Mr Mantsha.

**MR MANTSHA:** Thank you.

**CHAIRPERSON:** Thank you, Mr Myburgh, I see you are without any junior anymore, it is Friday evening. Thank you to the staff, thank you to the technicians enabling us to sit until this time. We will now adjourn. For the benefit of the public I can indicate that on Monday I will hear evidence during the day session relating to money flows. Mr Holden will give evidence and in the evening session I  
20 will hear the evidence of Mr Anoj Singh in regard to the Eskom work stream.

We adjourn.

**INQUIRY ADJOURNS TO 24 MAY 2021**