

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

**25 MAY 2021**

**DAY 402**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 25 MAY 2021**

**CHAIRPERSON:** Good morning Ms Hofmeyr, good morning everybody.

**ADV HOFMEYR:** Good morning Chair.

**CHAIRPERSON:** Yes. Before we start I just need to make one announcement or two. The one the next appearance before the commission of the President of the Republic; President Ramaphosa will be on the 31<sup>st</sup> of May and on the 1<sup>st</sup> of June. Those are the dates that I have determined so I  
10 announce them so that the public knows.

He will appear in his capacity as the President of the Country but as everybody will remember there will still be some issues that he will need to deal with which he could not – could not be dealt with when he appeared before the commission in his capacity as President of the ANC.

So he will deal with those issues and then he will give his evidence and be questioned in his capacity as President of the Country.

I also wish to indicate that it is the intention of the  
20 commission that he – his appearance will for all intents and purposes subject to one or two qualifications be the last appearance or will mark the last witness to give oral evidence before the commission next week.

The commission is trying its best to wrap up all oral evidence – I said that will be subject to one or two

qualifications. I will deal with those qualifications at some stage next week after he has completed his evidence. So I will do so either the following day or within two days or so after he has given his evidence.

The commission will still – or is mindful of the fact that there are some applications for leave to cross-examine that have not been disposed of as yet and these will be given due consideration and where the interests of the integrity of the work of the commission and the interests of  
10 all concerned indicate that some exceptions must be made and some witness must still be called that will be looked at but on the whole the commission wishes to wrap up its oral evidence because by end of his evidence it will have covered all the important evidence relating to the matters that were included in the Public Protector's Report that gave rise to this commission.

Everybody will recall that some time ago I indicated that in order for the commission to be able to complete its work within the time that we are looking at or even last year  
20 we would focus on what I said where the Public Protector issues that is those issues that the Public Protector had included in her report as issues that this commission should investigate as opposed to other issues that fall within the Terms of Reference of the commission but all outside of those Public Protector issues.

So the issue of applications for leave to cross-examine that have not been disposed of is receiving attention and where it is necessary to accommodate specific cases proper consideration will be given to that but for all intents and purposes the commission is looking at wrapping up the hearing of oral evidence next week.

There may be a few individuals that in my discretion I might decide might be required to either furnish affidavits later in June or appear briefly to deal with certain matters  
10 where in my view it is important for the work of the commission that those individuals be covered.

So I thought that I must mention this and of course I must indicate that we had initially contemplated that the hearing of oral evidence would be completed by end of March that is why in the application that I made to the High Court for the extension of the Term of of – Term of the Commission from the end of March to the end of June I had indicated that the months of April, May and June would be used for the preparation of the report.

20 That assessment had been made in good faith and everyone knows how the commission has been working extremely hard since the second half of last year holding double sessions, days sessions and evening sessions to try and finish its work. But we did not succeed in having oral evidence completed by end of March despite our best

efforts.

And everyone knows that if we had ended the hearing of oral evidence by end of March there is very important evidence that has been led in April and May which would have been left out which the nation needed to hear and that includes some evidence relating to the State Security Agency. But it also includes evidence by some of the high ranking officials of the SOE's in respect of whom there have been serious allegations of corruption and state  
10 capture.

So it was important that those high ranking officials that time be given – be allocated for them to complete their evidence but by the end of May by the time the President completes his evidence we will have finalised the oral evidence relating to senior executives and board members of various SOE's that have been alleged to have been looted as part of state capture.

So I thought it is necessary that I explain that. It will be necessary to apply to the High Court for a limited  
20 extension but that will now be for the preparation of the report because during the two months April and May although a lot of work in regard to the analysis and of evidence has been going on behind the scenes that will not enable us to have the report by end of June.

So it will be necessary to apply for a very limited

extension for the purpose of the preparation of the report.

But as I say a lot of work has been going on behind the scenes aimed at the facilitation of the preparation of that.

That is the end of the announcement. Okay Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair. Chair we convened today for the hearing in order to receive further evidence from Ms Duduzile Myeni.

10           You will recall Chair that we ended her last evidence on Friday the 6<sup>th</sup> of November with two outstanding remaining matters.

The first of those was the need for her to be questioned by my learned friend Mr Seleka who is working on the Eskom stream's evidence and that was particularly in relation to Ms Myeni's alleged involvement in certain meetings in 2015 related to the suspension of Eskom executives.

20           We had run out of time in the three days that had been scheduled for her evidence and so that topic for questioning remained to stand over for another date.

Chair the second aspect that remained standing over at the conclusion of Ms Myeni's evidence on the last occasion was the need for consideration to be given to her invitation of the privilege against self-incrimination

throughout the course of her three days of evidence. And Chair I would just like with your leave to – to remind the public and everyone here today precisely how you had ended the evidence of Ms Myeni on this particular point.

And Chair this is a reference to the transcript of the 6<sup>th</sup> of November 2020's hearing. It commences at page 258 from line 21. Chair what you said there and I quote is:

10           “The other point is the one that I mentioned earlier namely that there is no time now and it is not convenient really to look at Ms Myeni's entire evidence and see which questions she may have justifiably invoked the privilege not to incriminate herself and which ones in respect of which one she might not have done so justifiably or correctly.”

20           Chair you then requested that the legal team in particular consider the transcript of the evidence over those three days you indicated that you would do so as well and then we would revisit the question of whether the privilege had been justifiably invoked.

          What happened after the conclusion of the evidence on the 6<sup>th</sup> of November is that the legal team of the commission did that exercise. We considered the transcript closely. We went back to the references that were actually



made throughout her evidence when on the basis of the reasons she had given for not answering questions I made the submission that the privilege was being abused.

We went back to those – we distilled what we said were the questions that had not been legitimately refused to be answered on the basis of an invocation of the privilege. And we sent certain legal submissions to Ms Myeni at the beginning of April this year setting out the position of the legal team, setting out the fact, cataloguing through the  
10 transcript where we said that the privilege had been abused and what submissions we would make to this commission in the light of that alleged and submitted abuse.

Ms Myeni was offered an opportunity to respond to those submissions but none came in. None came in until about the middle of May and in the middle of May Chair you directed that she should return to the commission both to deal with this outstanding issue and the Eskom evidence.

And then through a change of attorneys about which we were notified only last Monday arrangements were made  
20 to provide Ms Myeni again with the submissions from the legal team and on Friday last week we received a response to those submissions from her current attorneys.

Now in the course of those submissions to the commission Ms Myeni concluded through her attorney her submissions with a request and it was a request in the

following terms.

Let me just be clear. My learned friend and I may need to get into this debate of the merits of the submissions but just in summary the submissions deny that Ms Myeni abused the privilege, deal with certain legal principles, make some comments about retrospectivity of the constitutional court's decision in January – we will get into that if we need to. But then it concludes in the penultimate paragraph with the following:

10 “We there – I think it is supposed to be therefor request that the commission stay execution of the summons for our client to appear on the 25<sup>th</sup> of May 2021 as we need to first have the benefit of you responses to all the above before advising our client accordingly.”

Now that is a reference to the summons that was issued by this commission in terms of the Commission's Act.

Chair you no doubt will be well aware and I am sure the public by now will be well aware that it is a criminal offence not to appear when there has been service of  
20 summons without sufficient cause.

Ms Myeni has not appeared today. She indicates recognition of receipt of the summons. It was a considerable effort for the commission to ensure that summons was effected because repeated efforts to engage Ms Myeni both by the sheriff and the commission came to

naught but eventually there was an affixing of the summons at her property which constitutes good service under the Commission's Act read with the Rules of Court but I do not understand there to be any debate that that summons was received. It required Ms Myeni to be present today. She is not present and I understand from my learned friend that he will now seek to move a postponement application.

So I – with your leave Chair I propose that we allow my learned friend to move it. I have indicated to my  
10 learned friend and to you Chair in chambers that that postponement application will be opposed by the legal team of the commission and so with your leave if I may be permitted to ask my learned friend to move the application?

**CHAIRPERSON:** Yes. Mr Buthelezi you may – somebody must just sanitise if you are going to be using the podium.

**ADV BUTHELEZI:** Good morning Chair.

**CHAIRPERSON:** Good morning Mr Buthelezi.

**ADV BUTHELEZI:** Thank you Chair. As my learned friend has prefaced Chair I appear before you this morning to  
20 request a postponement of the appearance of Ms Myeni.

And the reasons behind Chair I am at first at pains to stress that it is not an indication of reluctance on our part and ultimately the issue can be reduced to a breakdown in communication.

Now Chair where we start with this issue.

**CHAIRPERSON:** Of course the – the first thing is for you to indicate whether you confirm that she is not here despite having been served with a summons that required her to be here this morning.

**ADV BUTHELEZI:** That much is true Chair I confirm.

**CHAIRPERSON:** Yes. And

**ADV BUTHELEZI:** Sorry Chair.

**CHAIRPERSON:** And the – is the reason why she is not here the same reason why you asked for a postponement  
10 because in terms of sequence I should first be satisfied that this is not defiance because the question may arise as to why should I even hear an application by her for a postponement when she is defiance of the summons and of this commission because one would expect that if she has a legitimate reason for a postponement she would appear and say I am here in compliance with the summons but I am applying for a postponement for the following reason.

**ADV BUTHELEZI:** Indeed so Chair.

**CHAIRPERSON:** You can deal with that.

20 **ADV BUTHELEZI:** I would – in dealing with that I will go to the paragraph that Ms Hofmeyr....

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** Quoted from the letter that was delivered on Friday 21<sup>st</sup>.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** To which reads as follows:

“We therefore request that the commission stay execution of the summons for our client to appear on the 25<sup>th</sup> of May 2021 as we need to first have the benefit of your responses to all the above before advising our client accordingly.”

Now Chair I do not know whether it is fair to the attorney but the commission did respond around after 9 pm  
10 on Friday evening and I have shown this to Ms Hofmeyr. The attorney response sent me a response at 10 pm last night saying he only saw this email at 4 pm

Now that is not for the commission to rectify or it is no fault of the commission, the commission did respond. What subsequently happened with the attorney not picking up or not communicating to the client – the client was under the bona fide impression that the request for a stay of execution of the summons pending the response from the commission would have then been accepted or no response  
20 had come through.

So to deal with your points of defiance Chair I point out to you that first it was requested of the commission to say we have a certain view with regards to the correspondence that you sent.

Now at the start of that letter it goes on to – it starts

as follows: It says:

“We place ourselves as records – we place ourselves as attorneys of record in the matter concerning Ms Myeni as she had seized being represented by Mabusa Attorneys since early April.”

Further evidence of that Chair is confirmed by the fact that how this correspondence now for this appearance got to Ms Myeni was through the commission contacting her directly after not receiving any responses from Mabusa Attorneys and the people at the commission were aware that they had to then contact her directly and she then had to instruct new attorneys to pursue the matter.

So prior to April – to be contacted but – being contacted by the commission she was not aware and the letter does say:

“As a result of the aforesaid Ms Myeni did not receive correspondence of 1 April mentioned in your letter and has only come to know of the commission’s attempts to reach her in correspondence that was directly to her.”

And it is in that direct correspondence Chair that she took the steps and then appointed a new attorney through an unfortunate circumstance as I will illustrate – as I have stated Chair.

We – she and the attorney were under the

impression that the commission had not responded and ..

**CHAIRPERSON:** In which case they would – they should have taken the attitude that the summons stands and therefore she should appear.

**ADV BUTHELEZI:** Indeed so Chair. Correctly so and I advised accordingly yesterday and I say look regardless of a non-response you need to take the necessary steps to make sure that we do get here.

And it was only then that I think a concerted effort  
10 for the emails you can trace or somehow found maybe it could have been lost in a heap of emails from an unknown address that it was actually discovered that the commission did respond.

But due to time constraints and as I showed Ms Hofmeyr that he says he only picked up the email at 4 pm yesterday and given that Ms Myeni is not stationed in Gauteng Chair she was then of the view that look can you approach the commission on my behalf and request a solution to say how do we facilitate the appearance.

20 In other words is there still a prospect for this to be heard online or to be deferred to another date either later in the week or early next week or whatever workable solutions. But what the one thing that is absent from all of this is her reluctance to appear Chair.

So it may inconvenience the commission and we

apologise Chair and it may cause consternation but in as far as it seeks to imply that there is defiance of the Chair is summonsed I submit Chair that there is none. There is no such intention and I think we have indicated by the last paragraph that says:

“We request a stay of execution.”

In other words we did not take a point that says we just will not appear because we have written you a letter. And in concluding that letter we submit that pending your  
10 response so that we know how to advise client accordingly.

So in as far as intent not to comply Chair I think that test is not met to say because I think there was intent and in as much as we may want to impute that defiance to the client Chair I think there is some level of evidence that removes Culper from her or maliciousness to that extent.

Now Ms Hofmeyr had raised certain points Chair and I need to take these points because she glossed over them.

The first one is that client was advised about the invocation of the privilege against self-incrimination. And  
20 we took the view that the tests set by the Concourt to the effect that would this privilege be applicable in criminal proceedings – would this be a privilege that you would be able to invoke in criminal proceedings yes or no and I think that is the test.

And we relied on the submission that we have



already in all matters referred to SAA been referred to criminal investigation and we say that the prospect then of self-incrimination is triggered by a court order it is – in the abstract

Apart from it not being in the abstract we also read the Con Court...

**CHAIRPERSON:** I – I think let us separate issues.

**ADV BUTHELEZI:** Yes Chair.

10 **CHAIRPERSON:** Because that – that belongs to another phase.

**ADV BUTHELEZI:** Yes Chair.

**CHAIRPERSON:** Ja. Let us deal with the phase where we are. Is the position that if I direct that your client is – her evidence via Zoom or whatever link she is ready to comply with that?

**ADV BUTHELEZI:** She indeed Chair. The only issue would then become a matter organising it for when – but...

**CHAIRPERSON:** Well I am talking about.

**ADV BUTHELEZI:** Today.

20 **CHAIRPERSON:** Today, today I am not talking about another day. I am talking about today.

**ADV BUTHELEZI:** I would have to take direct instructions on that point because last my discussion with the attorney last night we did not have a clear indication of the state of readiness for client to testify in terms of one receiving those

files whether she would be able to access whatever documents that the commission would need her to work through.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** That is the only logistical challenge that there may be Chair.

**CHAIRPERSON:** Ja. Because if – if from her side she – she did not mean to not to cooperate with the commission and did not mean to defy one could expect that because she  
10 knew that the summons required her to be here. She may be available if I approve that she be connected via Zoom or whatever link so that we can proceed because otherwise the time might be lost. So maybe I should adjourn for you to take instructions on that because depending on what the answer is, it may be that some – we might not need to be detained too long on certain issues.

Of course, if we went that route, the question of her none appearance here would be one thing but if she is available and arrangements are made and we are able to  
20 continue that might be another issue. So, but if the position is that she is not available then one must take it from there. Ms Hofmeyr ...[intervenes]

**MR BUTHELEZI:** I just want ...[intervenes]

**CHAIRPERSON:** ...what do you think of that suggestion? I know she – he has not finished, I think. What do you think

about a short adjournment to - for Mr Buthelezi to get instructions?

**ADV KATE HOFMEYR:** [No audible reply] [microphone not switched on]

**CHAIRPERSON:** Ja, I think

**ADV KATE HOFMEYR:** Thank you so much.

**CHAIRPERSON:** H'm.

**ADV KATE HOFMEYR:** I feel as though I am in some sort of studio.

10 **CHAIRPERSON:** [laughs]

**ADV KATE HOFMEYR:** I do apologise.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** Chair, the Legal Team's position is that such an arrangement is unlikely to work.

**CHAIRPERSON:** H'm?

**ADV KATE HOFMEYR:** And the reason I say that, Chair, is that for the better part of ten days we have been seeking to engage with Ms Myeni directly to ensure that she has the bundles that she requires in order to give evidence  
20 today.

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

**ADV KATE HOFMEYR:** There are repeated screen grabs of every effort multiple members of this Commission have made to contact her to say: There is a link that you need to download in order to get the documents. There has not

been a single response from Ms Myeni to those efforts.

**CHAIRPERSON:** H'm.

**ADV KATE HOFMEYR:** So it is impossible, I submit, for Ms Myeni's evidence today to take place via Zoom because she has not a single document that would be required for this evidence to be conducted. The assumption, because she made no effort to respond to one of those messages, was that she would – understand her legal obligations – appear today and then would be given hard copies of the  
10 very bundles that we have made efforts for the greater part of ten days to give her access to.

So, Chair my submission is that a Zoom hearing today will not work. She does not have the documents that she needs in order for evidence to be conducted. And as my learned friend, Mr Seleka, will, no doubt, inform you, he had asked me to address this at the beginning today. The efforts of the Eskom Team to have her receive documents from them start as far back as August of last year.

20 There has never been any response from Ms Myeni to the efforts to get her the statements from Mr Linnell before Parliament so that she can consider it and how it differs from the statement that she gave Parliament in the Eskom Inquiry about what happened at those meetings. Chair, at no point has there been any effort on the part of Ms Myeni just to receive the documents from

the Commission so that this evidence could take place, meaningfully, today.

So, Chair my submission is. I would like to respond to my learned friend. I would like to deal with the question of defiance because a Zoom hearing is not going to work on the basis of the facts as I know them.

**CHAIRPERSON:** But she does not have the documents?

**ADV KATE HOFMEYR:** No.

**CHAIRPERSON:** H'm. Mr Buthelezi, what do you say to  
10 that?

**MR BUTHELEZI:** Well, my only point was to say, Chair, if we are to consider an online hearing today, the issue would arise in terms of client's documents. So in as much as this may not be possible today, I do not rule out the possibility of it being possible maybe in the second half of the day after lunch if the link is made available and means are made to expedite.

Even if we adjourn by two hours, we could get some work done. If there are links and there is somebody  
20 there to assist her with the technology of accessing the documents, we could make a bit of progress Chairperson...

**CHAIRPERSON:** I know that the matter relating to Eskom is a narrow one, the Eskom matter. Well, let us do this. Let me adjourn now for something like ten minutes before Ms Hofmeyr can respond, for you to take instructions of

what is possible and what is not possible from her side and from your side as her legal team and then when we come back you report to me what is possible and what is not possible.

**MR BUTHELEZI**: Thank you, Chair.

**CHAIRPERSON**: And then I will hear Ms Hofmeyr and then we take it from there.

**MR BUTHELEZI**: Thank you, Chair.

**CHAIRPERSON**: But do make it quite clear that her none  
10 appearance this morning here is viewed in a very serious light.

**MR BUTHELEZI**: Thank you, Chair.

**CHAIRPERSON**: We adjourn.

### **INQUIRY ADJOURNS**

### **INQUIRY RESUMES**

**CHAIRPERSON**: Yes, Ms Hofmeyr?

**ADV HOFMEYR**: Thank you, Chair. Apologies, my page  
just dropped. I had a conversation with my learned friend  
over the break. He has managed to make contact with Ms  
20 Myeni. Ms Myeni was on her way to a family engagement  
in Port Shepstone so she is now making efforts to turn  
around but there is some uncertainty as to when she will  
get back and if to the attorney's office and what can be  
done. So where I have left things with my learned friend is  
I wanted to just update you that that is where we are.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** Ms Myeni was on her way to a family engagement and she is now turning around because she received a call from my learned friend, Mr Buthelezi, but there is uncertainty. So I suggested to Mr Buthelezi I continue to make my submissions in response so we do not lose more time.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** And then maybe we can get an update a  
10 bit later.

**CHAIRPERSON:** Okay, alright, please do.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** Well, before you do that I think I had a question for Mr Buthelezi. Maybe if his mic works he can respond from where he is.

**ADV BUTHELEZI:** Thank you, Chair.

**CHAIRPERSON:** It relates to the other phase that you were touching on and I said let us leave that for later. Is your position that as far as the invocation of the privilege  
20 against self-information, is your position that:

1. It was justifiably properly invoked in regard to every question that has been raised here by the Commission's legal team in their written submissions?
2. Or is the position that you still want to – you or

your client want to provide grounds of justification for invoking it or is the position that the reference to the High Court decision referring some matter to the NPA for investigation is the justification?

What is the position?

**ADV BUTHELEZI:** Thank you, Chair. To answer you directly, the justification is the judgment of the Pretoria High Court. We submit that the privilege has been properly exercised. Now in the response that we gave to the Commission last week, we had received a set of questions that we were asked to respond to and we felt that those questions in the main fell under the ambit of the set of questions where we would invoke the privilege anyway or had already invoked the privilege and our interpretation thereafter would say that even if we are wrong this interpretation of the ConCourt judgment, in as far as the Commission is concerned, we were of the view that the Constitutional Court has not said the judgment finds retrospective of capability.

Now Ms Hofmeyr raised the point earlier to say you had a created a proviso that said that the Commission would go back and review the evidence in its entirety but if we look at the entirety of the questions that subsequently followed, many of them were a repeat of the questions



where the privilege had been invoked and many of the questions covered pretty much the same areas where we had advised that these past the test of where the privilege can be invoked.

**CHAIRPERSON:** Ja. Okay, alright. Ms Hofmeyr?

**ADV HOFMEYR:** Thank you, Chair. Chair, you commenced with a question when my learned friend began moving the postponement application and, with respect, I want to submit it was the right question. We may not even  
10 be in the world of a postponement if Ms Myeni is in defiance of a summons served by this Commission.

Chair, my submissions this morning to you will be that Ms Myeni is indeed in defiance of a summons and that is a criminal offence.

Chair, the reasons I say so are the following. First, there is no affidavit before this Commission from Ms Myeni, it is trite that any explanation pursuant to a request for a postponement must be done on oath. It must be evidence. We have not even been favoured with an affidavit from Ms  
20 Myeni explaining her position. That is the first point.

The second point is that the only explanation we have been given from the bar by my learned friend is that when through her attorneys she asked on Friday for a summons to be stayed and she did not receive a response, she thought she could not come today.

Chair, that defies, with respect, even logic because when the summons is in place and the compulsion power of this Commission has been exercised and you motivate for it to be stayed and, according to evidence from the bar, you receive no response, it is not sufficient cause for you then just simply not to appear, the assumption must be the summons stands. There has to be another exercise, Chair, by you, you are the functionary empowered to issue summons to compel evidence before this Commission. On  
10 the version we got from the bar today, Ms Myeni knew nothing of a further decision having been made on your part which would be the only basis for her not to appear.

Chair, we then heard – this is the third reason I say that she has committed a criminal offence – from her counsel this morning, from the bar, that yesterday afternoon he advised her that she must be present today. We have no affidavit, we have an approach to a request for a stay that makes no sense at its lowest and we have from my learned friend an indication that legal advice was given  
20 to her to be present and she is not present.

**ADV BUTHELEZI:** Sorry, Chair, I object to that submission?

**CHAIRPERSON:** H'm?

**ADV BUTHELEZI:** I am objecting to the last submission by Ms Hofmeyr.

**CHAIRPERSON:** I think I will give you a chance when she is done to respond.

**ADV BUTHELEZI:** Thank you.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** And then the fourth indicator is again that we have been told Ms Myeni this morning was en-route to a family engagement. Chair, there is no respect in which the summons that this Commission issued for her to appear today has been taken seriously by Ms Myeni. If it  
10 is so that she is on her way or was on her way until she received the call from my learned friend to a family engagement in Port Shepstone. Chair, this is not, unfortunately ...[intervenes]

**CHAIRPERSON:** Of course, in addition to the point you make or in substantiation of this, when you instruct your legal team to apply for a postponement of your appearance before the Commission or before a court, when there is a summons, one, you should be there yourself unless the reason for the application for a postponement is one that  
20 prevents you from being there, for example, if you are sick, okay? But if you are not sick and we have not been told she is sick, if you are not sick, even if you thought that it is not necessary for you to be there at the time your counsel makes the application, you needed to say what if my application is refused because, in that case, I must be

there. If she is on her way to a family meeting, that is not - that does not reflect the mind of somebody who genuinely sought a postponement because if you genuinely seek a postponement you must leave room for the possibility that your application may be refused in which case you will be required to be there.

**ADV HOFMEYR:** Indeed, Chair. If not, you have taken the postponement for yourself as my learned friend Mr Seleka said to me over the adjournment. Chair, there is a  
10 further matter...[intervenes]

**CHAIRPERSON:** So it means in that situation you are not waiting for a decision on your postponement application.

**ADV HOFMEYR:** H'm, you have decided.

**CHAIRPERSON:** And the question arises, in your mind what you intend is going to happen if your application is dismissed, do you have in mind that you will still comply or do you have in mind that you will not comply anyway? So, therefore, it does not matter what the decision is because you do not intend complying if your postponement  
20 application is refused.

**ADV HOFMEYR:** Chair, it is our submission that that is the that that is the quintessential example of a person who does not appear without cause. Ms Myeni has not appeared today and there is no sufficient cause for that nonappearance other than the explanation that we have

been given which amounts to nothing more than a postponement having been taken by Ms Myeni.

And, Chair, just on that point, we are dealing with defiance, we are not dealing with postponements but I may just give you the language of the Constitutional Court in the case of Psychological Society v Qwelane, that was a case dealing with postponement and I am reading from paragraph of the judgment.

“Postponements are not merely for the taking.”

10 Well, today the postponement has been taken.

Chair, there is a further matter that I do believe I need to address in the context of the defiance question and that is an issue that goes back to the approach that Ms Myeni has taken generally to accountability for matters that the Commission is concerned with and the reason I go there, Chair, is that the very matter that she was going to be coming today to deal with, the outstanding matter of Eskom, was a matter that was of course investigated by an inquiry by the Portfolio Committee of Public Enterprises in  
20 parliament and there were efforts there, Chair, that were made to have Ms Myeni come and account to the portfolio committee and there is a commonality between what happened and what has happened today which is the final submission on which I say there can be no doubt that Ms Myeni’s conduct today is not about a genuine attempt to

make arrangements, to be accountable and give a version. It is part of a pattern of steadfast resistance to be accountable to those who require answers about what has happened within our country and, Chair, for that purpose I have a short bundle of documents that I would just like to hand in. Chair, we have just numbered them, it was not certain whether I would need to make reference to them today so I am going to propose that we enter them as EXHIBIT DD34C. If I could just beg leave to hand up  
10 through your registrar.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** And then just make available a copy to my learned friend.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Chair, if we can enter this document as EXHIBIT DD34C, it will then just next in the bundle of documents related to Ms Myeni's evidence.

**CHAIRPERSON:** Exhibit DD?

**ADV HOFMEYR:** 34C for cat.

20 **CHAIRPERSON:** 34C.

**ADV HOFMEYR:** And it runs from page 1 to 12.

**CHAIRPERSON:** Should we – oh, the second document is a parliamentary summons.

**ADV HOFMEYR:** Correct.

**CHAIRPERSON:** And then there is – should we make

them (i), (ii), (iii)?

**ADV HOFMEYR:** Yes, we can certainly do that and then I will produce an index just that will identify each of them, Chair, because as you have already seen they are different documents but they relate to the theme of the efforts that parliament made to summons Ms Myeni to the inquiry previously.

**CHAIRPERSON:** So the top one, let us make it EXHIBIT DD34C(i).

10 **ADV HOFMEYR:** Yes.

**CHAIRPERSON:** And then next one will be EXHIBIT DD34C(ii).

**ADV HOFMEYR:** As we go through it, Chair, I will give the relevant necessary roman numerals.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Chair, just to locate us, if we may?

**CHAIRPERSON:** Yes.

20 **ADV HOFMEYR:** What happened was that the Public Enterprises Inquiry into Eskom took place towards the end of 2017 and early 2018 and there had been an effort to originally around February where Ms Myeni had been invited to attend the ...[intervenes]

**CHAIRPERSON:** I seem to remember that she did not pitch at some stage.

**ADV HOFMEYR:** I beg your pardon, Chair?

**CHAIRPERSON:** I seem to remember that she did not appear in parliament when she was required to appear.

**ADV HOFMEYR:** Yes, that is what I want to take, Chair, with your leave you through today.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** You see, there was originally just an invitation for her to attend and that was an invitation for her to attend on the 28 February 2018. She did not attend.

**CHAIRPERSON:** Yes.

10 **ADV HOFMEYR:** She gave an explanation for having done so. I think she communicated on the morning of that day with the relevant functionaries.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And thereafter she provided a statement.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** A few days later on the 5 March 2018 but parliament and the portfolio committee – well, let us be clear, the Portfolio Committee on Public Enterprises, did not in its wisdom regard the statement as sufficient and  
20 therefore decided that they would exercise their summoning power which is a power that they have under Section 14 of the Powers, Privileges and Immunities Act of Parliament and so you will see the document at (ii) of bundle DD34C is the summons that was issued.

**CHAIRPERSON:** Yes. So she had to be summoned even



in parliament.

**ADV HOFMEYR:** Even in parliament, indeed. And it required her attendance on the 11 April 2018. Now if you go back a page to the first page of this document, (i), DD34C(i), that is the return of service that was obtained from the sheriff when he endeavoured to effect service and what you will see there is that the sheriff says:

10 “I certified that on the 4 April 2018 at 5.55 in the evening I served the summons to appear for the National Assembly Portfolio Committee on Public Enterprises on the defendant, Ms Dudu Ms Myeni at her place of residence, 102 Kolsterkring Meer-en-See, Richard’s Bay.”

I just pause there, that is the same address that we used for service.

“I affixed a true copy of the process to which appears to be the main outer gate.”

And then a reason for a fixing is given:

20 “Mr Eric, security guard at the given address refused to accept service of the said document advising that the defendant was not there. All the house lights were on but he refused to advise me who is in the house.”

So this is what came back to parliament, Chair. And in the Aviation team’s investigations over the last two years, one

of the topics that we thought required further exploration was, well, what happened? There was a summons, it was served by Ms Myeni never appeared before the portfolio committee and we engaged with parliament and the portfolio committee in our investigations. It never became pertinent before today to refer to this because on the last occasion albeit that we found out the day before that we had to make zoom arrangement, Ms Myeni did appear. But today the significance of this prioritizing(?) by a body seeking accountability to have Ms Myeni come before it in my submission does become relevant.

So they get the return of service but Ms Myeni does not appear on the 11 April 2018 as required. So what happens thereafter, if you go to page 4, Chair, which will be (iii) of DD34C, is a decision is taken by the Chairperson of the portfolio committee on Public Enterprises that is referred to in a letter to the Speaker of the National Assembly, Ms Mbete. What it says, in essence, is that:

“On the 17 April 2018...”

So that is about six days after the scheduled appearance.

“...the Portfolio Committee on Public Enterprises met to receive a report on the service of summons on Messrs Gupta, Mr Duduzane Zuma and Ms Dudu Myeni. Copies are attached. The committee was informed that the sheriff could not serve the

respective summons and Messrs Gupta and Mr Duduzane Zuma as no none was resident at their last known addresses.”

And then they ask for legal – they are going to seek legal advice about alternative methods of serving summons. But at (iii) the following is recorded:

10 “The sheriff served the summons on Ms Dudu Myeni at her place of residence. However, Ms Myeni failed to appear before the committee. The committee resolved that criminal charges must be pursued against Ms Myeni in terms of the Powers, Privileges and Immunities of Parliament Act for her failure to honour the summons.”

Chair, that section is equivalent to the section in the Commissions Act in the Powers and Privileges Act it is Section 17 and it uses this “without sufficient cause” qualification to the nonappearance. But it is a criminal offence under that Act and this is the portfolio committee’s Chairperson advising the Speaker of parliament that the  
20 committee has resolved that criminal charges must be pursued.

Over the page is the response that came from the Speaker, Ms Mbete. Chair, there is unfortunately a blank page that has been inserted between 5 – so 6 actually does not need to be there but this will be (iv) of DD34C.

Chair, the essence of what Ms Mbete details in this letter is that – and I am in the second paragraph:

“After she received the correspondence from the Chairperson of the portfolio committee she requested a legal opinion on the question of whether authority would be competent, which authority would be competent to lay a complaint against a person who fails to comply. And she says that the advice found that the Act does not direct  
10 that any specific person must lay a complaint and went on to suggest that the Chairperson of the committee should do so. But notwithstanding the above...”

Ms Mbete goes on to say:

“...I should indicate that unless implicitly empowered by statute or the rules committees do not act independently of the assembly. Instead the rules and practices prescribed that committees must report and in cases that necessitate that remedial  
20 or other action be taken may make appropriate recommendations to the house which can then take informed decision.”

And she concludes by saying:

“As Speaker, I then convey or implement those decisions as the case may be and based on the

circumstances, I am of the view that the committee must...”

And then if we go over to 7.

“...detail the aforementioned matter in a report to the house with the recommendation which can then be duly acted upon.”

And then she deals with other witnesses.

Chair, the Commissioner sought to understand what happened after this, right? May 2018 the Speaker is  
10 advising the committee that it is the National Assembly that must make a decision on this matter and that there needs to be a report and a recommendation placed before it and so we followed up at what page 8 there, it will be document (v) about this very point and we asked for parliament to provide us with a copy of that report or recommendation that was made to explain if one was not, why it was not and unfortunately, the response that came back, which is at page 11 which will be document (vi) is the Commission had everything that parliament had and that was in its  
20 custody and so the conclusion that certainly, we submit, can be drawn for this is that no further steps were taken in respect of a recommendation or a report being placed before parliament.

**CHAIRPERSON:** So does it appear like Ms Mbete as the Speaker or National Assembly did not lay a complaint?

**ADV HOFMEYR:** Yes. We asked specifically for any complaint that was ever laid as well as our request to parliament.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** So no complaint was laid. There was a request for a report and a recommendation on next steps to be placed before parliament. No such thing happened.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And the consequence of all of that is  
10 that Ms Myeni was previously summonsed to appear before parliament, the committee of Public Enterprises took the view that her failure to attend constituted a criminal offence and a charge should be laid and nothing has become of that.

Chair, Ms Myeni attended here, yes, on the 4 November last year but as our submissions on the invitation of the privilege show, it is the submission of the legal team that she did so effectively with an intention to claim a right to silence, not meaningfully to engage with  
20 the questions that the Commission had for her and the weight of the allegations that had been presented in evidence before this Commission for her to answer and then today she, knowing of the summons, knowing that there had been no response after the request for you, Chair, to stay it, she does not attend. She makes other

arrangements and she effectively took the postponement for herself.

Chair, we submit that that is nothing less than a defiance of the summons of this Commission and that it is time for the law to take its course.

Chair, there is an important point that was also made in the judgment to which we will return with my learned friend, the judgment of the Constitutional Court in January of this year and it was a point about the equality  
10 of treatment of witnesses.

Witnesses who have previously sought postponements have done so on affidavit with medical certificate when they have not been able to come and then there is a cause. The legal had not opposed those postponement applications but today we were not favoured even with that, Chair.

**CHAIRPERSON:** Yes, of course, you know, I go back to my first question to Mr Buthelezi. Do I need to even hear the postponement application when the witness has not  
20 complied with the summons and the reason for noncompliance - the reason for a postponement is not the reason for noncompliance and is not because – is this not like being in contempt of an order of court? You cannot be in contempt of an order court and without purging your contemptuous conduct ask for other relief from the same

court.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** You must purge your contemptuous conduct first, you must comply with the order of court, then ask for whatever you are aggrieved about, but you cannot defy an order of court and then ask that Court for some relief at the same time.

**ADV HOFMEYR:** H'm.

**CHAIRPERSON:** You have got to comply and say I am  
10 complying because I know I am obliged to but now that I  
am here, here is my situation and I am asking for this or  
that relief. So there is that question.

**ADV HOFMEYR:** Indeed Chair. The final submission I wish to make is that what happened in Parliament in 2018 should with respect not be repeated.

**CHAIRPERSON:** H'm.

**ADV HOFMEYR:** There should be a criminal charge laid against Ms Myeni.

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

20 **ADV HOFMEYR:** And regrettably for the second time in this Commission's proceeding,

**CHAIRPERSON:** Of course, it is concerning if the National Assembly did not lay a complaint. What the policy would have done with it, we do not know. There – a complaint was laid by the Secretary of the Commission



against her some time back. I am not aware of what progress is being made of the policy in regard to it, maybe there is progress being made it is just better not being informed, ja.

**ADV HOFMEYR:** Chair, I can update you on that because we were also keen as the investigators to understand what had happened and we received an update after the most tireless efforts of my investigators sitting behind me who I think drove around the greater province for the last three  
10 days trying to track down the relevant investigating officers. The update is that a warning statement was taken from Ms Myeni last week and that is where it has gone, there is been a request for an affidavit from me, I am going to have to deal with that, because usually counsel cannot do that. They have received a full report, so we are going to follow it up, Chair but those are the facts on the 18<sup>th</sup> of May, after a complaint was laid in December of last year.

A warning statement was taken from Ms Myeni  
20 according to the account that we received yesterday and there is a request for an affidavit from me, but we will take that further.

**CHAIRPERSON:** So that must be - it was in November.

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** So it took quite some months just to get

the warning statement.

**ADV HOFMEYR:** Yes, Chair. Chair, if I may, just on one aspect, because I do not want to leave it and I do have my eye down the line to the recommendations of this Commission. Chair you signal to me a moment ago that what is concerning, is why Parliament may not have laid that complaint and I would just like to make one submission on that.

**CHAIRPERSON:** Yes, ja.

10 **ADV HOFMEYR:** When our team was looking at this, we were concerned about that fact as well and so we went back to the Powers and Privileges Act. The Powers and Privileges Act makes provision for service of a summons issued by Parliament, one of its committees, as was the case with Ms Myeni in one of two ways.

Its personal service on the individual concerned, or its service on a person appearing more than 18 years old at their place of residence. It does not include the third alternative of a fixing but sheriff's routinely affects and  
20 interestingly, our Commissions Act, which incorporates the High Court's rules allows affixing. That is how we successfully served a summons at Ms Myeni house earlier this week.

But the fact remains that the Powers and Privileges Act of Parliament only allows for those two methods and so

there is a potential for evasion by a witness. It is not clear that the affixing that the sheriff did in respect of that summons from Parliament was in fact a valid method of service under the Act and so that is what we made of the situation.

And it will be our recommendation that we will make to you in due course, that that provision of the Act be amended to add the third alternative, which is an alternative that deals with evasion. The rules of Court say  
10 it is when the sheriff believes that their efforts being made not to receive service that affixing is appropriate and just to close the gap, because if that was ever going to be the justification that there may have been an era in the service of the summons from Parliament we should not permit that to happen again, there must be a default position.

**CHAIRPERSON:** Of course, I did not understand but it is quite some time since I had a look at the documents relating to that matter in Parliament. I did not understand her to have said she was not aware that she – a summons  
20 had been issued for her to appear before Parliament because I think that if you are aware of the summons and what it says of its contents, it may well be that the fact that you became aware of the correct information through defective service does not avail you because you are aware, you know your obligations.

**CHAIRPERSON:** Chair, just to be clear, we do not know what is the response was but I did not want to miss the opportunity for this aspect, it is a law point but it is an important point in my submissions given where we are today, given that service of summonses by committees of Parliament who are wanting to make people accountable, and to summon them as witnesses to appear before them does not have this loophole in the future.

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

10 **ADV HOFMEYR:** Chair, those are our submissions.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** It is the position of the legal team that the offense has been committed under the Act and that a criminal charge should be laid against Ms Myeni. If I may handover to my learned friend, if there is anything in reply.

**CHAIRPERSON:** Well before Mr Buthelezi come on board, Ms Myeni was going to deal with two matters, one Eskom related and the others aviation related. I do not know whether Mr Seleka wishes to say anything in relation to  
20 insofar as this non-appearance affects Eskom related issues.

**ADV SELEKA SC:** Thank you, good morning Chair.

**CHAIRPERSON:** Good morning, Mr Seleka.

**ADV SELEKA SC:** Chair, much has been said and I think I need to emphasise that, insofar as Eskom work stream is

concerned, a letter was sent to Ms Myeni last year in 17 October 2020, for her to file an affidavit in relation to two persons who are implicating her, which is Mr Tsotsi and Mr Linnell, Nick Linnell on - the date was given I think the 4<sup>th</sup> of September 2020.

Now that is way back and that did not happen, we did not even get the courtesy of a response to that letter much less than affidavits, Chair and as I was saying to my learned, both my learned friends during the adjournment  
10 there is very little to argue on the postponement Chair, if the witness has arrogated to herself the postponement. So she is telling us, I am taking this postponement, decide whatever you want to decide. It is a question of defiance; we do not even get to her request to postpone.

She has dirty hands and she can ask for relief unless she purged herself of that misconduct if you like. So Chair, I could not agree more with the sentiment you have expressed unless there was incapacitation on affidavit, you would entertain an application duly brought  
20 for a postponement but this is not a proper application for postponement.

And I agree with my learned friend in regard to what then should be visited upon her in terms of the rules of this Commission. That – and hours is another issue as the Chairperson has pointed out, the issues are very plain Ms

could have availed herself and dealt with this matters in less than two hours. The Commission is overwhelmed with other work, and we tried to squeeze her in to finish her evidence, Chair this is completely unacceptable, thank you, Chair.

**CHAIRPERSON:** Thank you, then Mr Buthelezi, somebody must sanitize the bottom.

**ADV BUTHELEZI:** Thank you, Chair I have to express my dismay and disappointment at how things have turned out even what Chair had suggested at the adjournment and I have to make this point Chair because I think it also works towards the integrity of the Commission in itself. It is disheartening to observe how my learned friends, the Evidence Leaders, purport to seek to project this Commission as a prosecution.

Whereas in the proper understanding of what this Commission is about it is a fact finding inquiry, where witnesses need to account and they need to come assist the Commission. On arriving at this Commission today it is now going for 11 o'clock, we have lost two hours in engagements between three lawyers and...[intervene]

**CHAIRPERSON:** But that is because your client is not here.

**ADV BUTHELEZI:** Indeed so Chair.

**CHAIRPERSON:** In defiance of the summons.

**ADV BUTHELEZI:** Chair, the submission I am trying to...[intervene]

**CHAIRPERSON:** And that two hours is spent trying to establish why she is not here and what should be done about it.

**ADV BUTHELEZI:** Thank you, Chair. Where I was going to with that point Chair, about the two hours is that Chair I was appreciative of the stance that the Chair had taken that said, if it is not an act of defiance on her part, what  
10 pragmatic solution can we arrive at, to then solve the problem of getting her evidence on record and we had departed here with the view of saying, granted you may not be here, but if your indication is you do want to testify, you have testified online before it gets us to the point anyone can testify online, let us find a pragmatic way of implementing that.

And since that suggestion Chair...[intervene]

**CHAIRPERSON:** Maybe before you proceed, let us start where I should have started. You spoke to her, tell me  
20 what transpired because from what Ms Hofmeyr said in terms of what she gathered from the conversation with, it looks like she was on her way to a family meeting but she undertook to turn back and go back, but the story - I want to hear the whole story.

**ADV BUTHELEZI:** Chair, that is the objection I raised

Chair.

**CHAIRPERSON:** Yes, let us start with that.

**ADV BUTHELEZI:** Yes, I think I was misunderstood by Ms Hofmeyr. When we took the adjournment I then called her to say, what is your location, and what is your availability, for this thing to proceed online, she says, I am available as I am speaking to you, I should have been on the road to Port Shepstone but that is not on the plans and I will drive to the attorneys.

10           So the U turn story – she says that I am on standby. and that is why I came back and I said we could be online and proceed within two hours, because she then said I will have to divert my plans of wanting to go to Port Shepstone later and go straight to the attorneys in Pietermaritzburg.

          So her availability to me on call to receive directions, was informed by the fact I said, I do not know what the DCJ may direct or may not direct I need you to be on standby. So that if there is an amenability to resolving the situation pragmatically then we can make it happen in  
20 the shortest time possible.

          So it was never an intention not to be available or not to be here, as already submitted Chair. We came here with the intention to say due to a breakdown in communication, we seek to find a pragmatic way of making the hearing proceed and at every turn where we have said



we want to make the hearing proceed, we have been blocked.

When we said, okay, let us find a way of implementing a solution. The first objection was the fact that the documents will not be there on time. We take the adjournment to rectify that and try find whether we can go online. Now the objection is, we must lay a criminal charge. Well, if you lay the criminal charge Chair, it takes us to this position then the witness will never come.

10 **CHAIRPERSON:** Well, the laying of the criminal charge for her non-appearance I thought I indebted this earlier that that is one matter.

**ADV BUTHELEZI:** Yes, Chair.

**CHAIRPERSON:** And that need not stay in the way of her giving her evidence and if she is allowed to give evidence, that does not necessarily mean that a charge should not be laid for the fact that she did not come here when she was supposed to come and on the face of this does not appear to have had sufficient cause, that may be separate.

20 So from my point of view, the laying of a criminal charge would be one thing. The question whether or not arrangements can and should be made for her evidence to be received today is another issue. The one does not need to be a problem for the other.

So is the position – is her position that in terms of

the discussion you had with her that she is ready to be online and to give her evidence or ask be asked questions, or whatever needs to be done that would have been done once she was - if she was here.

**ADV BUTHELEZI:** Yes, Chair.

**CHAIRPERSON:** Ja, and is there an issue about needing some time for her to be ready in terms of the bundles or what is the position?

**ADV BUTHELEZI:** Well, Chair we had requested we had  
10 said, at the time when the discussion was held, it was around 10 to 10 and I had said we would need between two and two and a half hours for that to be implemented. But we have lost the last entire hour in our own debates and I think that is why I was lamenting that point to say, we could have been - I accept Chair that there is two separate issues. There is the issue of the non-appearance and then there is the issue of how we then resolve it, those two are not linked and we can separate them.

And I was wanting to say, look, let us focus on the  
20 solution for now and if the Commission feels thereafter that the charge must be laid then the Commission may lay that charge, but we could not be consumed in that to the extent that we are and lose so much valuable time if the intention is on either end to get the Commission to progress with its work.

And that is the point I am crying about Chair, to say look, it does not take the process forward for counsel to be involved in lengthy exchanges with each other where the situation exists that says, okay, the witness is not here. Can we get her evidence on record today, if yes, how - let us move on with the process.

Counsel can come and have the subsequent arguments about what this implies, or what this does not imply, at a later stage and as to how we must now be  
10 thrown into long discussions about what happened in Parliament and does not happen in Parliament. It does not take the process forward Chair.

And all I have asked for today was to say, let us implement whatever solution that is feasible and practically possible to get her to testify today as she was scheduled to do.

**CHAIRPERSON:** Okay, is there anything you wanted to say?

**ADV BUTHELEZI:** In addition to that Chair, I also wanted  
20 to correct one submission when I submitted that I said, Ms Hofmeyr has submitted that she was under legal advice to appear. I think that is an incorrect understanding of my statement.

I said, I took issue with the attorney to say, attorney please properly advise clients about what this means at

this point in time to say that we are only seeing it now still renders us vulnerable. That was a conversation between the attorney and myself but not a conversation between the client and myself.

And the last point Chair in as much as past conduct as it relates to Parliament is now being brought in here, Chair. I think it finds no relevance. You Chair, aware we were here in November for three days full, and until the end of the hearing she was here, and there was never at  
10 any point even prior to that hearing, an inclination or a reluctance on her part to appear.

So that premise that says she is a person whose prone to want to defy is unfounded, Chair, not when it comes to this Commission, not when it comes to this Commission and the fact that I am here, because it gives the Chair the benefits of answers and a perspective.

Whereas if there was no legal representative, and she was not here, on the morning then Chair you can take a view that says there is an outright defiance towards the  
20 Commission but the fact that I am here today, to make the plea to say, can we pragmatically resolve this and allow the evidence to come and record for the day, and it was my submission to you earlier to you Chair that my client is intent on getting this out the way. So the longer we drag it, it does not help either side, Chair.

**CHAIRPERSON:** Okay, alright. This is a decision I have reached.

One, it is not acceptable that Ms Myeni did not comply with his summons and presented herself at the hearing this morning.

Two, from what I have heard, there appears not to have been any valid reason for her not to appear.

Three, the secretary of the Commission must take steps to lay a criminal complaint with the South African  
10 Police Service against her for acting in breach of the summons and Commissions Act.

Four, I directed that she should make herself available to give evidence today, whether it is via zoom, or any of the methods used for her to appear virtually. So that must happen today, I directed that she should be available, it is now about 11, she should be available from 2 o'clock.

In the meantime, I will be able to hear some other evidence to use the time but she should be available from  
20 2 o'clock and at that stage I will indicate what is going to happen but she should be available and all concerned should be available.

**ADV HOFMEYR:** Chair, thank you so much if I may just raise one aspect.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** There was the issue of the invitation of the privilege and there were actually a set of questions in respect of which the legal team was going to seek rulings today.

**CHAIRPERSON:** Yes, yes.

**ADV HOFMEYR:** Now in the interest of time, I am going to jump ahead and say that we are going to seek rulings that would require Ms Myeni to answer those questions if you are persuaded by our submissions on affidavits, so I do not  
10 - I know we are running out of time today, I am not going to ask that we do that orally with her.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** So that effectively at 2 o'clock we could move straight into the Eskom evidence but there is an issue on the question whether those rulings should be made and I am just wondering whether we should not get that done now we have got the submissions from Ms Myeni's lawyers.

**CHAIRPERSON:** Yes.

20 **ADV HOFMEYR:** And so I and Mr Buthelezi can address you on them and then if you are so minded rulings can be made, or we can do that another day. I just do not want to leave that issue I know there is other evidence to get to but we could just resolve that now.

**CHAIRPERSON:** I think that I am inclined to think that the

witness ought to confirm whether what the grounds are for invoking that, if she says, it is what Mr Buthelezi said that she says so and then to the extent that argument may be necessary, and that might be really brief argument as far as I am concerned and then I make a ruling.

If I make a ruling that the grounds she advances for invoking or justifying the vocation of the privilege are not proper grounds, then I have to instruct her to respond. Now, I can instruct her to respond orally, though, as far as  
10 I am concerned I can instruct her if I deem it appropriate to respond in writing.

But I am inclined to think that she must first embrace the grounds, or advance the grounds before I make a ruling whether those grounds are proper or not.

**ADV HOFMEYR:** Chair, no, certainly in respect of the evidence that is coming this afternoon but there is still the matter of the November evidence, in respect of which we went over the transcript, we made the submissions about where the privilege has been unjustified.

20 The reasons are there Ms Myeni gave them each time they are in the transcript and then what we shared with our learned friends this week, is a literally a list of the questions from that historic evidence in respect of which we were going to seek ruling.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** So it would not be a rehash of that evidence, it would not be that she still needs to give reasons she did give reasons at the time and to close off that overhanging matter from last time. We were going to seek rulings on those specific questions in her last evidence where we said the privilege had been incorrectly invoked. I fully understand in the course of this afternoon's evidence, new reasons may be given.

**CHAIRPERSON:** No, no, I was talking more about the  
10 historical, ones not the new ones because obviously, with regard to the evidence relating to Eskom, she has not invoked any privilege.

**ADV HOFMEYR:** No.

**CHAIRPERSON:** We do not know if she will invoke, so I was looking at - even though as I was saying I am inclined to think she should be part of the discussions and not just the lawyer, you know.

**ADV HOFMEYR:** Absolutely.

**CHAIRPERSON:** But I think that it is something that  
20 should not take us long.

**ADV HOFMEYR:** Indeed, Chair.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** Sorry for the misunderstanding on my part, we can just proceed then.

**CHAIRPERSON:** No, that is fine – yes. Okay, no, that is



alright. Let me just say for what it is worth, the witness that I am going to hear in the meantime, is a witness who was going to come in the evening. So I am just mentioning that, but it may be that we will see how we go, so I think I am adjourning the hearing of her evidence or our business relating to her to 2 o'clock and then we will take it from there.

**ADV HOFMEYR:** Thank you, Chair, I understand we might need to make arrangements for the new witness should we  
10 adjourn for a period.

**CHAIRPERSON:** Yes, we are going to adjourn, I think the Evidence Leader in regard to that matter is probably either already here or his listening or watching. So I think that is now five past 11. I think we should aim to - I am going to aim to - because I do not know if - aim to resume - if I do not resume at half past 11 or resume at quarter to - I know he probably is watching and listening.

**ADV HOFMEYR:** Chair, I have just been informed that we can start from half past 11 from the point of view of the  
20 arrangements and the Evidence Leader getting here.

**CHAIRPERSON:** Okay, then we will resume at half past 11.

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

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

**ADV CHASKALSON SC:** Good morning, Chairperson. Chairperson, two details before we commence with Mr Powell's evidence. The first is Mr Powell is not represented by his attorney here today, because he was not anticipating to start. I have chatted with him and he has agreed very kindly to proceed in the absence of his  
10 attorney.

**CHAIRPERSON:** Yes, okay.

**ADV CHASKALSON SC:** But I thought we should put that on record.

**CHAIRPERSON:** Yes, okay.

**ADV CHASKALSON SC:** The second issue is that due to an error on the part of the legal team, there are certain annexures to Mr Powell's statement that were omitted from the bundle. Your Registrar has those bundles, it is 15.2 to 15.8 and the place where they will belong in the bundle is  
20 after page 424 in bundle 16, so there will be a sequence that starts at 424.1 and commences to 424.19 and if I can ask you ...[intervenes]

**CHAIRPERSON:** The ones that she has just handed up are marked 15.2, 15.3, but there are others that are not marked.

**ADV CHASKALSON SC:** I think the, so 15.2 is a discrete annexure, 15.3 is another discrete annexure, so if there is not a number on any particular page it means it is part of the preceding page's annexure.

**CHAIRPERSON:** Okay. There is standard terms and conditions, is that an annexure to something? Because it is not marked.

**ADV CHASKALSON SC:** Yes, it is. That is part of, I think it is part of annexure 15.5, those standard terms. So it  
10 was attached to the, sorry, 15.3.

**CHAIRPERSON:** Oh ja, 15.3. That is where they appear.

**ADV CHASKALSON SC:** And on they go. I wonder, Chair, if I can ask, possibly I can, I have now paginated my set, so they say 1 to 18 or 1 to 19.

**CHAIRPERSON:** Yes, yes.

**ADV CHASKALSON SC:** If I could give you this set, then yours will be paginated and I can ...[intervenes]

**CHAIRPERSON:** Okay, okay, that is fine.

**ADV CHASKALSON SC:** Could I then have yours back in  
20 return?

**CHAIRPERSON:** Yes, okay.

**ADV CHASKALSON SC:** Thank you.

**CHAIRPERSON:** Yes?

**ADV CHASKALSON SC:** Then Chair, if we can commence and swear Mr Powell in.

**CHAIRPERSON:** Good morning, Mr Powell. Thank you for coming back. Please administer the oath or affirmation.

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

**MR POWELL:** Steven David Powell.

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

**MR POWELL:** No objection.

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

10 **MR POWELL:** Yes.

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

**MR POWELL:** Help me, God.

**STEVEN DAVID POWELL:** (affirmed)

**CHAIRPERSON:** Thank you. Mr Chaskalson, I did not pay attention when you told me where I should slot these.

I see the pagination 15.2, is there where I must  
20 ...[intervenes]

**ADV CHASKALSON SC:** Chair, that is the annexure number. They belong after page 424 of bundle 16, 424.

**CHAIRPERSON:** Okay. Should the pagination be 424.1 onwards?

**ADV CHASKALSON SC:** Indeed.

**CHAIRPERSON:** So yes, 424.1. I do not know whether you, I want to skip the terms and conditions, but have the right pagination for the next document, which ...[intervenes]

**ADV CHASKALSON SC:** The one with the 15.4 at the top is 424.8, Chair.

**CHAIRPERSON:** 424.8.

**ADV CHASKALSON SC:** And then it will go on all the way through to 424.19.

10 **CHAIRPERSON:** Yes. Okay, I am not going to go all the way, but I think I will manage as we go along and then later somebody can just complete that pagination.

**ADV CHASKALSON SC:** Thank you, Chair.

**CHAIRPERSON:** I think if you mention a page number that I have not paginated I will be able to locate it.

**ADV CHASKALSON SC:** Thank you, Chair.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Then Mr Powell, before I ask you to confirm the correctness of the affidavit that you have  
20 submitted to the Commission, I understand that there are one or two details that need correction and the first relates to the table of payments from Mr McKay to Mr Kodwa, that appears at annexure SB5, it appears at page, bundle 16, page 293. Can I ask you to go to that bundle and to that page?

**MR POWELL:** Yes, Chair.

**ADV CHASKALSON SC:** And I understand ...[intervenes]

**CHAIRPERSON:** What page number?

**ADV CHASKALSON SC:** 293, Chair.

**CHAIRPERSON:** 293, Okay.

**ADV CHASKALSON SC:** And I understand that there is a transaction missing from that table.

**MR POWELL:** Yes.

**ADV CHASKALSON SC:** Can you tell the Chair what it is?

10 **MR POWELL:** Certainly, Chair. There is an additional transaction on 10 July 2015. Chair, apologies, if Chair can note just beneath the table by hand, 10 July 2015, there is a transfer from McKay to Kodwa in the amount of R35 000, Chair and that then will bring the total payments from McKay to Kodwa from R1 645 000 to R1 680 000, Chair.

**CHAIRPERSON:** The particular transaction is for how much?

**MR POWELL:** R35 000, Chair, and the date of that transaction is 10 July 2015.

20 **CHAIRPERSON:** Okay, I have got that, and that you say then with that transaction it is?

**MR POWELL:** It totals up to R1 680 000, Chair.

**CHAIRPERSON:** Yes okay, thank you.

**ADV CHASKALSON SC:** And then a consequential change in paragraph 11 of your affidavit where you refer to

the original figure of R1 645 000, that is at page 282 of the bundle, 282, but then I presume that figure of R1 645 000 in paragraph 11 must now change also to R1 680 000.

**CHAIRPERSON:** Yes, do you confirm that, Mr Powell?

**MR POWELL:** That is correct, Chair.

**CHAIRPERSON:** Yes, okay.

**ADV CHASKALSON SC:** And then I understand also that if one goes to the chronology table at page 281, the second last item reads e-mails between Shazay Gordon and Kodwa in relation to ANC tee-shirts for which EOH will  
10 pay more than R50 000, I understand that requires a correction as well.

**MR POWELL:** Correct, Chair. That R50 000 is wrong, if Chair will please delete and replace it with R134 200. There were additional tee-shirts that were identified subsequently Chair, that this relates to.

**CHAIRPERSON:** It is?

**MR POWELL:** The R50 000 is incorrect on that second last line on page 281, Chair.

20 **CHAIRPERSON:** Yes?

**MR POWELL:** If Chair can delete the R50 000 and replace it with R134 200.

**CHAIRPERSON:** 134 Or 154?

**MR POWELL:** R134 200, Chair.

**CHAIRPERSON:** Okay.

**MR POWELL:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV CHASKALSON SC:** Mr Powell, the technicians tell me that your microphone is a little bit too far away, I wonder if you could move it a bit closer.

**MR POWELL:** Certainly.

**ADV CHASKALSON SC:** Then Mr Powell, subject to those corrections that you have made, do you confirm the correctness of the affidavit as it appears at page 279 of the  
10 bundle?

**MR POWELL:** I do, Chair. This is my affidavit and I confirm the correctness thereof.

**ADV CHASKALSON SC:** Thank you, Mr Powell. You have testified before, but I wonder if you can briefly ...[intervenes]

**CHAIRPERSON:** Do you want me to accept it as an exhibit?

**ADV CHASKALSON SC:** I do, Chair.

**CHAIRPERSON:** Yes?

20 **ADV CHASKALSON SC:** Can I just find out?

**CHAIRPERSON:** Yes, ja.

**ADV CHASKALSON SC:** Chair, can you admit it as EXHIBIT BB2.3?

**CHAIRPERSON:** Okay. Mr Steven David Powell's affidavit that begins at page 279 is admitted as an exhibit



and will be marked as EXHIBIT BB2.3. Okay, you may proceed.

**ADV CHASKALSON SC:** Thank you, Chair. Mr Powell, you have testified previously, can you just very briefly remind the Chair who you are and how you came to be introduced to the work of the Commission?

**MR POWELL:** Certainly, Chair. I am the Head of Forensics at ENS Africa, one of the law firms Chair, and as I conveyed on the last occasion when I testified on  
10 25 November 2020, I gave evidence relating to an investigation that we had performed at EOH, an ICT company, a South African listed ICT company and I highlighted transactions that we had identified that the Commission asked us to share and provide evidence on.

Chair, subsequent to providing that evidence, shortly after completing my testimony I was asked by the Commission to furnish it with a report into additional items that we had identified relating to some of the witnesses that I had testified about previously on 25 November.

20 The Commission asked us to submit a report specifically into a gentleman or payments that we had identified made in 2015 and 2016 to Mr ZZ Kodwa at the instance of or by Mr Jean McKay, who at the time was an executive of EOH. Chair may recall that previously I testified that there was approximately R400 000 paid from

Mr McKay's account to Mr Kodwa and I gave evidence related to that.

What has happened subsequent to that, Chair, I the Commission has subpoenaed bank accounts. During my initial investigation I only had access to a snapshot of Mr McKay's accounts and the Commission has subpoenaed further accounts of Mr Kodwa from a relevant financial institution and based on those accounts I was asked to review and look at the information and provide a report on  
10 additional payments, which we have identified.

In addition Chair, we did some further e-mail analysis, because our focus on the previous occasion, Chair will remember, was related to the City of Johannesburg and Mr Jeffrey Makuba in particular. Mr Kodwa's evidence that I provided that was almost collateral information that we just came across essentially with the Commission at the time, we then did a detailed focus of the e-mail service at EOH to identify if there was further evidence related to the activities of Mr McKay and  
20 Mr Kodwa in particular and we have identified significant transactions, which or quite a number of interactions Chair, I should say, that I will give evidence about today.

When I testified earlier I mentioned that Mr McKay was an executive of EOH, it is also important to point out Chair, that McKay is a former Director of an entity known

as Tactical Software Systems (Pty) Ltd, it has an abbreviation TSS and that company, TSS, I understand is no in voluntary liquidation.

Chair, I know I say Chair may recall and I know Chair has a million things testified before Chair, but one of our items I highlighted was that EOH Matambo acquired at TSS subsidiary called TSS Managed Services (Pty) Ltd, now called EOH Africa, by way of a sales of shares agreement between EOH Matambo and TSS in 2011.

10           The transactions that I am going to describe to the Commission today Chair, come out of an entity called TSS, Tactical Software Systems (Pty) Ltd. This is not an EOH company, it remained in the TSS table. So Mr McKay, as you heard he moved, he became an executive of EOH, prior to that he was an executive at TSS and this is an interest that McKay had in TSS. So Chair, I just share that so that you do not confuse this with EOH.

          It is not an EOH company, it is not part of the EOH group. I then submitted a report to the Commission and  
20   that Commission is attached as SB4 to my affidavit, Chair.

**ADV CHASKALSON SC:**   Sorry to interrupt, Mr Powell. Chair, the SB4 report appears on page 286, if you can just make a note on Mr Powell's affidavit. We will not be going to it just yet, but I want it to be on the record. Sorry Mr Powell, I interrupted you midstream. Thank you, if you

would like to continue.

**MR POWELL:** Chair, as I was saying the Commission conducted its own inquiries and subpoenaed further accounts and they asked me to review that information and we have reviewed it and the e-mail evidence and financial data that we reviewed shows that over the period May 2015 to February 2016 ZZ Kodwa, whom I understand was the ANC spokesman at the time Chair, received direct payments as well as luxury accommodation with a  
10 combined value of more than R2 million.

Chair, last time I testified we just indicated the R400 000. These are all additional items that we have subsequently found and this is what I will be covering in my testimony today.

What we also discovered was that McKay and Kodwa regularly exchanged e-mails regarding what appeared to be ANC donations over this period. A table setting out the direct payments to Kodwa made by or at the instance of McKay is attached as annexure SB5.  
20 Annexure SB6 is a bundle of extracts from bank statements in support of the transactions, these bank statements are the documents I referred to that the Commission subpoenaed, Chair.

**ADV CHASKALSON SC:** Now thus far Mr Powell, you have been talking primarily about donations to Mr Kodwa,

you speak also of payments to the ANC. Can you say about that?

**MR POWELL:** That is correct, Chair. Chair, in addition to the payments to Kodwa, at McKay's instance, EOH also made payments aggregating to more than R15 million to the ANC or its suppliers and Chair, I will just describe for Chair what I am going to be elaborating on later so that Chair can have a small insight into what the broader landscape will look like.

10           Chair, you will remember when I testified previously about the City of Johannesburg there were a lot of donation requests instigated by Mr Jeffrey Makuba and there was correspondence and communications with McKay and a Patrick Makubedu regarding ANC donations and all of those donations were routed through an entity called Mfundi Mobile.

          Mfundi Mobile was run by a principal by the name of Reeno Barry, Chair. Reeno Barry also features in these ANC donations. These donations seem to primarily  
20 emanate from the Eastern Cape Provincial Branch of the ANC and what is interesting Chair, is that Reeno Barry again features as the person administering much of the donations, the management of those donations and previously we saw that with the CoJ Mfundi Mobile acted as an intermediary and what I mean by that Chair, is EOH

did not donate directly to the ANC, they donated, they gave this money to Mfundi Mobile and it was also around R16 million, Chair. So the numbers are quite similar as well and Mfundi Mobile then received invoices from the ANC for gatherings, transport, events, printing tee-shirts, et cetera.

In this instance I will be testifying, Chair, that TSS, the non EOH entity linked to McKay, funded a lot of that, those transactions in the same way that Mfundi acted  
10 previously with CoJ and similar to CoJ, Chair, Mr Reeno Barry has also kept a spreadsheet reconciling all of these payments that were made on behalf of the ANC. Chair, we will go into each of the specific items, but I thought it would be useful just to give Chair the picture of what we are going to cover here.

**ADV CHASKALSON SC:** Thank you.

**MR POWELL:** Mr Chaskalson, shall I continue?

**ADV CHASKALSON SC:** Well, if I can just ask you, you talk about payments between Mr Kodwa, payments to the  
20 ANC at Mr Kodwa's instance and in your report you suggest that these payments appear to be the *quit pro quo* for support for Mr Kodwa for EOH's interest in several tenders. Now can you just briefly summarise that? Obviously we will get into the detail later.

**MR POWELL:** Certainly, Chair. We are going to be going

through a lot of communications between McKay and Kodwa and payments to Kodwa and you will see Chair, we will refer specifically to the timing of those payments and the activities that the communications relate to, but these seem to have had a direct link or connection to three different procurement processes.

There was one at the Department of Home Affairs, there was a tender by the number of 1303/2014 and that was for the provision of Platinum Access Service Solution  
10 to Government for five years, that is abbreviated to DHA, Platinum Access Tender, Chair and then there was another tender to the Eastern Cape Provincial Government Department of Education Tender and that one is referred to as SCUM6'15/16'0001, and that was an integrated document Management and Human Resources Records Restoration Project and we will refer to that just as the EC Records Restoration Tender.

The third one is the SASSA Tender 18/14/ICT for the provision of support and maintenance services of ERP  
20 Oracle for three years, and that is commonly referred to as the SASSA Oracle Support Tender.

Chair, I do want to just point out that in respect of the Eastern Cape Provincial Government Department of Education Tender there was an award of R217 million made in respect of that tender to a consortium, and EOH were a

40% shareholder in the consortium, so not all of the 217 went to EOH at the time, approximately just over 80, 85 million, thereabouts would have been their share, Chair. So I just wanted to clarify that particular point.

**ADV CHASKALSON SC:** Thank you, Mr Powell. What I am now going to ask you to do is to go through, or in fact what I am now going to do is to take you through the timeline that you have prepared in paragraph 10 of your report and at various points I am going to, when we talk  
10 about procurement processes in the context of this timeline I am going to ask you just to take us back to which of the three that you have now described the line item refers to.

The first line item starts on 13 March and for that purpose can I ask you to turn to page 433 of the bundle, 433? And if you can describe to the Chair what the document at 433 is.

**MR POWELL:** Certainly, Chair. Chair, the document at 433 of the bundle is a letter of award from SASSA to EOH Matambo Limited and its header is ‘SASSA/18/14/ICT,  
20 appointment of service provider for the provision of support and maintenance services of ERP Oracle for a period of three years’ and this is to inform EOH that they had been awarded this tender.

Chair, the tender is worth just over R90 million, but what the document specifies in paragraph 1.1 is that your



quote price of R30 360 160 has been accepted for the first year of the provisioning of the abovementioned services, second and third year prices will be adjusted based on Consumer Price Index, CPI, as determined by Statistics South Africa. So they only specify the R30 million, but it did, will run to just over R90 million, Chair and Mr Chaskalson, this is the SASSA Oracle Tender, so one of the three that we referred to earlier.

**ADV CHASKALSON SC:** Thank you, Mr Powell. The next  
10 item on the bundle has the date 7 April 2015. To explain that item can I ask you to go to page 484 of the bundle, 484? Thank you, Chair. It is a bit quicker this time around in my evidence, Chair. We have got a quarter of the volume of documents.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** So this is an e-mail from Jean McKay, dated 17 April 2015 to Shazay Gordon. Shazay Gordon was Mr McKay's professional assistant at the time, he was an employee of EOH, he was no longer employed at  
20 EOH, and what this directs her to do is it is an instruction from Jean McKay to Shazay Gordon and it reads as follows:

“Please can you get me the contract value of both the SASSA IMS contract and the SASSA AMS contract? I need the value, inclusive of

vat. Also, can you send me a recon on all travel expenses for our special project with Ingrid?”

And were you able to identify who the Ingrid referred to here is?

**MR POWELL:** We suspect that this appears to be an Ingrid Ndlovu, who was the Parliamentary Liaison Officer for the Department of Social Development. There we have found e-mails, which we will bring to Chair’s attention in a  
10 moment, reflecting her address as ESD and that seems to be the Ingrid referred to.

There is also reference to another gentleman by the name that also has links to Social Development, which we will explain later.

**ADV CHASKALSON SC:** Now the item on the timeline has a date, 7 April. Can you go to page 485 and explain what you see at 485?

**MR POWELL:** Certainly, Chair. At 485 we have got another e-mail from Shazay Gordon this time to Jean  
20 McKay, the subject is ‘Project Ingrid’ and it is dated 18 April 2015, Chair, and it reads as follows:

“Hi, Jean. Total costs R118 908.54 as follows.”

And then it refers to various entities during April, 7 April to 9 April and the venues are Premier Hotel Pretoria, Premier

Hotel Pretoria, and they refer to the first two items of venue hire, R16 425. The second one is R11 125 and its reason, dinner, there is the column specifying reason. Then the last one in respect of 7 April 2015 is City Lodge OR Tambo and it reflects a price of R13 486.90 and the reason cited on the document is accommodation, seven rooms.

Then 8 April SAA flights to the value of R8 075.28, flights, and it is flights to East London. 8 April, SAA again,  
10 R23 163.36 Chair, and this is also flights, this time it is flights to Cape Town. Then the last item on 8 April is Premiere Hotel East London, R13 765 and the reason cited on the document is accommodation. 9 April, Wild Coast Sun International, R32 868, also reflected as accommodation and the total amount there is R118 908.54 and the footer reflects Shazay Gordon as Executive Assistant, Jean McKay and Zonet Mayet, EOH Matambo.

**ADV CHASKALSON SC:** So that would be the, and the header of that e-mail is Project Ingrid expenses, is it not?

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

**ADV CHASKALSON SC:** The next line item that you have is dated 24 April 2015 and to explain that document, can I ask you to go to it? It is at page 325 of the bundle, it is annexure 7.2.

**MR POWELL:** Sorry, Chair. Mr Chaskalson, if I can just

interrupt. If we just turn the following page from the last document you will see we are talking about Project Ingrid expenses.

**ADV CHASKALSON SC:** Yes.

**MR POWELL:** And if I may, I might just refer to the next e-mail, which seems to also tie up to the same project. IT also reference to Project Ingrid, but this time it is an e-mail from Shazay Gordon to reenob@tssms.co.za, copied to Jean McKay and it also talks about Project Ingrid, April  
10 2015, Absa TSS credit card, Jean McKay.

Chair, and if we look at this document what it shows is dear Reeno, so I presume Chair, it looks like the Reeno Barry that I referred to, the same gentleman that was linked to Mfundi Mobile, here he is linked to TSS/MS and what she is writing is:

“Dear Reeno, please allocate the highlighted charges on this card to Tactical Software Systems under Project Ingrid.”

So in other words, book these expenses which were  
20 occurred by Jean McKay on his personal credit card, to the project and then:

“This is a project Jean has started and has run from March 2015 to current.”

And then she goes on to say:

“I will be sending you each month’s charges.

Let me know if I should submit all to you on a spreadsheet and just flag you on the credit card used.”

And if we look at the breakdown it has got SAA flights, Chair, 14 April, 30 April and 131 on Herbert Baker meeting venue, Premier Hotel East London, R16 000 accommodation and that total is R116 000 Chair, and if you just turn the page you will see at FOF16587 ...[intervenes]

**CHAIRPERSON:** Where does it... Oh okay, I see the  
10 total. I thought you had left the page that I was looking at. Now I see the total you are talking about. So we go to page 487.

**MR POWELL:** 487, Chair.

**CHAIRPERSON:** Yes, okay.

**MR POWELL:** And what follows there is Mr McKay’s credit card statement for the period 3 April 2015 to 4 May 2015 and Chair, if you have a look at the right hand column on the very next page you will see that someone has written in handwritten handwriting Ingrid halfway down the pay and  
20 there is an amount of 192412 and it reflects South African Airways, OR Tambo. Chair, have you got that? That is in the middle of page 488.

**CHAIRPERSON:** Oh, at 488.

**MR POWELL:** Thank you, Chair.

**CHAIRPERSON:** You say somewhere in the middle.

**MR POWELL:** In the middle. It is highlighted Chair, and it has got Ingrid on the right hand column.

**CHAIRPERSON:** Oh yes, I can see that.

**MR POWELL:** This seems to be one of the personal credit card expenses paid for by Mr McKay and claimed back by his secretary, what happened is now direct Reeno Barry to allocate this to Project Ingrid.

**CHAIRPERSON:** Yes.

**MR POWELL:** And Chair, if you turn to the following page,  
10 page 489, you will see that there are a further eight narrations which are highlighted and they all have Ingrid next door to them written in. I presume this is Shazay Gordon indicating this on the spreadsheet to Reeno Barry there.

**CHAIRPERSON:** Yes.

**MR POWELL:** Chair, and earlier you will recall Mr Chaskalson asked me who Ingrid was. Chair, if you continue this narration and you turn to the following page ...[intervenes]

20 **ADV CHASKALSON SC:** Sorry, sorry Mr Powell, we are still having problems with sound apparently. Can I ask ...[intervenes]

**MR POWELL:** I have turned it completely.

**ADV CHASKALSON SC:** Okay.

**MR POWELL:** Thank you.

**ADV CHASKALSON SC:** Thanks.

**MR POWELL:** Apologies, Mr Chaskalson. Chair, if you turn to the very next page ...[intervenes]

**CHAIRPERSON:** Is that for 490?

**MR POWELL:** 490, Chair.

**CHAIRPERSON:** Yes.

**MR POWELL:** Chair, I mentioned that we identified this Ingrid Ndlovu as a person at DSD. This is an e-mail from Shazay Gordon dated 5 August 2015 and it is sent to  
10 ingridn@dsd.gov.za. It also seems to be sent to a private e-mail for the same person, bingindlovu@gmail.com and then it is copied to lunganwkwana@gmail.com as well as it is copied to Jean McKay and what the subject header here is Chair, is TSS, Government, ANC, Women’s League, 5 to 9 August 2015, and there is an attachment, an EOH Book 1, it seems to be a PDF of a spreadsheet Chair, and it is marked as importance high and the narration is from Shazay Gordon.

20 “Hi, Ingrid and Lunga. Please see attached final confirmation of hotels and numbers, total delegates 550.”

So I think that completes the picture of this particular chain of e-mails, Chair. Mr Chaskalson, apologies. I interrupted you.

**ADV CHASKALSON SC:** No, not at all, not at all. If we

can go back, I mean we have seen a series of payments in relation to, or e-mails referring to payments and booking in relation to Project Ingrid, but I now want to go back to 24 April and to page 325 of the bundle which, can you describe to the Chair what the document you see at 325 is? It is annexure 7.2, SBF 7.2.

**MR POWELL:** Chair, this is an e-mail from Jean McKay sent on 24 April 2015 to ZZ Kodwa, subject 'TSS loan agreement template doc', attachment TSS loan agreement  
10 template doc, and it is sent by iPhone and it forwards a message and this was forwarded from Shazay Gordon and sent to Jean McKay, this template doc, and then if you go to the preceding e-mail you will see that on 22 April at 09:55 Shazay Gordon said to zzkodwa@gmail.com, copies Jean McKay, TSS loan agreement:

“To whom it may concern, as requested by Mr McKay please find attached TSS loan agreement. Kindly confirm receipt of this e-mail. Regards, Shazay Gordon.”

20 And her cell number. Chair, and if you turn the page over to FAF16236 you will see this seems to be the template referred to and it is a loan agreement between Tactical Software Systems (Pty) Ltd with the company registration number referred to as TSS and the company name is blank, it is to be completed.



**ADV CHASKALSON SC:** Were you able to find any completed loan agreement between TSS and an entity that you could link to Mr Kodwa?

**MR POWELL:** Not at all, Chair. We looked, we could not find any loan agreement that was completed and this particular template seems to be a misnomer, because it refers to an enterprise development loan and the number is blank, Rands only, blank and then it talks about company name is a black owned company and if you just read the  
10 first paragraph of this document:

“All investments are grounded in the meaningful engagement of the youth, young women and disabled people in the development of appropriate economic and entrepreneur skills, the primary objective is to create wealth and in that process identify opportunities that will identify youth, women and disabled by way of created employment business  
20 opportunities. Company name is managed by a young team for young people with the primary objective of actively participating in the mainstream economy.”

Chair, this looks like an enterprise development loan and I would submit Chair, that I would hardly suspect that

Mr ZZ Kodwa would have been an eligible candidate for enterprise development. I have not seen anything in the e-mails and documents that I reviewed to reflect that he was at all engaged in enterprise development or empowerment purposes Chair, and the reason the document is drafted in this way is because when companies spend on enterprise development they are entitled to claim that back.

They get points or scoring on their BEE score card, so this looks like a BEE loan template, but as I indicated to  
10 Mr Chaskalson, Chair, we have never found any signed agreement. We also have analysed the bank accounts for a number of years and we have not found one single indication of a repayment of any loan by Mr Kodwa from his account back to Mr McKay or TSS.

**ADV CHASKALSON SC:** But can I take you to the payment that in fact the Commission found? That is four days after this e-mail on 28 April, it is at page 311, and can you describe to the Chair what the document is that you see on page 311?

20 **MR POWELL:** Certainly, Chair. This is the bank statement, it appears to be a bank statement of Mr NG Kodwa, who I understand is ZZ Kodwa.

**ADV CHASKALSON SC:** And if you go into the credit column, which for the most part is blank, can you describe to the Chair the transaction on the 28<sup>th</sup> of April 2015?

**MR POWELL:** Certainly, Chair. IFRS Conceptual Framework you go down about five lines you will see that there is an iBank payment from Absa Bank and the narration is TSS, it refers to a settlement and the value is R1 million, Chair and you will see the balance was R47 000 and it pushes it up to R1 047 000.

**CHAIRPERSON:** Is it the one that has the date of 28 April 2015?

**MR POWELL:** Correct, Chair. It is the only credit amount  
10 on the statement, so it is in the column on its own.

**CHAIRPERSON:** Yes, written 'settlement'. Is it the one written 'settlement'?

**MR POWELL:** Correct, it is written 'settlement', Chair.

**CHAIRPERSON:** Ja, okay. I see that.

**MR POWELL:** But this seems to be a transfer from TSS of an amount of R1 million to Mr Kodwa's private bank account.

**ADV CHASKALSON SC:** Then if we go down a week or so  
20 to page 314, we are still in Mr Kodwa's bank statements, but can I ask you to draw the Chair's attention to an item on the 6<sup>th</sup> of May 2015 on that page? It is page 314.

**MR POWELL:** Certainly. Chair, you will note that this is a further statement of Mr NG Kodwa's bank account and on the 6<sup>th</sup> of May there is an internet immediate payment settlement, Absa Bank, and the narration there is 'my car'.

Chair, and if you move across you will see that there is an amount of, on the right an amount of R890 000, so what ...[intervenes]

**CHAIRPERSON:** Yes, I can see that.

**MR POWELL:** Chair, what this reflects is that shortly after receiving the R1 million from TSS, Mr McKay seems to have settled, purchased a car for R890 000.

**CHAIRPERSON:** Yes.

10 **ADV CHASKALSON SC:** And can I then take you to page 327?

**MR POWELL:** Certainly, Chair.

**ADV CHASKALSON SC:** And can you describe to the Chair what the document that you see there is?

**MR POWELL:** Chair, this is a Standard Bank account of what appears to be Tajari Motors (Pty) Ltd

**ADV CHASKALSON SC:** And before you go further, did you investigate who Tajari Motors are?

20 **MR POWELL:** Chair, they are a motor dealership that appears to have been involved in the provision of the motorcar for Mr Kodwa.

**ADV CHASKALSON SC:** If I can take you to your timeline, we are going to be looking at the other side of the 6 May 2015 transaction at 280. On your timeline you have, Kodwa transfers R890 000 from his account to Tajari Motors (Pty) Ltd, trading as Jeep Sandton.

**MR POWELL:** That is correct, Chair.

**ADV CHASKALSON SC:** And will you take the Chair to where one sees the receipt by Jeep Sandton of this R890 000 from Mr Kodwa?

**MR POWELL:** Chair, we are back on page 327 of the bundle and you will see the second line item on this Tajari Motors' current account, business current account is a real time transfer from Absa, Mr NG Kodwa, and there it reflects to the entry we spoke about earlier, the R890 000.

10 **ADV CHASKALSON SC:** Then the next stage of the timeline that I want to draw your attention to or that I would ask you to comment on is another transaction, this time at page 308, 308.

**CHAIRPERSON:** That is on what page?

**ADV CHASKALSON SC:** 308, Chair.

**CHAIRPERSON:** 308.

**ADV CHASKALSON SC:** And can you tell the Chair what we are looking at, at 308?

**MR POWELL:** Certainly, Chair. This is another extract of  
20 Mr Kodwa's Platinum Classic bank statement.

**ADV CHASKALSON SC:** And can you describe to the Chair what one sees in the credit column against the date 26 May 2015?

**MR POWELL:** Correct, Chair. 26 May 2015 there is an NPF credit, EFT and then a reference number with various

letters and numbers, Chair, J McKay, so this appears to be a transfer from Jean McKay to Mr Kodwa and it reflects an amount of R80 000. You will see Chair, it is the only credit on that account on this particular page of the statement.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Then although it is not on your timeline, I would like us to add the transaction that you referred the Chair to at the start of proceeding and for that purpose can I ask you to turn to page 298?

10 **MR POWELL:** Certainly.

**ADV CHASKALSON SC:** And again can you describe to the Chair what this document at 298 is?

**MR POWELL:** Certainly, Chair. This is another extract of Mr ZZ Kodwa or NG Kodwa's Platinum Classic bank statement and this is for July 2015.

**ADV CHASKALSON SC:** And can you take the Chair to the last entry on that page and describe that to the Chair?

**MR POWELL:** Certainly. Chair, there is an entry on the last line of the page, the last line of the statement, dated  
20 10 July 2015. Immediate transfer credit, First Rand J McKay and it is also referred to as a settlement and the amount is R35 000 Chair, and you will recall that we asked Chair to add R35 000 to the total of payments by Mr McKay to Mr Kodwa. This is the R35 000 that we referred to earlier.

**ADV CHASKALSON SC:** Then if we can go literally to the next page, page 299, and it is the same bank statement, but can I ask you to describe to the Chair the transaction on the 13<sup>th</sup> of July, the credit transaction on the 13<sup>th</sup> of July?

**MR POWELL:** Chair, these transactions are easy to identify, because they usually happen to be the only credit on the statement before you. 13 July, this reflects an NPF credit and then it has a reference number which ends with a /J McKay and the amount is reflected as a credit of  
10 R45 000, Chair. So this looks like another transfer of R45 000 by Jean McKay to Mr Kodwa.

**ADV CHASKALSON SC:** Can we then go to an event that happened the very next day and can I ask you to go to page 328 and describe to the Chair what you see there?

**MR POWELL:** Chair, earlier in my introduction to my experience I highlighted that we would be zooming in on particular transactions, communications and dates and what the evidence leader is highlighting is that straight after this deposit, if we look at the date 14 July 2015 there  
20 is an e-mail from Jean McKay to ZZ Kodwa and the narration is as follows, Chair. If I may, I will read into the record.

“My brother, I hope you are good. If it is possible, please can you ask the Chair to look into DHARFB1303/2014?”

This is the Department of Home Affairs tender that I referred to earlier, Chair. The narration continues.

10           “There are games being played. Initially we were number one, then Andalani and the Head of Procurement decided to re-evaluate the bids and now it seems we are disqualified. The total value is about 360 million. Also please do not forget to talk to the Regional Funding Coordinator to understand what their funding requirements are. Thanks, my brother.”

Chair, so this looks like a plea, it is money deposited and now there is a plea for help. This was a lucrative tender that was going to be awarded, the EOH has now disqualified.

20           **ADV CHASKALSON SC:** Can I, I am going to possibly take us out of the timeline at this point just to track what happened in relation to this tender and for that purpose can I ask you to go to the very next page in the bundle, page 329?

**MR POWELL:** Certainly, Chair. If you go to 329 in the bundle you will see this is from Jean McKay, it is dated 2 November 2015 and it is sent to ZZ Kodwa and the subject is 'forward DHA' and there is an attachment, JPPEC and a PDF document attached.



**CHAIRPERSON:** What do you understand DHA to be an abbreviation for?

**MR POWELL:** Department of Home Affairs, Chair, that is the general description for Home Affairs.

**CHAIRPERSON:** Yes, okay.

**MR POWELL:** Chair, and you will see later that there is a document regarding this which confirms it is Home Affairs. Jean McKay had forwarded a document to ZZ Kodwa that he had received earlier that day from a gentleman by the  
10 name of Petrus Dawid Jansen, who was an EOH employee, and the date was 2 November, 06:19, so this was all happening quite early in the morning and it was also, it was sent to Sphiwe Nodwele, who was an executive at EOH at the time and it was copied to Jean McKay and it is Juanita van der Westhuizen also at EOH, and Juanita says:

“Good morning, Sphiwe. Please find attached cancellation letter for RFP1303.”

The RFP is a request for submission for a proposal or a tender, Chair and if you turn to the very next page Chair,  
20 330 in the bundle, you will see this is a formal letter from the SITA, the State Information Technology Agency which manages the procurement of these IT projects and services, and it is written to the Account Manager at EOH, attention; Patrick Makubedu, and what it says is:

“To whom it may concern, cancellation of

RFB1303/2014 for appointment of two separate service providers for the provincial of Platinum Access Service Solution for Government for a period of five years. We regret to inform you that this RFP (and the number) has been cancelled. SITA would like to thank you for the interest shown in this RFP and regret any inconvenience caused.”

10 Chair, so what this means is if you look at the chronology there is a payment to Mr Kodwa, there is a request for his intervention, because EOH were disqualified and now shortly after we have cancellation of the tender and that means that the procurement process would start afresh and potentially EOH would be illegible to compete again. They would have lost out.

**ADV CHASKALSON SC:** Can I then ask you if we can skip past the screen more, can we go to page 281, the top of your timeline at page 281 and the document that  
20 appears at page 335 of the bundle and can you describe to the Chair what that document is?

**MR POWELL:** 335?

**ADV CHASKALSON SC:** 335.

**MR POWELL:** Chair, this is an e-mail from Jean McKay dated 23 July 2015, also addressed to ZZ Kodwa and

copied on this is lungancwana@gmail.com.

**CHAIRPERSON:** That is Lunga Ncwana, N-C-W-A-N-A.

**MR POWELL:** Thank you, Chair. That is correct. Chair, remember I referred to Mr Lunga Ncwana earlier.

**CHAIRPERSON:** Ncwana.

**MR POWELL:** Ncwana, thank you. Chair, I did try practice some of these pronunciations.

**CHAIRPERSON:** Right.

**MR POWELL:** And we did some homework, just to  
10 understand who Lunga Ncwana is and we found he is  
linked in adverse media. He was allegedly, there were  
claims in the media that were used to channel [indistinct]  
money to the ANC, he is purported to be a close of  
Bathabile Dlamini, the ex Social Services Minister, and he  
was implicated in corruption regarding SASSA projects  
previously in the media.

Chair, I am not saying that he was convicted, but  
there was adverse media and he was also a friend of Jean  
McKay and one of the attendees at his wedding and there  
20 was also adverse media about some luxury accommodation  
that Jean McKay provided for Mr Ncwana. So I just wanted  
to mention that name and highlight that, the link there,  
Chair.

**CHAIRPERSON:** Yes.

**MR POWELL:** And if we go back into the e-mail it

attaches invoices and it looks like there is a number of invoices, invoice 1, invoice 2, invoice 3, invoice 4, invoice PDF, which I presume is invoice 1 and what Jean McKay is saying in the narration is:

“My brother, please look at this. People are using ANC letterheads, but changing the bank details into individual or company bank details. Please can you look into this for me. Thanks, Jean.”

10 And what this refers to is a series of invoices that were sent to EOH and they went to various people within EOH, Chair and if I can turn you to page 338, these are the documents that the discussions seem to relate to and you will see that there is a number of African National Congress, Nelson Mandela Region, Regional Coordinator’s Office, addressed to EOH Matambo and if we look at the date it is 29 May 2015, there is an amount of R126 000 and the bank details are SANTACO.

Chair, SANTACO is the South African National Tax  
20 Association. So this appears to be an invoice for taxi services rather than just an invoice from the ANC. They seem to be claiming for expenses for taxies and if you look at the next invoice on page 339 it seems to be more of the same services rendered, this time R16 800 and this one has bank details of Umfedo Services, Uitenhage and this

seems to be what Mr McKay is complaining about, you know these are purportedly coming from the ANC, the National Congress, Nelson Mandela Region, but the bank details are all service providers.

**CHAIRPERSON:** Then the last one that you mentioned is?

**MR POWELL:** Umfedo Services, Uitenhage.

**CHAIRPERSON:** Uitenhage, ja.

**MR POWELL:** That is correct, Chair.

**CHAIRPERSON:** Also, these are the letterheads that he  
10 was talking about, saying some people are submitting  
invoices on the letterheads of the ANC.

**MR POWELL:** Correct.

**CHAIRPERSON:** But with different banking details.

**MR POWELL:** Correct, Chair.

**CHAIRPERSON:** Okay.

**MR POWELL:** And the next one is more the same, the  
next one is the business zone on page 340. If you go to  
the bottom of the page you will see the banking details, it  
also says African National Congress, Nelson Mandela  
20 Region, bank details the Business Zone. The next one is  
another one for Unkedo Services, PE and R28 000.

**ADV CHASKALSON SC:** And proceeding in this  
chronology, bearing in mind that the Home Affairs tender  
has not yet been cancelled, we jumped ahead to that, that  
was November, can you take the Chair to the very next

page, page 342, and describe to the Chair that you see there?

**MR POWELL:** Chair, this is an e-mail on 5 August 2015 and I just emphasise what the evidence leader highlighted, that the tender has not been cancelled.

**MR POWELL:** This is sent by Jean McKay to ZZ Kodwa, the subject is 'sponsorship' and the wording, the narration is:

10            “My brother, addressed the letter to EOH  
Matambo (Pty) Ltd, attention Jean McKay,  
Executive Director (then his e-mail address).  
If you need a draft letter, let me know, but I  
am sure he will be fine with the content. It  
should simply state that the movement  
humbly requests assistance in the form of  
sponsorship of R1 million (whatever the  
purpose), something like that, either from  
the TG himself or Jerry, or any other  
authority.”

20 Chair, I understand TG to mean Treasurer General of the ANC. I am not sure who the Jerry is, Chair.

**CHAIRPERSON:** That is an e-mail from?

**MR POWELL:** Jean McKay.

**CHAIRPERSON:** McKay.

**MR POWELL:** To Kodwa.

**CHAIRPERSON:** Kodwa.

**MR POWELL:** ZZ Kodwa.

**CHAIRPERSON:** And he says:

“My brother, addressed the letter to EOH  
Matambo (Pty) Ltd, attention...”

Himself, and then he says what the letter should say, is  
that right?

**MR POWELL:** That is correct, Chair.

**CHAIRPERSON:** Okay, but basically he is asking  
10 Mr Kodwa to address the matter to himself or to TG or  
Jerry or any other authority to ask for sponsorship.

**MR POWELL:** Ja, he is suggesting ask us to sponsor you.

**CHAIRPERSON:** Ja, ja.

**ADV CHASKALSON SC:** Can I then take you to  
...[intervenes]

**CHAIRPERSON:** I am sure, I am sure many parties would  
like this kind of... Ask, just say please, we have got money  
to give you, ask us for a donation.

**MR POWELL:** Exactly, Chair.

20 **ADV CHASKALSON SC:** Whatever the purpose, Chair.

**CHAIRPERSON:** Whatever the purpose.

**ADV CHASKALSON SC:** Can I then ask you to go to  
page 348?

**MR POWELL:** Certainly, Chair. At page 348 in the bundle  
this is a Standard Bank South Africa customer or payments

final audit report and you will see Chair, that this refers to statement reference EOH Matambo, account name the Elections Agency, amount R1 million. So the R1 million that we referred to a moment ago, Chair, it seems to have ended up with a request to pay to the Elections Agency.

**ADV CHASKALSON SC:** And if you go up to page 346, can you describe to the Chair what you see there?

**MR POWELL:** Certainly. Chair, at 346 I will start with the final e-mail in the thread and then we will work back,  
10 Chair, but at the top of that page you will see that there is an e-mail from Jean McKay dated 12 August 2015, to ZZ Kodwa, subject Elections Bank letter, confirmation letter, attachments and then it has got a number ATT000001HDM and then it says PoP Election Agency.

Chair, the PoP is proof of payment, it I the acronym for proof of payment, and then there is an attachment of a PDF and this was forwarded, Jean McKay forwarded the proof of payment that he had received earlier that day from Renè Jonker, you will remember that name from my last  
20 testimony, she was a Financial Manager working with Jean McKay at EOH at the time, and that followed earlier correspondence where Jean McKay sent to Shazay Gordon and copied Renè Jonker Elections Bank letter, confirmation letter, and Jean had asked please send me proof of payment once it is done, and preceding that was



communications with Abantle Pakenyane, Executive Director of the Elections Agency and Shazay had requested clearly, this was dear Shazay:

“Herewith bank letter confirming our banking details. Kind regards, and apologies for the delay.”

**ADV CHASKALSON SC:** And that proof of payment of R1 million is what is forwarded by McKay to Kodwa on the 12<sup>th</sup> of August at the top e-mail.

10 **MR POWELL:** That is exactly correct, Chair. So I started with proof of payment of the R1 million that went to Mr McKay and then we just went through the actions preceding it.

**ADV CHASKALSON SC:** The next item on your timeline is dated 9 September.

**CHAIRPERSON:** I see we are at 13:00, Mr Chaskalson.

**ADV CHASKALSON SC:** Sorry, Chair.

**CHAIRPERSON:** Do you want to do that last one or do you ...[intervenes]

20 **ADV CHASKALSON SC:** It is not directly related to what we have just been discussing, Chair.

**CHAIRPERSON:** Okay. Let us take the lunch adjournment and we will resume at 14:00.

**ADV CHASKALSON SC:** Thank you, Chair.

**MR POWELL:** Thank you, Chair.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** I had stood down the matter relating to Ms Myeni to two o'clock. I understand that she is available online or via video link, but I would like us – I would like to finish with Mr Powell's evidence which I understand should not take beyond an hour and thereafter I will then deal with Ms Myeni's matter. Okay, alright.

**ADV CHASKALSON SC:** Thank you, Chair.

10 **CHAIRPERSON:** Let us continue.

**ADV CHASKALSON SC:** Mr Powell, the next item in the timeline is a document on page 350 of the Bundle, 3-5-0. Can you describe to the Chair what that document is?

**MR POWELL:** Certainly, Chair. 3-5-0.

**CHAIRPERSON:** 3-5-0 I think, Mr Chaskalson.

**ADV CHASKALSON SC:** That is correct, Chair.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** It is Annexure 14., SP 14.1.

20 **MR POWELL:** Chair, this is an award letter from the Province of the Eastern Cape Department of Education, and it is contract number SCMU6-15/16-0001. Standard bidding document for – sorry, I said it was an award letter, it is not.

It is a bidding document, Chair for integrated document management and human resource records,

restoration project issued by the Province of the Eastern Cape department of education. And the closing date for this is 24 August 2015.

And supporting this is a whole series of documents that need to be completed by the bidder, Chair.

**ADV CHASKALSON SC:** Then can we go to page 300 and can you describe to the Chair the document that you see at page 300.

**MR POWELL:** Certainly. Chair, this is an extract of the  
10 Mr NG Kodwa – Zizi Kodwa's platinum classic bank statement.

**ADV CHASKALSON SC:** And if you go down to 22 September, can you describe a credit entry on that date?

**MR POWELL:** Certainly, Chair. On 22 September there is an NPF credit with reference number EFT and then a lot of numbers and numerals, ending with /NG Kodwa JM. Chair, I presume why I understand the JM to mean Jehan Mackay and there is a transfer of R250 thousand to the account of  
20 Mr Kodwa.

And Chair you will see if you look just above that line, you will see that the bank account balance was almost depleted. The amount left in that account was R1,018.40. And after the deposit it goes up to the R250 thousand and  
16.

**ADV CHASKALSON SC:** I think you missed a withdrawal of R1 thousand in between.

**MR POWELL:** Sorry, yes there is a withdrawal just before that. So, it goes up by the R250 thousand. So the thousand that was in there, was depleted. In fact, the balance, Chair, Mr Chaskalson is quite right. The balance was R18.44.

**CHAIRPERSON:** [Affirms]

**MR POWELL:** And then there was an injection of  
10 R250 thousand from Mr Mackay.

**CHAIRPERSON:** Mhm.

**ADV CHASKALSON SC:** Can I then ask you – keeping with the chronology, to go to page 413. And can you describe to the Chair what you see on page 413? Maybe taking the email chain from the earliest email to the last email.

**MR POWELL:** Certainly, Chair. There is an email from a Mangezi Deyala and beneath his name on the email, Chair it reflects ANC Provincial Office of the Eastern Cape office  
20 manager, and then contact numbers and email addresses for ANC Eastern Cape. And it says, it is addressed to – the narration is:

“Hi CDE...”

I understand that to mean comrade.

“Comrade Maghlauli. Kindly receive the

quotation for the PGC accommodation from  
CDE comrade Marawhu.”

And that then is forwarded from Mzwane Mdoda,  
Theopolis Maghlauli...” ...[intervenes]

**CHAIRPERSON:** Mzwa Mdoda.

**MR POWELL:** Chair, and I thought I had gotten close to  
it.

**CHAIRPERSON:** Ja, no – no, it is just that it sounds like  
somebody else, not this name.

10 **MR POWELL:** Thank you, Chair and I thought  
...[intervenes]

**CHAIRPERSON:** Ja, you try your best. Mzwa Mdoda.

**MR POWELL:** Mzwa Mdoda.

**CHAIRPERSON:** Ja – ja, you did it.

**MR POWELL:** I think I would call him Mzee if he was  
here, Chair. And it is addressed to Dumisani Mafu,  
[Mazzola.nato57@gmail](mailto:Mazzola.nato57@gmail.com), as well as Thandi Kopolo.  
Thandi Kopolo was a former executive at EOH. She is also  
one of the individuals that left the company, Chair.

20 And it is also forwarded to Bulumko Lubelwana and  
it is a ELCB.co.za. Chair, you will recall that I referred to  
ELCB when I spoke about a consortium that was bidding  
for the Eastern Cape tender work and ELCB was one of the  
consortium partners, Chair. And this reflects:

“Dear all, as per ANC Treasury office

humble request, the below quote is the latest account allocated to us for purposes of settlement on or before 10:00 tomorrow 1st October, but discussions are taking place so as to at least settle half this amount before the above deadline and settle the ...”

It says reminder, it should be remainder.

10                   “...remainder before delegates’ arrival at 13:00 of the same date, i.e. tomorrow 1<sup>st</sup> October.”

Chair, this letter or this email, which was forwarded ends up being sent by Thandi Kopolo, it is forwarded again and he writes to Jehan Mackay forward with header, subject quotations and the writing on this – the narration is:

20                   “Eish my brother, I cannot seem to shrug these guys off. They are using our recent submission to arm wrestle with us, R700K for accommodation at the PGC. Can LN or MX do something? I see that our esteemed partners, ELCB are also copied.”

That is the consortium partner I referred to a moment ago, Chair. This then gets sent by Thandi Kopolo on 30 September to Jehan Mackay and if you look at the top of this page 413, Chair Jehan Mackay then takes this on

30 September – same day at 11:09, he sends it to Zizi Kodwa with the same subject header, quotations and the scans attached, and his question to Zizi Kodwa is:

“My brother, do you know about this? Your thoughts?”

**ADV CHASKALSON SC:** And then can I ask you to go down to 415 where the attached quotation is.

**MR POWELL:** Chair, and if you look at the document attached, you will see that this seems to be invoices from  
10 Imakaya Bed and Breakfast CC. Quotation for accommodation, ANC is the header.

“Attention Ms Pumza, accommodation for 626 people sharing at R375 per person bed and breakfast for 2 May.”

Sorry, 25 October 2015.

**CHAIRPERSON:** 25, Ja – Mhm.

**MR POWELL:** And the total is R704,250, Chair and then there is a list of guest houses and B and B’s – bed and breakfasts which appear to have been used for the  
20 accommodation and then there is a list of all the different Imakaya, Assante, Amagklè, Simbani and different names which appear to be different residences or lodges.

And each time they refer to the volume of beds making up the 626 people, Chair.

**ADV CHASKALSON SC:** Then over the page on 417, can

you describe to the Chair what you see there?

**MR POWELL:** Certainly, Chair. On 417 what we have here is another forwarded email from Mangezi Deyala, ANC Provincial Office of the Eastern Cape. He is sending this to comrade Maghlauli:

“Kindly receive the quotation for the PGC accommodation from comrade Marawhu. Regards”

And then:

10                   “Dear all, as per ANC Treasury office  
humble request, the below quote is the  
latest account allocated to us for purposes  
of settlement on or before 10:00 tomorrow  
1 October, but discussions are taking  
place so at least to settle half this  
amount...”

And that then is forwarded from Mzwa Mdoda, Theopolis Maghlauli to Dumisani Mafu ...[intervenes]

**CHAIRPERSON:** You got it right this time, Mr Powell.

**MR POWELL:** Try dodgy.

20 **CHAIRPERSON:** Yes.

**MR POWELL:** And that ends up being sent to Jehan Mackay who then sends it on 1 October to Zizi Kodwa, forwarded quotations and a scanned pdf attached and it is just a double ?? to Zizi Kodwa, Chair.

**ADV CHASKALSON SC:** And you deal with the – no,



sorry. Let me ask the question. Do you know what happened in relation to this request for paying accommodation expenses?

**MR POWELL:** Chair, just one moment.

**ADV CHASKALSON SC:** Maybe if I can take you to page 284 of the Bundle which is paragraph 19 of your affidavit, Chair.

**MR POWELL:** Chair, these requests all seem to arise with the ANC in the Eastern Cape request to EOH three weeks  
10 after EOH had submitted a bid to the Eastern Cape Provincial Government for that department of education tender that we referred to earlier.

The requests were forwarded both to EOH and the bid partner, ELCB that I referred to earlier. These requests for payments were all while the tender was being adjudicated and they were clearly – the impression from Mackey's email that they are trying to arm wrestle and I think Thandi Kopololo refer to the arm wrestle.

So, Mackey clearly thought that the tender outcome  
20 was going to be affected by whatever they did with these expenses so, he then sought Kodwa's advice on whether he should pay the ANC donations into the specified accounts and those we showed Chair earlier.

Those were taxi association bank account numbers that were inserted on the ANC invoice and he also

forwarded this complaint that they are using our recent submission to arm wrestle with us. The R217 million tender was ultimately awarded to the EOH consortium on 30 March 2016.

But only after they had donated R1 million to the Eastern Cape ANC on 6 November 2015 after receiving an official request to do so, Chair. So, it looks like EOH did succumb to the pressure to make these donations and, Chair you will remember that I did highlight to Chair that  
10 the award to the consortium was R217, EOH were a 40 percent partner in that.

**ADV CHASKALSON SC:** Can I take you to – ask you to go to page 430 and describe to the Chair what you see there.

**MR POWELL:** Chair, this is an FNB document. Its header is view payment and it says, own account Tactical Software Systems. Your recipient details, recipient: ANC fund raising account and there is a number there, 52640046639.

20 The reference TSS, Chair and that seems to tie is with Tactical Software Solutions. Amount payment advice, R1 million. So, that seems to be the proof of payment of the R1 million that we spoke about earlier.

**ADV CHASKALSON SC:** And you mentioned also the request from the provincial ANC, can you go up to

page 427 ...[intervenes]

**CHAIRPERSON:** I am sorry, if you are able to tell me, Mr Powell in terms of timeframe how soon does this amount of R1 million ...[intervenes]

**ADV CHASKALSON SC:** 6 November 2015, Chair.

**CHAIRPERSON:** After the trail of throwing emails about being arm wrestled or whatever.

**MR POWELL:** Exactly, Chair.

**CHAIRPERSON:** How close soon after does the payment  
10 happen, the deposit or transfer? Is it the middle of the week, two weeks?

**MR POWELL:** It is a question of weeks, Chair.

**CHAIRPERSON:** Ja, okay. Thank you.

**MR POWELL:** So shortly after.

**CHAIRPERSON:** Ja, okay.

**ADV CHASKALSON SC:** Maybe in terms of that chronology I should have taken you first to page 427 which is the request. Can you go to that page?

**MR POWELL:** Certainly, Chair. At page 427 there is an  
20 ANC document, African National Congress province of the Eastern Cape, Provincial secretary's office and it has an address in King Williamstown and it is dated 5 October 2015.

And it is addressed to the manager, EOH Mthombo Limited and the header is, request for

donation. And, Chair let me read the narration:

“Accept my warm greetings to your profound office. This communiqué serves to request your office to assist African National Congress with a donation. The organisation was having a Provincial general council which cost the ANC a huge amount as we were transporting, catering and accommodating 1,800 delegates. If affected your cash flow for the next coming months. You donation will assist the organisation in this regard. We hope our request will receive your favourable consideration.”

10

And then the organisation banking details are as follows:  
Name: ANC Fund Raising account, FNB bank, account number and a branch code. And that comes from Mr M Deyala, ANC Provincial office manager.

**ADV CHASKALSON SC:** And the date on that document, you mentioned was 5 October 2015. Just in relation to the Chair’s question do you recall the date on the last email forwarded from Mr Mackey to Mr Kodwa?

20

**MR POWELL:** Chair, let me just have a look. What was the reference?

**ADV CHASKALSON SC:** 417.

**MR POWELL:** 417. Chair, it was four days. I just wanted to get the exact number of days right and it was exactly four days earlier, Chair. The 1<sup>st</sup> of October.

**ADV CHASKALSON SC:** Ja. In fact, if I can – I may have referred you to the wrong page because I think the last, there was a – let me just check that I have the right one. No, no, I stand corrected. You are absolutely right, sorry.

**MR POWELL:** Thank you.

**ADV CHASKALSON SC:** Then from 5 October, if we go  
10 back to the chronology, can I ask you to go to an invoice that appears in the Supplementary Bundle at 424.18.

**MR POWELL:** So, 18 ...[intervenes]

**ADV CHASKALSON SC:** So, it is page 18 of the documents that were handed up this morning.

**CHAIRPERSON:** Hmm.

**ADV CHASKALSON SC:** Chair, it is the second last document in that Bundle.

**CHAIRPERSON:** Oh okay, thank you.

**ADV CHASKALSON SC:** And we will get to describe the  
20 status of this document and the authenticity of its date and issues like that at a later stage. For now, I want you merely to describe the item at that relates to 15 and 16 October.

**CHAIRPERSON:** Will that be 424.12 in terms of the pagination we did this morning?

**ADV CHASKALSON SC:** 424.18, 1-8.

**CHAIRPERSON:** Oh, okay. I think those are the ones which I did not cover but I should be able to ...[intervenes]

**ADV CHASKALSON SC:** It will also have the Annexure number 15.7 on it, Chair.

**CHAIRPERSON:** Okay, I have got that ja. So, otherwise 424.18.

**ADV CHASKALSON SC:** That is correct, Chair.

**CHAIRPERSON:** Okay, alright.

10 **MR POWELL:** Chair, this is an invoice from an entity called Inn Residence by Peter Brandyon Pty Ltd and it is addressed to Clipper Financial Services Pty Ltd and it seems to reflect accommodation at various guest houses in the Western Cape, Chair.

And if we look at the documents, you will see that Mr Chaskalson has asked me to zoom in on the October accommodation that is in the middle of the document, and you will see that there was a payment of R50 thousand per night.

20 So, R50 thousand times three, R150 thousand for accommodation at 53 Avenues Frais, 53 Avenue Frany, rental 29 October 2015 to 31 October 2015. And above that is ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Powel.

**MR POWELL:** Sorry.

**CHAIRPERSON:** Have you moved away from 424  
...[intervenes]

**MR POWELL:** Sorry, I should have referred to one earlier.  
Mr Chaskalson, I think you were referring to 15 October.

**CHAIRPERSON:** We started on the invoice from  
Inn Residence and you said you were going to focus on  
...[intervenes]

**MR POWELL:** Ja, Chair ...[intervenes]

**CHAIRPERSON:** The transactions in October  
10 ...[intervenes]

**MR POWELL:** The October transactions ...[intervenes]

**CHAIRPERSON:** I see only two in October, is that  
correct?

**MR POWELL:** That is correct.

**CHAIRPERSON:** Yes, okay.

**MR POWELL:** So, the first one to look at, Chair is the  
5 Nettleton rental.

**CHAIRPERSON:** Ja.

**MR POWELL:** 15 October 2015 to 16 October 2015, that  
20 is two nights at R50 thousand each. Chair, Nettleton Road  
is one of the most exclusive addresses in South Africa. It  
is at the very top of Clifton with the most magnificent views  
of the ocean.

**CHAIRPERSON:** Hmm.

**MR POWELL:** And the price seems to reflect that because

it is R50 thousand per night. So there is a R100 thousand  
...[intervenes]

**CHAIRPERSON:** For two nights.

**MR POWELL:** Chair, we will explain the rest of the document because all of these are various accommodations that were paid for and you will see from documents that we are going to refer to in a moment that this appears to be on behalf of Mr Kodwa.

**CHAIRPERSON:** Okay.

10 **ADV CHASKALSON SC:** In fact, we do not need to leave that document just yet because if you go to the top of the document, there are two issues that I would like to emphasise for later reference.

**MR POWELL:** Yes.

**ADV CHASKALSON SC:** The first is the invoice number and the second is the reference.

**MR POWELL:** Correct. Certainly, Chair you will see the invoice number is invoice 00000076, reference Mr Z Kodwa, date 25-01-2016, due date 31 January 2016.

20 **CHAIRPERSON:** Okay so, that was about five  
...[intervenes]

**ADV CHASKALSON SC:** Chair.

**CHAIRPERSON:** Or six nights.

**MR POWELL:** Chair, let us ...[intervenes]

**CHAIRPERSON:** No – no, I am sorry. I was



...[intervenes]

**MR POWELL**: I think it might be useful to just go through the whole list.

**CHAIRPERSON**: Okay.

**MR POWELL**: Because these are all accommodations and I think it is important for Chair to follow.

**CHAIRPERSON**: Okay, yes.

**MR POWELL**: The value of this luxury accommodation that was provided to Mr Kodwa. It starts off at the top with  
10 Barbados rental and Barbados, Chair we looked. The villa of Barbados in Camps Bay it is a luxury guest house, Chair or villa that you rent.

**CHAIRPERSON**: Mhm.

**MR POWELL**: And that was rented from 23 December to 5 January 2016.

**CHAIRPERSON**: Mhm.

**MR POWELL**: 23 December 2015 to 5 January 2016, and the price for that was R230 thousand.

**CHAIRPERSON**: [Affirms].

20 **MR POWELL**: And then the next one is the Nettleton rental.

**CHAIRPERSON**: And that would work out to about how much per night? Are you - were you able to make that out?

**MR POWELL**: It is just under ...[intervenes]

**CHAIRPERSON**: That is like what – that is close to is it

12 days, or.

**MR POWELL**: Ja. It seems to be two weeks, Chair.

**CHAIRPERSON**: Oh, two weeks, ja.

**MR POWELL**: Say 14 days so, it is about R17 thousand roughly.

**CHAIRPERSON**: Oh, okay. Well, I realise I think all your ...[indistinct] are lawyers, there is no accounting so, okay.

**ADV CHASKALSON SC**: Okay, astute observation, Chair.

**CHAIRPERSON**: Let us continue.

10 **MR POWELL**: The next one is the Nettleton / Clifton address with 15 and 16 October 2015 for R50 thousand.

**CHAIRPERSON**: [Affirms].

**MR POWELL**: And Chair you will see that this accommodation included a private chef for one night at R3 350 and then there is the another rental in October, Avenue Frany. Frany is also an exclusive part of the Western Cape Atlantic seaboard, Chair.

**CHAIRPERSON**: [Affirms].

20 **MR POWELL**: And you can see that this is also similarly expensive, Three night R50 thousand per night so, R150 thousand. And there is also a private chef but this time the private chef cost is R11 150, Chair. And then there is another rental of the Nettleton Road property.

5 Nettleton Road, 7 November 2015 to  
9 November 2015 also at R50 thousand per night, another

R150 thousand. And then there is a cost for a private chef from 7 to 9 November, R11,700. Altogether this comes to R656,200, Chair and the reference is that this was referenced to Zizi Kodwa and we will look at further emails regarding the link back to Mr Kodwa.

**ADV CHASKALSON SC:** Before we get to those emails, we have now dealt in the chronology with – well, all of these items are on the invoice, but on the chronology what is relevant for present purposes is 15 and 16 October  
10 luxury accommodation, 29 October luxury accommodation.

Can we first go to page 319 to see what else happened – 319 of the Main Bundle, what else happened on 29 October, Chair. And can you describe to the Chair what you see there?

**MR POWELL:** 319, Chair is another extract of the platinum classic bank account belonging to Mr NG Kodwa – Zizi Kodwa and this is for the period of October 2015.

**ADV CHASKALSON SC:** I said 29, in fact it reflects on the 30<sup>th</sup> here. Can you take the Chair to it.

20 **MR POWELL:** Yes, certainly. Chair, I was going to draw your attention to the transaction on the 30<sup>th</sup> of October 2015. There is an ACB credit referenced J Mackey, that appears to be Jehan Mackey R50 thousand credited to Mr Kodwa's account.

So, it is a transfer of R50 thousand on the 30<sup>th</sup> of

October and Mr Chaskalson highlighted the dates of the luxury accommodation a moment ago, Chair. You will see that it is very close to those times.

**ADV CHASKALSON SC:** But this was a very busy time because we have already seen another document dated 29 October. Can I ask you to go back to page 330 and just refresh our memory as to what that document was.

**CHAIRPERSON:** You say 330?

**MR POWELL:** 330.

10 **ADV CHASKALSON SC:** 3-3-0, Chair.

**CHAIRPERSON:** Okay.

**MR POWELL:** Chair, this is a document we looked at earlier, but the dates becomes significant because this is the cancellation of the appointment of two separate service providers for the provision of platinum access service solution for Government for a period of five years.

And this appears to be the EOH tender that was cancelled. Chair, you will recall I drew Chair's attention to the email from |Mr Mackey to Mr Kodwa.

20 **CHAIRPERSON:** Yes, ja.

**MR POWELL:** Where he explains this tender was going against us.

**CHAIRPERSON:** Ja.

**MR POWELL:** They have decided to disqualify EOH.

**CHAIRPERSON:** Ja, I remember that and the date that

this – the date that this letter of cancellation of the ...[intervenes]

**MR POWELL:** It is dated 29 October 2015 ...[intervenes]

**CHAIRPERSON:** Ja, October 2015.

**MR POWELL:** |The date is at the bottom of the page, Chair.

**CHAIRPERSON:** Ja, and that is the date when he is living in one of those apartments.

**MR POWELL:** Correct, Chair.

10 **CHAIRPERSON:** There that you are talking about.

**MR POWELL:** And I think what makes the picture look even more sinister, Chair is that it is a day after this letter is forwarded. So, at 29 October you have the cancellation.

**CHAIRPERSON:** Yes?

**MR POWELL:** 30 October he is enjoying – and 29 October he is enjoying the luxury accommodation and there is a little deposit into his account.

**CHAIRPERSON:** Of R50 thousand.

**MR POWELL:** Correct, Chair.

20 **CHAIRPERSON:** Ja.

**MR POWELL:** And again, if I can also just comment, Chair his balance was reduced to R8 thousand just before the R50 thousand comes in. So, very convenient and timely capital injection.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Can we then go a few days later to the 4<sup>th</sup> of November and to page 322. In fact, if we can start on 321.

**MR POWELL:** Certainly.

**ADV CHASKALSON SC:** And if you can describe to the Chair what you see there.

**MR POWELL:** Certainly, Chair. So, what we seen, Chair and this is important to draw to Chair's attention, is there is a series of transaction happening all around this time.

10 We have now spoken about the accommodation, the cancellation, the capital injection.

Now if I can draw Chair's attention to this extract from the November bank statement of Mr Kodwa, you will see just below the middle of that page, Chair on 411 there is an internet banking payment from Absa Bank with a reference TSS, Chair.

And I submit that TSS is Tactical Software Solutions and that is R50 thousand and Chair I am going to draw your attention to the balance just before this capital  
20 injection, it was R1,574 in arrears. That was in the red, Chair, in deficit. And then if we can follow the chronology of events ...[intervenes]

**CHAIRPERSON:** Sorry, just hang on one second. There was a R50 thousand deposit or transfer on the 30<sup>th</sup> of October.

**MR POWELL:** Correct, Chair.

**CHAIRPERSON:** And then there is a R50 thousand transfer on the 4<sup>th</sup> – the following month. Well actually a few days later.

**MR POWELL:** Four days later.

**CHAIRPERSON:** Ja.

**MR POWELL:** Four or five days' later.

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

**MR POWELL:** And if you turn the page, Chair  
10 ...[intervenes]

**CHAIRPERSON:** Is it the same account?

**MR POWELL:** It is, Chair.

**CHAIRPERSON:** In which the R50 thousand of  
18<sup>th</sup> October had gone and then transferred? Because  
...[intervenes]

**ADV CHASKALSON SC:** If you scroll up, Chair just  
page 319.

**CHAIRPERSON:** Oh, yes.

**ADV CHASKALSON SC:** You will see it is the same  
20 account.

**CHAIRPERSON:** Okay – okay.

**MR POWELL:** Chair, it is all the same platinum classic  
bank account of Mr Kodwa.

**CHAIRPERSON:** Yes. Okay.

**MR POWELL:** And if we follow the chronology, so we have

spoken about 4-11-2015. If you move to page 322 you will see that there is another payment, Chair. This time the reference is 4 November 2015, ACB credit settlement, J Mackey. Chair, the last one on 4 November was TSS so if you turn, if you just want to compare, Chair the last one was 4 November ...[intervenes]

**CHAIRPERSON:** What was the date of the last one?

**MR POWELL:** Also same date, Chair 4 November.

**CHAIRPERSON:** Ja, okay.

10 **MR POWELL:** That one was TSS R50 thousand, and you can see it looks like Mr Kodwa then paid various expenses because there is transfers of R20 thousand, R5 thousand, R1 thousand, etcetera.

**CHAIRPERSON:** Hmm.

**MR POWELL:** And then there is another payment, but this time it comes straight from Mr Mackey and it is again the exact same number R50 thousand.

**CHAIRPERSON:** Yes.

20 **ADV CHASKALSON SC:** Then if we can go down to 25 November and can I ask you to go to page 436. And if you can describe to the Chair what you see there.

**MR POWELL:** Certainly, Chair. On 25 November, this is an email from Zizi Kodwa to Jehan Mackey and the header is forward banking details. And what he has forwarded is an email that Zizi Kodwa himself received earlier that day –



sorry the day before, Chair. On 24 November he received an email from Joshua Munday and if you look at the mail address, [Joshua.Munday@FiatChryslerFourways.co.za](mailto:Joshua.Munday@FiatChryslerFourways.co.za) and it is sent to [ZKodwa@ANC.org.za](mailto:ZKodwa@ANC.org.za) and the narration is:

“Good day Buti Zizi. Just a friendly reminder I need to go and collect your car tomorrow so, please try and make payment so we do not have any delays. Thank you, Joshua Munday, new car sales executive,  
10 Chrysler Jeep Dodge Fiat, etcetera  
Hobart Street, Bryanston.”

**ADV CHASKALSON SC:** And then if we can go to page 310, and if we can start with the third last – or firstly, can you describe to the Chair what the document we are looking at is and for that purpose one might need to go back to 309.

**MR POWELL:** Correct, Chair this is the bank statement of Mr Jehan Mackey and it has got his Ecclestone Crescent, Bryanston home address.

20 **CHAIRPERSON:** I see that here is written Johan or what his name is normally written with Je, is that right?

**MR POWELL:** Correct, this seems to be a typo, Chair.

**CHAIRPERSON:** Yes.

**MR POWELL:** He normally does have a Je in his name.

**CHAIRPERSON:** Ja, okay.

**ADV CHASKALSON SC:** While we are on the statement, if I can ask you first to go to 3 November because we had seen in Mr Kodwa's bank statement a R50 thousand payment with a reference Jehan Mackey. Can you take the Chair to the corresponding payment in this statement?

**MR POWELL:** Mr Chaskalson ...[intervenes]

**CHAIRPERSON:** At what page?

**MR POWELL:** Do you want me to look at 310?

**ADV CHASKALSON SC:** 310 – 310.

10 **CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** And so, 3 November is what I am asking you to look.

**MR POWELL:** Ja. So 3 November, Chair you will see it is the 6<sup>th</sup> line item on the statement on 310, you will see that it has an internet payment to description NG Kodwa / JN Mackey, R50 thousand.

**ADV CHASKALSON SC:** Then the next entry that I like ...[intervenes]

20 **CHAIRPERSON:** Is that 2015? I see there is no year given there on the dates.

**MR POWELL:** Yes, Chair if you go back to the preceding page it identifies this as the statement during 29 October 2015 to 28 November 2015.

**CHAIRPERSON:** Okay.

**MR POWELL:** So it is 2015, Chair and then you will see

further down.

**CHAIRPERSON:** Ja?

**MR POWELL:** On 28 November there is an internet payment again to NG Kodwa / JN Mackey, R50 thousand.

**CHAIRPERSON:** What – on what date now? Is that for November?

**MR POWELL:** Sorry, this one is near the bottom of that statement, Chair 28 November NG Kodwa.

**CHAIRPERSON:** Oh, yes.

10 **ADV SELEKA SC:** J Mackey, R50 thousand.

**CHAIRPERSON:** The balance now is when these amounts come in now, they come in – they do not come in at a time when the balance is very low.

**MR POWELL:** No, Chair this is coming from Mr Mackey's bank account.

**CHAIRPERSON:** Oh, okay – okay.

**MR POWELL:** So, you can see Mr Mackey's bank account is a lot healthier than Mr Kodwa's.

**CHAIRPERSON:** Yes, okay. Ja.

20 **MR POWELL:** And he seems to help Mr Kodwa out in times when Mr Kodwa's account balance was very low.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** You just refer to the 28 November entry. There is one immediately above it from 26 November. Can you describe that to the Chair and

I am not too – I know ...[intervenes]

**CHAIRPERSON:** Oh, yes.

**MR POWELL:** Sorry, Chair I missed that one because it had a different narration, but this one is – there is an internet payment.

**CHAIRPERSON:** I thought that was the one you were talking about there.

**MR POWELL:** No sorry, I was referring to 28 November. This seems to be 26 November, Chair and this one has a  
10 FNB O/D number.

**CHAIRPERSON:** Ja?

**MR POWELL:** And then it has a narration there, April Streetwise - APR Streetwise (Zizi).

**CHAIRPERSON:** Ja.

**MR POWELL:** Chair and that amount is R30 thousand and that also appears to be a payment to Mr Kodwa.

**ADV CHASKALSON SC:** I have to – sorry, intervene there. The Commission has actually investigated this payment. And the contra account into which this amount  
20 was paid according to FNB is the account of the Jeep Chrysler sales representative, Mr Munday whose email we saw a few moments ago.

**CHAIRPERSON:** Ja, I remember that email.

**ADV CHASKALSON SC:** Yes, thank you. Ja, but we can – we will produce the FNB contra account.

**CHAIRPERSON:** Ja, but this is – so, this is money coming out of Mr Mackey’s account and you say it is going into Mr Munday’s account, Mr Chaskalson.

**ADV CHASKALSON SC:** That is correct, Chair.

**CHAIRPERSON:** And then there is a reference what the money is about and that is perhaps Streetwise (Zizi). Is that right? Am I reading the correct one?

**ADV CHASKALSON SC:** That is correct, Chair.

**CHAIRPERSON:** Okay.

10 **ADV CHASKALSON SC:** And you will recall that the bank details that were – that ...[intervenes]

**CHAIRPERSON:** Oh, that email is the one which was saying please make payment because I need to go and collect the car tomorrow.

**ADV CHASKALSON SC:** Exactly.

**CHAIRPERSON:** Okay, okay.

**ADV CHASKALSON SC:** And so, the account number at the bottom of that email.

**CHAIRPERSON:** Ja.

20 **ADV CHASKALSON SC:** Is the account into which it was paid.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** FNB confirms that that account is the account of Mr Munday himself, the representative.

**CHAIRPERSON:** Okay, okay. So, on the face of it, it

appears that Mr Mackey may have been paying on behalf of Mr Kodwa, or on behalf of Zizi, whoever Zizi is.

**ADV CHASKALSON SC:** Correct, Chair.

**CHAIRPERSON:** Okay, alright.

**MR POWELL:** Going forward, Chair and if I may just point out that when looked at 436 which spoke about the reminder to make payment, as a friendly reminder I need to go collect your car tomorrow.

**CHAIRPERSON:** Ja.

10 **MR POWELL:** The next page 437 has the bank statement number – the bank account number that Mr Chaskalson referred to that FNB account number 62114441611. That is the account that is referred to.

**CHAIRPERSON:** Okay.

**MR POWELL:** On this transfer, Chair.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Can we then go forward from 28 November to 4 December and to page 297. And can you describe to the Chair what we see at page 297.

20 **MR POWELL:** Certainly, Chair. This is a statement of the bank account of Mr Zizi Kodwa. And the statement is for the period 17 November to 17 December 2015.

**ADV CHASKALSON SC:** And on 4 December there is a transaction ...[intervenes]

**MR POWELL:** Correct, Chair on 4 December the

statement reflects at the fourth line on the statement on page 297, FNB O/B payment ...[intervenes]

**CHAIRPERSON:** I am sorry, what date?

**MR POWELL:** 4 December, Chair the fourth line item.

**CHAIRPERSON:** Okay, ja.

**MR POWELL:** On the statement.

**CHAIRPERSON:** Yes, I can see.

**MR POWELL:** FNB O/B payment, reference JM, R40 thousand Chair.

10 **CHAIRPERSON:** Yes.

**MR POWELL:** So, that is a transfer from Jehan Mackey to Zizi Kodwa, R40 thousand.

**CHAIRPERSON:** Not Joshua Munday? Is it not JM?

**MR POWELL:** Oh, JM.

**CHAIRPERSON:** Hmm? Well, whoever JM is, I guess.

**ADV CHASKALSON SC:** We do have the contra account details, we can show that is was Jehan Mackey in this case.

**CHAIRPERSON:** Yes. But this is R40 thousand, nè?

20 **ADV CHASKALSON SC:** The ...[intervenes]

**MR POWELL:** Correct.

**CHAIRPERSON:** So, the transaction we saw in J Mackey's account ...[intervenes]

**MR POWELL:** That was R30 thousand.

**CHAIRPERSON:** That was separate account

...[intervenes]

**MR POWELL**: That was a separate account and that Zizi Streetwise.

**CHAIRPERSON**: Ja, okay. So, this one you understand to be connected with what?

**MR POWELL**: Jehan Mackey. So, it is a payment ...[intervenes]

**CHAIRPERSON**: Oh, JM is ...[intervenes]

**MR POWELL**: JM is Jehan Mackey in this instance, Chair.

10 **CHAIRPERSON**: Oh, this account that you are looking at here is Mr Kodwa's one.

**MR POWELL**: This is Mr Kodwa's account.

**CHAIRPERSON**: This previous one was Mr Mackey's account.

**MR POWELL**: Mr Mackey's account.

**CHAIRPERSON**: Okay.

**MR POWELL**: Ja.

**CHAIRPERSON**: No, I got confused.

**MR POWELL**: Okay.

20 **CHAIRPERSON**: So okay, alright. Yes, thank you.

**ADV CHASKALSON SC**: Then if we go forward in the chronology, we have already discussed this item which is the holiday accommodation but just – I am just going to locate it in the chronology.

You will recall that there you took the Chair to



R230 thousand where none of us could count the days and work a daily rate for Barbados Villa accommodation from 23 December and that just for the reference there, that was again on 424 page 18 that invoice.

If we go forward further in the chronology, can I ask you to go to page 295. Chair, if I may just add when I estimated the accommodation at Villa Barbados in Camps Bay I suggested R17. I was not that far out for a lawyer, Chair.

10 **CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** The exact figure is R16,428, so.

**CHAIRPERSON:** I guess you are saying despite not being an accountant.

**ADV CHASKALSON SC:** Of course.

**CHAIRPERSON:** Okay. Yes, Mr Chaskalson.

**ADV CHASKALSON SC:** If we can go to page 295 and maybe 294 first just to identify the document and then 295.

**MR POWELL:** Chair, this is another extract from Mr Kodwa's bank account and this one is for the period  
20 16 January 2016 to 17 February 2017 – 2016, sorry.

**ADV CHASKALSON SC:** And then on 2 February can you - on page 295 can you identify the transaction?

**MR POWELL:** Certainly, Chair. The 9<sup>th</sup> transaction on the statement you will see the date 2 February internet banking payment and it looks like FRM and then it has got

the reference, JM – Jehan and again, we have checked. This is another transfer from Jehan Mackey.

**ADV CHASKALSON SC:** And what was the balance amount before the transfer? So, what is the amount and how did it effect the balance?

**MR POWELL:** The amount that was transferred was R30 thousand and, Chair the account was in arrears in the amount of R16,296. And after the R39 thousand it put it into a positive balance of – credit balance of R13,704. It  
10 was in deficit before this deposit.

**ADV CHASKALSON SC:** Then if we can go back to the Additional Bundle from today and go to the third page of that Bundle, 424.3. And can you describe to the Chair?

**MR POWELL:** Certainly, Chair. What we have here is a purchase order from Inn Residence delivered to Mthombo TSS and it is under EOH purchase order - EOH Mthombo Pty Ltd.

**ADV CHASKALSON SC:** And can I ask you just to look at the item position number 40. The item with a 40 in the first  
20 column and.

**MR POWELL:** Certainly. Chair, item 40 refers to EOH CST000297, EXP conferences and seminars, invoice 76 and it has got ...[intervenes]

**ADV CHASKALSON SC:** Do you recall what invoice 76 was?

**MR POWELL:** We looked at a moment ago. I will have to go back, Mr Chair but the number is R230 thousand.

**ADV CHASKALSON SC:** And does that number also ring a bell?

**MR POWELL:** Yes, Chair Villa Barbados that amount that we had to calculate the accommodation in Camps Bay.

**ADV CHASKALSON SC:** If I can then just to confirm the what invoice 76 looks – refers to, can I ask you to go to the second last page of this Bundle, Annexure SP15.7,  
10 page 424.18.

**MR POWELL:** Chair, this is the invoice number you remember, Mr Chaskalson pointed out when we looked at this document earlier, he highlighted the invoice number and the reference and he emphasised both points. So, it is invoice 76 and the reference is Mr Z Kodwa.

**CHAIRPERSON:** Yes.

**MR POWELL:** Chair, and that is the correlation .

**CHAIRPERSON:** Ja.

**ADV CHASKALSON SC:** And where does one find the  
20 R230 thousand that one saw – that we saw on the purchase order|?

**MR POWELL:** That is the Villa Barbados. The Villa Barbados rental, 23 December to 5 January for R230 thousand.

**ADV CHASKALSON SC:** Still in the same

Supplementary Bundle, if one goes back to page 8, Annexure SP15.4 – oh sorry. Before we – I left the earlier document. Well, let us go – let us go back to page 3, the document that we just looked at. I apologise for not dealing with it when we were at the document. But if we go to page 3, the purchase order that you just.

**MR POWELL:** Yes.

**ADV CHASKALSON SC:** Can you ...[intervenes]

**CHAIRPERSON:** That is what – 24?

10 **ADV CHASKALSON SC:** Point 3, the third page.

**CHAIRPERSON:** Oh, okay.

**ADV CHASKALSON SC:** The 424 Bundle.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Can you just draw attention to the total amount on that purchase order.

**MR POWELL:** Certainly, Chair. The total amount on this PO is R844,294.

20 **ADV CHASKALSON SC:** And with that number in mind, can we go forward to page 8 of the Bundle, Annexure SP15.4.

**MR POWELL:** Chair, this is Standard Bank ...[intervenes]

**CHAIRPERSON:** Ja, okay. That is 424 what, Mr Chaskalson?

**ADV CHASKALSON SC:** Point 8 – point 8.

**CHAIRPERSON:** Point 8, okay. Yes?

**MR POWELL:** Chair, this document before you is a Standard Bank of South Africa accredited details history and it shows creditor Inn Residence, date 19 February 2016, amount R180 thousand. Day 2 8 February 2016, amount to this figure that we just looked at, Chair the R844,294.

**CHAIRPERSON:** [Affirms].

**ADV CHASKALSON SC:** Okay, before we leave this document, can we just point out to the Chair who is making  
10 these payments?

**MR POWELL:** Chair, this appears to be EOH Mthombo Pty Ltd.

**CHAIRPERSON:** And this one is R844,294.

**MR POWELL:** Correct, Chair.

**ADV CHASKALSON SC:** Can we then go back to the chronology. Again, it is a document that we have seen already, but we have just seen a payment on the 8<sup>th</sup> of February, can we go a month and a bit forward to the 30<sup>th</sup> of March and to – I have lost my page reference.

20 Bear with me for a moment, to page 431. In fact, I do not think we have been here before, 431. And can you describe to the Chair what we see there.

**MR POWELL:** Chair, at 431 we have a Province of the Eastern Cape Education Department officer the chief director supply chain management to EOH. The managing

directors EOH Pty Ltd JB Rollout Energy and  
Kalolisi Investments Ltd and  
ELCB Information Services Ltd. This is that consortium,  
Chair.

“Dear Sirs / Madams, letter of award.  
SCMU6-15/16-0001, appointment of a  
service provider of an integrated  
management and human resource records  
restoration project for the department of  
10 education.”

And you will see in that paragraph, Chair the award:

“This bid has been awarded to your  
company in line with your offer of  
R217,744,087.42. Please acknowledge  
and accept this letter of award by signing  
the acceptance slip hereunder and return  
it to the Eastern Cape Department of  
Education as soon as possible.”

Date of this award is 30 March 2016, Chair.

20 **CHAIRPERSON:** It is dated 29 March, but it is signed on  
the 30<sup>th</sup> March. Is that right?

**MR POWELL:** Ja, it is dated 29 March and then it is  
signed on the 30<sup>th</sup> of March.

**CHAIRPERSON:** [Affirms].

**MR POWELL:** Correct, Chair.

**CHAIRPERSON:** Now, is this the tender that had been cancelled after ...[intervenes]

**MR POWELL:** No.

**CHAIRPERSON:** That is a not the one?

**MR POWELL:** That is not.

**CHAIRPERSON:** Okay.

**MR POWELL:** The cancelled tender was home affairs, Chair.

**CHAIRPERSON:** Oh, it was home affairs, okay. Oh no, I  
10 think maybe I am talking about the one where is it EOH say  
where they said they were disqualified?

**MR POWELL:** Yes, that was home affairs.

**CHAIRPERSON:** Oh, that was home affairs, okay. No,  
okay.

**MR POWELL:** Chair, this one the Eastern Cape tender is  
the one which have the R1 million that your remember  
Jehan Mackey sent a note to Zizi Kodwa.

**CHAIRPERSON:** Ja, ja.

**MR POWELL:** They make it a request for sponsorship  
20 whatever you want for R1 million.

**CHAIRPERSON:** Ja, I remember it was these guys where  
we have been left with this amount of R217 million.

**MR POWELL:** Correct.

**CHAIRPERSON:** Ja, okay.

**ADV CHASKALSON SC:** Then can we go to this

morning's Additional Bundle, the page 17 of that Bundle which is the – it is two pages from the end.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** And can you describe that document to the Chair?

**CHAIRPERSON:** One second. You say two pages from the end of the Bundle?

**ADV CHASKALSON SC:** Indeed, Chair it is SP 15.6. Your document will say 15.6.

10 **CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** From the end of this morning's additional bundle.

**CHAIRPERSON:** Okay.

**MR POWELL:** It is referred to as 424, 17 Chair.

**CHAIRPERSON:** Are you able to identify it with this morning's pagination?

**MR POWELL:** Yes Chair, 17 from this morning's pagination.

**CHAIRPERSON:** Is it also marked 15.6?

20 **ADV CHASKALSON SC:** That is correct Chair.

**CHAIRPERSON:** Okay, alright.

**MR POWELL:** Chair, this is an email from candice@mresidence, it seems to be an employee at the managing company of this holiday accommodations in the Western Cape and it is sent on Monday, April 25<sup>th</sup> 2016 to



Natalie Boegner.

The subject is Clipper Financial Services and the narration is:

“Hi Natalie. Deon has requested that the EOH invoices be credited and re-invoiced under Clipper Financial Services. Do you know who would be the correct person to send these invoices to for payment or who handles this account? Thank you, Candice.”

10 **ADV CHASKALSON SC:** Now first of all, who are Clipper Financial Services?

**MR POWELL:** Clipper Financial Services are an enterprise development partner to EOH. It is one of the small companies that they use to partner with them on a number of assignments and these are all linked back to an individual by the name of Phillip Arnold, Chair.

Phillip Arnold is not your typical enterprise development partner, because ED is usually black empowerment spent and he is a white English gentleman  
20 Chair, and Clipper Financial Services has been implicated in the broader investigation by EMS Africa into irregularities at EOH.

Along with other entities linked to Phillip Arnold, we identified that there were payments of more than 750 million rand to ED partners where no work was done, and

more than half of that amount has gone to entities linked to Phillip Arnold.

So Phillip Arnold seems to be implicated in irregular transactions and he seems to be an associate of Gian McKay. So what we have here Chair is that these invoices were paid by EOH but now we have given it to an ED partner and said you pay them.

**ADV CHASKALSON SC:** And then, can we go back to the document that we have looked at several times. The last,  
10 the document on page 18 of this bundle, this morning's bundle. SP15.7, the invoice, and can you identify the party to whom the invoice has been issued?

**CHAIRPERSON:** Just repeat the page Mr Chaskalson?

**ADV CHASKALSON SC:** Page 18, it is the second last page of this morning's additional bundle.

**CHAIRPERSON:** Okay.

**MR POWELL:** Chair, and it also has 15.7 at the top.

**CHAIRPERSON:** Ja, I have got it, thank you.

**MR POWELL:** Chair, we have looked at this document  
20 several times and if you look at the invoice number, invoice 76 reference Mr Z Kodwa, you will see that this reflects an invoice from M Residents by Peter Bronday Pty Ltd. This time it is to Clipper Financial Services.

So it looks like that prior request has been carried out. It has now been invoiced to the ED partner of

[indistinct].

**ADV CHASKALSON SC:** Can you comment on the date of the invoice?

**MR POWELL:** The date of this invoice is 25 January 2016 Chair.

**ADV CHASKALSON SC:** And is there anything noticeable about that date? Anything noteworthy, and again sorry Mr Powell, I have been asked to ask you to bring the microphone a little closer to you.

10 **MR POWELL:** Sorry.

**ADV CHASKALSON SC:** Thank you. Maybe if I can take you back to Candice's email on page 7, the previous page.

**MR POWELL:** Yes.

**ADV CHASKALSON SC:** What is the date of that email?

**MR POWELL:** Chair, the date of that email is Monday, April 25 2016.

**ADV CHASKALSON SC:** Candice's request is?

**MR POWELL:** Candice is requesting Natalie to say that Deon has requested that EOH invoices be credited and re-  
20 invoiced under Clipper Financial Services.

**ADV CHASKALSON SC:** So, and then on 18 is it possible that this invoice was issued on the 25<sup>th</sup> of January 2016?

**MR POWELL:** Chair, what Mr Chaskalson is highlighting is that the re-invoicing predates the request by several months.

**ADV CHASKALSON SC:** Yes. The last, we are almost at the last. The next date on the chronology that is important is back in the main bundle on page 509. So can we go back to the main bundle on page 509? What do we, can you describe that document to the Chair?

**MR POWELL:** Certainly. This is an email from Deon McKay Chair and it is dated 10 May 2016 to Rene Jonker without a subject. The narration is:

10                   “Hi Rene, have you managed to do recon for EOH, Oracle Saza deal, Project Ingrid was the project linked to the ED contribution and I am under pressure from them for recuperation of the funds already spent which was about two million. Please help as TSS funded Project Ingrid.”

                  Chair, if we analyse what this actually means, is it is highlighting to us that Project Ingrid which had all of those different ANC expenses that were paid was a project linked to the ED contribution and what the email is also  
20                   telling us is TSS are very unhappy because they funded this and they are looking for reimbursement from EOH.

**ADV CHASKALSON SC:** And can you just refresh our memory. The EOH Oracle Saza deal, what was that worth to EOH?

**MR POWELL:** It was 90 million Chair. Remember it had a

fixed figure of 30 million for the first year and year 2 and year 3 was going to be consumer price index related. So 90 million approximately in total.

**ADV CHASKALSON SC:** And lastly can we then look at the final reconciliation of Project Ingrid expenses, which we see at page 516.

**MR POWELL:** Chair, page 516 this is an email from Rino Barry, TSS Group. 24 August 2017 to Deon McKay copying Rawede Gould and CC'd to Shaun Emery. Subject RE  
10 attachments TSS loan EOH Project Ingrid. XLS, so it is a spreadsheet attached chair, as requested and this followed a request from Deon McKay to Rino Barry to provide him with a summarised recon of the Project Ingrid account, and this attaches, the attachment is over the page at 517  
Chair.

If you have a look Chair, this is remarkably similar to a schedule that Mr Barry put together in respect of COJ where they had off set expenses or ANC donations. This seems to be very similar, except this time it is the Eastern  
20 Cape Project Ingrid.

Chair, if we look at the document on page 517 it is an account transactions report, Tactical Software Systems Pty Ltd and it is referred to account TSS loan EOH and it is repeated TSS loan EOH and it talks about date range 1 January 2014 to 24-08-2017.

But when you look at the transactions Chair you will see that they only start in 2015. The first date is 23 January 2015 and if we look at the details thereof, it starts with there is a R300-00 small credit, EOH MS. Then there is account payments.

Debit one million and twenty seven. If you run through the list Chair, you will see Herbert Baker Hotel, Absa Bank, DO Light Transport, Absa Bank, Jabela, Star Bus Services, Kopanong Hotel and Conference, I Bank  
10 payment to Absa bank for Amasondo Transport, Masondo Bus Services, Motswele Trading, Absa bank Gallagher Convention Centre, there is six million.

Chair, I know when we did the earlier investigation for EOH that six million relates to an ANC conference that was held at the Gallagher Estate, and then there is Rennies Travel, I am just moving through the list, just have a look at the different types of line items and you will see there is a lot of supplier invoices paid for Rennies Travel.

The total amount comes to the figure on the  
20 following page at 518 Chair. Fifteen million, seven hundred and fifty four thousand three hundred and eighty four rand and sixty nine cents. Chair, so this comes from one of the TSS people and Mr Barry is clearly a financial person managing on that side and he has put this reconciliation together which we have just walked through.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON SC:** Mr Powell, that takes us to the end of the specific facts that we wanted to place before the commission. For the rest, your affidavit is just in some ways organising these facts to suggested inferences that should be drawn from these.

Is there anything in that regard that you want to say beyond what is set out in your affidavit or that you want to say in conclusion to the commission because I see we have  
10 already run past our hour by some time.

**MR POWELL:** Certainly. Chair, if I may just give you some concluding remarks which are similar to what I had advised previously, is that EOH has completely new management and leadership and they have been committed to cleaning up the company and eradicating all of the corrupt activities that we see in the documents.

What we saw is examples of the use of influences, middle men, intermediaries like Mr Kodwa has been asked to intervene and Lunga Nkwana we referred to earlier.  
20 Those all happened during this 2015 to 2017 period and Mr McKay and you heard previously on COJ, Mr Makududu and you heard Mr Lehur on some of the SAP transactions in my previous testimony.

All of those parties have been reported to the authorities so the company has fulfilled its responsibilities

in cleaning up the organisation and I have been mandated by the company to provide full support and assistance to the commission so that these irregularities can be exposed.

But I am just highlighting that EOH has managed to avoid blacklisting by any government department because it has done the right thing in trying to fix the company and I think that Chair, I just wanted to emphasise the point, because when we talk about all the wrongdoing at EOH, 10 the wrongdoing was by this small group of former employees who really took the business down the wrong road, and I know the CEO, Mr van Coller testified himself and explained what he has done to try and rebuild and save the jobs of a whole lot of honest, hardworking people at the company and I just wanted to remind Chair of just that thought as I close.

**ADV CHASKALSON SC:** Thank you very much Mr Powell and we certainly appreciate both your evidence and the evidence of Mr van Coller. Chair ...[intervenes]

20 **CHAIRPERSON:** His legal representatives came in while we were busy, yes.

**ADV MOOSAJE SC:** Chairperson, firstly I should apologise for being late.

**CHAIRPERSON:** Yes.

**ADV MOOSAJE SC:** I was expecting for Mr Powell to be in



the witness box at five PM.

**CHAIRPERSON:** Yes, I know. Things changed so I understand.

**ADV MOOSAJE SC:** Chair, there are just two questions I would like to put to Mr Powell which I hope will be of assistance to the commission.

**CHAIRPERSON:** Okay.

**ADV MOOSAJE SC:** Mr Powell, can I take you to page 298 please?

10 **MR POWELL:** Certainly Chair.

**CHAIRPERSON:** Maybe while he is looking, just place yourself on record again.

**ADV MOOSAJE SC:** Chair, I am Aslam Mosaaaje, I am a partner of Mr Powell and I am his legal representative for these proceedings.

**CHAIRPERSON:** Ja. Okay, what page did you say?

**ADV MOOSAJE SC:** Page 298.

**CHAIRPERSON:** Okay.

20 **ADV MOOSAJE SC:** Mr Powell, can you please describe this document?

**MR POWELL:** Chair, this is the bank statement, the platinum classic account of Mr Zizi Kodwa, MG Kodwa.

**ADV MOOSAJE SC:** Can I refer you then to the last entry on that particular statement?

**MR POWELL:** Certainly. That is the immediate transfer,

credit settlement first round G McKay and it is an amount of thirty five thousand. Chair, this thirty five thousand is the amounts that were added ...[intervenes]

**CHAIRPERSON:** What you talked about, ja.

**MR POWELL:** Which brought the total up to one million six hundred and eighty thousand.

**CHAIRPERSON:** Ja, you talked about it. I remember.

**ADV MOOSAJE SC:** So that thirty five thousand is not referred to on SP5 on page 293.

10 **MR POWELL:** No.

**CHAIRPERSON:** I think it must be, sorry. No, because that is why you asked me to, ja.

**MR POWELL:** Correct. Chair, this is the one we did add earlier this morning.

**CHAIRPERSON:** Ja.

**MR POWELL:** So that then brings the total up to 1.6 ... one million six hundred and eighty thousand.

**CHAIRPERSON:** Ja.

20 **MR POWELL:** Chair, we did ask that we amend the document to reflect the new total.

**CHAIRPERSON:** Ja.

**MR POWELL:** And then Chair you will recall that we also amended, I think it was paragraph 11 of my affidavit.

**CHAIRPERSON:** Ja, I made a note next to ...[intervenes]

**MR POWELL:** Yes.

**CHAIRPERSON:** The paragraph where you had the ...[intervenes]

**MR POWELL:** Correct, it was paragraph 11 Chair.

**CHAIRPERSON:** Ja.

**ADV MOOSAJE SC:** Mr Powell, can I also just then take you to paragraph 11 on page 282 and I just want to make sure that there were two amendments made.

**MR POWELL:** Yes.

**ADV MOOSAJE SC:** One in relation to the amount of 1645  
10 should actually read 1680.

**MR POWELL:** Correct.

**ADV MOOSAJE SC:** And then the reference to SP5, is that correct, in paragraph 11?

**MR POWELL:** No Chair, I think that should refer to SP6. Apologies Chair.

**CHAIRPERSON:** I am sorry, what page is that?

**MR POWELL:** At the end of paragraph 11 you will see in brackets it refers to SP5.

**CHAIRPERSON:** Ja.

20 **MR POWELL:** Chair, if you can just make that SP6.

**CHAIRPERSON:** SP6.

**MR POWELL:** Correct.

**CHAIRPERSON:** Okay. Thank you. Thank you very much Mr Powell for availing yourself. We appreciate you coming to us as the commission. Thank you very much.

**MR POWELL:** Thank you Chair.

**CHAIRPERSON:** You are now released.

**MR POWELL:** Thank you.

**CHAIRPERSON:** Thank you Mr Chaskalson.

**ADV CHASKALSON SC:** Thank you Chair.

**CHAIRPERSON:** Yes, I am going to adjourn for about ten minutes to enable the team relating to the other matter to set up and then I will come back. We are adjourned.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon Ms Hofmeyr once again. Good afternoon everybody.

**ADV HOFMEYR:** Good afternoon Chair.

**CHAIRPERSON:** Yes. Is everything, is everybody ready now?

**ADV HOFMEYR:** Yes, I think we are. My learned friend is certainly here and we have managed to establish connections with Ms Myeni who is connected via a Zoom link and as you can see Chair is visible in the room on the  
20 screen.

**CHAIRPERSON:** Good afternoon Ms Myeni.

**MS MYENI:** Good afternoon Chairperson.

**CHAIRPERSON:** Yes. We expected you to be here in the morning. That did not happen and I am sure your counsel has told you that I said that was unacceptable. You

understood that?

**MS MYENI:** Indeed Chairperson. Indeed Chairperson. I did get a call from the advocate. It was a misunderstanding, a miscommunication. It was not intended that I would not cooperate with the commission Chairperson and what he explained is exactly what happened.

I would like to send my apologies to you Chairperson. It was never intended to disrespect the  
10 commission and the session that I was invited to, to attend.

**CHAIRPERSON:** Okay, alright. Ms Hofmeyr, do you want to start with what we should deal with first?

**ADV HOFMEYR:** Thank you Chair, I will do so.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** I am just going to seek to complete the aspect that was held over from the last evidence.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And then hand over to my learned friend,  
20 Mr Seleka. Chair.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** You will recall I foreshadowed this morning that the matter that had to be dealt with, that was held over from Ms Myeni's last evidence, was the question of whether her indication of the privilege against self-

incrimination had been justified on the repeated occasions in which it was invoked during those three days of testimony.

Chair, just to focus our minds. The constitutional court gave a judgment in January of this year in the matter of the Secretary of the Commission versus Zuma. In that it actually dealt with this question of the privilege against self-incrimination.

My learned friends have referred to that judgment in  
10 the submissions we received last Friday. They quote many paragraphs of the judgment, but not the paragraph that I would like to draw to your attention just to frame the submissions that I am going to make.

It is at paragraph 109 of the Concord judgment and what it says there is:

“It lies with a witness before a commission to  
claim privilege against self-incrimination. In  
the event of doing so, the witness must raise  
the question of privilege with the Chairperson  
20 of the commission and must demonstrate how  
an answer to the question in issue would  
breach the privilege. If the Chairperson is  
persuaded, he or she may commit the witness  
not to answer the question. Privilege against  
self-incrimination is not there for the taking by

the witness. There must be sufficient grounds that in answering a question, the witness will incriminate himself or herself in the commission of a specified crime.”

Chair, that was an articulation of the law as it existed. There is no indication from the Constitutional Court that it was purporting to develop the law. It was stating the law and the part of that that I emphasise is that there is a clear recognition that the Chairperson of the  
10 commission must be persuaded.

There must be demonstration by the witness that answering the particular question will likely expose them to a charge on a specified crime. So Chair, against that backdrop the legal team of the commission did submissions which were then shared with Ms Myeni and her legal team.

What we did in those submissions is we went through the previous transcript and Chair, there is a bundle that was made available to yourself last night. I have made a copy available to my learned friend now. The  
20 documents that certainly everyone has seen before.

The only addition is that they are now paginated at today’s proceedings, and what they begin with at page 1 is that set of submissions, 14 pages. We go through the transcript and we make submissions about the instances in which we submit Ms Myeni invoke the privilege without

justification and we make submissions as to our conclusion which is that the privilege was abused on a number of occasions during the course of Ms Myeni's evidence.

We conclude, you will find this at page 16 of the bundle that you have before you Chair and that my learned friend has. We say at paragraph 41 on page 16, that Chair, you warned Ms Myeni that the consequence of not answering questions was that the version of other witnesses, which may implicate Ms Myeni in unlawful  
10 conduct.

It would then be uncontested and despite that warning Ms Myeni continued to invoke the privilege when there was no legal basis for doing so on the occasions that we traverse in the submissions. Then we conclude by saying this means that Ms Myeni made a choice not to provide her side of the story, despite the serious allegations against her.

Those allegations are therefore not simply uncontested. They have been left unanswered by a  
20 witness who had no valid reason for refusing to provide an answer. Chair, what we also did in the course of last week is we made available to our learned friends a list distilled from the submissions of the specific questions in respect of which we indicated we would seek rulings from you today Chair.



Now my learned friend through the attorney for Ms Myeni has made submissions in response. Those came through on Friday last week and Chair, you will find those in the bundle similarly. They commence at page 28 of the bundle.

Chair, there are a number of legal issues that are raised in the course of those submissions and I am certainly in a position to deal with those aspects this afternoon, but before doing that, I would like to fast  
10 forward because time is a luxury that this commission can ill afford.

Chair, I signalled before the lunch break that in the interest of time, and given the importance that the Eskom evidence which has not yet been ventilated with Ms Myeni, still takes place today.

What I was going to seek from you Chair, is rulings that would if you are so persuaded, require Ms Myeni to answer those questions, distilled from the submissions on affidavit in due course, subject to a direction from you on  
20 timing.

It is an unfortunate state of affairs, but the commission is literally scheduled to complete its evidence, barring a few exceptions you mentioned this morning, next Tuesday. It is simply the case that we have run out of time.

But those are the questions in respect of which the legal team of the commission submits the privilege was not justifiably invoked and in respect of which we accordingly indicated we would seek rulings from you today and Chair, those questions in the bundle before you commence at page 22.

Now Chair, in the gap before ...[intervenes]

**CHAIRPERSON:** I am sorry, commence at page?

**ADV HOFMEYR:** 22 Chair.

10 **CHAIRPERSON:** Using the top ...[intervenes]

**ADV HOFMEYR:** Apologies, yes Chair. There are some numbers at the bottom.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** It commences, the top pagination page 22. It is a set of six pages and I think 24 questions. Yes.

**CHAIRPERSON:** Okay. Are these questions connected in any way with the questions that you dealt with in your submissions?

**ADV HOFMEYR:** Indeed. So effectively ...[intervenes]

20 **CHAIRPERSON:** Ja.

**ADV HOFMEYR:** It is a summary to the submissions.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** So what happens is the submissions deal with quite a bit of the detail of the transcript.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** What happened in the course of the asking of the question and the answer given by Ms Myeni.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** It places it in context.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** All that these six pages do is they literally extract the relevant questions.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And then for convenience, they have  
10 been referenced in the footnotes against the very parts in the transcript.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Where if you go there ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** You will find the question.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** So what I can be clear about is ...[intervenes]

**CHAIRPERSON:** It is questions that were previously  
20 asked.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Yes, okay.

**ADV HOFMEYR:** Indeed. Previously asked, referenced in the submissions ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** As being questions in respect of which on the submission of the legal team ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** There was not a justifiable basis for invoking the privilege.

**CHAIRPERSON:** Yes, okay.

**ADV HOFMEYR:** And we have made our submissions on that we have received the response from my learned friend.

**CHAIRPERSON:** So the response that starts at page 28.

10 **ADV HOFMEYR:** Yes.

**CHAIRPERSON:** Is it a response also to those questions or the questions came after?

**ADV HOFMEYR:** No, they were sent with the submissions.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** But the response is really a response to the submission.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Because there are points of law taken.

**CHAIRPERSON:** Ja.

20 **ADV HOFMEYR:** Certain debates about what the effect of the Constitutional Court's decision was.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** But in an effort to move things forward, I did engage my learned friend before returning in the lunch break.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** I understand from him that the position is as follows, in respect of those questions ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** On the six pages. That Ms Myeni is now willing to provide answers on affidavit to those questions and those were the questions which during her testimony she declined to answer on the basis that answering would likely expose her to a criminal charge.

10           She invoked the privilege in respect of those, but given that she is now willing to provide an answer on affidavit to those questions, it is not clear to me that you necessarily need to rule on the question but I am happy for my learned friend if I have conveyed in any respect what I understood him to relate to me about Ms Myeni's current position to correct it.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** But if not, my suggestion would be simply a direction in relation to those questions may well be  
20 sufficient.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** If we need to debate the law or anything else, I am happy to do so.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** But in the interest of time I thought

...[intervenes]

**CHAIRPERSON:** Well, if Ms Myeni is now willing to answer the question, probably there is no need to make any ruling and subject to what Mr Buthelezi might say about the proposal that she provides answers in an affidavit. That would be the way to go, given the time constraints of the commission.

**ADV HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** Ja, okay let me hear from Mr Buthelezi.  
10 If you are able to address me from there it is fine. If you prefer to come to the podium, that is fine too.

**ADV BUTHELEZI:** No Chair.

**CHAIRPERSON:** It is fine there.

**ADV BUTHELEZI:** I agree with my learned friend. We have decided that we will submit via affidavit, responses to those questions.

**CHAIRPERSON:** Yes, and you confirm that your client is now willing to answer those questions?

**ADV BUTHELEZI:** Indeed so Chair.

20 **CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** We have one request of an indulgence, maybe perhaps with a bit of leniency in terms of the time frames, because it is about 24 questions in total.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** And some will need supporting

documents thereto.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** We would like to answer them comprehensively.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** And avoid raising disputes of facts that we recall the matter to come back Chair.

**CHAIRPERSON:** Yes, okay. Okay. Well, in that event I would not propose to make any ruling on the issue of the  
10 invocation of the privilege because Ms Myeni no longer relies on that.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** And is no longer refusing to answer the questions. So I will address her now and after that, I am ready to give a directive which can be a directive in terms of Regulation 10(6) of the regulations of the commission. Ms Myeni, your counsel has informed me that you are now willing to answer these questions and he has indicated that there is a desire to answer them comprehensively and you  
20 no longer rely on the privilege against self-incrimination to refuse to answer them.

You are now willing to answer them. Do you confirm that?

**MS MYENI:** Chairperson, I do confirm. We have discussed with Advocate Buthelezi.

**CHAIRPERSON:** Yes. Okay, no thank you. I appreciate that change of attitude. I appreciate that now you are willing to respond to the questions comprehensively. In terms of time frame, Mr Buthelezi today is what? 25 May. If we, if I say submit by 5 June, is that fine?

**ADV BUTHELEZI:** That is doable Chair.

**CHAIRPERSON:** Sorry?

**ADV BUTHELEZI:** I would ask because 5 June is a Saturday Chair.

10 **CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** I would ask for Monday the 7<sup>th</sup>.

**CHAIRPERSON:** Then Monday would be 7<sup>th</sup>?

**ADV BUTHELEZI:** Yes Chair.

**CHAIRPERSON:** 7 June?

**ADV BUTHELEZI:** Yes Chair.

**CHAIRPERSON:** Okay, alright.

**ADV BUTHELEZI:** The reason is that Chair, we often have delays with positions and distance and ...[intervenes]

20 **CHAIRPERSON:** Okay, no that is fine. That is fine. Okay, then Ms Myeni, I am going to issue a directive in terms of Regulation 10(6) of the regulations of the commission, directing you to deliver to the commission an affidavit in which you answer these questions by on or before Monday the 7<sup>th</sup> of June, and your counsel has indicated that that time frame is fine. You understand?



**MS MYENI:** I do understand Chairperson, thank you.

**CHAIRPERSON:** Okay. The directive that I therefore issue is that in terms of Regulation 10(6) of the regulations of the commission, I direct Ms Myeni, Ms Duduzile Cynthia Myeni, to deliver to the Secretary of the Commission on or before Monday, 7 June 2021 an affidavit or affirmed declaration in which she answers the questions which have, which are included in this bundle, starting from page 22.

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

**CHAIRPERSON:** Going up to page 27. Okay, that is the directive.

**ADV HOFMEYR:** Thank you Chair, we have taken note of that.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** It now leaves for me to hand over to my learned friend.

**CHAIRPERSON:** Yes.

20 **ADV HOFMEYR:** Maybe we could just take a brief adjournment.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** There might be a moving of files etcetera that needs to take place.

**CHAIRPERSON:** Yes, okay. Okay, that part Ms Myeni related to the aviation work stream which includes SAA.

The next part relates to Eskom. I am going to adjourn for five to say ten minutes and then when I come back we will then deal with the Eskom related issues.

You understand?

**MS MYENI:** Thank you Chair.

**CHAIRPERSON:** Okay, right. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Mr Seleka are you ready?

10 **ADV SELEKA SC:** I am Chairperson.

**CHAIRPERSON:** The oath was not administered earlier to Ms Myeni is it not?

**ADV SELEKA SC:** I do not think so Chair.

**CHAIRPERSON:** Yes. Please administer the oath or affirmation to Ms Myeni.

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

**CHAIRPERSON:** I think she is frozen. Can you hear me Ms Myeni?

**MS MYENI:** Chairperson I can hear you well.

20 **CHAIRPERSON:** Okay. Can you hear my Registrar as well? She is going to ask ...

**MS MYENI:** No I did not.

**CHAIRPERSON:** Oh she is going to...

**MS MYENI:** (Inaudible).

**CHAIRPERSON:** She will ask you a question just now.

**MS MYENI:** Thank you.

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

**MS MYENI:** Duduzile Cynthia Myeni.

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

**MS MYENI:** I do not have any objection.

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

**MS MYENI:** I do.

10 **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.

**MS MYENI:** So help me God.

**CHAIRPERSON:** Thank you very much. We will be dealing with the Eskom related evidence and Mr Seleka will put questions to you Ms Myeni. Before she does so for the benefit of the public he will take a few minutes just to orientate the public or remind them where you fit in – in  
20 regard to the issues of Eskom and where your evidence will fit in. Mr Seleka.

**ADV SELEKA SC:** Thank you Chairperson. Ms Myeni is called as a witness to testify in regard to the allegations that are made are two – mainly two persons in relation to Eskom and in particular the suspension of the executives at Eskom

in March 2015.

One of the persons being Mr Nick Linnell has given evidence to the commission about a call made to him by Ms Myeni on the 6<sup>th</sup> of March 2015 to come to Pretoria at President – the presidential residence of Mr Zuma – official residence of Mr Zuma for a meeting.

Ms – Mr Linnell has testified that he obliged and went to Pretoria on the same day of that call. He had a meeting there with Ms Myeni according to him where he was told by  
10 Ms Myeni that the President would like to initiate a commission of inquiry or to have it initiated into Eskom's affairs and that Ms Myeni has recommended to the President Mr Linnell to coordinate that inquiry.

The President according to Mr Linnell could not join that meeting and as they parted with – as he parted with Ms Myeni there was an understanding that there will be a meeting in Durban on the 8<sup>th</sup> of March 2015 and that Mr Linnell will be required to attend to which he agreed.

That meeting of the 8<sup>th</sup> did take place at which the  
20 second witness who testified before the commission was also present being Mr Tsotsi and they both Mr Tsotsi and Mr Linnell have related what transpired in that meeting in regard to what was discussed, role played by Ms Myeni and the information provided.

The second meeting with the President what was

discussed in that meeting and what proposals were made for them to go away and implement particularly with the board.

So that – that is in a nutshell the reasons why Ms Myeni has been called to provide her version in response to that evidence presented before the commission.

**CHAIRPERSON:** Just a small detail. I think the – I think Mr Tsotsi said that the former President Mr Zuma said to him at the end of the meeting that he should raise the issues that they have discussed at the meeting or the suspension of the  
10 executives and the issue of an inquiry with the board and he – that is Mr Zuma would in turn raise the issue with – or issues with the Minister who was not present at the meeting.

So I just wanted to clarify that part. Okay alright. So you – you understand Ms Myeni where your assistance is required. You understand the issues.

**MS MYENI:** I do understand Chairperson.

**CHAIRPERSON:** Yes okay alright. Now I – I am hoping that we will be able to hear you without any difficulty with your mask on. But if we do not hear you we would like you to  
20 consider if you are far from everybody taking it off. But if we can hear you and there is no problem then that would fine. Is that fine with you?

**MS MYENI:** It is fine with me Chairperson.

**CHAIRPERSON:** Okay alright. Mr Seleka so far I think I can her.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja. Okay.

**ADV SELEKA SC:** Yes. Thank you Chair. The - the bundle we will use Chairperson is Eskom Bundle 6 Ms Myeni I believe you have been emailed an electronic link to access this bundle – Eskom Bundle 6.

**MS MYENI:** Yebo Mr Seleka I have Bundle 6.

**ADV SELEKA SC:** Yes thank you very much. Well we do not have an affidavit from you but we have your statement to the  
10 Parliamentary Portfolio Committee which is on page 183 of that bundle. I believe the hard copy page numbering is the same as the electronic version of the bundle.

So you follow the black pagination on the left – the top left hand side corner.

**MS MYENI:** I do.

**ADV SELEKA SC:** Are you there?

**MS MYENI:** I am here on 180.

**ADV SELEKA SC:** 183.

**MS MYENI:** Yes.

20 **ADV SELEKA SC:** You are there.

**MS MYENI:** I am there.

**ADV SELEKA SC:** Thank you.

**MS MYENI:** Mr Seleka

**ADV SELEKA SC:** Yes Ma'am.

**MS MYENI:** May I please address the Chairperson just for

one second?

**CHAIRPERSON:** Yes you may do so Ms Myeni.

**MS MYENI:** (Speaking in vernacular) I am appearing –  
commission.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Chair I heard a part of it.

**CHAIRPERSON:** Ms Myeni has addressed me in IsiZulu.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Which I happen to know at least. I do not  
10 know many languages but IsiZulu is my language.

Now I am not going to translate what she wanted to say because if we had known we would have arranged for an interpreter. But she requests permission to respond in IsiZulu.

**ADV SELEKA SC:** I heard that.

**CHAIRPERSON:** She says because there are many people including her neighbours who may wish to hear exactly what her side of the story is because they have been hearing all kinds of allegations against her.

20 Now of course for today all we are dealing with is the Eskom related evidence and not everything.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Now I think I must ask whether Mr Buthelezi has anything to say. Mr Buthelezi.

**ADV BUTHELEZI:** No Chair.

**CHAIRPERSON:** You have nothing to say?

**ADV BUTHELEZI:** No Chairperson.

**CHAIRPERSON:** Okay Ms Myeni we do allow people in this commission to testify in their languages but we – we – if they are testifying in a language other than Isi – in English – English then make arrangements for an interpreter who can interpret for everybody.

So because you did not notify us that you would like to use IsiZulu today no arrangements have been made or an  
10 interpreter to be available. I do understand IsiZulu and Mr Seleka may have an understanding of IsiZulu – I do not know how far but he I think has some understanding. I have reason to believe that he would prefer that the translation or the language be the answers be in English.

So we have – we have that problem and – and of course we do not have time. If this was last year maybe we could still adjourn and arrange an interpreter. So I think your – you reason for wishing to give answers in IsiZulu from what you have said and from what we know from your  
20 previous evidence is not because of any difficulty with English it is simple because you would like people who know you, your neighbours and other people maybe business associates to hear you explain your side of the story in IsiZulu.

If I am correct in that understanding maybe there



might be a way that can be considered to take care of your concern and I am thinking aloud right now so everybody will have to indicate what they think about this.

That would be that we agree that you give your answers in English but you – you feel free after today to submit a Zulu version of your answers to the commission with a view that the commission can consider maybe it can be part of the record of the commission as an exhibit and maybe it may also be made available on the website of the  
10 commission for anybody who wishes to access it – maybe journalists might – who write for Zulu media might be interested and – and published it – publish it in IsiZulu newspapers.

In that way

1. We will have been able to continue this evening with your evidence as planned but at the same time we will make sure that your desire to put your side of the story in IsiZulu is addressed even if it is not addressed the way you would have preferred.

20 What do you think of that?

**MS MYENI:** Chairperson (speaking in vernacular).

**CHAIRPERSON:** Okay, okay. And do – would – do you think you will later on maybe submit a Zulu version of your answers or is that something you will think about later?

**MS MYENI:** Chairperson it is something that I will think

about later.

**CHAIRPERSON:** Yes.

**MS MYENI:** (speaking in vernacular).

**CHAIRPERSON:** Okay. Alright. Okay obviously you all would have heard what I explained to Ms Myeni about the logistical challenges of accommodating IsiZulu in circumstances when prior arrangements had not been made because we do not have an interpreter.

Her response is that she appreciates the fact that  
10 because the prior arrangements were not made it is going to be difficult and she agrees to give answers in English for the work of the commission to continue and she will consider the suggestion later whether to later on furnish a Zulu version of her answers.

(Speaking in vernacular) Ms Myeni.

**MS MYENI:** (Speaking in vernacular).

**CHAIRPERSON:** Okay alright. Thank you very much. Okay alright. We may proceed now.

**ADV SELEKA SC:** Thank you Chairperson. Ms Myeni  
20 Bundle – Eskom Bundle 6 as I have already referred to has your statement and I am drawing it to your attention in order – in the event that you wish to refer to it you can certainly do so. It is the only document that the commission has that contains your version. It is a statement which you have submitted to the Parliamentary Portfolio Committee.

You have seen it dated 5 March 2018.

**MS MYENI:** Yes Mr Seleka I have seen it in front of me and it is my – indeed my statement.

**ADV SELEKA SC:** Yes. So that – that statement runs from page 183 to 193. And now I want to refer you to the affidavit of Mr Nick Linnell – Nicholas Linnell.

**CHAIRPERSON:** Do you want to confirm with her first if she has not already done so that this is – the statement that she submitted to the Portfolio Committee of Public Enterprises in  
10 Parliament in March 2018 and whether its contents are true and correct.

**ADV SELEKA SC:** Yes I ....

**MS MYENI:** Chairperson thank you very much I – I did not go through line by line.

**CHAIRPERSON:** Yes.

**MS MYENI:** To check if it was not tampered with but for now what I see is what I have written.

**CHAIRPERSON:** Yes. But the one that you had submitted to Parliament you had checked and you were happy that its  
20 contents were correct?

**MS MYENI:** True.

**CHAIRPERSON:** Okay.

**MS MYENI:** Yes Chairperson.

**CHAIRPERSON:** Okay alright.

**ADV SELEKA SC:** Yes. Thank you Chair.

**CHAIRPERSON:** You may continue then Mr Seleka.

**ADV SELEKA SC:** Yes. I suppose – well we can admit it if...

**CHAIRPERSON:** Let us admit it ja.

**ADV SELEKA SC:** Should we?

**CHAIRPERSON:** Let us do that immediately ja. I should admit as Exhibit?

**ADV SELEKA SC:** It will be Exhibit U16 – let me see. I will give you the number just now Chair. I just want to see – it  
10 will be Exhibit U16.5.

**CHAIRPERSON:** Okay. This statement which is unsigned of Ms D Myeni dated 5 March 2018 which starts at page 183 of the bundle, Eskom Bundle 6 is admitted and will be marked as Exhibit U16.5.

**ADV SELEKA SC:** Thank you Chairperson. Ms Myeni then shall we please go to the affidavit of Mr Nick Linnell on page 30 of the same bundle.

**MS MYENI:** Page 30?

**ADV SELEKA SC:** Ja 30. It starts from page 30.

20 **CHAIRPERSON:** Is that where your questions are starting.

**MS MYENI:** Mr Seleka I am going to ask somebody to assist me here.

**CHAIRPERSON:** Oh okay.

**ADV BUTHELEZI:** Sorry Chair. Sorry Chair.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** We have got two sets of pagination the red and the black.

**CHAIRPERSON:** Oh we use the black.

**ADV BUTHELEZI:** The black.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** If she could just then refer to the black which is on the top left hand corner.

**CHAIRPERSON:** Ja. Ms Myeni wherever Mr Seleka refers you to a page number look at the black numbers at the top  
10 left corner of each page. You may disregard the red numbers.

**MS MYENI:** Thank you Chair.

**CHAIRPERSON:** Ja if document that does not have that numbers, then he will tell you and in that event, we will use red numbers only for that document. Otherwise, just stick to the black numbers.

**MS MYENI:** Thank you, Chair.

**CHAIRPERSON:** Yes. Are you at page 30?

**MS MYENI:** I am being assisted to get into page 30,  
20 Chair.

**CHAIRPERSON:** Okay. Mr Seleka, I was wondering whether it would not be quicker, because it is a very narrow issue.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** We just – if you lead her, just tell me in

her own words how this whole meeting in Durban came about, to talk about the Pretoria meeting with Mr Linnell and how the one in Durban came about, what was discussed, and then, when she has done to tell the whole version, then you ask her questions. It might be quicker that way.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** What do you think?

**ADV SELEKA SC:** Yes, I could do so, Chair. I have in  
10 mind to tell her what Mr Nick Linnell has said. I could summarise it for her.

**CHAIRPERSON:** If we let her just tell her side of the story.

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** That way, when you tell her, you can say: Well, here are the differences between your version and Mr Linnell's version ...[intervenes]

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** ...in regard to the Pretoria meeting is  
20 what he says which you have not included. What do you say about that?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And then...

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** I think it might make thinks quicker.

**ADV SELEKA SC:** Certainly, Chair.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Ja, that also...

**CHAIRPERSON:** Okay, have you found page 30, Ms Myeni?

**MS MYENI:** I have found page 30, Chair.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Miss...

**CHAIRPERSON:** H'm.

10 **ADV SELEKA SC:** Yes. Okay. Thank you, Chair. Ms Myeni, we, as are outlined in the introduction setting out the background, there are two witnesses who have testified before the Commission. But as the Chairperson is suggesting, I will give you the opportunity to tell the Chairperson your version in regard to the two meetings that have been alleged before the omission to have taken place, particularly by Mr Nick Linnell.

The one meeting he refers to is the one the 6<sup>th</sup> of March 2015 in Pretoria at the President's official  
20 residence to which he was called, he say, by you. And then the other meeting is on the 8<sup>th</sup> of March, again to which, according to him, he was called by you to meet with the President at the President's official residence.

His affidavits had been – were given to you last year in August. And I will you the opportunity to give your

side of the story to the Chairperson.

**CHAIRPERSON:** Would you like that Ms Myeni? In other words, you just tell the story as you know it how it came about that Mr Linnell came to meet with you in Pretoria on the 6<sup>th</sup> of March and how the meeting in Durban at the President's official residence came about, what was discussed and on – and the basis on which the meeting ended.

And thereafter, Mr Seleka will then tell you what  
10 the other two witnesses have said in regard to matters that may not be common cause between you and them. And then give you a chance to respond to what they have said. Is that fine with you?

**MS MYENI:** That is fine, Chairperson. Even if he leads me ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MYENI:** ...to identify those ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MYENI:** ...those areas that perhaps are contradicting  
20 ...[intervenes]

**CHAIRPERSON:** Ja.

**MS MYENI:** ...on the version for Mr Linnell. – Nick Linnell and Mr Tsotsi.

**CHAIRPERSON:** Yes, but ...[intervenes]

**MS MYENI:** But ...[intervenes]



**CHAIRPERSON:** It is fine ...[intervenes]

**MS MYENI:** ...willing.

[Parties intervening each other – unclear]

**CHAIRPERSON:** Okay I think just tell us. It might take about 15-minutes or so, depending – but just tell us how everything happened and then he will ask you questions.

**MS MYENI:** So, Chairperson ...[intervenes]

**CHAIRPERSON:** Yes?

**MS MYENI:** ...do not be surprised as I say this because I  
10 have gotten – I have to say it.

**CHAIRPERSON:** H'm.

**MS MYENI:** I highlighted before the Commission. I also highlighted, I think it was telephonically and even to the journalists that it is unfortunate that [speaking vernacular] by Eskom, we are not delving into the real issues that led to Mr Tsotsi meeting me first.

If then we want to take the route of just highlighting the meetings because there was Mr Zuma in those meetings, it can be done so Chairperson. But what  
20 is important here. How did I get to meet Mr Tsotsi? He did not tell you or he did not address this Commission.

I did also raise the fact that in – for me to address you Chairperson, Mr Tsotsi not have mislead you because when he came to me he had gone to somebody else and say to get the meeting facilitated for him to Mr

Zuma.

The purpose [speaking vernacular] ...Eskom...  
[speaking vernacular] Chairperson, I have highlighted this.  
There was an intermediary. There was a person who  
...[intervenes]

**CHAIRPERSON**: Okay hang on Miss ...[intervenes]

**MS MYENI**: Chairperson ...[intervenes]

**CHAIRPERSON**: Hang on Ms Myeni. You said something  
in isiZulu. You will have to translate it so that Mr Seleka  
10 and others can hear what you were saying about that part.

**MS MYENI**: Thank you, Chair. I highlight something and  
then I try to translate it but in the interest of time  
...[intervenes]

**CHAIRPERSON**: Ja, h'm.

**MS MYENI**: There was somebody, Chairperson, that I  
requested that that person be called as well. That person  
who was the link between me and Mr Tsotsi. But if we want  
to please those like to hear Mr Zuma presiding over a  
meeting with Mr Tsotsi. It is misleading and it is  
20 sensualised of Mr Zuma's involvement or my involvement  
to get – because we are talking about me [speaking  
vernacular]

I am going to be very clear here. I was never in  
any board of Eskom. I had no interest at Eskom. The  
person who had problems at Eskom is Mr Tsotsi. Those

problems were highlighted but when he came to me, he never sat with me. That is the problem we have but I took it as a colleague that a colleague comes to me.

That a colleague comes to me, he wants an assistant, he wants to meet with President Zuma. As a matter of fact, chairperson. Mr Tsotsi had gone with another Indian person to meet a certain lady to ask for the meeting. The lady said: No, I am not interested to ask for a meeting with President Zuma. I was the second person  
10 to say: Okay he visited the colleague. Is the chairperson of an SOE. I can assist.

And that, Chair – this whole thing is what so dramatized by him leading the prophets of saying things that are inaccurate. Therefore, the meeting(?) take place. In all the areas that have mentioned in Durban as well as in Pretoria meetings did take place. But these meetings took place at the behest of Mr Zola Tsotsi as my colleague because we chaired the SOE's.

But in terms of – matters of interest in the affairs  
20 of Eskom. I have too many troubles or problems or challenges and many responsibilities at SAA to pay attention to issues at Eskom. Therefore, Chair, the meetings did take place. I will not remember the context of the meetings but the issues of the executive that is highlighted or was highlighted, I think Mr Linnell was

correct to say he was responsible for anything and everything that happened to Eskom.

Mr Seleka, the last part that I am going to say that. Mr Linnell's view and Mr Linnell's version and affidavit is his. I have a statement before you, Chairperson. It is my statement. It is my version. It is my total recollection of the events. But I was deeply disappointed to learn that Mr Zola Tsotsi wanted to use me to hide behind issues of corruption that he was involved in  
10 at Eskom himself.

There is a statement Chair that I said he is misrepresenting... His version was inaccurate. Just because [speaking vernacular] That is not what I – I was bit(?) by Mr Tsotsi. Mr Tsotsi did not instruct me to facilitate a meeting for him to ask the former President to fire people. I have never been instructed by Mr Zuma in any place or take instructions about how the functioning of any entity of government should be. Who to hire. Who to fire. That has never been.

20 So, I think in a nutshell Chair. Meetings did take place but it was at the behest of the Chairperson of Eskom. No meeting took place at the behest of Buthi(?) Zulu(?).

**CHAIRPERSON:** Okay. Now, Mr Linnell said that it was on the 6<sup>th</sup> of March 2015 when the meeting – when he had a meeting with you in Pretoria at the official residence of

Mr Zuma. Now does that date ring a bell with you? You have no problem that that is the date of the meeting?

**MS MYENI:** I have a problem, Chairperson.

**CHAIRPERSON:** Yes?

**MS MYENI:** Because I do not have my diary here with me.

**CHAIRPERSON:** Yes.

**MS MYENI:** Otherwise, Char. For every meeting we would have ...[intervenes]

**CHAIRPERSON:** Ja?

10 **MS MYENI:** ...I always had a diary where I would write the minutes or whatever notes of a particular meeting.

**CHAIRPERSON:** Ja.

**MS MYENI:** So I cannot say on the face that there was a meeting at Mahlamba Ndlopfu, the official residence.

**CHAIRPERSON:** Yes.

**MS MYENI:** I cannot say that.

**CHAIRPERSON:** Ja. The one that we have been told that was on the 8<sup>th</sup> of March in Durban, that date also, is your answer the same or that you know to have on the 8<sup>th</sup>?

20 **MS MYENI:** My answer would be the same, Chair.

**CHAIRPERSON:** Ja.

**MS MYENI:** My answer, Chairperson, would be the same. I want to highlight something Chair with your permission ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MYENI:** ...without, again, taking a lot of time.

**CHAIRPERSON:** Ja, h'm?

**MS MYENI:** If I had been in the area, like for instance, Chair. As the person who was running the foundation. The foundation is an NGO.

**CHAIRPERSON:** H'm?

**MS MYENI:** If I was in Pretoria or in Johannesburg for a meeting or for other reasons(?) and there emerges a need for us to have a meeting of the foundation, it was cost  
10 effective for me to go and meet the persons of the foundations. So if there are other meetings alongside with those – that meeting, there was no problem with me doing... [Speaker is unclear]

**CHAIRPERSON:** H'm.

**MS MYENI:** So it is not like that. One would leave one's residence to go and have a meeting because there is a personal interest on a matter.

**CHAIRPERSON:** H'm. Okay now ...[intervenes]

**MS MYENI:** Especially with a matter of Eskom.

20 **CHAIRPERSON:** Yes. Now is my understanding correct that what you are saying is that Mr Zola Tsotsi was the Chairperson of the Eskom Board, was the person who approved you and he asked you to facilitate a meeting between himself and Mr Zuma? Is that correct?

**MS MYENI:** No. No, Chair.

**CHAIRPERSON:** H'm?

**MS MYENI:** There is a middle(?) person... [Speaker unclear]

**CHAIRPERSON:** Ja?

**MS MYENI:** ...that approached me ...[intervenes]

**CHAIRPERSON:** Okay.

**MS MYENI:** ...to meet Mr Tsotsi.

**CHAIRPERSON:** H'm?

**MS MYENI:** That person was sent by Mr Tsotsi to me. I  
10 have no telephone number of Mr Tsotsi to submit. I did not  
know Mr Tsotsi. I knew him as the Chairperson of Eskom.  
So it was the person that I was saying [speaking  
vernacular] Chairperson. We keep talking around this  
...[intervenes]

**CHAIRPERSON:** But tell us who that person is.

**MS MYENI:** Chairperson, no, no, no. I do not want to  
incriminate myself Chairperson ...[intervenes]

**CHAIRPERSON:** [laughs]

**MS MYENI:** ...by mentioning the names of the people.  
20 That information - this Commission should have asked:  
How did he get the appointment with me... Because in his  
appearance, he never mentioned that. He met me without  
any other person. We met together with the President...  
[Speaker unclear]

**CHAIRPERSON:** H'm. Well ...[intervenes]

**MS MYENI:** I listened to what he wanted. I listened to – I listened to his problems, what he wanted and I took everything he said Chair. I have no reason to doubt what he was asking or I had no reason to go and verify why he wanted to meet the President and other person who wants to meet the President.

**CHAIRPERSON:** So ...[intervenes]

**MS MYENI:** So I did not also not know that it would be a crime for him to meet the President.

10 **CHAIRPERSON:** So you say he did not tell you why he wanted to meet the President?

**MS MYENI:** Himself, Chair, did not tell me the other version of his problems at Eskom.

**CHAIRPERSON:** Yes.

**MS MYENI:** But the first things that he said to me, to ask for an appointment ...[intervenes]

**CHAIRPERSON:** H'm?

**MS MYENI:** ...because I was reluctant, Chair.

**CHAIRPERSON:** H'm?

20 **MS MYENI:** I was reluctant. You know, Chairperson. I have a hundred and one reasons why I was reluctant. But I said let me go and meet him ...[intervenes]

**CHAIRPERSON:** H'm?

**MS MYENI:** ...because the person did not come to me once or twice. The person that he sent to me.



**CHAIRPERSON:** What did he ...[intervenes]

**MS MYENI:** Then, eventually, I went to meet him ...[intervenes]

**CHAIRPERSON:** What did this person ...[intervenes]

**MS MYENI:** There was no Mr Linnell. There was no Mr Zuma.

**CHAIRPERSON:** What did this person say to you? Did he or she say Mr Tsotsi would like to meet with you?

**MS MYENI:** Correct, Chair. He wants me to advise him  
10 and also, he had some challenges there. He does not have a legal advisor.

**CHAIRPERSON:** H'm?

**MS MYENI:** And he asked me that I must also advise the Chairperson as to who we arrived at appointing a legal advisor as the board.

**CHAIRPERSON:** H'm?

**MS MYENI:** So I said those are issues that can be discussed. I do not have a problem with that. Then he said he has issues, he has got problems and they knew(?),  
20 like... for doing all that – the necessary process of getting a legal advice. Oh, sorry, a legal advisor.

**CHAIRPERSON:** H'm?

**MS MYENI:** Then I said to him in order for you to do that, you need your board. You cannot appoint somebody without a board resolution. So I told him after meeting

with him – okay during the meeting, our meeting, that I said: If you are to do this, you will need the board. The board must be on your side. And your board must see the need if you feel there is a need for him to appoint a legal advisor, the board must be on your side.

**CHAIRPERSON**: Yes.

**MS MYENI**: And then when... Sorry, Chair.

**CHAIRPERSON**: H'm?

**MS MYENI**: Go ahead.

10 **CHAIRPERSON**: No, I think you are now talking about the meeting between yourself and Mr Tsotsi.

**MS MYENI**: Yes.

**CHAIRPERSON**: I was still talking about the meeting between yourself and the person that you have so far not named who was – who sought to facilitate a meeting between yourself and Mr Tsotsi. So that is the one that I was still at. So, did that person simply say: Mr Tsotsi would like to meet with you to discuss certain issues without telling you what issues?

20 **MS MYENI**: He did not elude to detailing it or – our meeting but he appeared to be saying he has challenges - Mr Tsotsi has challenges at Eskom. He would like to discuss with him. In any case, Chair, really, you will recall. Ms Rantho who did indicate that as SOE's we had the Chairperson Rantho that was introduced.

**CHAIRPERSON:** Misses who?

**MS MYENI:** So the chairperson ...[intervenes]

**CHAIRPERSON:** I am sorry. Misses who?

**MS MYENI:** The lady in Parliament, Mr Chair. The lady in Parliament.

**CHAIRPERSON:** Which one is the lady in Parliament?

**MS MYENI:** The one that I ...[intervenes]

**MR BUTHELEZI:** Chairperson, Ms Rantho.

**CHAIRPERSON:** Oh, Ms Rantho. Ms Rantho. Okay. Yes,  
10 continue.

**MS MYENI:** No, he did – she did indicate that the chairpersons would interact. Obviously, Chair, you would perhaps understand what one chairperson has done and another SOE and another one has done this or another one has gone through a certain big challenge or something like that. And then you would share and compare notes. But not deciding for each other because you cannot – you can never go and decide for another SOE, Chair. You cannot preside over another SOE... [Speaker unclear]

20 **CHAIRPERSON:** H'm. So as I understand it and I want you to correct me if I am wrong. The person, that you are not name, approached you and said Mr Tsotsi would like a meeting with you. He has some challenges at Eskom and you agreed to meet with Mr Tsotsi. Is that correct?

**MS MYENI:** Correct, Chair.

**CHAIRPERSON:** Yes. And that was the end of your discussion with this other person?

**MS MYENI:** Chair, no, no, no. No, no, no. Chair?

**CHAIRPERSON:** H'm?

**MS MYENI:** Sorry. It is not that Mr Tsotsi wants to you see, he has challenges at Eskom.

**CHAIRPERSON:** Ja, what ...[intervenes]

**MS MYENI:** Mr Tsotsi would like to see you?

**CHAIRPERSON:** H'm?

10 **MS MYENI:** He would like to understand certain things from you. He would also wants to know how you went about appointing your – the legal advisor in your board. So I thought it was an open discussion. That is why.

**CHAIRPERSON:** Okay, okay, okay. No, that is fine. And then your response was to agree to a meeting with Mr Tsotsi?

**MS MYENI:** Not the first time ...[intervenes]

**CHAIRPERSON:** Ja.

20 **MS MYENI:** ...when that person called but the second time, I agreed.

**CHAIRPERSON:** Yes. And this person was speaking to you over the phone and not in a meeting?

**MS MYENI:** No, it was in – it was over the phone.

**CHAIRPERSON:** Over the phone. Okay alright.

**MS MYENI:** It was over the phone.

**CHAIRPERSON:** And you have a recollection of whether this was before March in 2015 or whether it was even in 2014?

**MS MYENI:** No, Chair ...[intervenes]

**CHAIRPERSON:** You cannot remember?

**MS MYENI:** I would be lying.

**CHAIRPERSON:** Okay that is alright.

**MS MYENI:** I would be lying.

**CHAIRPERSON:** But would – your – is your recollection  
10 that you – it did not take long after you had agreed to meet  
Mr Tsotsi that the two of you met?

**MS MYENI:** Yes, Chair but all was dependent on my availability in Johannesburg.

**CHAIRPERSON:** Okay.

**MS MYENI:** I was not going to fly to Joburg to go and meet with Mr Tsotsi, Chair.

**CHAIRPERSON:** Okay alright. Now - we will proceed to hear about your meeting with Mr Tsotsi. Now you are going to have to tell me who the person is because from what  
20 your discussion was in terms of your evidence between yourself and this other person, it seems that it was an innocuous discussion. That is why you also had no problem agreeing to meet with Mr Tsotsi.

All this person said was: Mr Tsotsi would like to meet with you. He has some challenges at Eskom and he

would like to know how you went about appointing a legal advisor at SAA. Do you understand?

**MS MYENI**: I understand, Chairperson. What I have seen here... Maybe with your permission, Chair. [audio recording is swinging/warping]

**CHAIRPERSON**: H'm?

**MS MYENI**: On page... of Mr Linnell. On page 28 of his affidavit.

**CHAIRPERSON**: What is on page 28? What is the  
10 number at the top, the black number at the top?

**MS MYENI**: It is 06028.

**CHAIRPERSON**: Oh.

**ADV SELEKA SC**: ...28 [Microphone not switched on]

**CHAIRPERSON**: Are you looking at the red numbers?

**MS MYENI**: I am looking at the black numbers, Chair.

**CHAIRPERSON**: Mister ...[intervenes]

**MS MYENI**: It is at the end of Mr Linnell's ...[intervenes]

**CHAIRPERSON**: Affidavit.

**MS MYENI**: ...affidavit. It is paragraph 6, Chair.

20 **CHAIRPERSON**: Paragraph?

**MS MYENI**: Paragraph 6.

**CHAIRPERSON**: Six?

**MS MYENI**: H'm.

**CHAIRPERSON**: Oh, okay. Well, paragraph 6 is at page 31 in terms of the black numbers but paragraph – page 28

in terms of the red numbers on my bundle. Is that the same with you, Mr Seleka?

**MS MYENI:** On ...[intervenes]

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** H'm?

**ADV SELEKA SC:** Sorry, I am... She is referring to a different ...[intervenes]

**CHAIRPERSON:** Affidavit.

**ADV SELEKA SC:** It is a statement. It is a supplementary  
10 statement of Mr Linnell.

**CHAIRPERSON:** Is it in this bundle?

**ADV SELEKA SC:** It is in this bundle, page 28, the black pagination at the top of the page. So you are going... Yes, the Chair will have to go back. So ...[intervenes]

**CHAIRPERSON:** Well...

**ADV SELEKA SC:** It starts on page 27, Chair. Page 27 ...[intervenes]

**CHAIRPERSON:** Ja, I see there is a ...[intervenes]

**ADV SELEKA SC:** Second supplementary affidavit to the  
20 committee ...[intervenes]

**CHAIRPERSON:** Oh, okay.

**ADV SELEKA SC:** ...Portfolio Committee.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay yes now I am there Ms Myeni. I

am at paragraph 6 at page 28. That is, actually – oh, ja. It is his second supplementary statement. Yes, I am there.

**MS MYENI:** Chair ...[intervenes]

**CHAIRPERSON:** Yes?

**MS MYENI:** ...this is the person that – that is the chairperson – that is the person that is named there ...[intervenes]

**CHAIRPERSON:** Ja.

**MS MYENI:** ...at the end of paragraph 6.

10 **CHAIRPERSON:** Yes.

**MS MYENI:** It is put in inverted commas.

**CHAIRPERSON:** Yes. No, that is fine. That person was – have been mentioned in this Commission as having been present at the Durban meeting. He is, in terms of paragraph 6, the person you are referring to, is referred to as Jabu Maswanganyi. He was referred to by Mr Tsotsi. I think also by Mr Linnell if I am not mistaken.

**ADV SELEKA SC:** Yes, Chair.

20 **CHAIRPERSON:** But certainly by Mr Tsotsi. Okay so that is the person who approached you and said Mr Tsotsi would like to have a meeting with you because he has some challenges at Eskom but he would also like to know how you went about appointing a legal advisor. Is that right?

**ADV SELEKA SC:** Yes, Chair.



**CHAIRPERSON:** Okay. And then your meeting with Mr Tsotsi, at your first meeting then. Would you like to tell me what was discussed between he two of you in that meeting?

**MS MYENI:** Look, Chair, I do not want to – look, I do not want things to give you inaccurate statements here.

**CHAIRPERSON:** H'm?

**MS MYENI:** I am before a Commission.

**CHAIRPERSON:** H'm.

10 **MS MYENI:** A disciplinary inquiry that I must – where the reports come about, I must temper everything I say.

**CHAIRPERSON:** Ja.

**MS MYENI:** I do not have the minutes. I do not have minutes of any meeting ...[intervenes]

**CHAIRPERSON:** H'm?

**MS MYENI:** ...that took place in any place with Mr Tsotsi. But all I am saying is that. The statement that I submitted to Parliament ...[intervenes]

**CHAIRPERSON:** H'm?

20 **MS MYENI:** ...and the statement that is before you, Chairperson ...[intervenes]

**CHAIRPERSON:** H'm?

**MS MYENI:** ...it contains everything that I remember at the time and that I, in my understanding, was the version that I would raise my hand and take an oath to say this is

what my understanding was.

**CHAIRPERSON**: Okay alright. Mr Seleka, do you want to take it from there?

**ADV SELEKA SC**: Thank you, Chair. Ms Myeni, let us go back to Mr Linnell's version. It was not clear to me – let us look at paragraph 5 on page 31.

**CHAIRPERSON**: Well, why do you not just put the question without, Mr Seleka ...[intervenes]

**ADV SELEKA SC**: Yes.

10 **MS MYENI**: H'm.

**CHAIRPERSON**: ...and her to look? Just say what Mr Linnell says.

**ADV SELEKA SC**: That is right, Chair.

**CHAIRPERSON**: H'm.

**ADV SELEKA SC**: That is fine.

**MS MYENI**: H'm.

**CHAIRPERSON**: It is going to be faster.

20 **ADV SELEKA SC**: So you would have seen from his affidavit presented to you last year, that he – he talks about a meeting to which you called him on the 6<sup>th</sup> of March 2016 in Pretoria. I know you say you do not have a recollection of the date but do you confirm the meeting having taken place in Pretoria, you and him at the President's official residence?

**CHAIRPERSON**: She has confirmed the meetings. You

confirmed that the two meetings did take place.

**MS MYENI:** I confirmed the meetings but I cannot confirm the dates.

**ADV SELEKA SC:** Yes, that is alright.

**CHAIRPERSON:** Ja. Is it true that you were the one who called Mr Linnell and asked him to come to Pretoria for the meeting?

**MS MYENI:** Chairperson, wherever I would be, if I am in that particular area at that particular time and there is  
10 need for a meeting I would use the same – the venue, I would use the time because, Chair, like I said to you, it was cost-effective me to have meetings in Jo’burg when I am in Jo’burg. If I go to Cape Town I met Nick Linnell, he stays in Cape Town, we met also in Cape Town so it is not like we met once or only in Pretoria or this specific date. So we met many times with Mr Linnell whether in the hotel where I would be staying or in a restaurant – like, for instance, in Cape Town we would meet in a restaurant or at the President’s place, we met him as well.

20 **CHAIRPERSON:** Yes, no but ...[intervenens]

**MS MYENI:** And in Durban, and in Durban.

**CHAIRPERSON:** I am just asking about how the Pretoria meeting between the two of you came about. He said that you called him and told him that – and asked him to come to Pretoria to meet with you and the President and I think

he said you said you would explain to him when he arrived in Pretoria what it was about, if I am not mistaken. So I just want to confirm that you accept that that is what happened.

**MS MYENI:** I accept that I would have called him for a meeting.

**CHAIRPERSON:** Yes.

**MS MYENI:** But as the rest of the contents of the meeting and what have you, no, Chair, I will not be able to confirm.

10 **CHAIRPERSON:** Yes. In other words, you did not say to him when you called him, you did not say that the purpose why you were calling him was so that he could meet with the President?

**MS MYENI:** Chairperson, I do not know.

**CHAIRPERSON:** You do not remember?

**MS MYENI:** I do not remember.

**CHAIRPERSON:** Is it possible ...[intervenes]

20 **MS MYENI:** Chair, Nick was – we were working together for the board of SAA. Therefore my phone calls with him were all are going so I can say that this particular call was for this, this particular call was for this. I cannot say that because also, Chair, Nick Linnell as a consultant he was also consulting with Gauteng, so I cannot say come to the President [indistinct], I would know if it is in Gauteng, I would also know whether I want to meet on SAA matters.

So I can specifically on this particular date I asked him to leave Cape Town to come and meet the President because the President wants to meet him.

**CHAIRPERSON:** But ...[intervenes]

**MS MYENI:** I cannot confirm that.

**CHAIRPERSON:** Is the position that you cannot confirm but you cannot say what he is saying is not true or are you saying it is not true, you can remember quite clearly you never said that to him?

10 **MS MYENI:** I cannot – that is his version, Chair.

**CHAIRPERSON:** Ja.

**MS MYENI:** And I will respect his version. My version is that I would meet Mr Linnell at any given time, when he visits Jo'burg, when I am in Jo'burg and we always met – we always had reasons to meet. If there was a board meeting, there was something we wanted to find out from him, he would be available on email or on phone call but if he is in Gauteng himself or coming to us as SAA he would come so I cannot say this particular day I called him and  
20 said please come, the President wants to meet you. No, Chair, I cannot confirm that.

**CHAIRPERSON:** Now he said that your call was on the basis that he must basically – it was so urgent that he had to drop everything and come to Pretoria and as a result he dropped everything, flew to Pretoria the same day. What

do you say about that?

**MS MYENI:** It is his version, Chair.

**CHAIRPERSON:** It is his version. And he says when he came the two of you had a meeting and but you said that the President was going to join the two of you in a meeting or you were going to have a meeting, the two of you were going to have a meeting with the President but while you were waiting to be called to meet with the President you briefed him about what this whole meeting was to be about  
10 and he said that you said that the President wanted an investigation or inquiry to be investigated into the affairs of Eskom. I think he was not happy with Eskom and you had recommended to the President or you were going to recommend to the President that he would be the right person to coordinate that inquiry or conduct that enquiry. What do you say to that?

**MS MYENI:** This Commission loves Mr Zuma, it really adores Mr Zuma even on matters that had nothing to do with him, it drags his name into that matter. Chairperson, I  
20 could [inaudible – speaking simultaneously]

**CHAIRPERSON:** But hang on ...[intervenes]

**MS MYENI:** [inaudible – speaking simultaneously] to recommend ...[intervenes]

**CHAIRPERSON:** Hang on, hang on.

**MS MYENI:** Sorry, Chairperson, sorry.

**CHAIRPERSON:** Hang on, hang on, it is not the Commission, it is witnesses who come to the Commission to say things about people, it is not the Commission, it is Mr Linnell ...[intervenes]

**MS MYENI:** Thank you, Chair, for the correction.

**CHAIRPERSON:** It was Mr Linnell who told us that it was not the Commission which came up with that.

**MS MYENI:** Thank you, Chairperson, for the correction. [speaking in the vernacular]. One, Chair, Mr Zuma would  
10 not have taken any recommendation from a Chairperson of another SOC to recommend it to him. First and foremost, Chair, the board does not report to the President, no board reports to the President.

The board, Chairperson, reports to the minister. I do not know how – I do not know a process where the board would jump the minister and go and report or take advice from another Chairperson of another board to recommend that the investigation must be done, this is the right person for this job.

20 Chair, some of these things that we would sit and listen to are hearsays, some are gossips, some are statements misleading the Commission. But, Chair, I am glad that I am here before you to ensure that I clarify issues.

The board is governed by something called shareholder

compact, Mr Tsotsi would have abdicated his responsibility to go and get instructions from another Chairperson of the board, one, or to take instructions from the President. It would be undermining the minister by Mr Tsotsi to have done that. It is a lie, it is misleading the Commission and the facts of the matter, Chairperson, is that Mr Tsotsi did want to get assistance from a legal expert, any legal person. I obviously shared with Mr Tsotsi how Mr Linnell was assisting us and Mr Linnell had a role at our board at  
10 SAA in terms of his advice to the board but I do not know that Mr Linnell would – or Mr Tsotsi would go to the President and get instructions from the President, I do not know. I deny anything to that effect, Chair, I honestly do not understand.

**CHAIRPERSON:** When you met with Mr Tsotsi, just the two of you, what request, if any, did Mr Tsotsi make to you? Did he request you to do anything?

**MS MYENI:** He asked – Chairperson, it was public knowledge that there were too many things going around in  
20 almost all the SOEs, so he asked us how we are dealing with matters, how we go about doing certain things I said you know what, we, as the board, we took a decision that we will do everything by the book, we will follow what needs to be done in terms of corporate governance, in terms of consultation. Consultation by – with who?



Consultation with the Minister, not consultation with the President.

**CHAIRPERSON:** Did he ...[intervenes]

**MS MYENI:** Then I said to him in everything you will do, even if you consult the minister or inform the minister or request the minister's permission to do whatever you want to do in the company, you have to have your board by your side because, Chair, Mr Linnell was appointed through the board resolution, it was not Dudu's friend or Nick Linnell  
10 Mr Fix of Dudu. No, it was a board resolution to appoint a legal adviser and therefore I said to Mr Tsotsi if you want the services of Mr Linnell, everything – your story must be very straightforward, Mr Linnell is a very straightforward and an honest man. That, I can say it publicly, he is honest, he does not take short cuts, he wants everything done by the book, so that I advised Mr Tsotsi. But at the back of this, I did not know that he himself in the [speaking in the vernacular]

**CHAIRPERSON:** [Laughs] [speaking in the vernacular] Ms  
20 Myeni.

**MS MYENI:** Chair...

**CHAIRPERSON:** Ms Myeni said something in isiZulu and she was leaving it to me to understand or interpret, so I said she must interpret herself what she was saying. Ms Myeni, tell everybody what the Zulu part was.

**MS MYENI:** Chairperson, there is no direct translation on what is [speaking in the vernacular] all I can say, Chair, is that Mr Tsotsi did not – he was not open to me, Chair, in terms of being honest to say that he has problems, personal problems that emanates from his breach of his role as a Chairperson. That is where I going blank with it and I was honest with him and I was discussing issues with him thinking that everything is above board but he was not telling me that he had his own personal challenges that he  
10 had to account about to either the board or the minister himself.

**CHAIRPERSON:** So he did not ask you to set up a meeting or facilitate a meeting between himself and the President or did he?

**MS MYENI:** He did, Chair.

**CHAIRPERSON:** Yes.

**MS MYENI:** He did.

**CHAIRPERSON:** And what was your response?

**MS MYENI:** Chair, even anyone who wants a meeting with  
20 the President I passed on the message to say so and so would like to have a meeting with you. Now the problem is that when person wants a meeting with the President it is not my duty to say please explain why you want a meeting but my responsibility would be say put it in writing so that you make the formal request. He said no, it must be a

meeting which is an open meeting, it is not anything that is untoward that I need to make it formal. Now in as far as I am concerned, Chair, there are comrades that would ask for a meeting with the President, there are people who would come and want to meet the President for certain advice on other matters. If I knew what Mr Zola Tsotsi wanted to meet the President about, indeed, Chair, I would have said take your minister to Mr Zuma. I would have advised him that way, Chair.

10 **CHAIRPERSON:** But what advice if any did you give him or did you say you were going to facilitate a meeting between him and the President or did you not agree to facilitate such a meeting?

**MS MYENI:** Chairperson, when I had the foundation meeting in Durban I was at the President's place in Durban, we were going to have a foundation meeting and that is where I asked him to come. I said to him I would be meeting the President at that particular place. He can come back.

20 **CHAIRPERSON:** Okay, alright. Mr Seleka, take it from there.

**ADV SELEKA SC:** Yes, Chair, let me approach this matter differently, Ms Myeni. Ms Myeni, you have seen the affidavits of Mr Linnell and he has testified about the two meetings. Let us leave aside for the moment, Mr Tsotsi, if

you concentrate on Mr Linnell, do I understand you correctly that you cannot deny what he is saying in his affidavit?

**MS MYENI:** I have not read Mr Linnell's affidavit, Mr Seleka.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** I think you will have to put to her the portions of what he says.

**ADV SELEKA SC:** Yes.

10 **CHAIRPERSON:** If possible without going to the pages unless it is really necessary.

**ADV SELEKA SC:** Indeed, Chair, I will certainly do so. So Ms Myeni, we have talked about the meeting, the first meeting in Pretoria, Mr Linnell has given a date for that meeting, the Chairperson has touched on the contents of that meeting. At the end of that meeting – well, I understood your – rather, let me, before I go to the end, I understand your response to the Chairperson that you cannot deny that meeting, that is Mr Linnell's version, or  
20 affidavit. At the end of that meeting he says he understood from you that he has to attend to a meeting in two days time on the 8 March 2015 in Durban, again with the President.

**CHAIRPERSON:** I think it is more than that, Mr Seleka, I think he said she told him.

**ADV SELEKA SC:** Correct, Chair.

**CHAIRPERSON:** That there will be a meeting in Durban on the 8<sup>th</sup> and he should go to that meeting in order to meet the President because he said to Ms Myeni ultimately while the two of you were discussing you learnt that the President had left for Durban without you being called, the two of you being called to meet him. He says it was at that stage that you then said to him that there was going to be a meeting in Durban on the 8<sup>th</sup> at the President's official residence, he should come to that meeting and he says he agreed.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** What do you say to that part of his evidence?

**MS MYENI:** That is his evidence, Chair, I have got nothing to say.

**CHAIRPERSON:** On your version what did the two of you talk about while you were meeting because he has told ...[intervenes]

20 **MS MYENI:** I cannot remember, I cannot remember what...

**CHAIRPERSON:** Because he has told me what the two of you were talking about and he said you were briefing him on the reason why you asked him to come to Pretoria and what the President was concerned about in Eskom and because the meeting involving the two of you and the

President did not take place in Pretoria and you learnt that the President had left for Durban you then said he should come to Durban because there was going to be a meeting in Durban on the 8<sup>th</sup> at the President's official residence. That is his version. What is your version of what the two of you talked about in that meeting?

**MS MYENI:** I do not have my minutes of the content of our discussion so I – my version of this whole thing is that I have met Mr Linnell on a number of occasions for SAA  
10 matters, not for Eskom matters. If it was for Eskom matter Mr Zola Tsotsi would have met – would have been in that meeting and Mr Tsotsi would have been discussing issues of Eskom with Mr Linnell. So I deny that I would meet him and discuss Eskom matters because I did not hire or the board had not appointed Mr Linnell for Eskom so there would not be time wasted and his hours wasted on Eskom matters on one on one between us. So, Chair, I do not agree that...

**CHAIRPERSON:** So you do not remember what the  
20 discussion was about between the two of you?

**MS MYENI:** I will not remember, Chair.

**CHAIRPERSON:** You will not remember.

**MS MYENI:** No.

**CHAIRPERSON:** You have said – you have said yourself that Mr Linnell is an honest man. Have you got any reason

why he would say that you said certain things in that meeting if you did not say those things?

**MS MYENI:** Chairperson, as I said to you when I addressed you at the beginning, I also [indistinct] therefore my version must be taken as well as honesty as I am putting it before the Commission but I cannot help it, Chair, my colour suggests immediately that I cannot be honest, I am a criminal from the colour of my skin, therefore my version – when I say Mr Linnell is an honest  
10 man, I have worked with him, it does not mean that when I say Mr Linnell is an honest man then my version of the day's meeting and his version, if they contradict each other, it means he is dishonest by that particular aspect. Only know honesty is very broad, Chair.

**CHAIRPERSON:** Okay.

**MS MYENI:** So I am saying I do not remember. If I had my diary, if I recorded myself on the discussions we had I would stand up and confirm what he said. It is his version, Chair.

20 **CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. Ms Myeni, Mr Linnell goes on to say – and I will go now to the meeting of the 10<sup>th</sup> – I mean, the 8<sup>th</sup>, sorry, Chair, of the 8 March 2015 that the same discussion that started between the two of you at the meeting of the 6<sup>th</sup> continued in Durban

and this discussion related to the President, the then President, seeking to have an inquiry initiated into Eskom's affairs, one.

And number two, having to have three executives of Eskom suspended. Your comment on that?

**MS MYENI:** No, comment, Mr Seleka. I deny what is being said, there is no President that go into a statement like that to say these are the things that you must go and do. The President would talk to the minister and the  
10 minister would talk to the Chairperson, so I do not know about that particular statement and I – it is not ...[intervenes]

**CHAIRPERSON:** Let us start here before we go to the content of the meeting.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Linnell testified that when he arrived at the Durban official residence of the President on the 8<sup>th</sup> you were already there, I cannot remember whether he said Mr Tsotsi was already there or whether Mr Tsotsi arrived  
20 later than him but he said – they said there were two meetings, so to speak. The one, which was the first one, was attended by yourself by Mr Linnell, by Mr Tsotsi, by your son and I think either Mr Tsotsi or Mr Linnell or both of them also said there was Mr Jabu Maswanganyi, either one of them, did not know the surname, but said Jabu or



the other – or both said Jabu but later on it transpired that it was Jabu Maswanganyi. Do you – what do you say about the people that Mr Linnell says attended the first meeting? He said that first meeting did not have Mr Zuma, it was just a discussion among yourselves about the issues that you were going to discuss once you were in a meeting with Mr Zuma.

So he says there was a discussion without Mr Zuma at that stage and you played the role of Chairperson, if I  
10 recall correctly, in that meeting by which I did not understand them to say you were elected formally at the Chairperson but they said you were the one who was doing most of the talking and what was discussed was that there was a need for an inquiry into the affairs or investigation into the affairs of Eskom because there were problems at Eskom and that there was a need for the suspension of certain executives and only three executives were contemplated. At that stage the names might not have  
20 been mentioned but their portfolios or their positions would have been mentioned. I am not sure whether the names were mentioned later in the meeting. What do you say about that, in terms of who was at the meeting and in terms of the gist of what the issues were that were being discussed?

**MS MYENI:** You see, Chair, it was a pity that I was brought up to respect people, especially adults but to say uTsotsi is becoming – was misleading and not telling the truth. But also, Chair, I explained here my son's role on that particular day. He drove me to the President, that was his role, he is an adult, Chair, but he was not going to preside on meetings uninvited, that is a [indistinct], he was at the meeting. Sorry, the meeting place, not in the meeting.

10            Secondly, Chairperson, why was I going to be an elected Chairperson of somebody who is the one who has a problem in an SOE? Chair, it is not true – that honestly, these gossips should not be entertained, it is absolutely not true, it is blatant lie. Chairperson, the person who had a problem is Zola Tsotsi at Eskom, it was not Dudu Myeni.

              So Zola Tsotsi met with Linnell and they were to discuss the issues at Eskom themselves. Why would I even discuss or preside over a meeting about problems with executives? I do not even know those executives. I  
20            even indicated, Chair, that in fact it was at this Commission that the only person I knew was the former DG of Public Enterprises. I only met Koko through this Commission. I have never met him person. Why would I even know their performance, that I would even go to the extent of saying this one must be suspended, this one must

be suspended? It is a lie.

**CHAIRPERSON:** Do you ...[intervenes]

**MS MYENI:** I deny all this, I deny all of this, there was a meeting, the President was not going to join us in a meeting, Chair. He came, he did all the pleasantries, he greeted us. Yes, the three of us were in that meeting. I cannot even remember whether Jabu was there or not. Perhaps he was there, I would have to go back to my notes.

10 **CHAIRPERSON:** Ja.

**MS MYENI:** But, Chair, if somebody gives me minutes of that meeting which I was presiding on that meeting as a Chairperson, I would be very glad.

**CHAIRPERSON:** Now ...[intervenes]

**MS MYENI:** Not true.

**CHAIRPERSON:** With regard to your son you say he was in the place or residence but not in the meeting and because he was driving you. They also made it clear that he did not participate in the meeting but they said he was  
20 in the meeting but he was quiet, he was not taking part, he did not speak. That is what they said but are you saying that that meeting did not discuss the issue of an investigation or inquiry into certain Eskom matters and that it did not discuss the need for the suspension of certain executives at Eskom?

**MS MYENI:** I do not have minutes of the meeting, Chair. All can say is that is one of the meetings where Zola Tsotsi wanted me to introduce him to Mr Linnell, which I did and in terms of the contents of the meeting in Durban I cannot say what was discussed in detail but indeed he wanted assistance from Nick, but Chair as I said Nick was not, Nick Linnell was not going to just jump in and assist Mr Tsotsi. The process needed to be followed and I

emphasise this, so I deny Chair that I Chaired any meeting  
10 at the President Zuma house, and I deny that Mr Zuma was going to preside in the same meeting. We had a foundation meeting on that day, in that place.

**CHAIRPERSON:** So you say you, you cannot remember what issues were discussed in that meeting, is that correct?

**MS MYENI:** I remember that I never Chaired anything that is the starting point and I remember that I was not at liberty to discuss issues of suspensions at an inquiry.

**CHAIRPERSON:** Yes.

20 **MS MYENI:** I had no role and no interest in Eskom, the person who approached me was assisted and I introduced him to Nick Linnell, anything else that transpired after that it was between the two of them. If I was sitting in that meeting, when they were discussing, I would be emphasising the point that there are no shortcuts in

dealing with issues of corporate governance in any SOE.

**CHAIRPERSON:** So – but you say you do not have a recollection, whether in this meeting, in which you were present the need for an inquiry or investigation into the affairs of Eskom was discussed. You say you have no recollection of whether that was discussed, even if it was being discussed between the two of them.

**MS MYENI:** If it was the two of them Chair that would have been perhaps their content of the discussion, but I  
10 would not be party to that.

**CHAIRPERSON:** But you were in the meeting, you would have heard what they were saying.

**MS MYENI:** Of course Chair, I – none of them knew each other Chairperson. So I introduced Nick, to Zola and Zola to Nick. So whatever that was to be, but Chair my role was to ensure that Zola Tsotsi knows that it is not going to be like they have met then the next day Mr Linnell is part of Eskom's legal advice, no.

So, obviously, there would have been many other  
20 things that could have been discussed but the issue of the inquiry was not going to be something that I would take an interest in, what is the gain Chair.

**CHAIRPERSON:** And also the issue of the suspension of certain executives at Eskom, are you saying you have no recollection of whether that issue was discussed at the

meeting?

**MS MYENI:** No, no Chair.

**CHAIRPERSON:** Or are you saying definitely it was not discussed?

**MS MYENI:** No Chair, Chair I deny any involvement in the issues of Eskom in terms of inquiry, in terms of suspending any of the executives at Eskom.

**CHAIRPERSON:** Yes, the version given by Mr Tsotsi and Mr Linnell if I recall correctly, is that after this first meeting  
10 had discussed issues you waited to meet with President Zuma and that at a certain stage after waiting for some time you were all then - you all moved to another room where you waited for about five minutes and Mr Zuma then came in, and then another meeting took place now with Mr Zuma present, which discussed the same issues.

And which ended on the basis that Mr Zuma said to Mr Tsotsi, Mr Tsotsi must go back to his Board and raise the issue of an inquiry or investigation into the affairs of Eskom and raise the issue of the need for the suspension  
20 of the three executives who were being discussed, and then he said he himself would brief or brief the Minister or raise the issues with the Minister.

That is what Mr Tsotsi said that is how the meeting ended but he did say, Mr Zuma came and he listened and he even asked Mr Tsotsi whether he knew which executives

those that they were talking about, and Mr Tsotsi said yes he knew.

**MS MYENI:** Chairperson, [speaking in vernacular], no sorry Chairperson, Chairperson I deny the version that is being put before me. Indeed, Mr President, Zuma did greet that people and then he did indeed, the workers at least introduce everyone, it was not a meeting with him alone, there were lots of – I deny that Chair.

**CHAIRPERSON:** Excuse me, when he came in and  
10 greeted were you still in the same meeting in which you had been since the arrival of Mr Linnell, Mr Tsotsi or did you move to another meeting, and that is where Mr Zuma came and greeted everybody?

**MS MYENI:** Chairperson, I think it will be to the benefit of those that might want to believe certain versions, in that place Chair where we were there are a few lounges. So you sit in a lounge, which could be a smaller lounge and then when the meeting is finished, in a bigger lounge, you are moved to another lounge so that you allow maybe one  
20 person to sit in a small lounge.

If you are many you are given a bigger lounge, so the moving of rooms, I do not attribute to that that it was a movement to allow that maybe it is now preparation for a second meeting, it is a lie.

**CHAIRPERSON:** So are you saying that yes, you did

move from one room to another but what you are denying is that the moving was for the purpose of all of you meeting President Zuma or are you saying there was no moving at all?

**MS MYENI:** I do not know whether there was moving and I do not know whether we sat in one place but Chair Mr Zuma does not need – well during that time, he would not necessarily sit in one place and then people come to him. He would be the one coming or knocking in any other room  
10 where there are people to greet those people and then say some pleasantries if it is people he knew.

If he did not know people will introduce themselves and then he would then leave and go to another room and do the same. So I cannot say we moved or we did not move but the issue of President Zuma being present in matters of Eskom, like how it is being explained by Mr Linnell and Mr Tsotsi, I deny.

**CHAIRPERSON:** Well, what - part of what would be strange as I look at what you are telling me is that on your  
20 version here are two meetings that took place at the official residences of the President. One meeting between yourself and Mr Linnell, in Pretoria, at the official residence of the President. The other meeting taking place in Durban at the official residence of the President, and yet on your version, the President had nothing to do with these



meetings.

So why were these meetings being held in his residence on each occasion, if he had nothing to do with these meetings.

**MS MYENI:** Thank you, Chair I think I explained the first side of reasons why it could have been the place. In Durban we had a foundation meeting. I was to meet Zola Tsotsi, I was to meet Nick Linnell for the convenience, for my convenience.

10 I explained to them where I was going to be for the day, and therefore we met them but also Chair, in part, it was important for Mr Tsotsi at his request to meet President Zuma, which he did. So I am saying...intervene]

**CHAIRPERSON:** Did he meet President Zuma in Durban?

**MS MYENI:** It was not – Chairperson, sorry I spoke over you.

**CHAIRPERSON:** No, I was asking whether he - Mr Tsotsi met President Zuma in Durban on that day?

**MS MYENI:** Yes, Chairperson.

20 **CHAIRPERSON:** Okay, continue, you were saying something and I interrupted you.

**MS MYENI:** I am saying Chairperson, it was not a coincidence that when I am in Gauteng there is a need for me to meet President Zuma, then why – perhaps he is the area, but after meeting, then I am able Chair to request

that I see whoever that I am supposed to see.

Like, for instance in Durban we have our own meeting in Durban for the foundation but it was opportune for me Chair to put Mr Tsotsi in charge with President Zuma per his request. Hence, there was the presence of the facilitator, Mr Maswanganyi. So it is not like the venue that was being used Chair, was being used because in all the meetings Mr Zuma would have been present.

But Chair, it looks like Chair I am being made to be  
10 having such authority that whenever something like that –  
this was the President of the country Chair, and I did not  
know the purpose that Mr Tsotsi wanted to meet with  
President Zuma, for what is the purpose.

It appears to me now today when I look at  
everything that has been said, and the times in which you  
have brought him back to the meeting, many times he has  
come back to this Commission. I have listened to him and  
I came to understand that the issues that he wanted, he  
would have raised with me he never did and I got to  
20 understand that he himself had breached, not oath as such  
but he had challenges in person at Eskom.

So I am saying those did not in fact, he did not  
explain such to me.

**CHAIRPERSON:** Now, in Durban did Mr Tsotsi have a  
separate meeting with President Zuma away from

everybody or what happened, how did - where did record their meeting taking place?

**MS MYENI:** I do not remember that, Chair.

**CHAIRPERSON:** But you said they did meet is it not?

**MS MYENI:** They did meet Chair like, Mr Zuma came into a meeting where we were, so in other words, they did greet maybe I should say that.

**CHAIRPERSON:** Ja, but Mr Tsotsi had asked for a meeting with Mr Zuma, through you, or had told you that he  
10 wanted the meeting with Mr Zuma to discuss certain issues, is it not?

**MS MYENI:** Chair, when a person is asking for a meeting with Mr Zuma I do not have to be there. Whether he met him on any other day, I do not know but it does not mean that when a person has asked for a meeting with President Zuma, I should be present in that meeting, definitely not.

**CHAIRPERSON:** But on that day, when you say they met you just - you mean that they greeted when Mr Zuma came in?

20 **MS MYENI:** Yes, Chairperson, sorry, he did come into the room where we were.

**CHAIRPERSON:** Okay, Mr Seleka.

**ADV SELEKA SC:** Yeah, I think Chair has exhausted most of the questions and...intervene]

**CHAIRPERSON:** I am leaving it to now raise...[intervene]

**ADV SELEKA SC:** Specific ones.

**CHAIRPERSON:** Specific ones, because we now have a picture of what her version is, in terms of what you may wish to put to her in the light of what other witnesses have said.

**ADV SELEKA SC:** Yeah, thank you Chair. Ms Myeni according to Mr Linnell the subsequent correspondence between him and Mr Tsotsi, including an email he sent to you, where he gives you an update of what steps had been  
10 taken to that point, he says are indicative of what transpired in the meetings, the two meetings that we have referred to, and the purpose for those meetings and you will see the annexures to his affidavit. Do you have any comment on that?

**MS MYENI:** I have no comment Chair; it is the same thing that I am saying this is Nick's version.

**ADV SELEKA SC:** We did put your version – well insofar as we gathered from your statement to the Parliamentary Portfolio Committee and he was quite unequivocal in his - I  
20 would say denial of your version that Mr Tsotsi was in the meeting in Durban to discuss what you say are his - Mr Tsotsi issues at Eskom.

He was specific that the discussions revolved around what was indicated to them was the President's desire to have an inquiry conducted and all three of the

executives to be suspended.

**MS MYENI:** What is your question Mr Seleka?

**ADV SELEKA SC:** That he is - he was very clear in saying your version is not correct. That Mr Tsotsi there to discuss his own issues at Eskom. Were you – he even added that he would not have flown to Durban, he would not have flown to Durban on the basis of a perception that the Board wanted to remove Mr Tsotsi. You your comment?

**MS MYENI:** I have no comment, Chair, that is Mr Linnell's  
10 version I will put before my version in Parliament, this statement I will stand by the statement.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Mr Linnell also said if I recall correctly, he would never have gone to Durban for a meeting with Mr Tsotsi. He went to Durban because you told him he needed to come to Durban, to go to Durban in order to meet the President. He said he would never have gone to Durban - I think it was on a Sunday if I am not mistaken.

**ADV SELEKA SC:** It was, Chair.

20 **CHAIRPERSON:** On a Sunday just to meet Mr Tsotsi.

**MS MYENI:** Chairperson, I do not want to talk too much, it is better for me to say that is his version and I do not want to talk too much.

**ADV SELEKA SC:** Is there a reason why Mr Tsotsi would approach you to seek a meeting with the President?

**MS MYENI:** I was never approached by Mr Tsotsi Chairperson. I think I alluded to this from the beginning.

**ADV SELEKA SC:** Okay, let me clarify there...[intervene]

**MS MYENI:** Somebody, okay.

**ADV SELEKA SC:** Let me clarify, yes because let me ask you this, whether indirectly, let us say he is approaching you indirectly, through a person you have mentioned, was the middleman. Why would that approach be made to you for a meeting with the President?

10 **MS MYENI:** Mr Seleka that is a question that you must ask – or that could have been better asked or answered by Mr Tsotsi because I did not know Jabu who came to approach me. Secondly, working in proximity, I was working close to President Zuma through his foundation, that is a starting point. It is a common, it is a common knowledge, Chair.

20 Secondly, Mr Tsotsi has gone to see the first lady in Pretoria to seek - to see Minister Zuma. So it is not like he just selected me out of the blue. He tried to go and see somebody else to try and facilitate the meeting. It is information that Mr Tsotsi should have declared. It is not like he came to me and just said, I want to see Mr Zuma. No...[intervene]

**ADV SELEKA SC:** Yes, well...[intervene]

**MS MYENI:** He have tried many other people to go and

see Mr Zuma and then he then sent to this person. It is not like Mr Tsotsi decided - woke up and decided, I must go through to see Mr Zuma, no. Jabu came to me, I do not know how Jabu got to know that I was working for the foundation. I do not know how Jabu got to know even my number but I got a call from him. He asked for the meeting that I must meet Mr Tsotsi, I met him and I never refused to meet people like my colleague, he was chairing another SOE.

10 **ADV SELEKA SC:** Yes, well the reason why the question, that question I directed to you is because I could not direct it to him. On his version, you called him during or about that is Mr Tsotsi, during or about the 7<sup>th</sup> of March 2015 and you asked him, according to him, to come to Durban for a meeting with the President. That is according to him.

But according to you, and that is why I am directing that question to you is that he was the one who called you. I mean, he sent the middleman, Mr Jabu Maswanganyi in order to request a meeting with the President. But why -  
20 did you ask yourself why do you come to me, this is the President of the country, why do not you go through his office? Did you hear me?

**MS MYENI:** I heard you very well, Mr Seleka, I heard you very well.

**ADV SELEKA SC:** Yes.

**MS MYENI:** That to say why do you come to me, why do you not go to the next person.

**ADV SELEKA SC:** No, no, why do you not go through the office of the President, this is after all the President of the country. Why should I secure a meeting...[intervene]

**MS MYENI:** My job was not to facilitate meetings; it must be understood.

**ADV SELEKA SC:** Yes, that is...[[intervene]

**MS MYENI:** It is not something like I would just be excited  
10 about that somebody wants to meet the President, never. I must just say, when Jabu came to me for the first time, called me for the first time, for the last time, I said, no, I cannot do that but also Chair it was time I was extremely busy.

So I said, I cannot do that but also Chair if Jabu, if Zola Tsotsi wanted to meet me there were meetings that were being done between Chairs of the Board and the Minister. Why did he not approach me because I did not know him this particular person told me that he is  
20 specifically wanting to take from my understanding of how to go about getting the legal advisor.

So I was not going to go and say, if you want to go and meet the President, just go with the President of the country. I was not going to say that, so most of the things transpired when I met with Mr Tsotsi it was not the time



when I was interacting with Maswanganyi.

**ADV SELEKA SC:** So are you are you saying to the Chairperson that the request by Mr Tsotsi through Mr Maswanganyi was twofold. One was to meet with you to ask how to appoint a legal advisor and two was to meet with the President for a reason that was not disclosed to you, or was it?

**MS MYENI:** The first one was more glaring because he highlighted issues, that he said he would prefer to have a  
10 legal adviser and then that is where I explained that even if he has to meet our legal advisor, he still meet the Board by his side. This is the explanation I made and then he said, he would also like to meet with the President.

But, Mr Seleka, I did not see any crime in doing that, because I have done that with many people as well. So if it was an offense, a criminal offense for me to facilitate a meeting where the person asked to meet with President Zuma, and without divulging the reasons why you want to meet with President Zuma, then it was [speaking in  
20 vernacular], because it was it was something that I did not consider at the time to say hey, do not come to me, write to the Presidency, go meet with President Zuma in the Presidency, go to Union Building.

I did not think that way but now that you are saying it I should have said it.

**ADV SELEKA SC:** Let me – well, yeah, I was not proposing that it is a criminal but let me tell you, why are we asking this questions, because you see the meeting, the first meeting with Mr Linnell in Pretoria on the 6<sup>th</sup>. Mr Linnell, says it was only between the two of you, you and him. Mr Tsotsi is not involved in that meeting and the meeting subsequent to that is a sequel on Mr Linnell's version to the meeting of the 6<sup>th</sup> of March. The two meetings are linked and they seem to have been initiated,  
10 not by Mr Tsotsi but by yourself.

**MS MYENI:** I deny these versions of stories, the stories that are being put before you Chairperson. One, I met Mr Linnell on numerous occasions. I was not going to meet Mr Linnell just because there must be President available or needed the President somewhere. Mr Linnell was consulting for SAA formerly so, so meeting Mr Linnell I was not going to say for this particular meeting there let us move from this particular place, let us go and meet somewhere else, no.

20 And I said I have no recollection of this meeting and the contents of the discussion because I do not have my diary with me nor do I have the meeting minutes of the meeting and the discussions thereof of the meetings in Pretoria.

**ADV SELEKA SC:** Yeah, Chair I do not think one can take

the matter further here.

**CHAIRPERSON:** Yes, is there – is that all you wanted to put to her?

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** Arising from her evidence Chair, I think most of the questions it has been covered in your questioning of her.

**CHAIRPERSON:** Are the submissions that you believe you  
10 will make in due course about her version compared to that of Mr Tsotsi and Mr Linnell that you wanted to get a chance to say something about or not.

**ADV SELEKA SC:** Yes, let me try.

**CHAIRPERSON:** Well, I am not saying do it if you do not have, I am just asking.

**ADV SELEKA SC:** Yeah, my sense is we have covered Chair, the issues because I could - let me do this, Chair.

**CHAIRPERSON:** No, no, I am not encouraging you to start afresh.

20 **ADV SELEKA SC:** No.

**CHAIRPERSON:** Ja, okay.

**ADV SELEKA SC:** Yes, Ms Myeni I am going to just put this to you and let me hear what you have to say. I have seen an email addressed to you by Mr Linnell. He deals with that in paragraph 49 of his affidavit on page 37 and he

says:

“At the same time on 18 March 2015 I also emailed a report to Ms Myeni, being the intermediary of the president. This included copies of the same terms of reference and the proposed media released been sent to the Chair and Ms Mabude. It also included a briefing document updating on progress which included reference to the considerations of a retired judge.”

He does say in paragraph 51 that he never received a response from you to that email. That email is on page 57 of Eskom Bundle 6. It is addressed to an email [skillsdm@mweb.co.za](mailto:skillsdm@mweb.co.za). It was read on the 18<sup>th</sup> of March 2015 at 12H38. He writes:

“Hi D. Please find ...”

Then he gives three documents:

“Briefing document terms of reference to be confirmed, media statement to be confirmed.

Chat now, regards Nick.”

**CHAIRPERSON:** What is the point about the email?

**ADV SELEKA SC:** So this is subsequent correspondence Ms Myeni, that Mr Linnell says they would confirm the contents of the meetings that took place on the 6<sup>th</sup> of March and the 8<sup>th</sup> of March 2015. As he says here

...[intervenes]

**CHAIRPERSON:** Remember, she does not deny the meetings.

**ADV SELEKA SC:** Yes, she denies the contents of the meetings, yes.

**CHAIRPERSON:** What is in the email that helps us with the content?

**ADV SELEKA SC:** It deals with, it will deal with the terms of reference to establish an inquiry.

10 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** The issue of the suspension of the executive.

**CHAIRPERSON:** Ja.

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

**CHAIRPERSON:** Well, maybe let us say this. Ms Myeni, the version that has been given by Mr Linnell, certainly in regard to the meeting of the 8<sup>th</sup> of March in Durban, is backed up by correspondence, emails and resolutions and memos that he prepared either on the same day or soon  
20 thereafter, and he gave evidence that the contents of those emails and memo's that he prepared, reflected or were consistent with the discussions at the meeting.

Some of those emails or memos or resolutions that were sought to be put before the Eskom Board, some of them reflect or are consistent with the version that at the

Durban meeting the issue of an inquiry into the Eskom affairs, into the affairs of Eskom and the suspension of certain executives did take place.

That discussion did take place. If you say such a discussion did not take place, are you suggesting that Mr Linnell fabricated all of these documents in order to implicate everybody who was in that meeting, into issues that they never discussed. Is that what you are saying?

**MS MYENI:** Chairperson, to start with from what Mr Seleka  
10 has asked, I hope I am pronouncing your surname correctly.

**CHAIRPERSON:** Seleka.

**MS MYENI:** The fact is that there was, Seleka?

**CHAIRPERSON:** Ja.

**MS MYENI:** Thank you Chair. The fact that there is an email that is being spoken about, the fact that that email has not been answered, it means I do not know about this whole thing. Chair, if you have an interest in the matter, no email would be sent and not be responded to.

20 That is the starting point. The second thing, maybe that email I was being set up without me knowing that I am being set up for something that I do not know. Today I am in a court of the commission or I am in this commission, and there is things that had nothing to do with me. That is one.

Two, Chair. No suspension ever happens of any executive in any entity or government entity without following the process. Three, Chair. I could ask Mr Seleka if Mr Tsotsi and the board appointed Mr Linnell to advise them.

If they did appoint him, he was doing his job. So [vernacular – 00:06:29]. Sorry Chair, I do not know where I come in. I honestly do not know. If Mr Linnell was appointed at Eskom, there would have been terms of  
10 reference given to him.

One, a board resolution appointing him. Two, the scope of work he is appointed to do, it has nothing to do with me. I do not know how else I can explain this.

**CHAIRPERSON:** Yes. You see ...[intervenes]

**MS MYENI:** Unless my name must be dragged into Eskom to interfere with another SOE. It cannot be Chair. It cannot be. I do not agree with all that.

**CHAIRPERSON:** You see ...[intervenes]

**MS MYENI:** The emails [indistinct] not opened.

20 **CHAIRPERSON:** Yes, continue.

**MS MYENI:** But it was [indistinct]. Chair, sorry Chair.

**CHAIRPERSON:** No, I am saying continue. I am sorry, I interrupted you. Continue.

**MS MYENI:** No problem. I am saying Chair, I must answer to an email that was sent to me. An email was not

answered. An email was not seen. I am seeing, I am reading it now. I am seeing it for the first time. I had no role Chair.

I had no interest. I did not have any interest even today. We still hear about the looting at Eskom. I have got no interest. I never did then [vernacular – 00:07:54]. I have no role to facilitating suspension of anyone without following the process.

[vernacular – 00:08:04] without following  
10 [vernacular]. Unless it is something that I do not understand, but there are processes and there are laws governing how the board does its job. So Chair, honestly I am lost.

**CHAIRPERSON:** Yes, you see I have to make findings in the end about what was discussed at the meeting in Pretoria between you and Mr Linnell, and I must make findings as to what was discussed at the Durban meeting and whether President Zuma then was present at the meeting at the second meeting that both Mr Linnell and Mr  
20 Tsotsi spoke about.

Now one, you have said you have no recollection of what was discussed between you and Mr Linnell at the Pretoria meeting. On the other hand Mr Linnell was quite clear about what was discussed at that meeting.

Two, with regard to the meeting in Durban, Mr



Linnell gave evidence about what was discussed. Mr Tsotsi gave evidence about what was discussed. If I recall correctly, to a very large extent their evidence is consistent most of the time with one's evidence is consistent with the evidence of the other.

They both said you were not only part of the meeting, but you were playing the role of the Chairperson. You were central in the whole discussion. Now as we know, Mr Tsotsi and Mr Linnell had not known each other  
10 before this particular date as far as I understand.

I do not know if they might have spoken on the phone, on the 7<sup>th</sup> ahead of the meeting. They might have spoken but they had not met before the 8<sup>th</sup> and yet you and Mr Linnell had been working together on SAA issues, and as I understand [indistinct] Water Board issues as well.

So the two of you, he was at the meeting because he had been asked by you to come to the meeting. So I have to ask myself the question did these two suddenly conspire against you? Mr Zola Tsotsi and Mr Linnell, who  
20 did not know each other before this date, conspire against you that they must falsely implicate you as having taken a very active role in this meeting, and why would Mr Linnell want to do that to you?

You and your board at SAA had given him business, had given him work. You trusted him. You have said he is

an honest man. Why would he turn against you together with Mr Tsotsi now and falsely implicate you into having played a very active role in this meeting, if in fact that is not what happened?

**MS MYENI:** Chair, is this the last question Chair, because I need to go to the bathroom.

**CHAIRPERSON:** Well, we will take a five minute, ten minutes break if you need to go to the bathroom, but ...[intervenes]

10 **MS MYENI:** Not now, I was just asking how long.

**CHAIRPERSON:** Okay. No, I think we are at the tail end. We are at the tail end.

**MS MYENI:** Chair, can I say something to you?

**CHAIRPERSON:** Hm.

**MS MYENI:** I have presided in the board of South African Airways together with the board of eleven, seven people and so on. Why would I be the only one charged for SAA's issues and maladministration, and be taken to court, when not once has the CEO been pointed out or called into this  
20 commission.

Not one CEO has been called. That is one. So why would Mr Linnell conspire with Zola Tsotsi and do something against me? It is one simple reason Chair. I am associated with the former President Jacob G Zuma through his foundation.

That is the only reason.

**CHAIRPERSON:** But I ...[intervenes]

**MS MYENI:** It is my reason and my version, sorry Chair.

**CHAIRPERSON:** I am sorry, continue. I am sorry, continue.

**MS MYENI:** If my understanding and my reasoning is wrong, somebody must give me something else. Then I will believe that, but Chairperson, for everything I have done and I did everything according to the book Chair, because I  
10 had an understanding later in life that I am reporting to a person who is wanted.

Mr Zuma. Therefore I made sure that everything I did was documented, decisions made are documented, communication I make, if I were to make a communication with you Chair, I would follow it up with an email. Therefore I made everything according to the book Chair.

We would not be looking for things that we are looking for, if I had stolen money at SAA Chair. Today I am before you for facilitating a meeting for Zola Tsotsi to meet  
20 President Zuma, or to assist Zola Tsotsi to explain to him how to go about appointing a legal advisor.

Even then Chair, I told him that no short cut. You have to do things by the book. You cannot appoint somebody alone as the board Chairman. You have to have your board alongside with you, supporting you. Take the

board into confidence.

Chair, that was my advice, but today Chair, you are saying why would Linnell conspire with whoever. Chair, today you people come there, they say things that never occurred. They tell lies and gossip. They even gossip about certain things that there is no evidence about.

Linnell should have produced minutes of all meetings we had and if Linnell should have not copied me on emails, if then it was not a setup. Fortunately Chair,  
10 [vernacular – 00:15:50] Chairperson, and [vernacular] Chairperson. I know when things will back fire.

**CHAIRPERSON:** Hm.

**MS MYENI:** [vernacular – 00:16:05] Chairperson. I pray a lot.

**CHAIRPERSON:** Yes. Am I correct or are you suggesting that Mr Linnell may have implicated you in having played an active role in this meeting because you are associated with Mr Zuma? Is that what you are saying?

**MS MYENI:** I do not know Chair.

20 **CHAIRPERSON:** Ja.

**MS MYENI:** You said why would they conspire.

**CHAIRPERSON:** Yes.

**MS MYENI:** So I cannot say Mr Linnell did this because of my association ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MYENI:** With Mr Zuma.

**CHAIRPERSON:** Yes.

**MS MYENI:** Chairperson, in some of the commission issues, there are people who bring their affidavits and their affidavits get amended. They are also asked to say certain things and Chairperson, when I raised some issues of concern, the Chairperson said he does not know some of the things that have happened in the commission.

**CHAIRPERSON:** Hm.

10 **MS MYENI:** Chair, I submitted over 13 copies of corruption at SAA. That has never been touched.

**CHAIRPERSON:** To the commission or where?

**MS MYENI:** But the person, to this particular commission Chair.

**CHAIRPERSON:** To this commission?

**MS MYENI:** This commission Chair.

**CHAIRPERSON:** You submitted, what did you submit and when?

20 **MS MYENI:** No, I am saying the reports Chair, of the corruption at SAA as well as the reports of Mr [indistinct], was submitted in this commission Chair.

**CHAIRPERSON:** By you?

**MS MYENI:** No, not by me.

**CHAIRPERSON:** Okay, by other witnesses?

**MS MYENI:** Except the, by other witnesses. Many other

witnesses Chair.

**CHAIRPERSON:** Ja.

**MS MYENI:** But those were commissioned by me Chair.

**CHAIRPERSON:** Yes.

**MS MYENI:** And I submitted them in parliament.

**CHAIRPERSON:** Okay, yes.

**MS MYENI:** But the person Chair that is the target, is one and only one. It is me.

**CHAIRPERSON:** Ja.

10 **MS MYENI:** Chair, I submitted about six or seven reports by SIU and the investigation that appears to have diminished. That is why I am saying Chair, [vernacular – 00:18:36]. Why my association with former President Zuma?

It is painful Chair, because if I knew that I was going to be a target, I would not have agreed to serve in his foundation.

**CHAIRPERSON:** Yes, now just to get this clear. You were saying that certain witnesses submitted certain information  
20 to the commission. You did not submit it to the commission but you did submit it somewhere else? The SIU or something?

**MS MYENI:** No, I was saying Chair from the previous position I was holding before I left, I was called. There was an investigation against Mr X. That, those copies

were given to me because I needed to read what I needed to respond to.

It was SIU dealing with the investigation there, implicating directly Mr X, but Mr X Chair has never been called to answer those issue that are contained there in the SIU report. I am saying if then the statement of saying are the people colluding against you and so on?

No Chair, I am saying I do not know whether they are colluding or not, but I am guilty of the association of  
10 Mr President Zuma. That is all I can say and Chair, if I can change, maybe tomorrow let me go and join IFP. Maybe I will be safe there.

**CHAIRPERSON:** Okay. Thank you. Mr Buthelezi?

**ADV BUTHELEZI:** Sorry Chair, I wanted to provide some clarity with regards to ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** The reports that she makes reference to.

**CHAIRPERSON:** Ja.

20 **ADV BUTHELEZI:** At our last appearance at the commission last year, as part of the annexures that came with our supporting affidavit at the time, there was several reports which Ms Myeni has commissioned as Chair at SAA, including ENS. I think there is one from Ernest Nyambo.

It was a series of reports. I think in total they came to about 11 forensic reports about corruption issues at SAA and I think there is another two that were part of the annexures that formed part of our submission for [indistinct] Water.

I think those are the ones she says she submitted them to this commission, but nothing has come of it.

**CHAIRPERSON:** Well, can I ask that you cause your instructing attorneys to write to the sector of the  
10 commission and say exactly what was submitted and what the concern is as you articulate it and the secretary will bring that to my attention and the letter to the secretary if it can make reference to the fact that at this hearing I asked that a letter be written to [indistinct].

He will bring to my attention so that I understand exactly what the position is. of course, if the complaint or concern is that she submitted reports to the commission that implicated certain people in acts of corruption, but the commission has not looked into those allegations, I would  
20 want to understand that and the legal team would want to look at that, that was dealing with Nhlatuze and SAA.

But of course, I started calling for people in 2018 to come forward and give the commission information so that the commission could investigate, and information that came late when there might not be enough time, might not



have enabled the commission to look into those matters. But I would like to make sure that a letter is written by your instructing attorneys, to the sector of the commission.

Raise the issues and identify exactly what is your thoughts and then the secretary will draw my attention to it.

**ADV BUTHELEZI:** We will do Chair, thank you.

**CHAIRPERSON:** Alright. I do not have any further questions. I think you were done.

10 **ADV SELEKA SC:** Yes, I am done. I would just like to ask one more question Chair, which ...[intervenes]

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Ms Myeni, if you can hear me, in so far as your version is that the meetings were initiated by Mr Tsotsi, did you keep minutes of those meetings that you had with him? I see you say this was not the first meeting with him.

In your statement.

20 **MS MYENI:** No, I said to the Chairperson that whenever I have a meeting, whenever I had a meeting I would have a diary where it says meeting with Mr Tsotsi and the venue where we are meeting. So I am saying that I would have known that this particular meeting was for me and Mr Tsotsi.

This particular meeting was for me and Mr Linnell

and Mr Tsotsi. That is why I do not want to commit myself into the dates.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Yes, but would you I mean you are alluding to keeping record. I think what I am asking or getting to is whether you will have the diary of 2015 where you would have kept record?

**MS MYENI:** No. No Chair, no.

10 **ADV SELEKA SC:** There are no minutes.

**CHAIRPERSON:** Okay, alright.

**ADV SELEKA SC:** There are no minutes?

**MS MYENI:** My house has been broken into Chair, so I do not know what I would have. No, no minutes Chair.

**CHAIRPERSON:** Yes. Okay, alright. Did you intend re-examining Mr Buthelezi?

**ADV BUTHELEZI:** No Chair.

**CHAIRPERSON:** No, okay alright. Thank you very much Ms Myeni for availing yourself to put your side of the story  
20 and to deal with questions. We have come to the end of the session. I think that Mr Buthelezi, do take the opportunity if you would wish to make written submissions as to which version should be accepted and which one should not be accepted with regard to the various witnesses in so far as these two meetings are concerned.

Because there will not be oral argument, but I will allow written submissions. So I would say please let me have whatever written submissions you wish to send through on or before the 15<sup>th</sup> of June. Is that fine?

**ADV BUTHELEZI:** I have already got enough homework Chair, but it is fine Chair.

**CHAIRPERSON:** You are counsel. So that is your deadline. Okay, alright. Thank you very much once again Ms Myeni. Thank you Mr Seleka and your team. Thank  
10 you to the technicians. Thank you to Mr Buthelezi and the staff.

I see Ms Hofmeyr is still around. Thank you Ms Hofmeyr. Thank you very much. We are going to adjourn now. For the benefit of the public I mentioned that tomorrow I will be hearing the evidence of Mr Tom Moyane during the day session.

We adjourn.

**ADV HOFMEYR:** Thank you Chair.

**INQUIRY ADJOURNS TO 26 MAY 2021**