

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

18 JUNE 2021

DAY 412



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 18 JUNE 2021

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning Chairperson.

CHAIRPERSON: Good morning Mr Gigaba, good morning Mr Solomon. I am sorry.

ADV SOLOMON SC: Good morning – morning Chair.

CHAIRPERSON: Good morning. I am sorry I kept you waiting for about ten minutes so we ran late. I am sorry.

10 **CHAIRPERSON:** Okay let us continue. The oath you took yesterday Mr Gigaba will continue apply.

MR GIGABA: Thank you (mumbling).

CHAIRPERSON: Okay.

ADV MYBURGH SC: Good morning Mr Gigaba.

MR GIGABA: Good morning Sir – Mr Myburgh.

ADV MYBURGH SC: I would like to deal with the High Court judgment. Could you please go to Bundle 7(a) which you have there and turn please to page 996.60.

MR GIGABA: 996.60.

20 **ADV MYBURGH SC:** That is correct.

MR GIGABA: Yes.

ADV MYBURGH SC: And I would like to take you please to 996.62.

MR GIGABA: To?

ADV MYBURGH SC: .62 where at paragraph 3 the Judge

sets out...

MR GIGABA: Is it 6.2 or .62?

ADV MYBURGH SC: 996.62.

MR GIGABA: Oh – oh okay.

ADV MYBURGH SC: At paragraph 3 the Judge sets out chronology of events which recorded that

10 “On or about 20 July the fourth respondent referred to as Captain Wasser and the fifth respondent Sergeant Ngubene arrived at the Gupta residence ostensibly to investigate two
alleged offences related to

1. Malicious damage to property in respect of a Mercedes Benz G Wagon which was allegedly scratched on its body with a sharp instrument which we know – now know to be a vegetable slicer. The car being parked at the garage of the applicant’s house.
- 20 2. Crimen Injuria in respect of a Whatsapp message which had been sent from the applicant’s cellular phone to one Petersen Siyaya who is a friend or business partner of Mr Gigaba which message Mr Siyaya had apparently found to be insulting.
3. These offences were said to have been allegedly committed on 19 July.

4. Two days later on 22 July the two policemen returned to the Gigaba residence; they identified themselves as member of the Hawks; they told the applicant in the presence of her two minor children that she was under investigation and facing arrest.

5. They further demanded all the applicant's electronic communication devices and gadgets in connection with the
10 aforementioned crimen injuria complaint laid against – or laid by Mr Siyaya.

6. On 30 July the Hawks returned and placed the applicant under arrest.”

So that was the chronology found by the Judge. So on 20 July the two policemen went to your house. Those two offences that they were investigating allegedly happened on 19 July and then on 22 July they returned where they demanded the electronic devices and then on 30 July they returned to place Ms Mngoma under arrest.

20 Now that is slightly different to your chronology. Do you want to comment on that?

MR GIGABA: Chairperson it is unfortunate that I was not invited as a party in this case to state my side of the story and the Judge relied on the version of the accused without inviting me. When the Judge was to comment on me to

come and present my own version. I found it peculiar. I am still puzzled by it because the – the chronology of events as the Judge states here is obviously patently untrue.

It relies on the version of a – a falsification which was presented before the Judge and not challenged. What also bothers me is why did the – the Hawks – because I was not party to the affidavit – I do not know what – what responding affidavit they filed – why did they not correct
10 these – this version?

I think earlier when Mr Myburgh spoke he mistakenly read 3.3 – he read 3 – number 3 as the fourth and fifth respondents arrived at the Gupta residence – no it is Gigaba residence. I think it was just a – an – a genuine error.

Secondly Mr Siyaya is not my business partner. The Judge did not ask me this. Mr Siyaya was not asked to state whether he was a business partner to me or not.

On what basis the Judge arrived at this I do not
20 understand because Mr Siyaya is my friend. We have been friends for the longest of times. We do not do business together. I am not in business. Mr Siyaya I have known him – we are just personal friends and Ms Mngoma knows this.

Furthermore the – when the police officers arrived

they have always been very careful not to talk to her in front of the children. When they arrived the first time they asked that the children be taken away. And the people who were in the house took the children away and so the children were not aware which is contrary to the instance when the – the current protectors of Ms Mngoma arrived. The first day they arrived at our residence as I was driving the children out to school they were carrying automatic weapons – rifles. They were carrying automatic rifles just
10 in front of the children. The children were frightened.

I had to reprimand them and instruct them to hide their rifles because they were traumatizing the children. Mr Mavuso and Mr Ndabange whenever they have come home including on the day they came to arrest Ms Mngoma they first asked that the children be taken away – be – I think when they came to arrest her the children must have been at school or something I cannot recall.

So the minor children were not there when they came to – to talk to her. Now insofar as electronic
20 communication the – the – my recollection is that they – they took her electronic communication on the date that they came to arrest her. That is my recollection.

But if – if it was earlier than that obviously the records at the police would indicate. I think when did they take the electronic communication is – is a matter that they

will – the police would be able to provide clarity on but the most important thing with regard to taking the electronic communication was the purpose for which it was taken from her and – and what information was extracted from that electronic communication.

But as I say I am unfortunately now expected to comment on a judgment in a case in which I was not involved. I was not invited to present my side of the story. I was not represented by any legal – by an attorney and
10 therefore I am prejudiced insofar as my version having not been presented at the case but the judgment made comments on me that I find unfortunate, inaccurate and plain puzzling.

What puzzled me further about this was the involvement. Whilst the DPCI was investigating this case and dealing with it somebody from Criminal Intelligence came on a contrary instruction on this matter.

From the outset it was very clear to me that here I was dealing with something bigger than what I thought this
20 was because it puzzled me why two arms of the same police service were investigating this issue from different perspectives, from different angles to a point where a – a Mr Moyana who is I presume – who is the head of Criminal Intelligence or is working in Criminal Intelligence point the – the Hawks officers now General Ngwenya back then he

was Brigadier Ngwenya called him and claimed that I had paid a bribe to them to – to arrest Ms Mngoma. On what basis did he make that allegation?

He could not prove it – could not substantiate it but why was he involved? It came down to my – to the information which I had that Criminal Intelligence paid security and certain people in the NPA were involved in – in a plot of sorts – the political plot of sorts which involved me and – and were – and when Ms Mngoma arrested it – it
10 interfered with their asset that is Ms Mngoma – it interfered with their asset and therefore it created a situation where they had to do everything in their power to vilify me and exonerate her. And that is how this whole case panned out up to the manner in which it was abruptly included without the issue of the – the matter of the damage to the property having been dealt with.

Because here you were dealing with the fact that property had been damaged. A confession had been obtained. A person who had done this was available then –
20 and then the matter was left hanging. But it brings to mind another issue.

If the claim is that I am the one who filed charges for arrest then why was it not me who withdrew the charges? The charges were withdrawn by the people who filed them that is the police, not me.

Because if I had filed the charges I could not have withdrawn them – the police would – could not have withdrawn them on my behalf – it is me who should have withdrawn the charges. I did not file charges therefore I did not withdraw any charges. It is the police who filed the charges. It is the police who withdrew the charges and – and so I do not understand how is it that it – it – I came to be involved in this matter – or in this nature without being invited to come and present my state – and present my own
10 case.

ADV MYBURGH SC: So Mr Gigaba you understand ...

CHAIRPERSON: Maybe Mr Myburgh.

ADV MYBURGH SC: Ja.

CHAIRPERSON: I must just explain something about the – how the...

ADV MYBURGH SC: Yes.

CHAIRPERSON: Judge decided the matter without inviting you because you have expressed concern about that. Obviously I do not know what happened but I want to
20 explain to you what normally happens.

In – in matters that come before courts a Judge is expected and required to decide the case on the basis of the evidence that the parties to the case bring before him or her.

So the parties in this case were on the one side Ms

Mngoma and on the other the particular people who were mentioned as respondents and you were not mentioned as a respondent.

So the expectation and the normal way of doing things is that the Judge should not in a civil case go out of his way or her way and say you people have not included so and so – I want that person to be included even if that person is not a party to the matter.

But if the Judge believes that somebody who has
10 not been joined as a defendant or has not be cited as a defendant or respondent should have been cited or should have been made part of the matter because he or she has what is called an interest in the matter then the Judge is entitled actually obliged to say I will not decide this matter until you have joined this party or this person or you have served the papers on this person and let this person decide if he or she does not want to take part.

So I am just saying it is normal what happened is normal – it is not something that does not normally
20 happen. So I thought I would just explain that in terms of the – how the Judge came to decide the matter without hearing your side of the story.

So as I say where there is an order that is sought against you or where the Judge feels that this person has an interest and interest is an interest in a legal sense in

the matter then the Judge can say, well I will not decide it until you have cited or joined this particular person.

But where he does not think that is the case he just decides the matter on the basis of the evidence brought by the parties.

You understand.

MR GIGABA: Yes Chairperson I understand. I do still find it very difficult that then the Judge would continue to comment about me.

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

MR GIGABA: In a manner that – that it happens here without hearing my side of the story or verifying whether Mr Siyaya and I are business partners and things like this. But I understand Chairperson.

CHAIRPERSON: Yes.

MR GIGABA: And hear you.

CHAIRPERSON: Ja. Mr Myburgh.

20 **ADV MYBURGH SC:** Thank you. Mr Gigaba you know from the first paragraph of the judgment that of course the relief sought by Ms Mngoma was amongst others a declaration that the decision of the police to apply for a warrant of arrest was unconstitutional, irrational and invalid and that the decision of the police to execute the warrant of arrest was likewise unconstitutional, irrational and invalid. You have seen that, correct?

MR GIGABA: I have seen that Chairperson.

ADV MYBURGH SC: All right. And you know that the police opposed this application and put in an answering affidavit that is apparent from the judgment. Correct?

MR GIGABA: Yes I have seen that.

ADV MYBURGH SC: And you would also I presume accept that the policemen in question they knew what the correct chronology of events was.

ADV MYBURGH SC: Well I accept that too Chairperson
10 but it still does not change the fact. I mean the chronology of the events of when her gadgets were taken is – is not as important as what was taken – what was extracted from them and the reason why they were taken. Because as I have indicated there were other issues which they were investigating.

There were other issues which they were investigating. I think the police are best suited to answer these questions than me who are – who from the – from what the Chairperson has said was not cite – was not –
20 what is the word? – was not.

CHAIRPERSON: They were – you were not cited as a party.

MR GIGABA: Yes.

ADV MYBURGH SC: Yes.

MR GIGABA: As a party here. So...

ADV MYBURGH SC: So what the judgment reflects is that the gadgets were taken on the 22nd of July and at 3.5 they further demanded all the applicant's electronic communication devices and judgments in connection with the abovementioned crimen injuria complaint.

It was a finding made by the Judge on the papers.

MR GIGABA: Yes I can see it is in the judgment.

ADV MYBURGH SC: Correct. Right. If you go to paragraph 5.4 of the judgment at page 996.63 it records
10 under the heading of Ms Mngoma's version at 5.4:

“Once they were in possession of all her gadgets they demanded that she should tell them all the secret pin codes. When she refused they threatened her that refusing an instruction from the Hawks was a criminal offence. She provided them with the secret codes which they tested on the devices before taking the devices away.”

You see that?

20 **MR GIGABA:** Yes I can see that.

ADV MYBURGH SC: And then if I could ask you please to go to paragraph 5.10.

MR GIGABA: Yes.

ADV MYBURGH SC: At page 998.64.

“On 30 July 2020 the applicant informed Mr

Gigaba that unless her gadgets were returned by the evening legal proceedings would be instituted for their return. On Friday 31 July 2020 Mr Gigaba informed the applicant that the Hawks would be arriving to return the gadgets. When the Hawks arrived instead of returning the gadgets they informed the applicant that they were placing her under arrest.”

10 What do you say to that?

MR GIGABA: Chairperson the – when Ms Mngoma spoke to me and requested that we talk to the – to the police to return her gadgets the basis of that was that, please ask them to return my gadgets so that we can – and ask them to withdraw – and withdraw. She asked me to withdraw the case. She even – I said to her in my discussions with the police they said to me that I cannot withdraw the case because I am not the one who – who had laid the charge.

20 She then put me in communication with – with Ms Zama Nonthlanga who is – who works at the Hawks – who is her personal friend and Ms Nonthlanga said to me that it is possible that you withdraw the charges because you are the one who reported the damage to the properties.

I said I will try talk to the Hawks and I do not make any promise but I will talk to them so that we can establish

whether that is possible. And – and I said to her that I would also further talk to them to – to return your gadgets because when we were having this discussion again the issue of an amicable divorce settlement that look all of this is solely the divorce discussions and I said, look I will talk to her – I mean I would talk to the police – we need to find an amicable way to resolve this.

Actually the divorce issues I think had not even started formally by then. That I will talk to the police – we
10 will try and find an amicable solution to this and she asked me to also talk to the – the owner of the vehicle and I spoke to the owner of the vehicle. He said to me he would take my advice on whether he should proceed to also lay charges for the damage to his property or not. I said to him I would come back to him.

I then also promised to talk to Mr Siyaya to ask him not to proceed with laying charges for crimen injuria and Mr Siyaya – Mr Siyaya's response was, I will do so on condition that Ms Mngoma apologises to me.

20 When I spoke to Ms Mngoma she told me in no uncertain terms that she would not apologise to Mr Siyaya. So that is how the matter then ended.

When the Hawks came on the 31st of July and insisted that they were now going to arrest her I think even by her own testimony before the commission Ms Mngoma

indicate that even on that date I spoke to her attorney Mr Mkwashu and – and went to the police station and indicated that I would like to withdraw the case and again the Hawks – the police indicated that no you cannot withdraw the case because you are not the one who laid the charge and I – I further was there throughout that Friday assisting her with whatever she needed; clothes and food and stuff like that.

So that is my version of paragraph 5.10

10 **ADV MYBURGH SC:** So do you accept now that the gadgets were taken on the 22nd?

MR GIGABA: It is immaterial Chairperson whether they were taken on the 22nd.

ADV MYBURGH SC: Mr Gigaba.

MR GIGABA: Or 31st.

ADV MYBURGH SC: I am not asking you to comment on whether you think it is immaterial I am asking you to direct yourself to the question of whether or not you accept that the gadgets were taken on the 22nd.

20 **MR GIGABA:** Presuming Chairperson that I am not in court that this is an inquiry I think I should also be at liberty to provide responses the way I – I think of them.

CHAIRPERSON: Ja, no Mr Myburgh is not suggesting that you should agree that that is the date if it is not the date. I think what he is doing is bearing in mind the discussion

about the dates yesterday now that he is referring to what the judgment is saying he is seeking to check whether this makes any difference in terms of your – your version of whether you – you still stick to the version you gave in regard to the date. He is not suggesting that you should change or not.

MR GIGABA: It is a – Chairperson thank you very much. No, it is – I think from what is appearing in this document it could have been on the 22nd of July rather than the 31st but
10 it still does not change the fact that the gadgets were not taken in – or with a malicious intention to undermine the work of this commission. Because at the end of the day whether they were taken on the 22nd or the 23rd or the 24th the question of what was extracted from those gadgets is available on police records and I think that is where we should direct ourselves.

ADV MYBURGH SC: Thank you. Now let us have a look at paragraph 5.11.

20 “At the police station Sergeant Ndubane repeatedly told the applicant that she would remain in the police cells until Monday the 3rd of August 2020.”

Then if you drop down to paragraph 5.1.

“The following day, Saturday the 1st of August and while arrangements were

underway to bring a High Court application to secure the applicant's release the attorney and the prosecutor reached an agreement which resulted in her release on R5 000.00 bail approximately 26 hours after her arrest."

You confirm that.

MR GIGABA: I – I can confirm it. I am the one who provided the R5 000.00 for bail.

10 **ADV MYBURGH SC:** And you confirm that she was released after having spent 26 hours in jail.

MR GIGABA: Yes.

ADV MYBURGH SC: Then at 5.16.

20 "On 2 August and following her release the applicant instructed her attorneys to demand the release of her gadgets by no later than 17H00 on 3 August failing which to bring an urgent High Court application. The gadgets were returned at nine o'clock on 4 August 2020."

MR GIGABA: I do not know how – the gadgets were not returned to me Chairperson so I would not know.

ADV MYBURGH SC: All right.

"When the applicant at 5.17 was provided with copies of the docket she discovered

that the information from her confiscated gadgets had been downloaded onto two discs which had not been furnished to her lawyers and some specific information had been removed or erased which had no relationship to the allegations of the two criminal charges.”

You want to comment on that.

MR GIGABA: I think the – whatever was downloaded from
10 her phone would be available on police records. From the cursory reading of what is being said here if... if... You know, I have got a lot of pictures on my phone. And if somebody has downloaded - has removed a picture or several pictures from my phone and – or in fact, if somebody had downloaded into two discs, information from your phone and not furnished those discs to your lawyers, how would you believe that specific information has been removed or erased which had no relationship to the allegations of the two criminal charges?

20 The judge in this matter had an obligation to ask the police to provide evidence of what information had been downloaded and to ask Ms Mngoma to provide evidence of what information had been removed. Evidence, not allegations. Because here, you are dealing in a criminal case which must rely on evidence rather than

hearsay or the views of a single party.

Now I am not aware of this information because these two discs were not furnished to me either, nor was I informed or nor was I aware of any other information which would have been removed or erased which had no relationships of the allegations of the two criminal charges.

ADV MYBURGH SC: Alright. So, you cannot dispute what is said here? You do not know?

MR GIGABA: I do not know.

10 **ADV MYBURGH SC:** Alright.

MR GIGABA: I was not furnished with this information.

ADV MYBURGH SC: So, if we could then go to paragraph 77, please? At page 996.97.

MR GIGABA: 996 point 97?

ADV MYBURGH SC: 97, ja.

MR GIGABA: Right. Yes, I am there.

ADV MYBURGH SC: At paragraph 77:

20 “It appears in this matter that the arresting officers abused their powers and position as members of the Hawks presumable to avenge a wrong or perceived wrong as complaint and alleged by Mr Gigaba and not for any lawful purpose and/or was accordingly...

A warrant was obtained for an ulterior motive.

The argument of the respondents that they

were investigating a conspiracy to commit murder against Mr Gigaba is not sustainable in the light of the fact that they have alluded no further information on this alleged conspiracy or how the charges against the applicant are connected to it.

There is no evidence of this in the docket and takes the matter no further.

10 It is clear that this is, in fact, a domestic dispute between two prominent members of society.

However, the offences are not deserving of a high priority of the Hawks and involvement of the Hawks.

Itself speaks to the abusive power by Mr Gigaba as a former Minister in using the state administrations for his own personal benefit with an intention to intimidate his wife in a domestic spat.

20 The scourge and dominance and patriarchy in our society must be pierced and women's rights to fair and equal treatment must be protected..."

Do you want to comment on that?

MR GIGABA: I dispute this, and I reject it with contempt.

Chairperson, you know... [laughs] The judge did not call the Hawks to provide evidence of the investigation. The issue of the investigation against me was not before this court. How the judgment strained into this matter, that puzzles me, but then, I am not a lawyer. I am not a man of legal – of the legal profession.

So, I would not know how these things happen. It is quite possible that they can happen but from a layman's point of view, the issue of the allegations against – of the
10 allegations of a conspiracy to murder me, to kill me, in my opinion was not before this court. Secondly, the – I dispute the fact that there was a conspiracy and abuse of power or that there was an abuse of power on my part.

In 2020, I had not been a Minister for more than a year and the fact that I am a former Minister does not entitle to me power that I do not have. You can claim that former Ministers have got some power as it is suggested here, that as a former Minister you can abuse your power by using the state administration for your personal benefit.
20 That is not correct.

Again, the judge makes damaging statements in reference to me without asking me to come before judge to present my case. I still insist that I should have been invited to present my own case, to be represented so that I can state my side of the story on this matter. There was

no abuse of power here. I had approached the Hawks on the matter of a threat I had received, and I have provided the Hawks with that SMS, the Whatsapp message. They have it.

They took a picture of it from my phone, and they opened the case. So that record is with the Hawks. Now, when the same person who is alleged to be involved in the conspiracy to kill me, then does what happened on the night of July at my residence. It – to call the Hawks and
10 say: What do you suggest I do now this person has done this? And they took the matter up.

In my understanding, the Hawks had jurisdiction over the matter, and they insisted as such and they also felt it was necessary to check all of these things and do the investigation in the manner that they did, for them to satisfy themselves whether this was not related to that. If this was a domestic dispute, a domestic spat, as the judge in this case says, then the matter would have been handled or should have been referred to the relevant units within
20 the police to investigate and that it how it should have arrived in court, and I would have been there to – as the one who would have opened the case in that regard. There was no intention to intimidate Ms Mngoma in a domestic spat.

Now, the warrant, I dispute the fact that it was

obtained for an ulterior motive and had I been asked to be there, I would have stated as such that it had not been. The Hawks, to my understanding and from the public announcement of the Minister of Police after this judgment, had intended to appeal the judgment but subsequently decided not to go ahead to appeal the judgment because in their opinion it was going to impact from the public statements they made.

They said it was going to impact on their
10 jurisdiction and the further work that they have to do in fighting crime in this country. But I cannot comment on why decided not to go ahead with the appeal. All that I know and what I am saying now is that I dispute the fact. One, that the warrant had an ulterior motive.

Two, that the – that I abused my powers, the powers which I did not have. I do not have powers. I am not a minister. I am a former Minister. And the title of former Minister is not a title recognised in the constitution. I am just now simply an ordinary member of society. And
20 had the police said to me: No, no these two issues are not related. Go report the case and so. I would have done exactly that.

I am entitled to seek an opinion from anybody in this society, as a member of society. And the people who give me information are the one who directs what I am

going to do subsequently. Here the judge then made a statement which I find very problematic that the sketch of – and dominance of patriarchy in our society must be pierced and women’s rights to fair and equal treatment must be protected but then so should our right as men. So should our right as men.

You know, if somebody comes destroys property in your custody and damages your study, takes your books and – to which you have invested so much and tries to
10 destroy them and takes your award and breaks them and they ransack your study. Must I as a man sit back and keep quiet because this is a woman? What entitles her in doing that? I have every right to report the matter to the police. In this case, I reported the matter with regard to the damage to property.

I did not say anything about the ransacking and the charges that must be laid. I reported the damage to property because the car in my possession did not belong to me. It belonged to someone else. There is no abuse of
20 power here. I think this statement was – as unfortunate as it was, unbecoming because it goes to make far reaching insinuations which are unfortunate to me because I have not been invited to the case to present my version and to be able to dispute the fact that – or the allegation that there was a patriarchal motive and an attempt to abuse

women's rights.

In this case, I am the one who was abused, and I have not done anything other than to report the matter to the police.

ADV MYBURGH SC: So, Mr Gigaba, you understand that the police were called upon in this case to justify a decision to arrest Ms Mngoma?

MR GIGABA: No, I ...[intervenes]

ADV MYBURGH SC: Let us just ...[intervenes]

10 [Parties intervening each other – unclear]

ADV MYBURGH SC: If you can just bear with me for a moment?

MR GIGABA: That is what I am disputing ...[intervenes]

ADV MYBURGH SC: Sorry, Mr Gigaba. If you just bear with me for a moment?

MR GIGABA: Yes.

ADV MYBURGH SC: I mean, that is what they were called upon to do. That is what the case was about, and these findings flow from the fact that they were unable to do that.

20 **MR GIGABA:** Chairperson, this is precisely what I am disputing. And I think the Commission should bear in mind that I was not invited to present my version in this case. So, to rely on a version on a judgment which also relied on a singular version on the matter, should take into consideration that my version has not been heard.

CHAIRPERSON: No, I think that ...[intervenes]

MR GIGABA: ...my version now ...[intervenes]

CHAIRPERSON: I think that is true, Mr Gigaba. Whatever one makes of the judgment, one has got to remember that you were not party to the case and the judge did not have your version. So, that will have to be borne in mind.

MR GIGABA: Thank you, Chairperson. And that is why I am saying. The question or the statement put to me by the evidence leader cannot, therefore, go unchallenged
10 because the police were not invited to come and perform an act with an ulterior motive. They were invited. You see, if it is the opinion of the Commission that a threat to my life is less important than, that would be unfortunate.

And I have every right to report that threat and ask the police to investigate, and I reported it to officers and institutions that were provided to me on the basis of my request for advice and guidance on how to deal with the matter that was presented to me. And when I presented this and asked the police to investigate it, I had no
20 presumptions, I had no preconceived ideas as to the veracity of the allegation or its truthfulness for that matter.

It was merely saying: Investigate this. It could very well have been the works of Intelligence or – agencies that were trying to cause problems in my household but nonetheless it would have been unfair of him had I

received a threat and not acted on it because then I did not know what should have happened had the people who sent me the threat acted on the threat.

CHAIRPERSON: Mr Myburgh, I am not sure how much more time you wish to spend on this judgment?

ADV MYBURGH SC: About five more minutes.

CHAIRPERSON: Ja, I am not sure that we should spend too much time on it.

ADV MYBURGH SC: I have got two more ...[intervenes]

10 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: ...paragraphs.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Well, let me just take you to because it really just expands upon the finding that we have already dealt with, but at paragraph 78 in the second sentence, it says:

20 “On the respondent’s own version, despite the warrant being issued on a weekday, 30 July, they choice to wait until Friday afternoon on 31 July to execute same.

Again, the respondents have offered no plausible explanation to this court why, if the applicant’s actions were so threatening as they allege, therefore the only way to secure attendance at court was through a warrant of

arrest but then waited an entire day before
obtaining the warrant to actually arrest her...”

Do you want to comment on that?

MR GIGABA: I am not a police officer, Chairperson. I would not know why they waited until the 31st. What I dispute and refute, and reject is then the conclusion that, if nothing else, the court is of the view that this only further demonstrate the abuse of power by the fourth and fifth respondents who were called by Mr Gigaba.

10 I was not party to this case. I did not have opportunity to present my own version. There was no abuse of power. What the judge in this case curiously does, is to undermine the threat to my life which had been received by me without calling me or the police to actually argue.

And the police, from what I understand, were not ready, were not going to be able during this application to deal with a matter of the threat to my life and tie it to this hearing because this was, one, the issue of the threat to
20 my life was still under investigation and secondly, this hearing, in particular, had not been called for the express purpose of dealing with the issue of the threat to my life.

It would have been premature of them to have come there and argue that in actual fact there is because when they were being interrupted in faction(?) through the

information, they were – they then – their investigations should or would obviously have been interrupted as well.

And so, they would not have been ready to come with an un-cooped story to court to argue that indeed there is a threat to my life. The report on whether there is a threat – on whether there was a threat to my life or there still is, is a matter of great concern to me because it speaks to whether there are people out there who have been hired to kill me or not. And it also speaks to whether
10 there may be people out there who are spreading this information for the purposes of whatever reason that I may not know of.

But it is quite normal in the political environment and especially in a political environment that is highly tense, that is tension filled for people – for there to be people who are spreading this information and causing pain, division, and havoc, using methods of this nature.

But all of that notwithstanding, I could not take for granted that I had actually received a threat to my life that
20 I needed to act on.

ADV MYBURGH SC: And then perhaps we can just for the purposes of the record look at the relief and the conclusion, Mr Gigaba, at paragraphs 81 and 82. I think this is at page 996.99. I see I have punched a hole through that number. I hope it is that page. At 81, the

judge concludes:

“Based on the evidence as tendered, the applicant has discharged the onus resting upon her to establish that despite the execution of warrant of arrest by the fourth and fifth respondents was wrongful and unlawful and that they set in motion her prosecution...”

And then at 82:

10

“In a result, the following order is made:

(1) The application is granted on an urgent basis.

(2) The decision of the fourth and fifth respondents to apply for the warrant of arrest of the applicant is unlawful.

(3) The decision to execute the warrant of arrest by the fourth and fifth respondents is unlawful.

20

(4) The confiscation of the applicant’s information and communication technology equipment is unlawful.

(5) The respondents are ordered to restore all information unlawfully removed from the applicant’s ITC equipment.

(6) The third, fourth and fifth

respondents are directed to return the information which was downloaded from electronic gadgets of the applicant by the respondents including the information contained in disc 1 to disc 6 referred to forthwith.

(7) The cost of this application are to be borne by the third, fourth and fifth respondent on an attorney and own client scale...”

10 Do you have any comment on that?

MR GIGABA: Chairperson, thank you. The warrant of arrest, to my understanding, was issued by a judge, a colleague of justice, Sodwana(?).

CHAIRPERSON: Oh, I see in the judgment she said the magistrate, but your understanding is correct.

MR GIGABA: Oh, I thought it was a judge.

CHAIRPERSON: Ja, it says in the judgment, paragraph 79, the magistrate.

MR GIGABA: H'm. But I would think ...[intervenes]

20 **CHAIRPERSON:** But nevertheless, a judicial officer.

MR GIGABA: Yes.

CHAIRPERSON: Ja.

MR GIGABA: I would still – ja, that is what I probably meant to say a judicial official officer.

CHAIRPERSON: H'm.

MR GIGABA: And in my understanding, therefore, I do not know what impact or what are the implications of that. Secondly, Chairperson, the – paragraphs 5 and 6 should then put paid to the allegation that there was information that was extracted and if there was it should have been restored as the relief suggests and therefore we should by now have the information that was contained in discs 1 to 6 and that should tell us what is it that had been extracted by the police and they should be able to explain why they
10 would have extracted that information if any of it had nothing to do with the case in point.

But I still do not understand what this has to do with me because I was not involved in this investigation. I gave no instructions of what must be extracted because I did not know what was being extracted and how it was going to assist the investigation on the conspiracy to kill me.

And I also still believe that I should have been invited here, even the comments that were made about me
20 and how those comments laid the ground for the questions that I was to face because to me this judgment was in itself a curious judgment which set the tone for what was to be said here in the first and supplementary affidavits that have argued that Malusi has done A, B, C, D but information is not available because it was extracted from

my phones.

But what information is said to have been extracted, it is photographs. Photographs that are said to have been extracted. Photographs which are available on the Twitter account, on the Instagram account of the – of this witness. Insofar as all the other things that she has said, the ATM, the cash, the gift.

I have sat here – and she has not argued that all of that information or support for that information was also
10 contained in her – in the pictures that were extracted from her phone, but I have disputed all of that elaborately and presented a different version which demonstrates that the witness actually lied extensively in coming to present that case and that her being here has been done with the sole purpose of malice because of the inability to extract from me the – what she seeks on the matter of our divorce.

I still insist that what brought her was malice and bitterness because if these issues that are being canvassed here are anything to go by, whatever
20 information she claims was extracted from her phone was to do with pictures. That is what she has said. And therefore, those pictures, she can go to her Instagram account and find those pictures.

ADV MYBURGH SC: Alright. Can I then turn to a different topic, Mr Gigaba? And that is the evidence of

Witness 3.

MR GIGABA: Yes, sir.

ADV MYBURGH SC: You have put in an affidavit, responding to that. So, let me ask you. Perhaps we can open two files at the same time. One affidavit of yours appears in the file that you have open at page 536.

CHAIRPERSON: are we keeping the current bundle?

ADV MYBURGH SC: Yes, we are.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC**: At 536, Chairperson.

CHAIRPERSON: And then we should have another bundle?

ADV MYBURGH SC: And the second bundle, if we could – I know Mr Gigaba has been provided with it – BB14(d). That is the exhibit that contains the affidavits of Witnesses 1, 2 and 3. Do you have the other bundle?

MR GIGABA: No, I do not.

ADV MYBURGH SC: Someone will help you.

CHAIRPERSON: Oh, somebody will ...[intervenes]

20 **MR GIGABA**: It was here yesterday, but today it is not ...[intervenes]

CHAIRPERSON: Oh, it is behind you, I think. It might be behind you.

MR GIGABA: Oh.

ADV MYBURGH SC: Thank you, Chairperson. And could I

ask you in that bundle, please, Mr Gigaba, to turn to page – these are the numbers on the right-hand side – page 122?

MR GIGABA: Sorry. You are now on this – on BB14?

ADV MYBURGH SC: BB14. B ...[intervenes]

MR GIGABA: Right – you say the numbers are where?

ADV MYBURGH SC: On the right-hand side.

CHAIRPERSON: It is the only numbers, hey, the red ones?

10 **ADV MYBURGH SC:** Ja.

CHAIRPERSON: You know, some bundles ...[intervenes]

MR GIGABA: 122?

ADV MYBURGH SC: 122, right towards the end, ja.

CHAIRPERSON: H'm.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Before you proceed, Mr Myburgh. What do you say, Mr Gigaba, to somebody who says, to the extent that you say that Ms Mngoma has come before the Commission and said all these things that you have said
20 are untrue? She has been dishonest and a fabricated stories because she wanted to extract a settlement from you, a divorce settlement and she did not succeed and so she is bitter.

What do you say to some who says but if she is the wealthy woman that you have said she is or made her

to be, why would she be so bitter about failing to extract such a settlement from somebody, and I just use your words, you said you live a modest life? What do you say to somebody who says that?

MR GIGABA: Chairperson, I would say, look at the character of the person. Look at the character of the person. She loves money. She loves money and would take money from anyone and demands it. And that is why in her own submission she made, among others, the claim
10 that I was incorrect to say that she – that the Nedbank debit card I had given her had R3 000 and she says what can anyone do with R3 000? And I responded by saying but people ...[intervenes]

CHAIRPERSON: Maybe to correct you, I think she said she would not be able to do anything with R3 000.

MR GIGABA: Yes.

CHAIRPERSON: Ja.

MR GIGABA: It goes to tell you the character of the person, Chairperson. In actual fact what the Chairperson
20 is saying, and I appreciate the correction, goes to prove what I am saying, that she loves money and thinks the more money she can extract the better she can be. When I met her, she, as I said, she portrayed this extravagant lifestyle, person who had a lot of cars, who apparently also had an Aston Martin, uncles that were rich, father that was

rich living in New York, she was accustomed to going to New York. She had studied at Oxford College. This is the person who was used to money and cannot comprehend the idea of not having the money.

And, as I said yesterday, she kept asking me about my pension payouts as a minister, what have you done with those? Why can you not use them? And I kept saying but I invested the money for the future and used some on legal fees. So she was demanding that this money be made
10 available for spending.

So that anger, that bitterness about not being able to extract more settlement, including her initial unwillingness when we signed the ante nuptial contract to actually consent to it proves that this is the person who came here, you know, this is the person who says when he was a minister, he used to do this, he used to do that for me, he used to give me this money, give me that money, buy me these bags and do that and now that he is no longer a minister and probably no longer has the ability to
20 help me afford this type of lifestyle, I should therefore demand of this lifestyle or of a payment that will assist me to continue living this lifestyle going forward with or without him. That she has money, I have got no doubt about it, she does have money, plenty of it and I think when she was here before the Commission, she did say

that no, I do this, I do that, all the furniture is mine in the house, this man cannot afford anything anymore, but this is the person who loves money and wants more of it and is angry therefore that I am saying that I cannot afford to spend all my future savings today. I cannot because I do not know what the future holds for me, you know?

As you know, Chairperson, I work for the African National Congress, I think the ANC's financial situation has been widely spoken about, I am not the type of person who
10 should be in a position to spend all their life savings in one day because I do not know what the future holds for me, I should still be able to invest in it and prepare for that future.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: I just have one question that I wanted to ask you in that regard, if I may. I have noted that your evidence that Ms Mngoma was independently wealthy and that she, for example, paid for your wedding because she was a woman of means. That is not
20 something that you deal with in your affidavit, is that right?

MR GIGABA: Yes, I did not provide detail in my affidavit, I simply disputed her facts or her allegations.

ADV MYBURGH SC: You disputed the allegation that you received the money from the Guptas?

MR GIGABA: Yes.

ADV MYBURGH SC: But my affidavit, Chairperson, should be read together with my testimony here, I presume.

CHAIRPERSON: No, it would be but I leave Mr Myburgh to decide whether he wants to ask any follow-up question or not.

ADV MYBURGH SC: But it just becomes an important theme almost and leg of your evidence, is it not?

MR GIGABA: I beg your pardon?

ADV MYBURGH SC: Is it not an important theme or leg or
10 your evidence that Ms Mngoma is independently wealthy?

MR GIGABA: That is what I have always understood, yes.

ADV MYBURGH SC: But the point is that is not dealt with
at all in your affidavit.

MR GIGABA: But my affidavit should be read together with
my testimony here. In the affidavit I could not go on to
elaborate extensively a number of things, I just, as I say,
simply disputed the allegation she was making about
payments for the wedding. I think when I sit here, I have
also elaborated on a number of things which I had left
20 almost hanging in my affidavit, not only with regard to this
one, but with regard to many others.

ADV MYBURGH SC: And just before we move on, can I
just make sure that I understand. Was it your evidence
that Ms Mngoma inherited money from a deceased a
fiancé?

MR GIGABA: Yes, that is what I understood, yes.

ADV MYBURGH SC: And when was that?

MR GIGABA: I do not know, I did not ask her about her finances, did not discuss her finances with her but the fiancé passed away I think in 2011 or 2010, I do not know.

ADV MYBURGH SC: Okay, if we then can deal with witness 3. Mr Gigaba, it might be easiest for you to have to have the two files open together.

MR GIGABA: Yes, I do.

10 **ADV MYBURGH SC**: You have that. I want to go to witness 3's affidavit and then just ask you to comment as we go along. If we can pick up please at page ...[intervenes]

CHAIRPERSON: Mr Myburgh, maybe this would be a convenient time to just ask whether Mr Gigaba's counsel has cross-examined witness 3. I have forgotten.

ADV MYBURGH SC: Yes, he has cross-examined witness 3.

20 **CHAIRPERSON**: He has. Okay, alright. There are just so many witnesses who have come before me.

ADV MYBURGH SC: Absolutely.

CHAIRPERSON: I think I was told recently that it is more than 300 witnesses since August 2018. Yes, okay, alright.

ADV MYBURGH SC: Thank you. Could we start at paragraph 6, page 123? Witness 3 says:

“During 2005 I was assigned together with a colleague as a CPO to protect the then Deputy Minister of Home Affairs.”

And then at 7:

“During the period of providing CPO services for Gigaba I accompanied him on a number of occasions on visits to Sahara Computer business address in Midrand. At the time I was not aware that Sahara Computers was owned by the Gupta
10 family or in fact who the Guptas are.”

Do you want to comment on that?

MR GIGABA: Chairperson, I have conceded that I did know the Guptas, now that we are going back to that question again, that I did know the Guptas long before 2005 and that I would have on a few occasions go into Sahara Computers just to see Mr Ajay. I think it would be very few occasions because I think it would be – it would be two or three occasions. I remember the other time I was just passing through Midrand and I was talking to him
20 and he said look, we are having lunch. I said oh, good, let me come have lunch with you. Ja, so this I have conceded to.

ADV MYBURGH SC: Alright and – so what was the purpose of these meetings with Ajay Gupta?

MR GIGABA: They were not meetings, Sir.

ADV MYBURGH SC: Well...

MR GIGABA: It was just ...[intervenes]

ADV MYBURGH SC: Lunches.

MR GIGABA: Visits, ja. Nothing more than just a – as I have said before, social meetings.

CHAIRPERSON: Social visits.

MR GIGABA: Ja, no meetings.

ADV MYBURGH SC: So witness 3 says that he accompanied you on a number of occasions, as I
10 understand your evidence, you would say well, it was a few times, couple of times, two or three times.

MR GIGABA: Yes. It would be two or three times.

ADV MYBURGH SC: And ...[intervenes]

CHAIRPERSON: I am sorry, he says in paragraph 7 during the period of providing CPO services for Mr Gigaba, that period spanned how many years? He resigned in – was 2008? I am trying to see what the – what period he is talking about, so when we talk about a number of occasions or three occasions in what period.

20 **MR GIGABA:** It is a period of three years, Chairperson.

CHAIRPERSON: It is a period of three years. Okay, alright, so that is the period that you are talking about when you say he accompanied you on a few occasions.

MR GIGABA: Yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So that is between 2005 and 2008.

MR GIGABA: Yes.

ADV MYBURGH SC: And you then stopped going to visit Mr Ajay Gupta at Sahara Computers after that?

MR GIGABA: You know, it was not a conscious visit to Sahara so that at one stage you stop but after that, yes, I did not go to Sahara Computers, I think – because, as I say, it was not for purposes of having meetings there, it was just social visits during lunch breaks when I also had
10 time or something like that, but...

ADV MYBURGH SC: So would you describe Mr Ajay Gupta, given the evidence that you have just given, as a friend of yours?

MR GIGABA: He was. He was. Not – I mean – he was, Chairperson, a friend, yes.

ADV MYBURGH SC: At paragraph 8:

“I resigned from the SAPS and as CPO for Gigaba during 2008 to join a private group of companies.”

Let us pick up at 9:

20 “Around April 2013 I received a call from an official from the Department of Public Enterprises who inquired if I would be interested to meet with the minister regarding VIP protection services required by the minister. At the time Gigaba was the Minister of DPE.”

Do you want to comment on that?

MR GIGABA: I do not know which official was that and it does not say either and there would be no purpose in him meeting with me if there was any need to provide VIP protection services to me because VIP protection services are not discussed with the minister, you get provided with them. I think what he is talking about was a call because again at the time I had received security threats and the police were in the process of both investigating and
10 looking for additional security to provide me. They indicated at the time that they did not have personnel and so what the Chief of Staff in my office did was to meanwhile look at whether we can get assistance from one of the SOEs and one with security personnel seemed to be Transnet and that is what – that is the initiative he then took to talk to Transnet to provide us with temporary security services until such a time that the police could give us additional police backup.

ADV MYBURGH SC: He goes on to say at 10:
20 “I subsequently attended a meeting with Gigaba and a manager in his office in Pretoria. During the meeting the manager discussed Gigaba’s security profile and the reasons for additional protection services required by the minister. He indicated that I would be required to provide close protection

vehicle backup duties to the minister together with VIP SAPS officers already assigned to protect the minister. I indicated to the minister and the manager that I [indistinct – dropping voice] work for the minister.”

I think you have probably already covered this ground.

MR GIGABA: Yes and I have responded in my affidavit to say that such a meeting did not take place in my presence because I would have no need to discuss my security detail
10 with anyone. The practice in government has always been that the security detail of the principal is not discussed with him. The only time they come to you is if they are informing that so and so has now been assigned to work with you or they are being withdrawn and replaced by somebody else.

ADV MYBURGH SC: And, Mr Gigaba, just for the purpose of the record, that – when you refer to your affidavit, you make that statement as I have it in paragraph 14, is that right, of page 540?

20 **MR GIGABA:** Yes.

ADV MYBURGH SC: Then if we can carry on at paragraph 11, says:

“Sometime in May 2013 I received a call from the official from Transnet who invited me to attend an interview with General Rodney Poka, the general

manager for security at Transnet. I attended the interview and was offered the position of CPO for executive directors at Transnet. Two days later I received an offer of employment. I accepted the appointment with effect from 1 June 2013.”

Paragraph 12:

“During the first month of my appointment at Transnet a colleague and I attended security training course at Transnet training campus.”

10 Paragraph 13:

“In July 2013, shortly after completing the course my colleague and I were informed by Poka that we were seconded to the DPE in order to perform CPO for Gigaba, a vehicle backup for support for Gigaba’s SAPS VIP officer.”

Would you confirm that?

MR GIGABA: The details of this I am not aware of. What I can confirm is that he was assigned to back me up.

ADV MYBURGH SC: And then at 14 he says:

20 “During December 2013 two additional SAPS officials were assigned to assist with the VIP protection of Gigaba. As a consequence our services were no longer required and our secondment to DPE came to an end at the end of December 2013.”

So as I have it and I you have said this in your affidavit, witness 3 provided you with these services from July to December 2013, six months or so, is that right?

MR GIGABA: Yes.

ADV MYBURGH SC: Then under the heading CPO Services to Minister Gigaba at paragraph 15:

10 “In order to provide the close protection and vehicle backup support for Gigaba, my colleague and I were each issued with a Chevrolet Aveo rental vehicle from Transnet.”

Do you have any comment on this? It is not of particular importance.

MR GIGABA: No, I do not have any comment on it.

ADV MYBURGH SC: And then at paragraph 16 ...[intervenes]

MR GIGABA: I suppose these were tools of trade rather than cars, vehicles issued to them for their private use.

ADV MYBURGH SC: At 16:

20 “As part of our vehicle backup duties my colleague and I would be following the minister’s official BMW vehicle at close range, a scheduled destination, in one of our Chevrolet vehicles. The minister’s two SAPS VIP officers would be travelling with him in the official vehicle.”

Your comment on that?

MR GIGABA: That is true.

ADV MYBURGH SC: Paragraph 17:

10 “Usually on a Friday afternoon Gigaba’s personal assistant would provide either my colleague or myself with a printout of the minister’s diary for the following week. The diary would inform us of the minister’s meetings and movements for the next week. If meetings or venues changes the PA would provide us with an updated diary printout or she would inform us verbally of new meeting destinations.”

Do you want to comment on that?

MR GIGABA: That would be true, I suppose, because this was an arrangement between the PA and the protection services so I would not know whether it is true or not but I presume it is true because they would need to know about my movements and my schedules.

ADV MYBURGH SC: And at paragraph 18:

20 “It sometimes happened that the minister would inform us on short notice that he will be going to unscheduled destinations and/or official meetings. Some instances that I can recall I will discuss later in this statement.”

Do you want to comment on that?

MR GIGABA: Yes, it often happens.

ADV MYBURGH SC: Paragraph 19:

“As part of the CPO and vehicle backup duties my colleague and I usually did reconnaissance at the venues where meetings to be held prior to the minister’s arrival in order to ensure that his safety was not compromised. In instances where the minister attended unscheduled meetings prior reconnaissance would not have been possible.”

Any comment on that?

10 **MR GIGABA:** That is also probably true.

ADV MYBURGH SC: And then under the heading Gigaba’s visits to the Gupta residence, paragraph 20:

I can recall that during the period July to December 2013 I escorted the minister as part of his convoy on unscheduled visits to the Gupta residence in Saxonwold Drive, Johannesburg, in approximately six or seven instances. During the visits I drove the backup vehicle and followed Gigaba’s official vehicle into the residence. On one occasion,
20 however, I drove the minister personally to the Gupta residence without his convoy.”

Do you want to comment on that?

MR GIGABA: I think that I also have refuted on the basis that during that period I was very busy with the elections programme, so to the extent that I visited the Gupta

residence at the time, it was only once or twice and it was not the seven or eight times that he is referring to and no occasion did he accompany me alone to the residence. You know, it is quite peculiar how he describes this occasion of him accompanying me alone, that I got into my residence to refresh, I asked him to wait outside. What refreshing was this supposed to be? I mean, what did refreshing mean? And then he was asked to wait for me alone and to drive me back to Johannesburg from Pretoria.

10 Why was this separate from the other occasions, from the other alleged seven or eight occasions before? So that too is not true.

ADV MYBURGH SC: Alright and then he said at 20.1 and 20.2 that:

“None of these visits were recorded in the minister’s diary.

And then sub 2:

20 “By way of instruction of the minister I did not record trips to the Gupta residence in the log book of my allocated vehicle as those were unofficial trips.”

I think I need to point out that there was cross-examination around this and that ultimately in re-examination what witness 3 said was that:

“Some of the trips...”

We are talking about the logbooks.

“...were recorded earlier until the minister informs me that we should not record them and the logbooks were kept at our head office.”

Is what he said in re-examination. And then with the diary he said that the visits to Saxonwold were not on the diary.

Do you want to comment on that?

MR GIGABA: During the examination – the cross-examination – okay, let me start with saying this – witness
10 3 contradicts himself quite extensively both in this affidavit as well as during the cross-examination. In the affidavit he says none of the trips were recorded in their logbook because they were unofficial trips and then he changes and says they were not recorded in the logbook because I instructed them not to. Now which one is it that is the case in this instance?

During the cross-examination the question was asked of him if I had any right to ask them not to record things in their logbooks. Their logbooks stayed with them,
20 they did not stay with me. I had no right to comment on police business and even on the business of the people who are CPOs because at the time he was no longer a member of the police service. So

So witness 3 in his eagerness to come and present a falsehood contradicts himself and eventually admits that

there was no instruction they received from me that there were no logbooks that they kept and the fact that he did not keep the logbooks because he says they kept the logbooks at their head office but they were not asked – I mean, but they had been asked by me not to record the trips to the Guptas, to the Gupta residence only. Now he then admits that there was no instruction that had been given by me not to record the logbook because in actual fact it was not my business, it was the business of the protection services to keep the logbooks and to record things which they needed to record.

As he says in 20.2, they thought they should not record what were unofficial trips and that is what was happening. If I was having an unscheduled engagement which was outside the official line of business, they obviously would not record those – or let me not say obviously because I do not know – they probably would not record those and for reasons better known to them, it had nothing to do with any instruction from me. I reiterate that I had no power to decide what protection services record or do not record, what they do in the line of official business or not because ultimately, as we were always instructed, they do not report to us, they only provide a protection service to us.

ADV MYBURGH SC: So, Mr Gigaba, in the six month

period, July to December 2013, you say you went to the Guptas once or twice?

MR GIGABA: Once or twice. I was busy with elections and so ...[intervenes]

ADV MYBURGH SC: Yes. So I understand it that what you mean by that is you would usually in a six month period go more often than that but you only went once or twice because you were busy with elections.

MR GIGABA: That is not what I am saying, Chairperson, I
10 stand by the statement I said on the first day of my appearance before the Commission.

ADV MYBURGH SC: Alright. Well, what were you doing at the Guptas on this one or two occasions during this six month period?

MR GIGABA: As I have indicated before and even today, these were just social visits.

ADV MYBURGH SC: Alright and when you say social visits would that have occurred during the week or the weekend or...?

20 **MR GIGABA**: I do not exactly recall. If we are talking about throughout the period, some occasions would have been on weekends. I remember one, the Diwali celebration that was on a Saturday evening but there would be occasions when in the afternoon on my way from Johannesburg I would stop over just for a chat and then

proceed back home or to another destination I was headed to.

ADV MYBURGH SC: And at paragraph 21:

“On such occasions I would be waiting in my vehicle in the parking area inside the premises while Gigaba attended meetings inside the house.”

Comment on that?

MR GIGABA: Witness 3 would not know what I am doing, so to claim I was attending meeting is a presumption on his
10 part because he would not know what I am doing and I would not say to them that guys, I need to attend a meeting or I have been attending a meeting. He would just be presuming that this is what has been happening but he would not know what the nature of the visitation was.

ADV MYBURGH SC: And then at 22:

“Whilst waiting in my vehicle for Gigaba to return from meetings inside the Gupta residence I noted on different occasions people arriving or leaving the premises that I recognised. Individuals in this
20 regard include Brian Molefe, Matshela Koko, Ben Ngubane and Linda Mabaso.”

Do you want to comment on that?

MR GIGABA: You know, again, Chairperson, I wonder about the truthfulness of this. Mr Matshela Koko in 2013 was not a CEO at Eskom, he was not, so this is a lie. Dr

Ben Ngubane, I think at the time in 2013, was an Ambassador abroad. You cannot be both abroad and in Johannesburg. It is a lie. Mr Linda Mabaso was not the Chairperson of Transnet at the time nor was he on the Board of Transnet.

Witness 3 would not have known these people, Linda Mbaso, Dr Ben Ngubane, Matshela Koko, they would not have known them, so this is a lie. As for Mr Brian Molefe I do not know, I do not know if he ever saw them or
10 not but the rest of the story, the majority of the story is just a lie.

ADV MYBURGH SC: Perhaps, I could just ask you to comment on this, you will recall Mr Chairperson as I remember the same issue arose certainly in relation to Koko and Mbaso where Mr Singh was giving evidence.

CHAIRPERSON: Ja, I remember, ja.

ADV MYBURGH SC: And you then hold called upon us to make contact with Witness 3 through his attorneys to put in an affidavit to address this. He subsequently did produce
20 an affidavit you will recall where he said he accepted that Koko and Mbaso did not hold the positions at the time but in effect, he put names to the faces later on. So I just want to put that to you Mr Gigaba.

MR GIGABA: He accepted, what you telling me?

CHAIRPERSON: What MR Myburgh is saying is that Mr

Anoj Singh and I think Mr Koko or just Mr Anoj Singh...[intervene]

ADV MYBURGH SC: Mr Singh made essentially the same point that Mr Gigaba is making.

CHAIRPERSON: Ja, he made it.

ADV MYBURGH SC: But then there was an investigation.

CHAIRPERSON: Ja, so arising out of Mr Singh, raising the same issues that you are raising about Witness 3 saying he had seen certain people, I directed that the legal
10 team should obtain an affidavit from Witness 3 to address the issues that Mr Anoj Singh raised, which are similar to the issues you are raising to say, but how would he have known these people because at that time, they were not holding certain positions or were not so public.

So Mr Myburgh is saying that an affidavit was obtained from Witness 3 to deal with those issues and one of the things he said was that he conceded that at that time, say, for example, Ms Linda Mbaso I think was not Chairperson of Transnet at the time, Mr Koko I think was
20 not CEO of Eskom at the time but he said he - when he later got to know their names – he connected their names with the faces he had seen before.

So in fairness, Mr Myburgh is just saying to you, here is how Mr – or Witness 3 has responded to concerns or so, such as the ones you are raising, you might wish to

say something on that?

MR GIGABA: It is improbable Chairperson, even it was in 2013 and he testified in 2020 to have seen people's faces once or twice, they were not even in the public domain at the time, for you to remember photographically faces you have seen amongst many faces that you see and suddenly when they appear on the public domain, you then say I recognise this face, it is improbable.

But certainly he would say so, that I recognise the
10 faces in order to give credence to the statement, to the falsehood he had made in his affidavit. It basically was standing by his affidavit by now trying to come up with a new twist that I remembered the face.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes, sorry, Chairperson perhaps just for the sake of the record. You mentioned Mr Koko, of course that would have been in the Eskom stream but to the best of my knowledge this - Mr Koko's implication by Witness 3 was put to Mr Koko and Mr Koko himself then
20 raised the same point.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: So I do not want to be misquoted, I think Singh and Koko both raised the same issue but the affidavit that I am speaking of came – it arose from the evidence of Mr Singh.

CHAIRPERSON: Ja, okay alright.

ADV MYBURGH SC: Alright, at paragraph 23 Mr Gigaba:

“On one such occasion I saw former President Jacob Zuma’s convoy leaving the Gupta residence.”

Do you want to comment on that?

MR GIGABA: On the one or two occasions I had been there I never saw President Zuma’s convoy leaving the Gupta residence. In actual fact, I have never seen the President, President Zuma’s convoy ever at or arriving or
10 leaving the Gupta residence and if Mr – Witness 3 saw it, it was during his own private visit not during the time when I was there and if his referring to the instances when he went there with me, not true.

ADV MYBURGH SC: And at paragraph 24:

“During visits to the Gupta residence, I could sense that Gigaba was nervous as on arrival at the venue, he would get out of the official vehicle very quickly and almost run towards the door of the residence.”

MR GIGABA: This is a lie; it is a lie. I think this question
20 was put to him what I have been nervous about, so I would get out of the car and start running towards the door. What should I do when I was coming out of the residence would I also be running or walking, would I still be nervous or as he claims I would be happy that now I had money.

This is - it is ridiculous Chairperson to put it in

blunt terms, because this is the same person – now what would I be nervous about in 2013 when he knew that these are people that I had known prior to 201, what would I now suddenly be nervous about.

ADV MYBURGH SC: Alright, and then if we go to paragraph 25 under the heading, cashed carried by Gigaba, Witness 3 says:

10 “During the same period that I worked for Gigaba I noticed that he used to carry large amounts of cash with him and then I wish to highlight the following instances.”

But Chairperson, I see it is quarter past 11, I do not know if you want to take a break because this is obviously the material part of this.

CHAIRPERSON: Well, I see that the part that is left is just a few paragraphs.

ADV MYBURGH SC: Yes.

CHAIRPERSON: If you want to finish, then we take the break, that is fine.

20 **ADV MYBURGH SC:** Thank you.

CHAIRPERSON: Ja.

ADV MYBURGH SC: So he says at 25:

 “I wish to highlight the following instances in this regard.”

26:

“One day I was present when Gigaba opened the boot of the official vehicle to take out money to buy lunch for us [the SAPS officials and CPO’s]. Inside the boot was a travel bag which he opened and I could clearly see that the bag was stacked with bundles of R200 notes tied with rubber bands. I was shocked to see that Gigaba was travelling with that much cash in the boot of this vehicle.”

Perhaps we should take these each one at a time. What is
10 your comment in relation to paragraph 26?

MR GIGABA: This again Chairperson is really nonsensical. You know, to start with I have never carried these large sums of money in the boot of my car. I think I stated this previously and I want to reiterate it and if you have so much money in the boot of your car, you would not open that back in front of people, even if they are your close protectors, because you would want to conceal this and, you know, you would want to keep it, you know pretty much safe so that nobody knows that you are carrying
20 these large amounts of money.

Secondly, Chairperson you know, why would I have to take money out of the boot of the car to buy lunch, how much is lunch? How much is lunch? It is true that I used to ask when I travelled with my protectors, I still do so even now, when I go to have lunch whether alone or in a

group, or among a group of friends, I would say to them, please order and tell the waiter or the waitron, to include your bill in my bill, I will pay.

And in instances is where on a few occasions when I would not be eating, I would say eat here is the card, here is the pin number, take for your lunch when you are done. And true to nature, they do not order – I mean we would be going to restaurants, you know, not your very expensive restaurants and they would not order the most
10 expensive meals, they would order a meal enough even if it were four people, it would be 500 or slightly above that. It does not need you to go to the boot of the car to fetch money.

You and as say I would give them my card and if – and on certain occasions I would just take out maybe R500 or R600 and say guys, have something to eat and then we will continue with whatever we are doing. But in most instances, I would say to them order something to eat, tell the waitron that your bill must be included in my bill and
20 we will pay for it here.

So, this thing that is being said on paragraph 26 is a big lie and when Mr Witness 3 was asked about this he did not know whether this was a travel bag because in - when he gave testimony, he said it was a sports bag. Then when he was cross-examined, he said it was both a travel

bag, a sports bag, which clearly indicates that here is somebody who is here to lie and therefore in their lying they forget what they have said and what story they have given before.

As I indicated a travel bag, what is a travel bag? How big is it? And if it is a sports bag - the last time I had a sports bag I was playing for a team called Swallows at Sibongile Township in Dundee where I was a teenager, I think it was a blue puma sports bag which my father had
10 bought me. That was the last time I had a sports bag. So paragraph 26 is also a lie Chairperson, I have never carried these mainly R200 notes tied with rubber bands that I travelled with at the boot of the car and if I had to open this money, I certainly would not open it in front of Witness 3 and certainly I would not have to go open this travel bag with this much money just to buy lunch, lunch is really not expensive.

ADV MYBURGH SC: Then at paragraph 27:

“On more than one occasion I was present when
20 Gigaba bought expensive tailored suits from the Fabiani clothing store in Sandton City. Gigaba paid in cash for the suits which he produced from the bag that he use to carry with him.”

Comment on that?

MR GIGABA: This is a blatant lie, nonsensical to,

Chairperson as I indicated in my previous appearance, I used to buy suits at Fabiani in the 90's, late 90's, the first time I bought a suite at Fabiani it was a navy blue suit in 1999 in preparation for the swearing in as an MP and during that period, I used to buy lots of suits at Fabiani.

I think until the late 2000 when I now bought stuff from tailors, when I decided to buy suits from tailors and the friends would tailor make suits for me and they would bring me suits, sometimes if they have been travelling. So
10 this paragraph 27 is a total lie. Now this bag, the travel bag that stayed at the boot of my car - in the boot of my car, I now took it out, went to Fabiani with Mr Witness 3 three and took out stashes of cash again in front of people and paid for suits.

It is unimaginable that anybody in their right mind would do that, it is a complete lie and now if he says I bought tailored suits, how many suits were they? So how much did they cost? How much did I pay? How much was in my bag that I would be able to buy tailored suits were
20 they two, were they three, were they four, five?

But as I say Chairperson during this period in 2013, I did not buy suits, I - it was at a time when I was on a weight loss program. I was no longer buying suits, I was tailoring the suits which I had and Fabiani did not have in house tailors. So I did not go to them to ask them to alter

my suits back then. I used to go to other tailors and ask them to alter my suits. So I did not buy tailor, this is not true.

ADV MYBURGH SC: Mr Gigaba, I just want to get clarity on overall the position in relation to your suits. As I understand your evidence, and you must correct me if I am wrong, your evidence that you have given us thus far is that you will occasionally – let us call them sponsored suits.

10 **MR GIGABA:** Yes.

ADV MYBURGH SC: And I think you have said that as for the rest you bought them from your friends at a store in Sandton City. What is that what, my understanding HTK or?

MR GIGABA: Not only HTK Chairperson, there would be two, three other shops where I used to buy suits.

ADV MYBURGH SC: And what you said, again if my memory serves me correctly, that as you put it you - because the owners of HTK were your friends, you abused
20 them...[intervene]

MR GIGABA: Not, the owners actually I made a mistake.

ADV MYBURGH SC: Alright.

MR GIGABA: The guy who manages.

ADV MYBURGH SC: Okay, well the manager was your friend, you abused him, I understood you to be saying that

you would effectively buy those suits on lay buy, is that right?

MR GIGABA: Not lay buy, I would buy this suits - but you can call it lay buy technically because I would pay for them over a period just that I would not take the suit after I have finished paying for it. I would take it - because look here I had a high profile, they knew I would not run away. So they would allow me to take this with and you know at HTK I probably bought three suits, it was one navy blue suit and
10 two tuxedos that I would buy. The rest of the things that I buy there would be summer shorts, it would be shirts, it would be - because they have got some good quality casual and smart casual wear. But this notion of these many suits that I was buying that ended up amounting to 200 it is just not true.

ADV MYBURGH SC: So as I understand - okay, so it seems that what you were getting at is perhaps instalments is a better description than lay buy.

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** Do I have your evidence correct that you stated that when you purchase suits, they were relatively inexpensive. I think you had mentioned an amount R7000, does my memory serve me correctly?

MR GIGABA: Yes, roughly there, roughly around R7000 and they would be discounted then to lesser price.

ADV MYBURGH SC: Have a look at your affidavit at Bundle 7A page 542.

MR GIGABA: Yes.

ADV MYBURGH SC: You say at paragraph 21 in this third sentence:

“Most of my suits were made for me by a number of designer/stores who asked me to wear their suits.”

MR GIGABA: Yes.

ADV MYBURGH SC: As I understood the evidence that
10 you gave before was that occasionally you would be given
or would wear sponsored suit, I understand this paragraph
to say that most of your suits were sponsored.

MR GIGABA: Ja.

ADV MYBURGH SC: Which one was it?

MR GIGABA: Which one was what?

ADV MYBURGH SC: Well previously - and I have tried to retrace my steps, previously I understood your evidence to be that occasionally you would wear a sponsored suit.

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** This paragraph seems to reflect that you saying here most of your suits, were sponsored suits, that is all I am asking you to comment on.

CHAIRPERSON: I think, Mr Myburgh reads occasionally to be few and most of yours, should be more, if I am not mistaken.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So there may be inconsistencies, so he just wants to know, which one is the correct description of the position.

MR GIGABA: You know Chairperson, it would probably be 50/50, ja it would probably be 50/50 I think the issue I understand the confusion created by most or occasionally, but quite a lot of suits I would wear would be sponsored just for me to advertise them, for exposure as I say.

10 **ADV MYBURGH SC:** Of course Ms Mngoma herself gave evidence about you buying suits at Sandton City.

MR GIGABA: At Fabiani to, which was also not true Chairperson because as I have explained before, and I explained today, much of what I would have bought at Fabiani between the periods 2013 and whatever at the time, I mean have not bought anything with them recently, would have been perfumes, pocket squares, I have got beautiful pocket squares and they have got great perfume.

20 They have great jeans, I am not trying to advertise them, but they are quite a good brand.

CHAIRPERSON: You have just advertised them so maybe they owe you something.

MR GIGABA: You know Chairperson, I also once I think in 1990, in the in the early 2000's I also modelled for them.

CHAIRPERSON: Oh.

MR GIGABA: Yes, I also modelled for them, so...[intervene]

CHAIRPERSON: It is part of advertising.

MR GIGABA: You would find my picture at their shop in Cape Town and also ones here in Johannesburg but the notion that I bought a lot of suits from them during this time is not true.

ADV MYBURGH SC: So Mr Gigaba perhaps I could just ask you, I think Ms Mngoma's evidence from what I recall,
10 was that she estimated that you had 200 suits and then I think she might have mentioned a 100, but how many suits do you own?

MR GIGABA: I do not know Chairperson, you know, if you are a Minister and you wear suits almost – you wear suits almost daily except probably on weekends, you have relative suits. Some of them you stop wearing as you buy new suits, you give them away. I do not know how many suits but they certainly could never - as I say if you think about 100 suits, that is a departmental store.

20 That is a departmental store and...[intervene]

CHAIRPERSON: 50?

MR GIGABA: No, Chair, no Chair there would not be 50.

CHAIRPERSON: Maybe between 20 and 30?

MR GIGABA: But I would have to count them, I would have to count them for me to know how many they are.

CHAIRPERSON: But you say less than 50?

MR GIGABA: Oh, certainly far less than 50.

CHAIRPERSON: Yes.

MR GIGABA: Far less than 50.

CHAIRPERSON: But maybe are you able to say not less than 10, I would imagine.

MR GIGABA: No not less than 10.

CHAIRPERSON: Ja, maybe not less than 20, maybe?

MR GIGABA: Maybe 20 or so, ja.

10 **CHAIRPERSON:** Ja, you are not sure but you are estimating.

MR GIGABA: Yes.

ADV MYBURGH SC: And then at paragraph 28 Witness 3 says:

“On a number of occasions approximately three times Gigaba met with Molefe at the Bukhara Restaurant in Sandton City where he paid for meals and drinks in cash.”

You want to comment on that?

20 **MR GIGABA:** Chairperson, preposterous Mr Molefe earned far much more than I did as a Minister and he certainly would not have let me pay for a meal in cash, certainly not. I know Brian, no he would not. When we - and we - I first refute the fact that I met Brian, oh Mr Molefe at Bukhara Restaurant three times in seven months.

It is a lot, I mean, that is two people who were extremely busy.

Three meetings at Bukhara having dinner and where we paid in cash, what Witness 3 is trying to do here is to create this narrative of me meeting people, paying in cash and for lunches and so on which was not true, because on the occasion I just do not recall whether I ever did meet Mr Molefe at Bukhara Restaurant but on the occasion that I would have had a dinner with him he certainly would have
10 paid using his card, not expect me to pay for the meals, no.

ADV MYBURGH SC: Chairperson, if this is a convenient time to take the break.

CHAIRPERSON: Okay, let us take our tea break, we will resume at ten to twelve, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Before we proceed Mr Myburgh I been told that a matter that should have come up at ten did not
20 come up at ten probably because we started earlier relating to legal representatives of some NPA prosecutor. They were supposed to come here together with somebody from the legal team – the work stream dealing with Law Enforcement Agency to talk to me about how much time should be allocated for the reading of summaries relating to

certain people.

Who are here? Is there somebody from the legal team who is here for that? Oh – oh if you can speak from where are that would be more convenient because it should not take long. Yes.

UNKOWN COUNSEL: Vilakazi is here – I just saw her outside but they are correcting some issues and the documents that they prepared for you Chair. So I do not think they ready quite yet. So perhaps I (inaudible).

10 **CHAIRPERSON:** Well ...

UNKOWN COUNSEL: We will wait until it is convenient maybe before lunchtime if that would be okay.

CHAIRPERSON: Okay let us – let us say then we are going to continue. You talk to them.

UNKOWN COUNSEL: Yes.

CHAIRPERSON: If – if and when you are ready you can either wait for one o'clock when – then I can deal with that matter or you can mention to Mr Myburgh and we can have a five minutes discussion about that and then we continue.

20 **UNKOWN COUNSEL:** Thank you very much Chairperson.

CHAIRPERSON: Okay all right.

UNKOWN COUNSEL: (Inaudible).

CHAIRPERSON: Okay. Let us continue Mr Myburgh.

ADV MYBURGH SC: Thank you Chairperson. Mr Gigaba I think as it was pointed out during the cross-examination of

Witness 3 – Witness 3 does not say in his affidavit that the money that you were allegedly carrying came from the Gupta's.

MR GIGABA: Yes.

ADV MYBURGH SC: So I just want to read to you a passage from his evidence and ask you to comment on it. This was in response to a question by Advocate Solomon – he said:

10 “I think I was of the view that the money that I had seen carried by the Minister – the former Minister came from the Gupta family. It is because in my view every time that we go there maybe after a day or two I would see the money from the boot of his car in a bag full of money hence I connected the dots.”

 And then the Chairperson in fact asked a question in that regard. He said:

20 “Let me ask you a question or let me put this question – are you able to concede that what you are saying namely that you could connect the dots to say the money came from the Saxonwold residence and it would be correct to say that it was simply a suspicion on your part?”

And he said:

“It may be Chair.”

You want to comment on this evidence by Witness 3 of connecting the dots.

MR GIGABA: Yes Chairperson the – the connection of the dots is actually unfortunate given the absence of the evidence that would suggest. Because in – in – that would suggest such – such because in his own – in his cross-examination and when he presented his evidence he – he
10 was asked about this money that was in the boot and as he says as you have correctly pointed out Mr Myburgh that he says, it would be two days after.

Now why two days after? Why not a day after? Now if he says that I would go the Gupta seven or eight times it means that seven or eight times two days after he would see this bag full of money in my car. That sounds improbable because he was asked questions:

“Did you see Mr Gigaba coming in or out with a bag of – bag full of money? --- No.

20 Did you see him go to the vault – you know where the vaults are – I think he spoke about them? --- No he never – I never took him there. He never went there.”

But seven or eight times he would have seen a bag full of money in my car. Who put that bag there? Where

does it come from?

Chairperson here is a case of somebody who is creating a story and – and is unable to make the story sensible but is busy connecting dots.

My – my view is that which I have expressed even in my affidavit – in my response to him is that – excuse me – Witness 3 is lying; not only lying but committing an unfairness and injustice to me in making claims that are patently untrue and that is my view because he never saw
10 me carrying any bag then suddenly he would see me seven or eight times as he alleges with – he would see a bag full of money in my car. That in my opinion is just unfortunate – it is a lie.

ADV MYBURGH SC: So Mr Gigaba perhaps I could ask you this as a more general proposition. The commission has received evidence albeit contested in some respects of persons receiving cash from the Gupta's at Saxonwold or being offered cash. In all your dealings with the Gupta's and your visits to Saxonwold did you ever gain any
20 knowledge of them giving them other people cash or offering other people cash?

MR GIGABA: No Chair I was not – I never gained any knowledge of such because I myself did not take cash from them so I would not have known that anybody was receiving cash from them.

CHAIRPERSON: Mr Myburgh I am trying to have a look here – it would be interesting to know whether there are persons in respect of whom Witness 3 said he saw them coming out of the house with bags that we later found to have a lot of cash. So in other – because in regard to Mr Gigaba he does not – he does not say that. He just talks about having seen a bag with cash in the boot but to the extent that he gave evidence and in his affidavit he deals with Mr Anoj Singh for example I do not know who else it
10 would be interesting whether in regard to some he says, I saw this one coming out with – with a bag and it had cash but in regard to Mr Gigaba he does not say that.

I do not know whether your recollection – I was trying to quickly have a look.

ADV MYBURGH SC: Yes certainly what – I think Chairperson if I could take you in relation to Mr Singh.

CHAIRPERSON: Hm.

ADV MYBURGH SC: At paragraph 39 this is at page 128.

He says:

20 “After each meeting Singh would usually appear from the residence with a sports bag which appeared to be full. I suspected that the bag contained money.”

He said:

“Singh would knock on the boot of the

vehicle I would open it from the inside, he then put the bag in the boot.”

And he then went on to say:

“That my suspicion that the bags that Singh collected from the Gupta residence contained money was confirmed when on one occasion he opened the bag which he had earlier collected from the Gupta residence inside the boot of the vehicle and he gave me some money to buy lunch. When he opened the bag I could clearly see that the bag was stacked with R100 and R200 notes.”

10

And then I suppose of some significance

Chairperson 41:

“A few instances after visits to the Gupta residence Singh would instruct me to drive to Knox Vault at the corner of Riviera and River Streets, across the road from Killarney Mall. Singh would then take the full bag from the boot of the vehicle, go into the Knox Vault building where I would wait for him in the vehicle in the parking area. After a few minutes he would return to the vehicle and I could see that the bag that he carried

20

was now empty. I suspected Singh deposited the contents in a safe.”

I think that might be the high watermark of Witness 3’s evidence.

CHAIRPERSON: Ja.

ADV MYBURGH SC: You will know that he also gave evidence in relation to Mr Pita.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But in relation to Mr Pita his evidence
10 was that Mr Pita did not come out of the Gupta residence with bags his evidence was though that he did take him to the Knox Vault where he...

CHAIRPERSON: Ja.

ADV MYBURGH SC: Emptied the contents of bags or deposited things.

CHAIRPERSON: Ja.

ADV MYBURGH SC: So there – there – it is not uniform in respect of the three people.

CHAIRPERSON: Ja.

20 **ADV MYBURGH SC:** That Witness 3 deals with which in itself may be of significance as you mentioned.

CHAIRPERSON: Okay all right. Thank you.

ADV MYBURGH SC: Mr Gigaba I do not know if you have got any comment that you want to make in relation to what I have said.

MR GIGABA: Chairperson.

CHAIRPERSON: And I guess maybe just to – to make sure you know what we are talking about. So – so you have a situation where in respect of Mr Anoj Singh the same witness says he would think go with a certain bag of and come out with a certain – with that bag or come out with a bag and then later on he – he would establish or he established that that money – in regard to him he says they went to Knox Vault where he stopped – took the bag into the
10 house and Mr – Mr Anoj Singh has given some evidence about his visits to the Vault Knox but he has denied having taken bags from the Gupta's or money and so on.

But what I was pointing out is that in regard to the one person Witness 3 says:

“I saw him coming out of the Gupta residence with a bag that later on I found had money.”

But in regard to you he does not say he saw you coming out with a bag. He just says he saw money in a bag
20 and he had certain suspicions or connected dots. But he does not – he does not give the direct evidence that he saw you.

Do you want to say anything about whether anything should be made of this contrast?

MR GIGABA: Chairperson it would make sense to me if he

says Mr – he was driving Mr Singh and I at the same time because then he would say he went there – he had a bag – he came out with a bag – he went to the Knox Vault and then when I drove Mr Gigaba then he then had a bag in the boot – then I was connecting the dots.

But he – he worked with us at different times. In my case and I am not – I am not commenting on Mr Singh I think Mr Singh has spoken for himself. In my case he says he never saw me coming in or out with a bag but he says in
10 his testimony that in my case I went to the boot of my car – opened my boot – took out money to give it to him to – for lunch and then he repeated the same for Mr Singh. Things like a well-orchestrated lie. Things like a well-orchestrated lie and – and uses this lie to try and connect the dots.

As I have said Chairperson I have never had a boot – a bag full of money in my car – in the boot of my car. If I would have I would not have opened it in front of him. I certainly have never given him cash from the boot of my car to go buy lunch because in the instances when I bought
20 lunch for the protectors I worked with I would have asked of their bill to be included in mine so that we would be served if not by one person then by two people who would split the tip among them afterwards.

So the notion of me having – going to the boot of my car to take money out of it as I say lunch is not really

expensive and I could afford the lunch both for myself and as I used to do for my protectors.

So this – Mr – Witness 3 is trying to put in the – in my vehicle a bag of money – a bag full of money that actually did not exist. Why he would do that – that is a question which I think he and his employers would – would be able to answer better. But in truth I never had a bag full of money that was sitting in the boot of my car which I would expose to Witness 3.

10 **CHAIRPERSON:** Of course I am – I may – I may have asked this question to you before or it might have been Mr Singh or somebody else Ms Gigaba I cannot remember. The question being of course if or do you not think that if he really wanted to implicate you in terms of receiving cash from the Gupta's he had the opportunity of not using suspicions – not using a story that is based on suspicions and connecting the dots but because he wanted to put into trouble saying I saw him – he went in with this bag; came out with this bag – or that is what would happen. I took him
20 there many times and each time this is what happened or at least on some of the occasions this is what happened. He would go in with this bag – he came out and I saw the cash. So it is very direct as opposed to a situation where you want to put somebody into trouble and you are fabricating a story about him you say you are – you put up a story that on

your own version is based on suspicion because you do not have direct evidence that he got this money from the Gupta's. You say I am suspecting that he got it from – from there but I do not have direct evidence because I did not see him. I just saw the bag with money and I suspected that he got it from the Gupta's.

Do you not – what do you say about that namely if his motive was really to falsely implicate you in receiving money from the Gupta's why he would not have falsely said
10 he had seen you coming out with this bag rather than say I saw this money in the bag – I suspected that he got it from the Gupta's.

MR GIGABA: I think Chairperson his statement achieves exactly the same goal. It achieves exactly the same goal in perhaps a more malicious manner. Perhaps it would have been much better had he said I saw him get in and come out with a bag full of money.

In my case he – he makes it very, very difficult for me to expose the lie in – in his – in his affidavit – in his
20 testimony in the sense that he creates this – he creates this scenario where he does not directly implicate me in receiving the money but if you read his testimony in total – in totality it leads inevitably to a situation where once he places this money in the boot of my car the only other conclusion you can arrive at in connecting the dots as he

does is that yes Mr Gigaba got this money if not directly then somebody brought the money to him after his visit to the Gupta's that he placed in the boot of his car.

But he does so in – in quite a pathetic manner because he says, I visited the Gupta's seven times – seven to eight times and he would see the boot – the money at – in the boot of my car two days thereafter which means if I visited on the 20th it means on every 22nd he would see the boot of the – the money in the boot of the car. How did the
10 money get there? And he connects the dots.

He – I think it is quite malicious in the manner that he has done this. I consider it to be implicating me nonetheless because even though he does not say he saw me receiving the money he actually provides evidence about two other people in which he creates stories – three different stories but all of which have about the same conclusion that they got the money – they got money from the Gupta's – two of the people he claims that they went to the Knox Vault. He does not say the same about me. But is
20 – it is an attempt on his part to make his story credible but it is – it is – it is not credible at all given the massive gaps in – in his testimony many of which were exposed during his cross-examination.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes thank you. I would like to turn to

something else please. Could I ask you to go to Bundle 8.

MR GIGABA: Okay.

CHAIRPERSON: This file with Witness 3's affidavit can go away?

ADV MYBURGH SC: For the time being yes Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And could I ask you please to go – if you have tabs – do you have a tab 4?

MR GIGABA: Tag?

10 **ADV MYBURGH SC:** Ja. That should take you to page 897.

MR GIGABA: Yes.

CHAIRPERSON: Mr Myburgh must I still keep the other file that has got Mr Gigaba's affidavit open or can I put it away for now?

ADV MYBURGH SC: You can put it away for now Chairperson.

CHAIRPERSON: Okay.

20 **ADV MYBURGH SC:** So at 897 you see that this is the 3.3 Notice that you issued in respect of one of Mr Mahlangu's affidavits. You will find relevant extracts from that affidavit commencing at page 903 and then you will see at page 925 the application that you brought to have your statement of response submitted and your statements of response we find at page 928. So I want to take you through Mr Mahlangu's affidavit and – and your response if I may?

If I could start at page 904 and Mr Mahlangu there deals with as he says:

“My interactions with the Gupta family.”

He says at 57:

“Before I took up employment as the Minister’s special advisor I had never heard of or met any member of the Gupta family.”

At 58 he says:

10 “Shortly after I commenced employment with Minister Gigaba in December 2010 the Minister briefed me on the Gupta family. He described them as one of a number of business people who were aligned or favourably disposed to the ANC.”

Do you want to comment on that?

MR GIGABA: It was the case at the time I think even some officials of the ANC have said so. That – that was the case at the time I had seen them even though I had not interacted with them in this regard but it is what I
20 understood.

ADV MYBURGH SC: All right. And – so – just so I understand your evidence. You say your interactions with the Gupta’s did not stem from the fact that they were aligned or favourably disposed to the ANC?

MR GIGABA: In terms of – yes because they – they were

among the people I understood to be – who donated money to the ANC or sponsored some events of the ANC even though my interactions with them did not stem from that and did not include that.

ADV MYBURGH SC: And then at paragraph 59.

10 “The Minister tasked me as one of my duties as his special advisor to manage the Gupta family on his behalf because they were considered within ANC circles important stakeholders. I was required to interact with the Gupta’s and help them if they required assistance within the Minister’s area of responsibility. During this briefing the Minister advised me to expect a telephone call from a Mr Gupta and a few – and after a few days Mr Ranesh Gupta phoned me and requested a meeting. I duly obliged and met with him at the Gupta family residence in Saxonwold in that same
20 month.”

You want to comment on that.

MR GIGABA: You know Chairperson as I have indicated I did not want to confuse roles in this regard between my knowing of the – of Mr Ajay personally and what could happen should he come because you know when you

become Minister and this has happened on many occasions you – you have these people who are donating to the ANC and I am quite happy that Parliament has resolved this issue by promulgating a law that deals with the funding of political parties because it really is going to take a lot of strain out of many Ministers and other people in responsibility including DG's who always have to come under pressure to meet people, help them out, do this, help out with this in order – because I am going to fund the ANC.

10 I had on a couple occasions been requested to meet people either who wanted to provide this service or the other – others who had cases pending in court between them and the Departments including Home Affairs that needed to be resolved so that once they get payment they can – they will fund the ANC.

You find it very difficult to deal with such issues because the – there are procedures in the Department – you know there are procedures in the entities – there are laws and you cannot just simply go to a CEO of a company or go to a

20 DG of a department and say, oh no this case that involves this person please withdraw it and pay them so that they can be able to sponsor the ANC. I wanted to create this distance and just say: Look, guys. I know you personally. I do not want to talk business with you. If you want to talk anything, talk to my legal advisor and the legal advisor on

knowing the law and precisely because he would have this deeper understanding of law in legal procedures, would be able to respond. And it is much better if it is going to be him who says: No, this cannot be done. Because it removes me from the responsibility of having to sit and discuss these issues with people that I did not want to discuss them with.

ADV MYBURGH SC: Alright. Well, if we go back to what he says at 59.

10 “I was required to interact with the Guptas and help them if they require assistance...”

Do I understand you to be accepting that ...[intervenes]?

MR GIGABA: It was only in the instance that such assistance was within the legal principle limits. It was not required, and it would not have been outside the limits of what was legally permissible.

ADV MYBURGH SC: And then, is it correct that:

“...during the briefing, the Minister advised me to expect a call from Mr Gupta...”?

20 **MR GIGABA**: Yes, I might have had. And the instruction to my advisors and to anybody who work with me was always that: Meet with them, hear them out but explain to them that this thing can either be done or will not be done. It must always be within the limit with what we are able to do, legally speaking, so that we are not accused of not

being accessible because on occasion they would report us to our political seniors and you – within the party, and you would be, you know, called upon. No, man, meet so and so. Do this, do that. But create the access but always ensure that such access does not extent to matters that are outside the legal framework that exists. Let us not do anything illegally.

ADV MYBURGH SC: So, I presume ...[intervenes]

CHAIRPERSON: Well... I am sorry, Mr Myburgh.

10 **ADV MYBURGH SC:** Sorry.

CHAIRPERSON: It is interesting that you mention that sometimes they would report you, which I take to be Ministers, maybe, and DG's that you are talking about, to your political seniors because the evidence that was given by Mr Maseko in this Commission, right at the beginning about his experiences with meeting with Mr Ajay Gupta in 2010 was precisely that Mr Ajay Gupta said to him, amongst other things, in effect, and I am putting it in my own words, that they, that is they, the Gupta family, as Mr
20 Maseko understood this, could call any Minister to come to them if they needed them and if a minister did not cooperate, they would report them to President Zuma.

I think that was the – what I understood Mr Themba Maseko's evidence to be. So, I think what you are saying seems to be consistent with that. You might not be

saying exactly the same thing, but it seems to be consistent with that. You might or might not wish to say anything about this observation I am making.

MR GIGABA: The issue, Chairperson, is that it – you know, you would get a call or meet someone at an event or rally or wherever or get a call from someone reporting your DG. No, Minister, the DG has done this, that and the other. They are refusing to meet us what about. In one instance, Minister Dlamini Zuma had to deal with a
10 company that had gone to the Public Protector to complain that she was not giving them a hearing.

And the Minister said: But this cannot be my responsibility to meet a company to discuss with them their interest in the department. This would – they would report DG's to Ministers. They would report Ministers to the various official so the ANC. On several occasions I was asked to meet a company that a legal dispute with Home Affairs by one of the officials.

Even at time you meet different officials, and they
20 raise the same thing, and you realise – you keep saying to them but: No, no but those people have gone to so and so and they went to so and so to raise the same thing. Comrade, this cannot be done. The matter is in court, and I cannot instruct the department to get the matter out of court.

It is not within my power, and I think I should stay away from it so that it gets resolved there and once it is resolved, the court had better competence to decide how the issue is going to be resolved. So, it was – it has always been a confusing scenario which made some of us decide that: Look, let me create distance for myself so that in case I am asked I would say: Oh, no. I have asked a legal advisor to go and meet with these people and listen to them.

10 So that it does not become an issue that you need to do it directly. And in some instances, I would say to people: Why do you not go and meet the DG or why do you not go and meet the CEO of this company and talk to them and hear whether this thing that you are proposing or putting to me can be done because I do not know. I am not involved in the transactions within the organisation.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes, I just then want to clarity. I mean, I understand from what you have said is, and correct
20 me if I am wrong, that because of the personal relationship that you had with the Guptas, you felt more comfortable not dealing with them yourself but rather requiring Mr Mahlangu to perform that role. Is that correct?

MR GIGABA: No.

ADV MYBURGH SC: Not?

MR GIGABA: I wanted to create distance so that I do not have to deal with issues that involved my portfolio with people that I knew personally. And Mr Mahlangu would be able to say to them it cannot be done. And, you know, if they needed a meeting, he would assist them with that meeting, but with the understanding that whatever is discussed there has to fall within the limit of the law. It cannot be something that falls outside the limit of the law. He understood it. I understood it. And even though I did
10 not discuss it with the people involved, but insofar as they and I were concerned, there was no business discussion. It was just social issues.

ADV MYBURGH SC: Yes, well, I think we may have been saying the same thing, Mr Gigaba, but let me leave it at that. When Mr Mahlangu then met with this people, he would meet them in his capacity as your special advisor. I mean, he was your representative.

MR GIGABA: Not as my representative but – how do I put this? It should not be – it would – he would understand
20 that he is meeting with them, not necessarily as directly representing me, but it is the impression you create in also trying to shield your political principal from having to engage with those people. He understood that his responsibility was to shield me from having to engage with them.

ADV MYBURGH SC: But he was your special advisor, as I understand?

MR GIGABA: Indeed, he was.

ADV MYBURGH SC: Alright. So, when you said to him that he could expect a call from Mr Gupta, I assume then you would have phoned Mr Gupta and said you can phone ...[intervenes]

MR GIGABA: No.

ADV MYBURGH SC: ...Mr Mahlangu. Or how did that
10 telephone call come about?

MR GIGABA: They had raised with me a desire to have a discussion and I said I cannot. I want to separate the issues. You can talk to my legal advisor.

ADV MYBURGH SC: Alright. And then do you accept that a few days later, Rajesh Gupta phoned Mr Mahlangu and requested a meeting and that he then duly obliged?

MR GIGABA: I think he did. He may have informed me, yes.

ADV MYBURGH SC: Well, that is what I wanted to ask
20 you. Presumably then in the performance of this role, he would report back to you on his various meetings?

MR GIGABA: Not all the time, Chairperson. He understood. His responsibility was to shield me. Yes. So, there would have been instances where he reported to me, not necessarily with regard to the Gupta family because I

did inform him that with regard to this family, even though they are regarded as a special – as an important – not special – as an important stakeholder in the ANC.

And there were many others. There are many others even now. They were there then. They still are there now. But even though they were regarded as important stakeholders in the sense that they assisted the ANC, it was important for you to shield me from having to engage without creating a sense of inaccessibility.

10 **ADV MYBURGH SC:** So, what other important stakeholders did you require Mr Mahlangu to manage?

MR GIGABA: Well, there were – I think he says in his own affidavit, if you look at paragraph 60, there were others that he had to deal with and those he assisted in resolving some of the disputes which they had. And there were others he would meet, just to listen to. People in the business sector, people in the legal profession, people – I have met a lot of people in the legal profession. I met BMA and Nadel at some point through his interactions with
20 them. So, it was different stakeholders, Chairperson.

ADV MYBURGH SC: Alright. Then at paragraph 60, Mr Mahlangu continues.

“This is not uncommon...”

I think you have touched on this already.

“It is important to point out that the Gupta

family were not the only important stakeholders of the Minister that I was required to interact with and who I visited at their homes.

I recall having meetings with eminent black business leaders at their homes in my capacity as the Minister's Special Advisor.

Typically, black businesspeople complaint ...[intervenes]

10 **MR GIGABA**: Chairperson, just – apology to disrupt you. I might – I seem to have created confusion for myself.

ADV MYBURGH SC: Sure.

MR GIGABA: I have extracted certain pages which I needed to have in front of me.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Oh, you would like to have ...[intervenes]

MR GIGABA: Ja.

CHAIRPERSON: Okay.

20 **MR GIGABA**: So, if you just bear with a little bit?

CHAIRPERSON: H'm.

ADV MYBURGH SC: Not at all.

MR GIGABA: Ja. No, I think we can continue.

ADV MYBURGH SC: Okay, let me start at that paragraph again. Have you got it in front of you now?

MR GIGABA: Yes, yes.

ADV MYBURGH SC: Page 904. This – says Mr Mahlangu:

“...is not uncommon. It is important to point out that the Gupta family were not the only important stakeholders of the Minister that I was required to interact with and who I visited at their homes.

10 I recall having meetings with eminent black business leaders at their homes in my capacity as the Minister’s Special Advisor.

Typically, black businesspeople complaint about the slow pace of transformation and had specific proposals or grievances which I was tasked with relying to the Minister...”

Do you want to comment on that?

MR GIGABA: Yes, as I have... Yes, Chair. As I have indicated. There have been – there were many instances and we – you know, he would go meet with them on occasion to brief me, the black lawyers with regards to
20 obtaining working the SOE’s. Black accountants with regard to obtaining work in the SOE’s, and some instances, individual businesspeople.

That would either be raising policy or political issues which related to policy or would be requesting assistance, in which case, Mr Mahlangu would say: I could

help facilitating a meeting for you with relevant people and it is up to you to raise your issues and discuss with those relevant people.

However, the matter gets resolved between the two of you. It is no longer any of my direct interest.

ADV MYBURGH SC: And if we go over the page, to page 906. At paragraph 64, Mr Mahlangu says:

10 “At all times I kept the Minister informed of my interactions with different interlocutors including Rajesh Gupta, the only member of the Gupta family that I have dealt with...”

Do you want to comment on that?

MR GIGABA: As I say in my response that he kept me abreast of many of his interactions to ensure that I was updated in case I met those people, but it would not be all the time. It would not be all the time. I think – I do not read much to what he says when he says at all times. He did try to keep me abreast of many of his interactions.

20 **ADV MYBURGH SC**: But perhaps we could just have a look at what your response was to paragraph 64.

MR GIGABA: Yes.

ADV MYBURGH SC: At page 913 at paragraph 8.2.

MR GIGABA: Yes.

ADV MYBURGH SC: You stated:

“Mr Mahlangu gave me updates on the

interactions he had with the different person in this context and the purpose was to ensure that I would be updated on what may have been discussed...”

Is that accurate?

MR GIGABA: That is accurate, Chair.

ADV MYBURGH SC: Alright. If we then go back, please, to page 906 and to pick at paragraph 65. Mr Mahlangu says:

10 “In the first meeting with Rajesh Gupta, only he and I were in attendance.

Mr Gupta introduced himself to me and we exchanged pleasantries.

He explained that he wished to meet with me as the Minister’s Advisor because he supported broad based black economic empowerment and wish to contribute to the government’s efforts to empower black people.

20 That sums up the first time that I met with Rajesh Gupta...”

I presume you do not have – would you have any comment on that?

MR GIGABA: No, I would not, Chairperson. Safe to say that quite a lot of people claim to be supports of this black economic empowerment.

CHAIRPERSON: H'm.

MR GIGABA: You just listen to that. You do not necessarily take it to be...

CHAIRPERSON: I just want to go back to the question that Mr Myburgh asked you about whether in meeting the Guptas or any of the other people, that Mr Mahlangu had to meet as your advisor, he was representing you. I think your answer was that he would not be meeting them as your representative as such, but he was your special
10 advisor.

I am not sure whether there is anything important in the distinction that you seem to want to make, because on the face of it, I would have thought that if you asked him, as you say you did, to manage these people for you so that, for example, they do not discuss with you certain things that you maybe do not want to discuss with them, but he can meet with them.

I would have thought that in a way he is there for you. He is there because you do not want to be there.
20 You are sending them to deal with them. But I just want to try and understand whether there is some important in the distinction you were seeking to make.

MR GIGABA: Chairperson, I think it – I could be failing to articulate it properly because, yes, I had asked him to manage those stakeholders so that he keeps them away

from me and he manages them away from me. I do not have to talk those issues with him because I did not want to be distracted from my official responsibility and of executing the policy and ensuring that our SOE's are run properly.

So, in a way, yes, he was meeting them as mandated and he had that responsibility to ensure at all times that the engages with then, he takes them away from me, but he understood that at every moment the
10 engagement would have to be professional and ethically.

CHAIRPERSON: And, of course, he says at paragraph 64, which we have looked at and you confirm, that he would report back on his interactions. He says at all times. You say, well, maybe not at all times but generally speaking most of the time or on a number of this he would report back.

MR GIGABA: Yes.

CHAIRPERSON: As I understand the position from his side. The only basis on which he was meeting with them or
20 interacting with them was because of his position as your legal advisor or special advisor.

MR GIGABA: Yes.

CHAIRPERSON: I get the impression from his affidavit that had it not been for that he would not have been interacting with them. He interacted with them by virtue of

it being part of his duties to do that. And I would imagine that those people would also not have been interested in meeting with him or interacting with him if he was not your special advisor. The only thing that attracted them to him was that – was because of the position he occupied. Is that a fair understanding of the position?

MR GIGABA: It is, Chairperson.

CHAIRPERSON: H'm.

MR GIGABA: And I chose him as the legal advisor to deal
10 with that work.

CHAIRPERSON: Ja, ja.

MR GIGABA: Because of his legal background.

CHAIRPERSON: Ja, ja.

MR GIGABA: And did not want any of my other officials to find themselves in meeting people who did not have the necessary legal expertise.

CHAIRPERSON: H'm, h'm.

MR GIGABA: To be able to address people in a way that did not compromise them or the department or government
20 as a whole or even the SOE's themselves. So, somebody like that could be able to manage that and to deal with it and therefore protect the entire team, not only the Minister but the entire team.

CHAIRPERSON: H'm, h'm. Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. And at paragraph 66:

“I met with Rajesh Gupta again in January 2011 and had a number of occasions subsequent to that.

During these other subsequent engagements, he would be joined by Tshepo Magashule and Duduzane Zuma.

I came to learn that they were business partners.

10 Safe for what I have read in the media about their business relationships, I have no knowledge of the nature and the extent of their business relations...”

Did you know about this?

MR GIGABA: No. I knew that, I think, from media engagements, I knew that Mr Tshepo Magashule and Mr Duduzane Zuma were their business partners but their participation in their engagements I was not aware of.

CHAIRPERSON: Was... Is there a particular reason why, at least according to Mr Mahlangu, the only member of the
20 Gupta family he interacted or had meetings with was Mr Rajesh Gupta whereas the person that you were interacting with, and based on what you said earlier on, you were friends with was Ajay Gupta and not Rajesh Gupta? Is there any particular significance in the fact that he was not interacting with Ajay Gupta, he was only

interacting with Rajesh Gupta or is there none?

MR GIGABA: No, I do not know what – I do not know any specific reason, Chairperson.

CHAIRPERSON: Ja.

MR GIGABA: It could also be that Mr Ajay himself did not want to confuse roles of his friendship with me and their – whatever their business interests were as a family. And he understood from my point that I was just a social friend. Nothing more than that.

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

ADV MYBURGH SC: Thank you. At 67:

“Over time, I learnt that Rajesh Gupta predominantly conducted his business at his family residence in Saxonwold.

That is the reason most of my meetings with him took place at the family’s residence...”

He goes on to say at 68:

20 “My engagements with Rajesh Gupta were in the period between January 2011 and March 2013.

Throughout my interactions with Rajesh Gupta, I maintained a professional relationship with him.

I engaged with Rajesh Gupta in my capacity as the Minister’s Special Advisor only...”

You have any comment on that?

MR GIGABA: It was my understanding, Chairperson, that he maintained a professional relationship, Mr Mahlangu, and on occasion that he would brief me, he would made that point quite clear, yes.

ADV MYBURGH SC: Then if we go over the page to page 908 and let us pick up at paragraph 73:

“In March 2013, I consciously scaled back on my meetings with Rajesh Gupta.

10 I distanced myself and eventually ceased interacting with him all together.

To the best of my recollection, the last time I met with Rajesh Gupta was in about mid-2013...”

And then, that must be read together with paragraph 74, where he says this:

“I took this action because in March 2013, the Minister was confronted by a media query relating to a meeting in October 2012 that I had arranged between Mr Mxolisi Dukwana and Rajesh Gupta at the Gupta residence.

20 The Minister spokesperson in answer to this media query told the relevant journalist that I have gone to the meeting in my private capacity when, in fact, I have gone to the

meeting on official business in my capacity as the Minister's Special Advisor.

I felt hurt and betrayed by this untruth.

I took a decision to expedite my plans to leave my employment which I began considering in the latter part of 2012..."

What is your comment on that?

MR GIGABA: This incident did take place. And actually, all of us at the time had, you know, we were becoming a bit
10 disquiet about a number of things including these, you know, requests for meetings that Mr Mahlangu was being asked to expedite – I mean, to facilitate.

And as I have said. You know, there were many media reports that were talking to the family's business dealings and a whole range of things, name-dropping and so on. So, we were all becoming quite restless with regard to this relationship. The incident of March 2013 did take place and mister, you know, Mr Mahlangu indicated to me that he was quite hurt because, you know, they had quite
20 robust engagements between him.

And the other officials in my office who were saying that: You know, we think that, you know, this was in your private capacity. That you need to stand back. And they also discussed the matter with me. So, I understood it. Why he was angry, and it was also my view that: Look,

we need to begin scaling down, even me at a personal level. I understood that I needed to begin to reduce my interactions even though they were social with the family.

And he indicated that he wanted to leave employment and my view was that you do not leave employment on the basis of this incident. It happens in office that people fight on occasion, but I do not think this is the reason for you to leave which was then why he stayed on until the end of my term of Minister of Public
10 Enterprises.

ADV MYBURGH SC: So ...[intervenes]

CHAIRPERSON: I take it from both what you have just said now, but also from what you have said earlier about him meeting the Guptas in his capacity as your legal adviser, special adviser, that your understanding was that he had arranged that meeting in that capacity not as in a private capacity.

MR GIGABA: It was in that capacity, Chair.

CHAIRPERSON: Yes.

20 **MR GIGABA:** As I had said in order to shield me away.

CHAIRPERSON: Ja.

MR GIGABA: In my discussion subsequently with him it was that look, you - you know, you need to continue because people will continue trying to meet with me to talk about their own issues, continue engaging with them but I

support your decision to scale down on the other side because it is becoming a problem for all of us, the ANC itself is getting embarrassed by this type of relationship.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Can I just go through this on a sentence by sentence basis to make sure that I understand what you have said? At 74 he says:

10 “In March 2013 the minister was confronted by a media query relating to a meeting in October 2012 that I had arranged.”

Now were you confronted with the media query?

MR GIGABA: Yes, there was a media query.

ADV MYBURGH SC: And he goes on to say that:

“I have arranged between Mr Kona and Mr Rajesh Gupta at the Gupta residence.”

So had Mr Mhlangu arranged this meeting?

MR GIGABA: Yes.

ADV MYBURGH SC: And did you know about that?

MR GIGABA: I knew about it after it happened.

20 **ADV MYBURGH SC:** Now why was he arranging a meeting between Mr Kona, who as I understand at that time was the Chairman of SAA or Chairperson of SAA and the acting CEO and Rajesh Gupta. Why would he be arranging such a meeting?

MR GIGABA: I do not know what was on the agenda but

as I have said earlier, he was – I had asked him to manage certain stakeholders that were regarded as important in the ANC and ensure that, you know, we do not create a sense of inaccessibility but, at the same time, we do whatever – he does whatever he needs to do or we do whatever we need to do within the remit of the law.

Now Mr Mhlangu arranged many other meetings, I guess as he has said in the previous chapters, I think right at the beginning of his affidavit, that he arranged a number
10 of meetings and whatever with different people where, you know, people would have requested with him either to discuss issues of a policy nature which they would wish to raise with me or where they needed to discuss with some of our CEO's matters of interest to them. So he understood it that those engagements would have to be professional and he would brief the people involved that in this engagement please know that you are not supposed to agree or take any decision that is outside the framework of what you are required to do legally and [indistinct –
20 dropping voice]

ADV MYBURGH SC: And then just sticking with the first sentence, Mr Gigaba, what was the nature of the media query that was raised?

MR GIGABA: I think it was about the meeting and why it was organised, I think in exactly the manner that he raises

it.

ADV MYBURGH SC: Then the second sentence says:

“The minister’s spokesperson in answer to this media query told the relevant journalist that I had gone to the meeting in my private capacity.”

Did the media spokesperson say that?

MR GIGABA: I think so and that was the reason of his grievance, of Mr Mahlangu’s grievance.

ADV MYBURGH SC: And he says:

10 “When in fact I had gone to the meeting on official business in my capacity as the minister’s special adviser.”

I understand you accept that?

MR GIGABA: It is the issue we discussed earlier and I said perhaps I lack a way to articulate it. It was not an official business meeting. It was not an official business meeting except to the fact that Mr Mahlangu himself was at that time officially my legal adviser.

CHAIRPERSON: Is what you are saying this, that it was a
20 meeting which he was attending in his capacity as your special adviser. What the status of the meeting is, you might not be sure whether it was official or not but you are saying he was there because of his position as your special adviser?

MR GIGABA: Yes, Chair, in line with my request to him.

CHAIRPERSON: Ja.

MR GIGABA: To ensure that he shields me and the rest of my team.

CHAIRPERSON: Ja.

MR GIGABA: From having to be requested to do this because, quite honestly, I do not think that it would have been in my best interest or it would have been within my time limits to be facilitating meetings and such meetings, if I just stretch a bit, Chairperson, beyond this point. Such

10 meetings would have been - you know, if it was officially, it would have taken place I presume at SAA and secondly, such meetings would, when they happen, not only be with regard to these specific SOEs, it would have been – I mean, with respect to SAA but there would have been others that either required SOEs or that would have required me directly because, as I say, in some of the instances when he came to me to say Mr Minister, I have met with black lawyers in the legal profession, they would like a meeting with you, we would facilitate that meeting.

20 In that case it should be direct discussions and it was easy to do that because you are meeting an organisation and there would have been instances, even when I was Minister of Finance when I met with individual business people. I remember the CEO of Glencore and a number of others. So we would always try. You know, if issues required a

policy discussion then they would bring those issues to me after he has had those meetings but if they did not require that, he would just keep them away from me.

ADV MYBURGH SC: Did you instruct your media spokesperson to respond to this media query by stating that Mr Mahlangu had attended the meeting in his private capacity?

MR GIGABA: No.

ADV MYBURGH SC: Were those your instructions?

10 **MR GIGABA:** No, it was no my instruction, he was responding because the spokesperson, unless it is really a big policy issue, they do not have to consult with me because I would busy, you are confronted with a number of queries as a spokesperson, you need to think on your feet, take decisions and the times I meet the spokesperson on TV already commenting on issues before I even know about them. I think past tense in this case would be important. You would meet the spokesperson already comment in TV before you even knew that there was an issue being

20 raised, unless it was major policy issues where the spokesperson would have to wait for you to say Minister, there is this policy issue, how do we respond? Should I put the DG to respond to the matter or would you like to respond directly? And if they thought that I needed to respond directly as the minister they would then indicate

as such.

ADV MYBURGH SC: Mr Chairperson, I see that it is one o'clock.

CHAIRPERSON: Okay, let us take the lunch break, we will resume at two. We adjourn.

ADV MYBURGH SC: Chairperson, I beg your pardon, I see that the other legal representatives are here.

CHAIRPERSON: I forgot about them. Okay, let me quickly hear. Who wants to talk first? If you can talk from
10 where you are, if your mic is working, that would be convenient. While they are doing that, I just remind you that the purpose of the arrangement that the legal representatives should come here today was to see how much they think they – how much time they think they will need in regard to each person so that hopefully we could reach agreement. We do not have to reach agreement now but if I know how much time you would like to be allocated, as you read summaries for your clients, then I can let you know in due course through the secretary or the
20 Commission's legal team whether the times you are asking for are in or not.

ADV VILAKAZI: Thank you, Chair, just to put myself on record.

CHAIRPERSON: Ja.

ADV VILAKAZI: It is L E Vilakazi and I am with my

colleague Advocate K Ramenele(?).

CHAIRPERSON: Yes.

ADV VILAKAZI: Thank you, Chair. We have prepared a draft directive to assist the Chairperson in making a decision on the allocations.

CHAIRPERSON: Yes.

ADV VILAKAZI: A copy is with the registrar, I beg leave to hand it up.

CHAIRPERSON: Yes.

10 **ADV VILAKAZI:** Chair, as the Senior Counsel Majibede(?) indicated in the sitting of Wednesday, the 16 June, the preference is that in order to give a full picture of the issues around all the implicated officials of the NPA, the preference is to cluster the presentation according to topics and not necessarily according to individual implicated persons.

CHAIRPERSON: Yes, okay.

ADV VILAKAZI: So that is how they have been clustered and we have attempted to make an estimation as to how
20 much would be required for each theme or topic and the estimation is a rough one based on our sense of how much time would be required and it has not factored in if objections are to be raised or perhaps there are questions that are raised for clarity. So the estimate is based purely on our sense of how much time we would need to make the

presentation. So the - you know, just in the same way as Chairperson that with the work of the Commission you have work streams...

CHAIRPERSON: Yes.

ADV VILAKAZI: The arrangements that we have made is almost akin to your work streams.

CHAIRPERSON: Okay.

ADV VILAKAZI: So the key issues would be the rendition matter. Obviously we will have a general overview which
10 we estimate would be one and an half hour and then the rendition matter and then there are sub things within rendition. I can quickly take ...[intervenes]

CHAIRPERSON: No, do not take you through.

ADV VILAKAZI: Okay.

CHAIRPERSON: Because I can see here.

ADV VILAKAZI: Yes, so it is the rendition which we estimate will take two hours and the implicated persons would be Adv Masing, Baloyi, Dr Pretorius and Maema and then the Cato Manor which we estimate would take about
20 three and an half hours, implicated persons being Advocates Masing, Maema, Matenjwa, Chauke, Mogatle and Dr Pretorius. The [indistinct] matters and these ones relate only to the charges that pertain to KZN.

CHAIRPERSON: Ja, okay. Let me interrupt you. Has the legal team of the Commission prepared anything that

indicates their own estimate of how much time is reasonable? Yes, go to the podium because they are sanitized.

LEGAL COUNSEL FOR COMMISSION: Chair, without going through it in much detail because we obviously just had it here, I ...[intervenes]

CHAIRPERSON: Yes, I do not want you to do it, I was asking whether you do have a similar document reflecting your situation.

10 **LEGAL COUNSEL FOR COMMISSION:** No.

CHAIRPERSON: Okay.

LEGAL COUNSEL FOR COMMISSION: We do not have a similar document.

CHAIRPERSON: Yes.

LEGAL COUNSEL FOR COMMISSION: We are looking at this document. I think the time limit does look reasonable. I would only want to say that certainly not at the same occasion but it might be that the legal team might want to respond these summaries, that could also just be in writing
20 and that could be discussed with Adv Tulley and yourself, Chair.

CHAIRPERSON: Ja.

LEGAL COUNSEL FOR COMMISSION: But I think that I do agree that dealing with certain topics is probably a good idea because it would draw everything together and the

affidavits, Chair, are hundreds of pages long, so I think that the estimate of time is [indistinct – dropping voice]

CHAIRPERSON: Ja. No, on the face of it - I can indicate on the fact of it I think the estimates seems to be much more than what I expected but I say that only having had a superficial look. I think what we should do is this. Let me – the legal team of the Commission must prepare something that indicates – I will have a look. It may well be that I can make a final decision when I have got the
10 summaries, it may be, but of course, I think as I have said the other day, maybe it is better to prepare summaries knowing how much time you have got. So maybe in a way that – but at the same time maybe I need to have an idea what points are made in the summaries because when I read the summary and I see it is 20 pages but I see that there are only two points really that are being made. I can say well, you do not need three hours for this but when I do not have that summary, I might not know the points you seek to make. But I think maybe what we should do – what
20 is the day that we talked about when I would give this opportunity?

LEGAL COUNSEL FOR COMMISSION: We spoke about the two days that were allocated for the cross-examination that was set down for the cross-examination of Dr Pretorius.

CHAIRPERSON: It was...

LEGAL COUNSEL FOR COMMISSION: It was the 25 June and the 28th.

CHAIRPERSON: It is 20...?

LEGAL COUNSEL FOR COMMISSION: 25.

CHAIRPERSON: 25 and 28.

LEGAL COUNSEL FOR COMMISSION: 25 June and 28 June. Yes, Chairperson.

CHAIRPERSON: Okay, alright. I do not see it being
10 necessarily really or warranted to use two days when we
are talking about summaries, so I think we should work –
or that should be the starting point that – I think I would
have difficulty seeing it as warranted that we should use
two days. But let me have a look at this. 25 is what day
of the week next week?

LEGAL COUNSEL FOR COMMISSION: Friday, Chair.

CHAIRPERSON: Is it Friday?

LEGAL COUNSEL FOR COMMISSION: It is next week
Friday, Chair.

20 **CHAIRPERSON:** Okay, alright. I think if the
Commission's legal team can try and let me have their
document that gives their estimate on Monday then maybe
by either Tuesday or maybe Wednesday we should then
have another appearance when I can hopefully maybe give
an indication, a more realistic indication of what I think. Is

that fine with you?

ADV VILAKAZI: Yes.

LEGAL COUNSEL FOR COMMISSION: That sounds reasonable, Chair.

CHAIRPERSON: Ja, let us do it that way. We want to give the opportunity but we – the idea is, it is summaries, it is not the whole story, so – but let us do it that way.

1. On Monday the Commission's legal team must give me their document.
- 10 2. On Wednesday – maybe let us simply say Wednesday, ten o'clock in the morning do come again and then we can take it from there. Is that alright?

ADV VILAKAZI: That is fine, Chair.

CHAIRPERSON: Okay, alright. Okay, so ...[intervenes]

ADV VILAKAZI: We are indebted to you, Chair, and to Ms van Rensburg.

CHAIRPERSON: Yes, let us leave it at that then, this matter. Let me adjourn then, I think let us say – let us resume at ten past two rather than two because I have
20 eaten into even the witness' time and everybody's time. We will adjourn and we will resume at ten past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you Chairperson. Good afternoon Mr Gigaba.

MR GIGABA: Good afternoon.

ADV MYBURGH SC: Before lunch we were at paragraph 74, of Mr Mahlangu's affidavit.

MR GIGABA: Yes.

ADV MYBURGH SC: At page 908 of Bundle 8, dealing with the meeting with Mr Khona.

MR GIGABA: Yes.

10 **ADV MYBURGH SC:** I just wanted to share with you what Mr Khona's evidence was about this meeting. He testified before this Commission, Chairperson you will recall in February of 2020, some time ago.

CHAIRPERSON: Who was that?

ADV MYBURGH SC: Mr Khona.

CHAIRPERSON: Mr?

ADV MYBURGH SC: Mr Khona.

CHAIRPERSON: Oh, okay.

20 **ADV MYBURGH SC:** Now, at the time of this meeting in October of 2012 Mr Khona was the Chairperson of SAA and I think also the acting CEO and what he said is that Mr Mahlangu arranged this meeting and he went off and he met – he went to the Saxonwold compound. He said that when he arrived there he was asked to turn in his cell phone and present at the meeting was himself Mr

Mahlangu, Mr Sipho Mahlangu and Duduzani Zuma, and Tony Gupta and he said, well, he was congratulated on his appointment and he was welcomed to the family.

And somewhere along the line, Mr Tony Gupta said to him that we know that you have not been paid, you have not been paid both as acting CEO and Chairperson, and this is what Mr Khona then says, this is at page 93 of the transcript on day 206. He says to Mr Khona;

10 “We know you have not been paid here is R100,000
but we are just welcoming you to the family. We
look after each other.”

And he goes on to say:

“Yes so Chair, I look at Tony and say okay, but I do not need - you do not need to pay me money. What are you paying me this money for? I do not need the money, I am okay. Then he looks at me cynically and says, what kind of guy would - are you refusing this money? And he says to me, no, here is 500,000.”

20 And he went on to say that Mr Tony Gupta took the R100,000 out of the drawer in cash and he assumed that if he had agreed to take the 500, he would have just reached into another drawer and taken out that much cash.

And then he concluded his evidence by stating that the meeting then turned to the business of the day and he

was asked about a consulting contract and in the run up to this contract Lufthansa Consulting had been chosen over McKinsey to provide a turnaround strategy. And when Mr Khona told Tony Gupta that he had appointed or that Lufthansa Consulting would be appointed, the meeting all of a sudden came to an end.

But before he left, a telephone call was placed to the DG of the Department of Public enterprises and it was stated to this person over the phone that he should come
10 there quickly and explain what was going on. Mr Khona then left the meeting and he was subsequently phoned by the DG, who asked him, why did you give this contract to Lufthansa? So that is what Mr Khona - what his evidence was, do you have any comment on that?

MR GIGABA: Just finishing notes sorry, Chairperson yes thank you. Chairperson, one of the things which I have explained earlier is how not only these but other business people tended to embellish their credentials by claiming or by name dropping.

20 Now, I did not know what - I do not know what they meant by welcome to the family and I am very happy that Mr Khona refused to take the money, which was placed to him. The - it is precisely this type of conduct, among others, that led to the decision on my part, to just begin cooling off relations until I cut them out altogether. I

became aware of this, I think, not the exact detail during the query but the exact detail like became aware of it after Mr Khona's evidence before the Commission that he had been offered, amounts to the tune of R500,000.

I cannot confirm that it happened, but it is what was presented before the Commission. Now, I would not know where this money was taken out of and it certainly could never have been true that he had not been paid as a Chairperson, an acting CE because in all honesty SAA
10 would have had money to pay their Acting CE and their Board members. So that would not have been true, I do not know what it meant.

CHAIRPERSON: Well I imagine that one possibility might have been administrative features because it does happen, does it not, well, maybe not just in government, but maybe in the private sector, that something goes wrong and when people are expecting to be paid on a particular day, the money does not come in.

And it is not necessarily because there is no money,
20 it might be maybe details were furnished late or whatever. That kind of thing does happen that comes to my mind as having, as a possibility if one listens to this story.

I know that the staff of the Commission, I am aware that in recent months, some have been getting their salaries, after the dates when they are supposed to get it

some time they do not get it at all. So I am simply saying it might not be that when he says he had not been paid, he means SAA did not have the money to pay. One does not know or I do not know how soon the meeting was after he became Acting CE and then there would have been administrative delays. I am not sure; I am just mentioning something that comes to my mind.

MR GIGABA: It is certainly Chairperson, I think in this case the difficulty would be that Mr Khona was the Acting
10 CE and therefore he would have had authority and as – if my recollection serves me well SAA had been given a government guarantee earlier in 2012, and so they did have some liquidity to be able to pay salaries.

I do not recall in 2012 there had been problems at SAA with regard to paying salaries timeously. So - and I do not recall being told of admin glitches with regard to the payment of salaries. So I would not know what this meant.

CHAIRPERSON: Okay.

MR GIGABA: So - and then with regards to the consulting
20 contract for the turnaround strategy, I unfortunately, was not involved in the awarding of this contract and all the nitty gritty that were involved in it. I had - as I explained on several occasions, I have - I had kept myself as far away from contract issues and tenders as possible.

And precisely so that I do not get implicated in any

possible way even before I knew that there would be this Commission. I had kept myself as far away from tenders and contract issues as I said earlier, including where I was being canvassed to influence the department in one way or the other.

I would remember Chairperson in 2014, when I returned to Home Affairs, when I was asked that by –ja 2014, when I was being asked to assist in the resolution of the legal dispute between Home Affairs and one IT
10 company, my response to the then Treasurer General of the ANC was that the matter is in Court, as a Minister, I should not get involved because I would be undermining the Court case of the department.

And therefore, I suggest that we let the matter be resolved at that level. I have taken the same approach even with regard to this, I know that the question does not - is not asking whether I was involved.

I think the question seeks to know if I was aware of this and what my comment would be, certainly the
20 department would not - the Department of Public Enterprises would not be involved and if it was and I have never been alerted to this, it would have been wrong for it to involve itself in deciding issues of contract and tenders within a particular entity because in the end, it is that entity which must account for whatever decisions they have

taken through its accounting officer.

ADV MYBURGH SC: Perhaps if I could just pick up on the last point and then go back. Mr Khona continued his evidence to say that a few days after this he got a letter from Public Enterprises saying that they wanted to investigate the award of the contract to Lufthansa. He says:

10 “There was an investigation conducted and no fault was found but he says that they still would not allow me to start to appoint Lufthansa Consulting to start the work.”

Do you know anything about that?

MR GIGABA: No, I am not aware of it, I was not aware of a letter from the Department of Public Enterprises, Chairperson and the investigations which took place in that regard.

ADV MYBURGH SC: And then in relation to the salary issue, Mr Khona was asked, well:

20 “How did Tony Gupta know about this?
And he said:

 “Well, I assumed that the advisor knows because our pay is approved by the Ministry.”

And then he was asked:

 “Did you find it strange at the time that he knew the status of payment of your salary?”

Mr Khona said:

“Absolutely, no, his knowledge was I mean, it just baffled me because I was told by the Minister advisor that he is an important stakeholder. So his level of knowledge seemed extraordinary when I got their thoughts of the events that are happening.”

MR GIGABA: Chairperson to my recollection the Minister did not approve the salary of an Acting CE, if I am not mistaken, and I am subject to correction, and Acting CE
10 would earn the salary of the resigned CE, and that did not need ministerial approval. I think therefore, this matter would not have come to my office at all and even then, you know, salaries are not I think on a much broader scale, salaries of CE’s of SOE’s are not approved by the Minister.

The Board sets the salary of the CE. What did happen, I think, between 2013 and 14 and I do not know when it was resolved, because by the time I left Public Enterprises, this had not yet been resolved. What did happen is that we began an independent investigation into
20 the salary scales of the CE’s of the SOE’s in our portfolio, including their long and short term incentives.

This had been prompted by concerns among others, that the CE’s of SOE’s were earning large salaries much larger than that than that of the President and secondly, that in many instances, for some but in many the awarding

of incentives by Boards to executive directors was taking place regardless of the fact that the executive directors had performed well and met the KPI's. The question then that was being asked was, how do we set this?

So when we undertook this investigation the cabinet felt that we needed to expand it to all SOE's and the department engaged the services of a certain company, unfortunately, I cannot remember the name of the company now, that did that - in that was doing that investigation or
10 did that investigation and SAA among others was identified as a mid-level SOE and the argument was that the salary scale of the SAA, CEO was above the scale in which they were supposed to be earning,

But it is a matter that got resolved after I had left the department. So at the time of Mr Khona acting and if I am not mistaken, it did not act for very long because I think, subsequent around 2013, a new CE Mr Kalawe was appointed. So when Mr Khona was acting as CE the salary had already been determined at the level and scale of the
20 previous resigned CEO that had not needed my approval.

So if anybody knew about it, it would probably - because either the matter is public or somebody has leaked or disclosed that information. It certainly did not come from me or from the processes that officially involved my office.

ADV MYBURGH SC: Did Mr Mahlangu tell you about this?

MR GIGABA: No.

ADV MYBURGH SC: Would you have expected him to?

MR GIGABA: Well, I would have expected him to but I guess, seeing that – ja, I would have expected him to, especially the offer of a cash benefit but perhaps he decided not to disclose it, because it eventually did not happen, Mr Khona refused to take it.

ADV MYBURGH SC: So as you sit now, assuming that
10 this is correct, what is your comment of this behaviour on the part of the Gupta's?

MR GIGABA: I think I have indicated, Chairperson, that it was such type of behaviour that began to concern us and me particularly because of my friendship with Mr Ajay and I began to view this conduct in name dropping and a number of other things as quite disconcerting and I think that it led eventually to me cooling and subsequently cutting off my relationship with them.

ADV MYBURGH SC: And then what other – well you say
20 you were not aware of this, so what concerns were raised with you or came onto your radar that caused you to make that decision?

MR GIGABA: As I have just said Chairperson, among others, the public – the issues which were emanating from the media, concerns about the, you know, pervasive

influence of this family, the name dropping, particularly of the President, I think it became - it was our responsibility to protect the name of the President from anybody claiming that - claiming anything about the President and the name dropping of other Ministers and the issues that were being raised, so it really did concern.

ADV MYBURGH SC: Was any investigation, was there ever any consideration given to an investigation into the Gupta's? **MR GIGABA:** By whom?

10 **ADV MYBURGH SC:** By government.

MR GIGABA: No, to my recollection, no. I think that happened, I suppose, after the Public Protectors Report in 2016, as the Chairperson pointed out.

ADV MYBURGH SC: Now, I just wanted to try and find the date in your affidavit when you say you cooled down your relationship with the Gupta's. Was that - to the best of your recollection, was that in 2013 or 2014?

MR GIGABA: It began in 2013, Chair.

20 **CHAIRPERSON:** Maybe, Mr Myburgh was still going to mention this maybe you should be told that in his affidavit, which I - which may be another affidavit not this one. Mr Mahlangu denies Mr Khona's version that Mr Tony Gupta offered him money. So I just mentioned that he obviously admits the meeting, as he does but he denies that parts. So I thought I would just mention that.

ADV MYBURGH SC: Thank you.

MR GIGABA: Thank you, Chair.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Well, let me ask this question about Mr Mahlangu having organised or facilitated that meeting, do you know any reason why he would not say to somebody, whether that was Tony Gupta or whoever, who wanted to meet with a CEO or any official of an SOE, do you know of any reason why he would not say contact them directly and
10 rather than him facilitating these meetings than going to the extent of attending the meeting?

I mean, I asked myself the question, why must he attend that meeting? Maybe there is a reason but I am just inquiring from you, why he would not say well, Mr Tony Gupta maybe this is the number for Mr Khona if you wish to see him – meet with him arrange with his office.

MR GIGABA: I would not know the reason Chairperson. My presumption would be that he probably wanted to hear what was being discussed so that if it had anything that he
20 would need to intervene in or, you know, alert me about, then he would do so.

I do not necessarily think that there was any motive for him being there that was in favour of the people that the said CEO was meeting with, but certainly Chairperson with regards to facilitating the meetings he did facilitate

quite a number of meetings. I think, as he admitted in his own affidavit that he did facilitate a number of meetings, he did sit and listen to people and he would do so only professionally and I do not think that he expected out of those meetings to be any outcomes that were outside the legal or procurement framework, either of government or the existing SOE.

CHAIRPERSON: But my concern about it is this that him being your legal adviser, special advisor his facilitation of
10 the meetings, and his presence in some of those meetings could lend a certain credence of credibility as if that interaction is approved by yourself.

MR GIGABA: Yes.

CHAIRPERSON: And that what is being said, or whatever is being initiated has got your blessing even if it might not have but the people who say, could you please facilitate this meeting probably they know why they are not phoning those people directly. Maybe they think, well, if I phoned the CEO directly, he might refuse but if he gets a call from
20 the Minister's advisor, his unlikely to refuse even to come to meet in my house, rather than us meeting at SAA.

So that that is the concern that arises from me to say, why should this people not arrange directly? Why do they need the Ministers advisor? Why does the Minister's advisor get involved? You understand?

MR GIGABA: I understand you perfectly Chairperson, and I understand the implications of their involvement. I guess, just to make two quick points in that regard. One is that I think there are important lessons because at the time there was - you know, when you become appointed as a Minister, there is no induction to the extent that you need to watch out for the following things.

I think just basic induction, you know, that assists you because you are new to the office, especially if you
10 are coming into office for the first time and so there is not that type of induction that says look watch out for these things, if this happens, the implications could be this, if that happens, the implications could be this and it would compromise the integrity of the institution.

But secondly, I think it became important and was a timely intervention to adopt this legislation which in terms of which - if somebody says, I have a donation to make, can you meet with me, you say to them, the party is funded through the Democracy Fund in Parliament and therefore,
20 anything else - your donation does not necessarily have to be tied to you being assisted with meetings or whatever and it has to be disclosed and it will be disclosed, go to the Treasurer General, and that is how it is going to be handled.

So I think that has assisted a great deal because at

the time, it did not exist, and we were basically, you know, functioning without that type of guidance and framework, we just made life rather difficult when you look at it from hindsight.

CHAIRPERSON: Well, I know that you denied Mr Salugee's version that he met with you at the Gupta residence and Tony Gupta introduced him to you.

MR GIGABA: Yes.

CHAIRPERSON: But if it is true do that – that meeting
10 took place. It may well be that even in that context Tony Gupta was trying to send a message to Mr Saloojee to say, you see we are close to the Minister – to your Minister you know he is here at our house. As I say I know that you – you have said that meeting did not take place but I am just saying if that version is true of Mr Saloojee it may well be that is that kind of situation and it may be something that is consistent with name dropping that you say you became concerned about.

MR GIGABA: Yes – with the exception Chairperson as you
20 correctly say that I was not at that meeting.

CHAIRPERSON: Ja, no, no I understand ja. Mr Myburgh.

ADV MYBURGH SC: Yes I was going to just point out the similarities between the two meetings but I think that has been dealt with. I just wanted to add to what the Chairperson asked you about and that is that Mr Kona's

evidence was that when Mr Mahlangu approached him to have this meeting he told him he is very busy. He wanted know why these people could not come to his office and Mr Mahlangu said no, no this is now urgent we have to go there. Do you have any comment on that?

MR GIGABA: No Chairperson I would not know what was the urgency of – of going there because my expectation would be that the meeting would take place at SAA office where Mr Kona was in his environment.

10 **ADV MYBURGH SC:** And then perhaps just one last thing Mr Gigaba if we can get your comment on this. Leaving aside the – the question of the money and the bribe I mean would it be appropriate for somebody like to Mr Gupta to get hold of Mr Mahlangu and say, I want you to arrange a meeting for me with Kona to discuss the award of the consulting contract. Would that fall within the bounds of a – of him managing the relationship for you?

MR GIGABA: Of course not – of course not and I do not think Mr Mahlangu himself would have approached that
20 matter with an ex – with an expectation unless Mr Kona says Mr Mahlangu contacted him afterwards to say actually review this as – as it has been suggested. I think he then says the – the letter came and the processes came from the department afterwards. But of course Mr Mahlangu would have been wrong to – to have sought to instruct a CEO of a

SOE with regard to a contract.

CHAIRPERSON: I do not know whether Mr Myburgh you have any recollection whether Mr – what Mr Mahlangu says was discussed at that meeting whether he admits that what was discussed is what Mr Kona said was discussed because I – I – I would imagine Mr Gigaba that Mr Mahlangu would have wanted to know what the meeting was about before he could go there. So if he attended the meeting and if he facilitated the meeting one expects that he would have
10 known what it was about. Of course we do not have Tony Gupta's version of what the meeting – what was discussed. We do have Mr Kona's version. I think Mr Myburgh does not think that Mr Mahlangu has told us what was discussed at the meeting or he might not recall But Mr Kona is quite clear what was discussed. So – so – and if it is true that what was discussed was what Mr Kona says was discussed it seems that it would be inappropriate for him to facilitate such a meeting or – and even attend.

MR GIGABA: Yes I think Chairperson it would be fair to ask
20 Mr Mahlangu to – to comment.

CHAIRPERSON: Ja.

MR GIGABA: On that – on that meeting in particular.

CHAIRPERSON: Ja.

MR GIGABA: And its contents thereof.

CHAIRPERSON: Ja.

MR GIGABA: Yes.

CHAIRPERSON: Ja he has filed an affidavit it is just that I do not know where to find it immediately. He has given a version but I do not – I do not seem to recall – I seem to think he denies even the discussion of the Lufthansa entity that contract – I am not – I may be wrong about that but he certainly denies the issues of the money. But Mr Kona has been clear as to what was discussed. Mr Myburgh.

ADV MYBURGH SC: I will ask my colleague to try and find
10 that as we go along.

CHAIRPERSON: Ja. No that is fine. We do not have to resolve it now.

ADV MYBURGH SC: No.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Can we then – well let me – let us move to another topic and that is the – my trip to India in January 2011 at page 909.

MR GIGABA: Yes.

ADV MYBURGH SC: We have dealt with – with this before I
20 just want to take you through what Mr Mahlangu has to say. At paragraph 93.

“In January 2011 at the invitation of Ranesh Gupta a I travelled to India to attend a wedding of one of his family members. At the time I had only met Ranesh Gupta twice

first in December 2011 after the Minister briefed me about the Gupta family and tasked me to manage them and the second time in January 2011”

Presumably that should be 2012 or the December should 10 I suspect. Is that right.

MR GIGABA: Probably.

ADV MYBURGH SC: Ja.

MR GIGABA: I think December should be 10 ja.

10 **ADV MYBURGH SC:** 10 yes.

“On both occasions I met with him in the course of my duties. I did not have any personal relationship with him when he invited me to the wedding.”

94.

20 “To the best of my recollection Rajesh Gupta covered the expenses for the trip. Because I did not consider this a social excursion and was not friends with Ranesh Gupta I would not have undertaken the trip at my own expense.”

Then at 95.

“I disclosed this invitation to the Minister I annex a copy of my email to the Minister dated 18 January 2011.”

Which we went through last time.

“In which I informed the Minister of the trip and sought his approval to undertake it.”

Perhaps I could just ask you to turn to that email – there is just one question I want to raise with you. At page 210 – page 920 the first bullet point.

“Although this is a private excursion it promises to give great political value. I therefore suggest that we take full advantage of it.”

10 You want to comment on that?

MR GIGABA: As I said in my previous response to this paragraph Chairperson the trip was a private excursion – it has no political value great or less.

ADV MYBURGH SC: Well Mr Mahlangu you accept had a different view. He says:

“It promises to be of great political value.”

MR GIGABA: It has no political value Chairperson. So it was an opinion here in January 2011 and as he says in his affidavit it was just a huge wedding. He spent very little
20 time with Mr Rajesh Gupta and only saw him at the organised events which were large and not conducive to any social or other serious discussion. So at the time he received the invitation he thought it was of great political value. At the invitation – at the wedding itself he realised that it was just simply a wedding with – with – he says

which was not conducive to any social or other serious discussions.

ADV MYBURGH SC: Yes but at the time that he received the invitation did you think it would be of great political value for him to attend?

MR GIGABA: No. The invitation was clear that it is a wedding.

ADV MYBURGH SC: So you were happy for him to go to the wedding?

10 **MR GIGABA:** I think as I have indicated Chairperson I did not respond to this email. I did not respond to him and I said that it was in hindsight it was an oversight on my part to not have said to him there is no great political value do not go to it. But the email which he sent me and perhaps that is where I – I should have you know exercised greater caution contained a whole lot of things and I just did not think it was worth responding to. It contained a whole lot of things not only about the wedding it was about the GCE of Transnet, the Gama issue, meeting senior editors and so
20 on. So my response to the question Chairperson is that I did not think it contained any value. Perhaps the only mistake I made was not in responding to it to say to him do not go. But I would have had to respond to all the other issues which he had raised in the – in the memo – I mean in the email which he had sent me.

ADV MYBURGH SC: Mr Gigaba if you had been invited to this wedding would you have gone?

MR GIGABA: No.

ADV MYBURGH SC: So then on what basis did you allow Mr Mahlangu to go or put differently why did you not stop him from going?

MR GIGABA: As you say I did not allow him to go. I say I did not respond to the email which he probably presumed to be permission for him to travel. I did not respond to the
10 email.

ADV MYBURGH SC: And then he says at 96 at page 909.

“I considered the trip of strategic political importance to the Minister as did he because it was important to understand the Gupta family as part of the responsibility that the Minister had tasked me with.”

MR GIGABA: Chairperson I did not consider this to be of strategic political importance – not at all. It was a wedding – it was a wedding invitation. He thought that it was
20 important to understand the family. They were important stakeholders in the ANC. He – it was his initial – because as he says he did not know them prior to 2010 – prior to December 2010.

Now taking from the briefing I had given him where I had said they are one of the important stakeholders of the

ANC he presumed them to be – I mean he presumed this invitation to be of strategic political importance to me. It actually was not and I did not respond because if I thought it was I would have responded to him to say oh yes indeed it is a great – a great opportunity please do travel. But I did not respond. I say the oversight on my part was on not responding to that particular aspect of the email which resulted in him travelling and finding out when he was far away that in actual fact this is just a big wedding.

10 **ADV MYBURGH SC:** Now at page 933 you respond at paragraph 8.4 by saying:

“Mr Mahlangu disclosed the invitation to attend the wedding and I did not have an objection to it.”

MR GIGABA: By saying I did not have an objection to it I meant I did not respond. I did not respond to say to him do not go and that is why I continue in the next sentence to say:

20 “In hindsight I do not see any purpose which was to be served by him attending a private wedding.”

CHAIRPERSON: What page is that Mr Myburgh?

ADV MYBURGH SC: At page 933 Chairperson paragraph 8.4.

CHAIRPERSON: Okay. Yes You may continue.

ADV MYBURGH SC: I just wanted to ask you in relation to this I understood your evidence and you must correct me if I am wrong at the previous sitting to initially have been that you did not know what Mr Mahlangu was going to do in India.

MR GIGABA: He had disclosed the invitation to the wedding. I understood it to be a wedding – celebration – music – dance – food – whatever else but what political purpose would be served in attending a wedding – I have
10 attended many weddings I have not been at a wedding where politics was discussed.

ADV MYBURGH SC: I just want to read to you a passage of your previous evidence where I asked you.

“So did you enquire what he was doing in India? So as I have indicated I did not ask him.”

Again the impression is correct me if I am wrong your testimony before was that you did not know what he went to do in India.

20 **MR GIGABA:** No.

ADV MYBURGH SC: Did you always know that he was going to attend a wedding?

MR GIGABA: He had sent me – Chairperson may I refer you to SM17?

ADV MYBURGH SC: Yes.

MR GIGABA: First paragraph if I may read – if I may quote?

CHAIRPERSON: The email?

MR GIGABA: The email yes.

CHAIRPERSON: Ja.

MR GIGABA:

“I have been invited on a trip to India.”

ADV MYBURGH SC: Yes.

MR GIGABA:

10 “Although this is a private excursion it
promises to be of great political value.”

ADV MYBURGH SC: Yes.

MR GIGABA: Now some – so I understood it be just that. No political purpose. It is a private excursion. I think I had heard that it was going to be – it was going to be a wedding so I – I left it at that because I did not – you know I did not respond to it. I did not think that a wedding is of any significances of any political significance.

ADV MYBURGH SC: And perhaps we move off was Mr
20 Mahlangu then paid by the state whilst he went on this as he calls it 00:17:41 to India?

MR GIGABA: As I think at – as I said in my previous response Chairperson that no – no other than me talking to him afterwards and saying you should not have gone there is no other penalty that was imposed on him. I just

indicated to him that you should not have gone on this trip and in future we should be careful not to undertake trips of this nature and that was it. It ended up there with an apology on his part. I did not even put it in writing I had an oral discussion with him.

ADV MYBURGH SC: So I take it then he was paid?

MR GIGABA: He was.

ADV MYBURGH SC: All right.

CHAIRPERSON: Was it appropriate that your advisor
10 should go on a trip with a family – private family and be away from work I think for about a week if I am not mistaken and be paid by the state for a time that he was not working – he was maybe having a good time in India?

MR GIGABA: Chairperson I think I have said in hindsight I should have said no to the trip and I did reprimand him afterwards. I think if there was a need for an additional penalty you know the benefit of hindsight is that it allows you to view things from a different perspective from the time when they happened. Maybe we would have said to him for
20 this week that you were away we shall deduct from your salary but at the time we did not.

CHAIRPERSON: Because you see it is not a penalty. If you had not paid him – if the department had not paid him for that week that he was away I do not know if it was seven days or five days or even ten but I think it was less than ten

you are entitled to be paid if you have worked. That is the principle. That is why the – the other side of the coin is if you have not worked you will not be paid. That is obviously subject to a leave situation if you have applied for leave or you on leave that is different. There is a statutory regime for that but if you do not work you do not get paid. So what we have here is a situation where your advisor goes away to India and to the extent that he was not working or he was not there to perform any of official duties he should not
10 have been paid for the days that he was there. Would you agree?

MR GIGABA: Well perhaps Chairperson that should have happened. It just did not happen at the time.

CHAIRPERSON: No, no I understand when you say it did not happen but I am just asking whether you go along with the idea that it should have happened.

MR GIGABA: It should have happened Chairperson but I guess above it the trip should not have been undertaken.

CHAIRPERSON: Ja.

20 **MR GIGABA:** Yes.

CHAIRPERSON: Ja. I know that ...

MR GIGABA: And if I do not disrupt the Chair I think both Mr Mahlangu and I both agree because he also his own assessment is that the trip was of no value and I say in my response that in hindsight there was no purpose to be

served by this trip and I have said that it was an oversight on my part not to have said to him, no do not go.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: And would you accept as well that it was inappropriate for Mr Mahlangu's trip to have been paid for by the Gupta's?

MR GIGABA: It was inappropriate Chairperson but it was them who had invited him to the wedding. There have been many instances where people have been invited to soccer,
10 international sport tournaments and so on by the private business people or companies and the trips were paid for by those companies. I think our response in an organised fashion should cover all such instances so that we – we prevent the possibility of people undertaking trips even when they have applied for leave being paid for because if somebody says to you there is a – the Euros – the Euros 2020 we have got tickets for you for the semi-finals and the finals. The semi-finals will be in that country – the finals will be in another country – we will pay for your trip – we
20 will pay for the flights and accommodation. There have been many instances where government officials previously have accepted those – have accepted those invitations and gone on those trips. I think our response should be organised to be able to deal with all such instances not only this one.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thank you. Can I ask you then please to turn to page 915. I want to deal with the appointment of Mr Naithani as a director.

CHAIRPERSON: I am sorry Mr?

ADV MYBURGH SC: Naithani – Naithani.

CHAIRPERSON: Oh okay. You moving away from this.

ADV MYBURGH SC: Yes I am moving to page 915.

CHAIRPERSON: Okay before you move away.

10 **ADV MYBURGH SC:** Yes.

CHAIRPERSON: Let me ask this question Mr Gigaba. You said that when Mr Myburgh drew your attention to a paragraph in your affidavit where you dealt with this trip.

MR GIGABA: Yes 8.4.

CHAIRPERSON: Ja well at page 933.

MR GIGABA: Yes.

CHAIRPERSON: Ja paragraph 8.4. You said – you say in that paragraph.

20 “Mr Mahlangu disclosed the invitation to attend a wedding and I did not have an objection to it. In hindsight I do not see any purpose which was to be served by him attending a private wedding.”

You said that when you said you had no objection to it you meant that you – let me not try and put words in your

mouth. Please remind me what you said that mean – that meant?

MR GIGABA: That I had not firmly said to him do not go.

CHAIRPERSON: Yes.

MR GIGABA: I mean I did not respond to the – to the email which he had sent me which I guess he presumed to be an approval on my part for him to go to travel.

CHAIRPERSON: Hm. Now when you gave evidence last time about this trip and I think you have hinted at it again
10 you said when he came back you reprimanded him.

MR GIGABA: Yes.

CHAIRPERSON: Now my difficulty with having said you had no objection to it and having said you reprimanded him is that my understanding would be that if you had no objection to it you would otherwise meaning that you saw nothing wrong with it and then if he went on the basis that you had no objection to it why would you reprimand him when he came back?

MR GIGABA: As I have said Chairperson repeatedly that by
20 saying I had no objection to it I meant I did not respond to his email to put it firmly to him that he should not travel which he then would have read to mean that I approve of the trip. Having travelled I – and on his return I then reprimanded him because the Chief of Staff was not aware that he had undertaken such a trip.

CHAIRPERSON: So you – were you the only one who was aware that he had undertaken the trip?

MR GIGABA: He had sent the email to me. I do not know if he had spoken to anybody else.

CHAIRPERSON: Who else ja. Okay. Now I would have thought that if you had seen something wrong you certainly would have spoken to him at the time and that the fact that you did not react to his letter must mean that at that stage you did not see anything wrong. So – which might coincide
10 with my understanding of no objection when I read your affidavit. I understood it in that sense to say you saw it – you did not see any reason – anything wrong with – with it and therefore you did not say, do not go. Is that interpretation – does it not reflect what your thinking was at the time?

MR GIGABA: No it does not Chairperson it does reflect.

CHAIRPERSON: Ja.

MR GIGABA: My interpretation is the one that I have presented before the commission

20 **CHAIRPERSON:** Yes, yes

MR GIGABA: Yes on several occasions now.

CHAIRPERSON: But at that time did you see anything wrong with the trip? At the time when you read his email to you.

MR GIGABA: I did not – I did not apply my mind to the trip

Chairperson

CHAIRPERSON: Yes.

MR GIGABA: I mean to the – to the email.

CHAIRPERSON: Yes.

MR GIGABA: I did not apply my mind to the email it just was an email which came. Usually around the 18th of January we would have – you know it is quite a busy period for us politically – the beginning of January because on the one hand you preparing for the – the anniversary
10 celebrations of the African National Congress as soon as you come back from there you are preparing for the
00:29:47 Lekgotla of the ANC.

CHAIRPERSON: Lekgotla

MR GIGABA: A week from there it is the cabinet Lekgotla of the – of the – I mean it is the cabinet Lekgotla and thereafter you are preparing for the opening of Parliament, a busy period. A whole can just – a whole lot of things can just consume your attention.

CHAIRPERSON: H'm. Which says to me it is all the more
20 reason why you should have been reluctant to let your advisor be away for five days on something that you might not have regarded as important.

MR GIGABA: As I say, Chairperson, the mistake I made was not in responding to the email.

CHAIRPERSON: ja.

MR GIGABA: I should have responded to the email. I did not respond to it. I got carried away by the many things that I was doing at the time.

CHAIRPERSON: H'm.

MR GIGABA: But realising that he had travelled, I had a discussion with him and reprimanded him afterwards. And so, I took the matter to have been dealt with.

CHAIRPERSON: H'm. When you reprimanded him, what is it that in your view he had done wrong or – ja, what was
10 it that in your view you were reprimanding him for doing or not doing?

MR GIGABA: It was, Chairperson, going on the trip. It was, you know, not communicating well with me and with the Chief of Staff, and as I have said, going on the trip itself, because my view was that, you know, there was no purpose to be served in him – there was no, what, great political significance or value from attending a wedding and he should have communicated better so that – because at the time, I would be busy with a lot of things. A lot
20 could just escape my attention. It is better that you familiarise you better. We sit down. We talk with you everything and decide that yes or no you can do this, or you should not do it.

CHAIRPERSON: H'm. Ja ...[intervenes]

MR GIGABA: Because I even – usually, at the time, you

spend most of the time away from the office because there is just so much happening with the Magudla(?) and January 8th(?) preparations which are sometimes after January 8th itself.

CHAIRPERSON: But is my understanding correct? From your previous evidence that you are not saying you were not aware before he left that he was going to leave. It is just that you did not respond to the email, but you were aware. And when he was not around, you knew that he had
10 asked to go and that is why he was not around, but you dealt with the issue when he came back.

MR GIGABA: I was aware, Chairperson, on the basis of the email.

CHAIRPERSON: Ja.

MR GIGABA: When he was not around, it dawned on me that: Oh, by the way. There had been this email and I had not responded to it. He presumed that a non-response to be approval and then he travelled. So, I had a discussion with him upon his return and we have discussed all of that.

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

ADV MYBURGH SC: Yes, thank you. I want to then, as I have mentioned, deal with the appointment of Mr Naithani as a director of SAA. This is something dealt with – can I ask you to turn to page 915?

MR GIGABA: [No audible reply]

ADV MYBURGH SC: At paragraph 178:

“Rajesh Gupta claimed that Dr Naithani had strong links with the Congress Party and the government of India.

According to him, Naithani had the potential or capacity to improve SAA’s relations with the government and the people with India.

SAA ran a route from São Paulo to Dubai via Johannesburg.

10 The Johannesburg/Mumbai leg of the route had caused SAA serious losses.

This was attributed partly to challenges with its landing and timeslots in India.

So much so, that its passengers had difficulty connecting to their last destinations when they landed in Mumbai.

SAA, at the time, also needed to attract more customers from India to render the Mumbai route profitable.

20 I received Dr Naithani’s CV on these bases and deposited it with the department...”

Do you know anything about that?

MR GIGABA: I was not aware. Chairperson, I have explained, I think, in paragraph 103 the processes of the appointments of the boards, because I did not get involved.

I think there would be one instance where I asked for certain candidates to be considered. I think it was Ms Tjitji(?) Maponya(?), Professor Zanele(?) Mugathi(?) and two other people. I think – I cannot remember. I think it was for the Board of SAA or so. I cannot remember. But generally, I was not involved in the appointments of the boards. I would be informed when the decision memos – sometimes it would be through the decision memo that would come to through to me from the department or it
10 would be through the department when we prepare for an ATM when we are sitting now looking at the ATM, the proceedings of the ATM and the – if there has to be board changes, then the department would say: Minister, we are proposing. Either it is time for a new board because the term of office of the current board is lapsing by the time of the ATM. Or, they would say to me that we are proposing that we add certain skills that are required on the board in order to lift the board up or we must retire certain people because the board evaluation report is suggesting
20 something else that certain people must be removed because they are not giving attention to the board, or they have a conflict of interest or something like that. So, the issue of Naithani arose in the context of the presentations to me and the people to be considered. The argument in 178 is known to me only to the extent that it deals with the

challenges that SAA was facing on its São Paulo/Johannesburg/Mumbai route. The challenges with the landing slots and the need for us – because at the time, what the department said, was that, recommended was, that we need to find somebody on the board who would assist us to influence the Indian Government to get better landing slots in Indian so that we can assist SAA to make the route profitable.

ADV MYBURGH SC: So, I understand you to then be
10 saying that you did not know anything about Mr Mahlangu’s interaction with Rajesh Gupta in relation to Dr Naithani.

MR GIGABA: I think – I am trying to now – no, I did not know of his interaction with Rajesh in that regard.

ADV MYBURGH SC: Alright. Then at 179:

“Dr Naithani is a scientist.

The challenge I had with that was that his CV did not make it readily apparent that he had links with the Indian Government which could be of use to SAA and address the issue I
20 referred to above facing SAA in India.

It bothered me that his value to SAA was not readily apparent...”

Then at paragraph 180”

“Shortly before Dr Naithani’s CV came before Cabinet, I raised these misgivings separately

with the Minister and Rajesh Gupta.

I asked for proof from Rajesh Gupta to support the claim that Dr Naithani could deliver favourable terms for SAA in India.

That is how I received the emails from Mr Chaula which elaborated on Dr Naithani's ability to serve SAA in India..."

Do you know anything about this?

MR GIGABA: I do not know anything, Chairperson, about... I only became aware of the emails from Mr Chawla when – from the processes of the Commission and the concerns about Dr Naithani, I do not recall if Mr Mahlangu did raise his misgivings to me about Naithani. I do not recall if he had raised those misgivings to me. No, I do not.

CHAIRPERSON: But would you have any reason to think he would say he did raise them with you if he did not?

MR GIGABA: No, I do not have any reason to make any presumptions in this regard.

20 **CHAIRPERSON:** H'm.

MR GIGABA: It may that, Chairperson, should it be – should any inferences be made on my non-recollection of him raising misgivings about Naithani because the people who had been recommended for boards would have had to be vetted. I think for a long time there were several

challenges with regard to the Board of SAA. One, must get in somebody who would assist to influence India. The second was resolving the Johannesburg route and influencing the Chinese Government to give us better slots. The third would have been getting on the board somebody with aviation expertise. And it proved to be really difficult to find people who would fill in those gaps.

CHAIRPERSON: But I see you talk about this factor of somebody who would influence, for example, the Indian
10 Government to assist SAA as if it is a legitimate and valid factor to take into account in deciding whether somebody should be appointed as a member of the SAA Board. I am not sure that I understand why it should be because the impression it gives to me and maybe it is a wrong impression. The impression it gives me to is that you are looking for somebody who would privately influence the Indian Government because if that was not the thinking, if the normal channels would be used and the normal forms of communication would be used, then one would expect
20 that you should not necessarily be looking for that type of person. You should be looking for people who can put a sound argument why SAA should be dealt with in a certain way. Is there anything you can say to help me understand why ...[intervenes]

MR GIGABA: Unfortunately ...[intervenes]

CHAIRPERSON: ...you say: You know, now we have got a CA in the Board of SAA, we have got a senior counsel, we have got an engineer. Now we need somebody who is going to influence the Indian Government. I have some difficulty with understanding whether that is a legitimate factor.

MR GIGABA: Unfortunately, Chairperson, it becomes a legitimate factor, you know. One of the reasons why the SAA Route to Beijing had to be flagged down was because
10 we just simply could not find a way to influence the Chinese Government to give us better landing slots. So, SAA passengers in Beijing would arrive at an inconvenient time for them to be able to connect to other parts of Southeast Asia or other parts of China which meant people preferred not to use SAA and rather use other airlines. And therefore, because SAA could not optimise on the route, they have decided to shut it down. With regard to India. There had been a long engagement between India and South Africa on how to optimise the
20 Mumbai/Johannesburg route because what SAA offered was an additional advantage of connecting to São Paulo. So, when it comes to – or when it came to trying to negotiate better landing slots, you do not only rely on the skills of your negotiators. You also rely on your ability to influence over and above the negotiations. It seems to be

the practise that you needed people of that influence, either serving on your board or being your international advisors in relation to specific or to certain routes and that was the case. If we had found somebody with the requisite skills, we would have made great progress in regard to this, but it turned out that Dr Naithani was not what had been sold to us.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes. Chairperson, I just want to go
10 back to Mr Kona. I do not know if there is a need for me to deal with this with Mr Gigaba.

CHAIRPERSON: That is fine, ja.

ADV MYBURGH SC: But you raised the question of what Mr Mahlangu's version was. I had found the references. Perhaps I could just ...[intervenes]

CHAIRPERSON: Yes, ja.

ADV MYBURGH SC: You will recall that we have put up the whole of Mr Mahlangu's affidavit in advance of the last sitting. That you will find in Bundle 7(a). Whereas, what
20 we are dealing with now are those portions that we were given to Mr Gigaba in the 3.3. process.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Mr Kona at page 916.161 deals with the meeting at the Gupta residence and he deals with that from 916.161 through to 916.165.

CHAIRPERSON: Do we need to go there, or it would be enough if you read it to us?

ADV MYBURGH SC: So, I just really want to ...[intervenes]

CHAIRPERSON: Ja.

ADV MYBURGH SC: ...place those references on record.

CHAIRPERSON: Ja.

ADV MYBURGH SC: And then to confirm ...[intervenes]

CHAIRPERSON: Ja.

10 **ADV MYBURGH SC:** ...that your recollection was correct. He did deny that there was an offer to pay him a hundred thousand or five hundred thousand. And in answer to your question about what ...[intervenes]

CHAIRPERSON: He said was discussed.

ADV MYBURGH SC: ...he said was the subject of the meeting.

CHAIRPERSON: H'm?

ADV MYBURGH SC: He says at paragraph 234 that:

20 "The meeting at the Gupta residence did not involve the Lufthansa Consulting Contract as suggested by Kona..."

At 235:

"Mr Gupta was preoccupied by the desire to increase TNA's subscription..."

So, that is his version.

CHAIRPERSON: Oh, that is his version.

ADV MYBURGH SC: The business was of the day.

CHAIRPERSON: Yes, yes, yes. Well, it – there might be in principle a slight difference or there might not be – there might not be any slight difference. He wanted to, even on Mr Mahlangu’s version, Tony Gupta discussed his proposal or request or suggestion that SAA should increase the business that they were doing with them in terms of TNA, a new age. Okay, alright.

10 **ADV MYBURGH SC:** Yes. So, Mr Gigaba, can I then carry on with paragraph 181 at page 915?

MR GIGABA: [No audible reply]

ADV MYBURGH SC: Mr Mahlangu says:

“I do not remember whether I raised this concern with Rajesh Gupta telephonically or in person.

Insofar as the Minister is concerned, it is likely that I raised the concern with him in person.

20 Accordingly, I do not believe that there are documents or other supportive means which I can place before the Commission as proof of the concerns I held at the time relating to Dr Naithani’s nomination to serve on SAA Board.

I do not have any in my possession...”

Do you have any comment on that?

MR GIGABA: I also doubt if he raised this, Chairperson, with me in person. The issue of the appointments of the boards, as I have explained, would be dealt with through the departmental process. I expected that the departmental process would be robust enough to establish the suitability, the eligibility of people to serve on the board.

CHAIRPERSON: Sorry, Mr Gigaba. It is the second time
10 that there is something that making that sound and disturbing us. Will somebody make sure it does not happen again? Okay, alright. Continue, Mr Gigaba.

MR GIGABA: Thank you, Chairperson. So, I am saying. I expected the departmental processes to be robust enough for them to be able to establish the suitability or eligibility of people to serve on the boards because even if it was a recommendation that came from outside the existing database, that recommendation still had to be subjected to the same process of testing, of vetting and establishing the
20 suitability before a person is then taken forward.

ADV MYBURGH SC: But, as you can see, Mr Mahlangu said that he raised misgivings with you.

MR GIGABA: No, he says he – he says it is likely which then provides the possibility that he also did not raise it with me. He is not sure.

ADV MYBURGH SC: No.

CHAIRPERSON: No, what he is saying. It is likely – is the for in which he raised it. Earlier on he said he raised it with you. Now he is talking about whether he raised it telephonically or in person. What he is saying is, he is not sure which one, whether it was telephonically or in person, but if you read it together with what he said earlier on, that he raised with you, he does not seem to doubt. He just doubts which – in which form he raised it with you.

10 **MR GIGABA:** If he did raise it with me, Chairperson, I had not capability to decide on anybody's suitability. There was an established process in the department through which appointments to boards were being dealt with. I was only the last resort when it came to this process. I was not the person to whom people came in the first resort.

CHAIRPERSON: H'm. But, of course, he was your advisor. Would he not be entitled to advise you whether a particular person was suitable?

20 **MR GIGABA:** We – you know, the advice, as he says in a previous paragraph, if you look at paragraph, I think it is 110 and 111. He says that – I think it is in relation to a concern which had been raised by Ms Mngoma. And he says that the emails reflected – in paragraph 110, the last sentence:

“The emails reflect the nature of the Minister's

interaction with his special advisors on matters of board appointments...”

And he goes further to say:

“The means to accepted or rejected advice as it deemed appropriate.

For instance, the Minister rejected my advice about the removal of Mr Andrew Mthembu as the Chairperson of Infraco.

10 The Minister followed the contrary advice of the DDG and that the staff members in the ministerial office...

Similarly, in 2013, the Minister accepted the advice of other colleagues to make an appointment to the SAA Board over my advice to the contrary...”

Now, Chairperson, the advices that I would receive – if there is a process taking place in the department, you would not come to me and say outside those processes, then I need to make a different determination because if
20 that is the case I might just as well appointed entire boards without the department being involved and only just inform them that at this stage I have appointed the following people into the board of so and so or of this entity or that one. That did not happen. And it does not happen in my understanding even until now. The – even if you come to

me and say: I think this person is suitable. I will listen to you. I may agree or not agree but the process has to go to the department. The name has to go to the department so that it is vetted properly, it is evaluated properly, its skill set is considered in conjunction with the skills matrix that has been established by the department for a board of a particular entity and then a recommendation is made. In the instance that, for example, a recommendation comes to me which contains the name of a person that is unsuitable, 10 the discretion is ultimately the Minister's to say: I approved this collective as being recommended, or I suggest that this person be reconsidered and that one be added, that one be removed, but that too is subject to Cabinet approval because Cabinet reserves the right to accept or reject the recommendations in totality or in part. And Cabinet can very well say to you remove these people, replace them with the following people and this becomes the decision of the Cabinet. Unless Cabinet says that: No, replace the following people. Find other people and 20 check them out if they are suitable and bring the matter back to Cabinet. So, even if this regard – even if somebody comes to me privately in person, the process still is subject to – that recommendation still is subject to the departmental processes which are some more robust than relying on my personal opinion of a person whom I do

not know, even if I knew the person.

ADV MYBURGH SC: But, of course, if this – these misgivings had been raised with you, there would have been nothing stopping you from having a further look at Dr Naithani.

MR GIGABA: If I did that, I would have to do it with every other recommendation that was brought to me with regard to board appointments. My procedural response would be: Raise it in the department with the people who deal with
10 these processes because they are better capable to take a decision on the matter and make a recommendation to me.

ADV MYBURGH SC: But, Mr Gigaba, was this not a bit of a unique situation? Because Mr Naithani had been nominated by Rajesh Gupta.

MR GIGABA: Chairperson ...[intervenes]

ADV MYBURGH SC: Just bear with me for a moment.

MR GIGABA: Yes.

ADV MYBURGH SC: On the face of these documents. Mr Mahlangu then receives the CV and that is given to the
20 department. You are right, the process, no doubt, unfolds but there is – becomes a point where he, actually, himself has misgivings about this. He has misgivings about the nomination, the provision of the CV, and he comes to you and he raises it as in his capacity as your special advisor. Surely, if he had raised those misgivings in that context,

you would have looked to revisit the issue.

MR GIGABA: Chairperson, since the name had not been recommended by me, then Mr Mahlangu should have removed the name from consideration because it was not my responsibility to then go to say remove the name of this person from consideration given the fact that the process was taking place away from me. And he was briefing me about one individual that he had the power to have removed from consideration in his engagements with the
10 department. It is not uncommon that business and business organisations would make – the businesspeople and business organisations would make recommendations. People nominate people to serve on boards. They nominate them. There have been many instances including in the appointment of the Board of SAA in 2017, the appointment of the Board of Eskom in 2018, where business individuals and business organisations actually made recommendations as to who should be appointed. I think then the suitability of those people is considered and
20 then the decision is made in that regard. So, if Mr Mahlangu grave concerns about Dr Naithani, I think he should have removed him from consideration all together. He did not need me because his nomination had not emanated from me.

ADV MYBURGH SC: But if I understand the chronology,

and you must correct me if I am wrong, as I understand
180, he says:

“Shortly before Dr Naithani’s CV came before
Parliament(sic) – or came before Cabinet
...[intervenes]

CHAIRPERSON: Cabinet, ja.

ADV MYBURGH SC: So, was it not at that late stage, in
other words, the process had unfolded, the vetting had
been done, he then had his - . when he raised them with
10 you then, would he have been able to withdraw Dr
Naithani’s name himself at that stage?

MR GIGABA: Chairperson, the department, he should
have gone back to the department to say the memo you
have – I do not know at what point this process was in
terms of submission of the memo, whether the memo had
already gone forward to cabinet because if I must withdraw
a memo to cabinet, if the recommendation was Minister,
either withdraw the memo to cabinet or withdraw the
following name then I would have done so but the process
20 had been taken forward and the people who dealt with this
from the outset are not saying to me that through the DG
that Minister, we recommend that this – that can you
please indicate to cabinet on this particular memo that this
specific name must be expunged for the following reasons
and then we will come back to cabinet with a new name.

Had the DG come to me to say that then that most probably would have happened but the issue of the memoranda to cabinet in the chronology of the process and the hierarchy of the people who are involved in drafting cabinet memos, the special advisers are not there, they only feature insofar as receiving from the department, reading them and providing advice but if a significant decision – because, you know, once a memorandum is submitted to cabinet, to withdraw it, you have to provide 10 reasons and those reasons must not be there are misgivings. The departmental, the people involved with this in the department should have come to me to say Minister, can you please expunge this name and recommend to cabinet that will give you another name.

ADV MYBURGH SC: At paragraph 182:

20 “I had no and have no knowledge that Mr Chawla modified the document elaborating on Mr Naithani’s qualifications and if so, how many times, to what extent he did and why. I furthermore, never had any discussions with Mr Chawla about Dr Naithani. I discussed my concerns directly with each of the minister and Rajesh Gupta. My interaction with Chawla were limited to receiving an email he sent to me on behalf of his principal which contained information that was destined to my principal. I

have no knowledge of the detail of Chawla's involvement in the modification of the document or communication with Naithani. I did not discuss my query with him, I dealt directly with Rajesh Gupta. I would presume that Chawla was tasked by Gupta to send me the information."

Do you want to comment on that? Again there is reference here to a discussion being held with you.

MR GIGABA: I think I have responded to the issue of the
10 discussion.

ADV MYBURGH SC: Alright. At 183:

"One of the reasons for my concern about the absence of the proof of Dr Naithani's ability to deliver for SAA India is that the list of the proposed SAA board was about to serve before cabinet. I was worried that if quizzed on Dr Naithani's credentials the minister might have been able to substantiate his rationale for appointing Naithani. I also needed the comfort that Dr Naithani in fact had
20 the political links in India that he claimed to have had."

What do you say to that?

MR GIGABA: I reiterate, Chairperson, that there is a process that should have been followed and that had that process through the DG come back to me to say Minister,

please expunge this name, then I would have acted accordingly on the guidance of the people involved in this process because inasmuch as special advisers do provide advice on a wide variety of things but I also had to respect the internal processes in the department.

The DG and the people in the department would have been surprised to know that I have gone ahead to withdraw a name from a memorandum that had come through the process without getting a recommendation from
10 them and so that is how this matter continued to serve before cabinet.

ADV MYBURGH SC: So, I mean, what can you remember about Dr Naithani, what caused you to decide to appoint him as a director?

MR GIGABA: It was the recommendation which had been brought to me about him as enunciated in Mahlangu's paragraph 178 with regard to the skills that he was presumed to bring. The skills in this case, not his academic skills but his ability to influence the Indian
20 government to assist us in achieving the objective of getting better landing slots and developing good relations with the Indian government. That was the argument that was brought forward and that was taken to cabinet as the reason. It did turn out later, I think I might be saying this in my memorandum, in my affidavit, it did turn out – yes, I

actually do say it in my affidavit that it did turn out later that Dr Naithani was not what he had been projected to be and that we then began the processes of having him removed. Yes, I think if you look at my affidavit ...[intervenes]

ADV MYBURGH SC: 8.7, ja..

MR GIGABA: 8.7 page 940.

ADV MYBURGH SC: So you say there:

10 “I do not recall Mr Mahlangu discussing his concerns about Dr Naithani or his résumé with me.”

MR GIGABA: Yes.

ADV MYBURGH SC:

“What I do recall is that I was briefed by the department of the board of SAA to a board assessment report that Dr Naithani was not fulfilling his duties as a director SAA including but not limited to not attending board meetings.”

MR GIGABA: Yes.

ADV MYBURGH SC:

20 “I initiated a process of his removal from the board of SAA albeit that the actual removal occurred after I had been appointed as the Minister of Home Affairs.”

MR GIGABA: Yes.

ADV MYBURGH SC: Then if you could go please to page

917.

MR GIGABA: Yes, I am still on 917.

ADV MYBURGH SC: The last paragraph dealing with this.

MR GIGABA: Yes.

ADV MYBURGH SC: 184:

“In the light of these explanations I deny that I worked closely with Mr Chawla...”

Says Mr Mahlangu.

10 “...to ensure that Naithani was appointed to the SAA board. I had no personal interest in the outcome of Dr Naithani’s nomination or application and simply processed his nomination and application in a manner typical of board appointments. As always, his appointment was considered by others and was deliberated over further and as a matter of course the authority and decision-making powers to appoint Dr Naithani so the SAA board lay in the hands of the minister. He decided to appoint Dr Naithani to the SAA board with full knowledge of who had
20 nominated him.”

You confirm that?

MR GIGABA: I deny, Chairperson, that I had full knowledge of who had nominated Dr Naithani. The nominations to the board were done through a process excluding me and it would be brought to me from the

departmental process and so I did not have full knowledge of who had nominated Dr Naithani.

ADV MYBURGH SC: Well, I suppose – perhaps I can ask you the question directly. Did you know that Ranesh Gupta had nominated him?

MR GIGABA: No, I was not aware.

CHAIRPERSON: Did you say earlier on, Mr Gigaba, you or the department – both of you and the department found out later that Dr Naithani actually did not have what you
10 had been made to believe he had that was going to be beneficial to SAA?

MR GIGABA: Yes, Chair, through the résumé that was presented to us and the argument that he would be able to provide this assistance that will be required but when the board assessment was done, it turned out that he did not have this influence. Not only did he not have the influence, he was also not attending board meetings, not participating in board subcommittees and then it meant that he was unsuitable for the board and that is why we
20 initiated the process of his removal.

CHAIRPERSON: You know, I want to ask you a question that has arisen in my mind over the months, over the years that the Commission has been listening to evidence relating to the SOEs.

MR GIGABA: Yes.

CHAIRPERSON: When one looks at the evidence that has been mentioned in the Commissioner of what really happened to a number of SOEs especially Transnet, Eskom, Denel, SAA during certain periods because I do not want to paint everybody with the same brush, during certain periods, when you look at the damage that was done to those SOEs because of irregularities in contracts, because of corruption and so on, you ask the question whether the boards of those SOEs during that relevant time
10 were doing their job properly.

But also you ask yourself the question whether those boards were populated by the rights types of people and that raises the question in the context of Dr Naithani whether the vetting which you say the department would do before people were appointed to the boards was done properly, was done by people who knew what they were looking for or what was going on because in the context of Dr Naithani, the impression I am getting is that his name may have been sent to the cabinet even before the
20 department and yourself satisfied themselves that there was proper proof for what was claimed about him, namely this ability that he was said to have, that he would influence the Indian government to treat SAA in a certain way.

If that was discovered after, one asks the question

why was it not established before he was appointed? Why did not – if somebody asked for proof or was the say-so of somebody in the résumé or in the CV that was sent to the department seen as enough or maybe Mr Tony Gupta's say-so to Mr Mahlangu, whether these things were being checked properly? Are you able to say anything?

MR GIGABA: Yes, Chairperson and perhaps seeing as I might not finish my evidence today...

CHAIRPERSON: Ja.

10 **MR GIGABA**: ...I would like to comment a little bit more extensively on this.

CHAIRPERSON: Okay, that is fair enough, ja.

MR GIGABA: When there would be sufficient time and to allow me to do broader reflection.

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

MR GIGABA: Because it covered a period where I grappled a great deal with these issues from a policy point of view, execution point of view, what gaps I observed in the system some of which we had inherited from a period in
20 time when there was great confusion about the roles, the mandates of SOEs, the ownership model of SOEs, whether they would be privatised or not because all of that considered and the capitalisation of the SOEs, all of it considered, had a massive impact on how they performed at a later stage moving on and then if you look at them

today, you know, the challenges at Eskom, the challenges at SAA ...[intervenes]

CHAIRPERSON: And Denel.

MR GIGABA: Denel. All of these are not just new problems, they have accumulated over time and I think it would behove that those of us who were being practitioners in the said(?) should assist the Commission in terms of some of the strategic view that might need to be considered. You do not have to accept what we
10 recommend.

CHAIRPERSON: Ja.

MR GIGABA: But it is only aid to assist the Chairperson to make some – to consider.

CHAIRPERSON: Ja.

MR GIGABA: Some recommendations which could assist the process moving forward. But it does seem commenting without Chairperson taking away my right which I have requested to comment ...[intervenes]

CHAIRPERSON: Ja, no, no, I am granting the right to
20 later on, when you come back, to deal with it properly.

MR GIGABA: It does seem, Chairperson, that the vetting was not as robust and it was not only in relation to SAA, it is in relation to a number of SOEs ...[intervenes]

CHAIRPERSON: Well, it is, I can just tell you because I was going to mention – maybe I should mention now, that

your successor in the portfolio of Public Enterprises, she was giving evidence here, maybe last month, I cannot remember, and one of the issues that we raised with her was that the person that was appointed as Chairperson of Denel, of the Denel board, after you had left during her time that she appointed was an attorney who had been reinstated as an attorney about three years, two, three years before that but somebody who had been struck off the roll of attorneys a few years earlier and he was not
10 being reinstated as an attorney, he had not been reinstated as an attorney because he won his case on appeal and the evidence that emerged from your successor was indeed that, if I recall correctly, she may have become aware of that fact after the particular person had been appointed as Chairperson of the board and the question that arose is how could the department, if it was doing proper vetting, have failed to establish that this person had been struck off as an attorney even though there had been reinstated?

There must have been so many other people if you
20 wanted an attorney or advocate who had never been struck off for the reasons that had been given, so – and then, of course, I had member of – a former member of the board of SAA who gave evidence here last year and – you smile, so I am not going to mention her name, but it is known, some of the questions I put to her are known.

Of course you also – we all know at SAA Ms Myeni was there for a very long despite the fact that there were lots of concerns and complaints about her leadership or her role and actually, I recently refreshed my memory reading some document which relates to the evidence of the Commission, which suggested that actually during your time as Minister of Public Enterprises certain directors of the SAA board even wrote to you or copied you on a letter that they had written to her complaining about her and on
10 what I was reading, it does not appear that you did anything. But after you had left, your successor seems to have – or rather let me not say your successor but what seems to have happened is that those who had complained against – about her, Ms Myeni, either resigned or were removed and she remained.

So I mention all of these things to support the point you were making that it was not just one SOE where there may have been problems, it was a number of them, so that is what I was mentioning.

20 So one looks at all of these things and says the appointment processes, were they what they should have been? The criteria of people who were being appointed, what were they – were they really the right criteria?

Obviously one must always, as one speaks, remember that it may not be that everybody did not do well

but certainly the evidence that the Commission has had suggested a number of boards or people in boards might not have done their job properly. But you – I will grant you the right, you will deal with it comprehensively when you come back.

MR GIGABA: Thank you, Chairperson, can I ...[intervenes]

CHAIRPERSON: but I know I interrupted you, you want to finish.

MR GIGABA: Thank you very much, Chairperson.

10 **CHAIRPERSON**: Ja.

MR GIGABA: I am aware that...

CHAIRPERSON: Oh yes, in terms of time.

MR GIGABA: I would like, Chairperson, with your permission perhaps when we come back again.

CHAIRPERSON: Ja.

MR GIGABA: That I pick up on this one.

CHAIRPERSON: Okay, okay.

ADV MYBURGH SC: Sure.

CHAIRPERSON: No, that is fine, that is fine.

20 **MR GIGABA**: Just the – Chair, with your permission, I think we should not close today on the note that the boards were predominantly – or were predominantly not doing their work because there was many very good professionals who did the best.

CHAIRPERSON: Ja.

MR GIGABA: Because I think we should not cast aspersions on people, it affects their careers and their professions.

CHAIRPERSON: No, no, that is why I said I do not want to paint everybody with the same brush because there may have been people who did good jobs but in the boards of the SOEs that we have talked about, not talking about others, these ones, during the times that we are talking about, it may be that it is the majority which had a problem
10 because if the majority were doing the right job then – because the majority – decisions are made by the majority then that would have happened. Certain things would have happened.

It may well be that it is minority of people that were up to the job. It may be, I am not saying it is, I am saying it may be but when you come back feel free to deal with issue comprehensively and if you have ideas or if you are able to say there were witnesses and are you able to say here are the areas where there were witnesses and you
20 have suggestions of what should be done, feel free to do that because it is quite important.

Okay, alright, I think because of the time we have to stop here, Mr Myburgh, is that so?

ADV MYBURGH SC: Yes, that is correct, Chairperson.

CHAIRPERSON: Because Mr Solomon is not able to be

with us beyond this time. Mr Solomon, are you still there?

ADV SOLOMON SC: I am indeed, Chair.

CHAIRPERSON: We have to stop now because of your situation. When I say that, I do not want to feel guilty. Do not feel guilty because I say that but we need to talk about when we are going to continue and finish. We were hoping to finish today, it has not happened. How much time do we need? What is your assessment, Mr Myburgh?

ADV MYBURGH SC: I think we are going to need quite a
10 lot of time still, Chairperson.

CHAIRPERSON: Quite a lot of time still.

ADV MYBURGH SC: I think that insofar as the cross-cutting examination is concerned, there are 15 witnesses. We have dealt with one, Mr Matangu(?). Of course he was a longer and perhaps more material witness.

CHAIRPERSON: Ja, ja.

ADV MYBURGH SC: But certainly if we are going to need to deal with the rest of them and Mr Gigaba must obviously be afforded the opportunity to present ...[intervenes]

20 **CHAIRPERSON:** Ja, his side.

ADV MYBURGH SC: Whatever he wants.

CHAIRPERSON: Ja.

ADV MYBURGH SC: I would think we would need at least a day.

CHAIRPERSON: At least a day. We might have to not

look for a day when we will start in the morning.

ADV MYBURGH SC: Yes.

CHAIRPERSON: We might have to take evenings.

ADV MYBURGH SC: Certainly.

CHAIRPERSON: Maybe two evenings. I suspect that if we talk about time next week or evenings from your side there is no problem?

ADV MYBURGH SC: Certainly not from mine. I do have occasion to look at your calendar.

10 **CHAIRPERSON:** Yes, well I am happy you did because I do not have it in front of me.

ADV MYBURGH SC: From what I can see, Chairperson is booked up for the whole of the week. I mean the one thing that we do have is on Monday morning...

CHAIRPERSON: Ja.

ADV MYBURGH SC: What is scheduled is Ms Mngoma's cross-examination.

CHAIRPERSON: Oh, yes, yes.

ADV MYBURGH SC: So I suppose one could consider
20 carrying on with Mr Gigaba instead of dealing with her.

CHAIRPERSON: Ja, yes.

ADV MYBURGH SC: But I think it is six of one and half a dozen of the other because we would not finish him in the morning.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And I suppose one can deal now with Ms Mngoma because we have completed our examination of Mr Gigaba on that.

CHAIRPERSON: Yes. Mr Solomon, how is your situation next week generally speaking?

ADV SOLOMON SC: Chair, we had set aside Monday for the cross-examination of Ms Mngoma.

CHAIRPERSON: Yes.

ADV SOLOMON SC: It may be better to try and finish with
10 ...[intervenes]

CHAIRPERSON: Mr Gigaba.

ADV SOLOMON SC: Mr Gigaba on Monday and use that time.

CHAIRPERSON: Ja.

ADV SOLOMON SC: And then I had made myself available on Wednesday to cross-examine essentially two witnesses, Ms Coetzee and Ms Mzimela.

CHAIRPERSON: Mzimela, ja. Are you going to need to cross-examine them?

20 **ADV SOLOMON SC:** Yes, I think certainly Ms Mzimela. Ms Coetzee it seems is a very narrow issue and that is probably not necessary but we could keep in touch with Mr Myburgh and let him ...[intervenes]

CHAIRPERSON: And let him know.

ADV SOLOMON SC: And let the Commission know

through him.

CHAIRPERSON: Ja, ja. Okay, on Monday, on my schedule, Mr Myburgh, for the day session, apart from Ms Mngoma who did you have?

ADV MYBURGH SC: It is the whole – well...

CHAIRPERSON: Whole day?

ADV MYBURGH SC: It is the morning session until lunch is Ms Mngoma.

CHAIRPERSON: Oh.

10 **ADV MYBURGH SC:** Then I see that you filled – if my memory serves me correctly, I think Mr Seleka and Eskom.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But may I just mention that Ms Coetzee and Mzimela, Ms Mzimela has apparently contracted Covid, unfortunately.

CHAIRPERSON: Oh.

ADV MYBURGH SC: So I think it is probably unlikely that she would be able to be cross-examined on Wednesday.

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** So may be – Chairperson, that we could work out something because if we could use the Wednesday slot.

CHAIRPERSON: Ja.

ADV MYBURGH SC: To continue with Mr Gigaba's evidence that would probably make sense.

CHAIRPERSON: Yes, ja.

ADV MYBURGH SC: And I do not know if you want him to continue also on Monday morning instead of Ms Mngoma because then we could have two bits.

CHAIRPERSON: Ja, no, no, I think it would be better to continue with Mr Gigaba on Monday.

ADV MYBURGH SC: Yes.

CHAIRPERSON: And try and finish with him. Mr Solomon, are Saturdays out of the question for you for
10 religious reasons?

ADV SOLOMON SC: That is correct, Chair.

CHAIRPERSON: Oh, okay, alright.

ADV SOLOMON SC: Monday does commend itself to me to continue with Mr Gigaba.

CHAIRPERSON: Yes, I think if you could handle this with Ms Mngoma, Mr Myburgh.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Let us continue with Mr Gigaba on Monday.

20 **ADV MYBURGH SC:** Until lunchtime.

CHAIRPERSON: At least until lunchtime. It is just that I do not remember who is supposed to come up on Monday afternoon and evening.

ADV MYBURGH SC: So it is – we are in the morning and then at two o'clock it is Masango with Mr Seleka

CHAIRPERSON: Ja.

ADV MYBURGH SC: And then at three o'clock it is Govender, also Mr Seleka and then the evening is full too.

CHAIRPERSON: Is it Govender?

ADV MYBURGH SC: Govender is the three o'clock witness, yes.

CHAIRPERSON: Oh, okay. Masango will be very short. And in the evening?

ADV MYBURGH SC: The evening you have a whole lot of
10 witnesses with the evidence leader being Mr Hulley.

CHAIRPERSON: Oh, is that Mr Mabuyakhulu? Ms Ngubane?

ADV MYBURGH SC: Mzila, Ngubane.

CHAIRPERSON: Okay. I think let us start – let us do Monday. You know, if everybody agrees, in order to try and maximise the chance of either finishing with Mr Gigaba, I am just thinking whether we could start quite early on Monday. I am even thinking now of half past eight.

20 **ADV MYBURGH SC:** That would be fine, certainly from our side. Perhaps one other suggestion. I think what Mr Gigaba has to say about the board nominations and the like is important, I do not know if you would have a – maybe another option is for him to put something in writing, I mean clearly that is valuable insight.

CHAIRPERSON: Yes, yes, yes.

ADV MYBURGH SC: If that takes an hour or two then we are never going to get anywhere near being able to finish.

CHAIRPERSON: Yes. Ja, no, no, that could work. So maybe what we – and it would give him more time.

ADV MYBURGH SC: Yes and he could deliver it later.

CHAIRPERSON: Maybe the answer that you wanted to do comprehensively, maybe you could put that in writing so that we then continue and if we do not finish on
10 Wednesday with you despite starting early, then we could look at the possibility of using Wednesday. Obviously we will have to try and find time somewhere for Ms Mngoma.

ADV MYBURGH SC: And also we have Mr Benjamin, you will remember.

CHAIRPERSON: Yes, yes.

ADV MYBURGH SC: But he can be a floating witness, I think.

CHAIRPERSON: Ja, ja. No, he will be easy. Okay, let us leave it like – let us continue. Is half past eight fine with
20 you in the morning? It would be fine with you. Mr Solomon, is half past eight on Monday fine?

ADV SOLOMON SC: That is in order, Chair.

CHAIRPERSON: that is in order. Okay, alright, let us continue on Monday, let us start at half past eight in the morning.

ADV MYBURGH SC: Thank you, Chair.

CHAIRPERSON: And then we continue, ja. Okay, alright. Thank you very much to everybody, we will adjourn then for today. There is no evening session. We adjourn.

INQUIRY ADJOURNS TO 21 JUNE 2021