

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

22 JUNE 2021

DAY 414



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

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 22 JUNE 2021

CHAIRPERSON: Good morning Mr Chaskalson, good morning everybody.

ADV CHASKALSON SC: Good morning Chairperson.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: I – oh we have Mr Holden remotely.

CHAIRPERSON: Good morning Mr Holden.

MR HOLDEN: Good morning Chair.

10 **CHAIRPERSON:** Good. Thank you for availing yourself once again.

MR HOLDEN: Thank you Chair.

ADV CHASKALSON SC: Thank you Chair. Might it be...

CHAIRPERSON: I had forgotten that I said nine o'clock. So thank you for the reminder.

ADV CHASKALSON SC: Chair for somebody who had forgotten that it was nine o'clock you got an extraordinarily clear.

20 **CHAIRPERSON:** Well I did so without breakfast. But it is okay.

ADV CHASKALSON SC: Ja thank you Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Chair there are a few matters of housekeeping that we need to begin with. The first relates to the attenuated Rule 3.3 process that we had the first time

Mr Holden testified. Since he testified several persons who received Rule 3.3's have furnished statements or affidavits or in some cases letters in response to the Rule 3.3's and Chair we would submit that in – in fairness to those – those people all of their responses where they engage substantively in any way with the contents of Mr Holden's testimony ought really to be admitted as exhibits and then when Mr Holden's statement and report are made public they can be made public at the same time as the responses

10 and Chair we have somewhat presumptuously included all of those Rule 3.3's responses in a new Bundle FOF20 and I am not sure if you – you have the new bundle.

CHAIRPERSON: I see my Registrar nods so she – she must be having it. Would you like her to give it to me now?

ADV CHASKALSON SC: Please – please Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: So that I might (inaudible).

CHAIRPERSON: Is it the one that I have? Oh she says this is the one that is in front of me.

20 **ADV CHASKALSON SC:** Chair the first of those responses comes from Dentons attorneys and you will find it at page 80 of the bundle. And there is essentially from pages 80 on to page 88 and beyond there is a sequence of responses.

The first is a letter from Dentons essentially saying that they – they confirm the contents of their materials and

statements that they have made to the commission that in fact are attached as annexures to Mr Holden's report.

Then at page 82 there is an affidavit – there is a letter from the attorney of Mr Rafiek Bagus attaching an affidavit of Mr Bagus that...

CHAIRPERSON: I think that the people who do the pagination must just enlarge the page numbers starting from page 82 because unlike the other pages they are in very small fine print until I think – oh it is just maybe only this letter until – until what would be page 87. Okay maybe it is just this letter alone that has got fine print on my bundle.

ADV CHASKALSON SC: Oh.

CHAIRPERSON: On my bundle. So when you say page 81 or 82 I – and I look I do not see anything until I come quite close to the page I see that it is paginated but in very small print. It looks like only that letter the rest seem to be fine.

ADV CHASKALSON SC: I will – good Chair. At the back of that letter behind that letter what is still a small paginated 84 there is an affidavit from Mr Bagus.

20 **CHAIRPERSON:** Let me see – at the – Yes I can see that – that is page 88 that is paginated as page 88. Oh that is the letter. But it is written re affidavit of Mr Rafiek Bagus 6 June 2021 but I think it is an email and there is a series of emails I think after that until there is a statement at page 94. I do not know – ja.

ADV CHASKALSON SC: So there is – so that goes onto page 87. At 88 there is then a response from Dentons that affidavit.

At page 91 which I think is a little larger on mine there is a letter from Mr Duarte.

CHAIRPERSON: Yes I can see that and on – on that page the pagination is normal.

ADV CHASKALSON SC: Yes Chair. Then at 92 there comes a – a letter from the attorneys of Combined Private
10 Investigations followed by a statement from their client and that runs all the way through to page 100.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Oh sorry Chair I think 107 with annexures.

CHAIRPERSON: I think the statement goes up to page 105 and then it is annexures after that.

ADV CHASKALSON SC: At...

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And then Chair at 108 there is an
20 exchange of correspondence between the attorneys for Nkonki and the commission.

CHAIRPERSON: And that is from what page?

ADV CHASKALSON SC: 108.

CHAIRPERSON: 108 okay.

ADV CHASKALSON SC: Through to 113. At the end of – at

the end of that exchange Nkonki elect not to go into the merits of any – of the allegations.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: At paragraph 114 there is...

CHAIRPERSON: Page 114.

ADV CHASKALSON SC: Sorry page 114 Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: There is an affidavit from Thabisa Faye.

10 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: On behalf of Pygma Consulting.

Now Pygma Consulting was one of the parties that had objected to the short notice last time and were not mentioned. There is – Ms Faye has now put up this affidavit and Ms Holden – sorry Mr Holden can in due course say what he has to say about it but I understand from him that having read this affidavit he accepts that it is possible – he stands by the submission that the relevant payments are also tainted by state capture but he accepts
20 that it is possible that Pygma was a victim of that process as opposed to a party to that process.

But he can – he can briefly speak to that in due course.

CHAIRPERSON: Yes okay.

ADV CHASKALSON SC: Then the last of these affidavits

that relate to – to the Rule 3.3 processes is an affidavit on behalf of Tsebo which is another party that one attending the Free State. That affidavit appears at page 235 Chair.

Then – so Chair I would ask that all of those affidavits and correspondence.

CHAIRPERSON: I am sorry – I am sorry Mr Chaskalson. Did you say a certain affidavit appears at 235?

ADV CHASKALSON SC: 255 Chair.

CHAIRPERSON: 255.

10 **ADV CHASKALSON SC:** It is the affidavit of Mr Radebe.

CHAIRPERSON: Oh yes okay I have got it.

ADV CHASKALSON SC: I would ask that all of those affidavits and – that this bundle that runs from page 80 all the way – I should just see where the end of Tsebo affidavit is because I do not have a note. I will come back to you or can we say now to the end of Tsebo affidavit and annexures.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Which is at page 285 that that
20 be admitted as an Exhibit VV10B.

CHAIRPERSON: Now you said starting from page 80 is that right?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Let us see. Some of these are separate and loose emails and letters and so on, is that right?

ADV CHASKALSON SC: That is...

CHAIRPERSON: That are not attached to any affidavit.

ADV CHASKALSON SC: That is correct Chair. Yes.

CHAIRPERSON: And then some are affidavits, others are just statements.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: And they are from different people.

ADV CHASKALSON SC: Yes. Would it make sense to break them up into ..

10 **CHAIRPERSON:** I would prefer that we – I think affidavits are few – two or three is that right?

ADV CHASKALSON SC: There are – there are three affidavits that is correct Chair.

CHAIRPERSON: Yes. I would prefer that we break them up if we can which we can do either immediately or as and when you get to referring to them.

ADV CHASKALSON SC: I have the page references in front of me so why do we not do it immediately Chair.

CHAIRPERSON: Okay. Yes okay let us do that.

20 **ADV CHASKALSON SC:** Then the first letter from Dentons appearing at page 80.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Would be VV10B.1.

CHAIRPERSON: VV10B.1

ADV CHASKALSON SC: The affidavit of Mr Bagus – the

letter – the letter from Mr Bagus' attorney with his affidavit at page 82 will be VV10B.2.

CHAIRPERSON: That is the letter at 82 – why do we not do the letter separately from the affidavit? I think let us do it that way.

ADV CHASKALSON SC: Certainly Chair. Then the letter will be 2 that is at 82 and the affidavit at 84 will be 3.

CHAIRPERSON: Okay so the letter at 82 is Exhibit VV10B.2 and that goes up to 83 and then the affidavit would
10 be Exhibit VV10B.3. Is that right?

ADV CHASKALSON SC: 3 that is correct Chair and it runs to page – from 84 to 87.

CHAIRPERSON: Okay. That is Exhibit VV10B.3.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Okay that is the affidavit.

ADV CHASKALSON SC: Then the response to that affidavit from Dentons runs – is VV10B.4 and that runs from page 88. The response of Mr Duarte ...

CHAIRPERSON: Oh okay I am sorry. This one is Exhibit
20 VV10B.4 that is the letter at page 88, is that right?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Right.

ADV CHASKALSON SC: Then there is a – a letter from Mr Duarte which is VV10B.5 and it is at page 91.

CHAIRPERSON: That will be Exhibit VV10B.5.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: That is the letter at 91 yes.

ADV CHASKALSON SC: And there is a letter from the attorneys of Combined Private Investigations at 92 that can be VV10B.6 and the affidavit – oh it is a statement not an affidavit Chair.

CHAIRPERSON: Yes it is a statement ja. The letter at page 92 will be Exhibit 10 – Exhibit VV10B.6.

ADV CHASKALSON SC: And – and then the statement at
10 page 94 will be 10. – VV10B.7 that is the statement from page 94.

CHAIRPERSON: Yes the – whose statement is this one again?

ADV CHASKALSON SC: I think it is Mr Roy – let me just – check. It is...

CHAIRPERSON: Just trying to check. Ja it is Mr Robertson.

ADV CHASKALSON SC: Roy Robertson.

CHAIRPERSON: Ja. Mr – the statement of Mr Robertson
20 that starts at page 94 will be Exhibit VV10B.7.

ADV CHASKALSON SC: And it runs with annexures all the way through to page 107.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: At page 108 is a letter from the attorneys of Nkonki Kirshen Naidoo and Company and that

will be VV10B.8.

CHAIRPERSON: The letter starting at page 108 will be Exhibit VV10B.8.

ADV CHASKALSON SC: There is a follow up letter at page 110 which can be VV10B.9.

CHAIRPERSON: The letter that starts at page 110 will be Exhibit VV10B.9.

ADV CHASKALSON SC: There is then a letter from the Commission at VV10B – sorry page – at 111 which can be
10 VV10B.10.

CHAIRPERSON: The letter from the Commission starting at page 111 will be Exhibit VV10B.10.

ADV CHASKALSON SC: And then at page 113 there is a further letter from Mr Kirshen Naidoo Incorporated – if that can be VV10B.11.

CHAIRPERSON: The letter at page 113 will be Exhibit VV10B.11.

ADV CHASKALSON SC: Then there is the affidavit of Ms Faye for Pygma Consulting at page 114 that can be
20 VV10B.12.

CHAIRPERSON: Just a – one second. Yes the affidavit at page 114 that is of Thabisa Faye will be admitted as Exhibit VV10B.12.

ADV CHASKALSON SC: Then Chair as I look at page 253 in fact it is a notice of motion for application on behalf of –

of Tsebo with the attached affidavit in support thereof and –
 and what the affidavit – what the relief sought by Tsebo is
 first condonation for the late filing of the application.
 Second leave to give evidence on affidavit. The third is to
 request the subpoena duces tecum of all relevant
 documents to be identified. And the fourth is that other
 relief is the person as the Chairperson may grant. Chair I
 am not aware of anyone from Tsebo present today but for
 present purposes can I suggest that we – we provisionally
 10 grant prayers 1 and 2 of that application because we – once
 the affidavit is admitted as – in evidence that might suffice
 Tsebo's purposes and if Tsebo at a later stage comes to
 move the application for further relief we can deal with it
 then.

CHAIRPERSON: This is an application – oh it is for – this
 is an application which must still be decided but Prayer 2
 should not be a problem. I do not know about Prayer 3.
 You obviously have had a chance to read it. For purposes
 of today your only interest or our only interest would be the
 20 affidavit I would imagine.

ADV CHASKALSON SC: Yes I just want the affidavit to be
 put on record.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Because...

CHAIRPERSON: Ja you want to raise – put certain matters

to Mr Holden.

ADV CHASKALSON SC: I do not need to put – I am not – I do not intend to put...

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Matters to Mr Holden in relation this affidavit in particular.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But I just in fairness to Tsebo and the other Rule 3.3 parties.

10 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: If Mr Holden's report goes public after today's testimony their responses should go public at the same time.

CHAIRPERSON: Ja that may be a separate issue that – what I am looking at is whether it should be in this file and maybe it should not be if you are not going to really need it for purposes of leading Mr Holden's evidence.

ADV CHASKALSON SC: I – I think Mr Holden will – he will respond generically to ...

20 **CHAIRPERSON:** To some of the matters.

ADV CHASKALSON SC: To all of these.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: To all of these Rule 3.3 responses.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But not in any detail at all.

CHAIRPERSON: Yes. And – and for that purpose we only need Mr Radebe's affidavit.

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Is that right? We just happen to have the – the notice of motion. I would like to – I would like an arrangement in terms of which his application is processed in the normal way but we have what we need here.

ADV CHASKALSON SC: Yes.

10 **CHAIRPERSON:** To the affidavit.

ADV CHASKALSON SC: Chair should we then just admit the affidavit.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: From page 255.

CHAIRPERSON: Without the notice of motion.

ADV CHASKALSON SC: Indeed Chair.

CHAIRPERSON: Ja so – so we will – I think what can be done is just to put a blank page before the affidavit to say pages 174 and 175 related to a notice of motion which was
20 taken out or something like that. Okay so – his affidavit – Mr Radebe's affidavit is from page 255 to 267. So that will be Exhibit VV10B number what.

ADV CHASKALSON SC: 13 Chair.

CHAIRPERSON: 13. Okay. The affidavit of Mr Michael Radebe which starts at page 255 will be admitted and

marked as Exhibit VV10B.13. Ja. Yes Mr Chaskalson.

ADV CHASKALSON SC: Then Chair I have just been notified that there is a further Rule 3.3 issue which is that Ms Matselo has been contacted on – I am not sure if it is on email or on the phone – telephonically from attorneys for T-Systems who were one of the implicated parties who objected last time it is Mr Purchase from Bowman Gilfillan. Now they have had more than two weeks to respond to the last Rule 3.3 Notice and have not done so. There is an
10 added wrinkle in that there is in Mr Holden's supplementary testimony new evidence about T-Systems to which they were only alerted I think on Friday. But what we have is a telephonic objection to the evidence. My submission is that there is no basis to object to the evidence that was in the original report and that has now been in their possession for close to a month and in response to which we have received nothing. If Mr Purchase or T-Systems and another representative of T-Systems is going to come today maybe we can hear them on that. I am in a awkward situation
20 Chair because I – it is important to canvass that evidence. It is very significant evidence.

CHAIRPERSON: Well I think that somebody can tell them that if they leave things as they are they run the risk that we will proceed – they will proceed and include that evidence. If they want something different then they should

be here before lunch or something so that they can say what they need to say and then we can take it from there or a ruling can be made but they cannot just leave it at just phoning. What is your attitude to that?

ADV CHASKALSON SC: Chair it is a difficult situation because part of what I intend to canvass with Mr Holden this morning which was the second housekeeping issue is that – and I suppose we can move it around.

CHAIRPERSON: Oh unless – unless I adjourn and you talk
10 to them for five minutes or something.

ADV CHASKALSON SC: Chair I would rather not waste time – lose the time because we are so pressed for time.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Can I propose this Chair?

CHAIRPERSON: Yes.

ADV CHASKALSON SC: That I will change the structure of the evidence from what I was going to do.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: I will ask Ms Masilo to contact Ms
20 – Mr Purchase and

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And if we have not – if an application is not made by lunchtime in the afternoon I will canvass what I had intended to canvass this morning.

CHAIRPERSON: Ja. Ja. That is fine.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Ja. Okay.

ADV CHASKALSON SC: Then Chair there – there is a last...

CHAIRPERSON: I am sorry – I am sorry – I am sorry Mr Chaskalson. Just technically I am – I confirm that the correspondence and statements and affidavits that we allocated Exhibit numbers earlier on are all admitted.

ADV CHASKALSON SC: Thank you Chair.

10 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: Chair there is a – a further matter of housekeeping which is quite a significant issue and which – which may affect – which I do need to address now even though for the most part it is going to be shelved until lunchtime and Chair what has happened since Mr Holden first testified is that a range of people have come forward with further information. Some discrepancies in his – or some oversights in his figures have been picked up by parties and further information has been made available to
20 him so those who now change slightly on the strength of the new information and what we have done is. We had prepared replacement pages which incorporates the new information. Now I am not going to canvas the new information with Mr Holden because some of it relates to T-Systems, but I would ask if we can just get your consent,

Chair, to have those replacement pages put into your file so that the tables in your file will now reflect the correct numbers and then after lunch, we can ask Mr Holden to address those changes and maybe if we can just check that all is done satisfactorily at teatime.

CHAIRPERSON: Ja. Okay, that can be done.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Then just very briefly before we
10 – we leave the Rule 3.3's. I wonder if Mr Holden could be sworn in so that we could just very briefly deal with his response to the Rule 3.3. responses.

CHAIRPERSON: Yes. Please administer the oath or affirmation, Registrar.

REGISTRAR: Please state your full names for the record?

WITNESS: Paul Edward Holden.

REGISTRAR: Do you have any objection to make a prescribed affirmation?

WITNESS: I do not.

20 **REGISTRAR**: Do you affirm that the evidence you will give, will be the truth, the whole truth and nothing else but the truth? If so, please raise up your right hand and say, I truly affirm.

WITNESS: I truly affirm.

PAUL EDWARD: (affirmed)

CHAIRPERSON: Thank you.

EXAMINATION BY ADV CHASKALSON SC: Thank you, Chair. Mr Holden, can we briefly address the Rule 3.3. responses which have now been admitted as exhibits?

MR HOLDEN: [No audible reply]

ADV CHASKALSON SC: I should place on record that no one is sought to cross-examine you or to give oral evidence themselves but in that context, do you have any response that you want to put on record in relation to those
10 various letters, statements, and affidavits that you have seen?

MR HOLDEN: Certainly, Chair. I think my generic and general response is that the additional statements and letters are well received. On reflection, I do not think that any of the evidence that has been presented to me would make me change my mind in determining that these are contracts tainted by state capture, by which I mean, that some aspects of the contracts involve either individual associated with state capture, or the funds ultimately
20 flowed to the benefits to what I call the Gupta Enterprise.

Certainly, there are objections that are made to very specific elements of my evidence but which I do not think undermine the general thrust of my findings. The only exception and nuance are at that is in relation to Pygma(?) Consulting which my evidence leader

traversed(?)slightly earlier.

On reading Pygma's very detailed affidavit, I am still of the opinion that the contract is tainted by state capture in that Mr Ashok Narayan was intimately involved in the contract and the portion of the funds were ultimately paid to a company that appears to be under the control of the Gupta Enterprise, just in the management.

That said. It does not appear from the evidence that Fortime Consulting aware of this stuff or were aware
10 that this was a contract tainted by state capture and it appears that – in good faith.

ADV CHASKALSON SC: There is one further issue that I wanted to just raise with you in response to – in response to these Rule 3.3's. There is, what I think a typo that was picked on by the affidavit of Mr Radebe Potsebo(?)
[00:04:38]. I have no lost my reference, but there is a point in your report where you refer to 85% of the payments from the state to Tshebo(?) going onto Inova(?). You say just over 85%. I am afraid I have lost my
20 reference. Mr Radebe points out that it was just over 75%. Do you take issue with that?

MR HOLDEN: No, I think that is correct.

ADV CHASKALSON SC: Thank you. Then beyond that, is there anything further that you want to say to these responses to the Rule 3.3's?

MR HOLDEN: Certainly, Chair. Obviously, I am not going to respond in further detail here, but I will be very happy to furnish the Commission, if it is required, with further written responses to the affidavits and the letters that have been sent, and it can obviously be shared with the affected parties that needs be, as well.

ADV CHASKALSON SC: Thank you, Mr Holden. Then I would – we are going to the part from the structure of your evidence as originally planned, and we are now going to
10 move to the money laundry of the proceeds of the state capture tainted contracts that we have discussed last time you testified, and just to refresh – I mean, it has been over a month since you last testified.

Your testimony last time dealt with, essentially, three different broad topics. The first was contracts that were tainted by state capture and the aggregate amount paid by the state in that regard. The second was the aggregate amount by which the Gupta Enterprise benefited through those contracts.

20 And the third and last topic that we touched on last time was what you called First Level Laundry entities and we have discussed – and you dealt in some detail with the aggregate amounts that was paid by contractors with the state to what you call First Level Laundry entities. Can you briefly just refresh the Chair's memory on what the

First Level Laundry entities are and what they do?

MR HOLDEN: Certainly, Chair. Over a period of a number of years, the Gupta Enterprise made use of vehicles that received payments from contracts to the state in contract tainted by state capture. The contracts to the state would make multiple and many payments to these First Level Laundry that were designated by the Gupta Enterprise.

Once these payments were received by these first level organs they were the first aggregating part of a much
10 broader and more complex laundry scheme. From these First Level Laundry entities, they are then set out into a – or paid out, rather, into a much more complex and detailed local laundromat which then connect into a vast and quite extended international laundromat as well.

And so, the first level laundries are effectively the vehicles to which the Gupta Enterprise was first paid and through which of the funds through multiple different local and international laundromats.

ADV CHASKALSON SC: And when you use the term
20 laundromat, what are you referring to?

MR HOLDEN: Certainly, Chair. A laundromat – what I mean by laundromat is a system of connected entities which receive funds from the Gupta Enterprise by the first level laundries – First Level Laundry vehicles and then effectively wash those funds or laundered those funds by

various means by passing it to multiple different related accounts until such time as it exit at the final destination.

ADV CHASKALSON SC: What we are going to deal with now is your evidence in relation to the full domestic money laundry networks and before we get there, I would just like to flag in your statement the – in your report the relevant sections that we are going to be addressing because we are not going to have time to go into the detail, but for the Chair's benefit, I would like to give the cross references.

10 Chair, I will ask you to take down these cross references for later reference. It is incredibly detailed and complicated testimony that Mr Holden has provided in his report and which we simply do not have the time to do justice to in this hearing.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: In relation to the local laundry network. Mr Holden first introduces the topic at Bundle 9 page 229 to page 231.

CHAIRPERSON: Bundle 9?

20 **ADV CHASKALSON SC:** 229 to 231.

CHAIRPERSON: Page 229 to 231.

ADV CHASKALSON SC: And it is paragraphs 310 to 322.

CHAIRPERSON: Paragraphs 310 to 322. Okay?

ADV CHASKALSON SC: The first network that he identifies is one that he calls the Chivita Network, C-h-i-v-

i-t-a. He deals with that from pages 232. It is all in Bundle 9, Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: 232 to page 241.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: At paragraphs 323 to 341.

CHAIRPERSON: Paragraphs 323 to 341?

ADV CHASKALSON SC: That is correct, Chair.

CHAIRPERSON: Okay.

- 10 **ADV CHASKALSON SC:** And you will recall, Chair, there was an executive summary that Mr Holden prepared. That is now being placed in Bundle 20, Chair, and the same topics are addressed at page 47 to 48 of Bundle 20 in the Executive Summary, paragraphs 52 to 55.

CHAIRPERSON: Executive Summary is in Bundle 20 and page?

ADV CHASKALSON SC: 47 to 48.

CHAIRPERSON: H'm?

ADV CHASKALSON SC: Paragraphs 52 to 55.

- 20 **CHAIRPERSON:** Thank you.

ADV CHASKALSON SC: The second money laundry network he identifies, he calls it the Homix Network. That is addressed at Bundle 9, pages 241 to 259.

CHAIRPERSON: Okay. For some reason, I am slower.

ADV CHASKALSON SC: [laughs] Sorry.

CHAIRPERSON: The second money laundry network, what...?

ADV CHASKALSON SC: He calls the Homix, h-om-i-x.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Network.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: That is addressed at page 241.

CHAIRPERSON: Page 241.

ADV CHASKALSON SC: To 259.

10 **CHAIRPERSON:** To 259.

ADV CHASKALSON SC: At paragraphs 342 to 385.

CHAIRPERSON: 342 to three hundred and...?

ADV CHASKALSON SC: Eight, five.

CHAIRPERSON: Eighty, five. Okay?

ADV CHASKALSON SC: And that is in Bundle 9.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Then there is a summarised treatment of it in Bundle 20.

CHAIRPERSON: Yes?

20 **ADV CHASKALSON SC:** At pages 48 to 50.

CHAIRPERSON: Pages 48 to 50.

ADV CHASKALSON SC: Paragraphs 56 to 65.

CHAIRPERSON: Paragraphs 56 to 65. Yes?

ADV CHASKALSON SC: The third network that he identifies, he calls the Forsure, f-o-r-s-u-r-e.

CHAIRPERSON: F-o-r-s-u-r-e.

ADV CHASKALSON SC: H-a-s-t-a-u-f. Hastauf.

CHAIRPERSON: H-a-s...?

ADV CHASKALSON SC: T-a-u-f.

CHAIRPERSON: T-a-u-m.

ADV CHASKALSON SC: F for Freddie.

CHAIRPERSON: Ja. So, it is Forsure Hastauf?

ADV CHASKALSON SC: Indeed, Chair.

CHAIRPERSON: Ja.

10 **ADV CHASKALSON SC:** In Bundle 9, that is addressed at
pages 260 to 266.

CHAIRPERSON: Yes?

ADV CHASKALSON SC: And it is paragraphs 386...

CHAIRPERSON: 386...

ADV CHASKALSON SC: ...to 400.

CHAIRPERSON: Okay?

ADV CHASKALSON SC: And the summarised treatment of
it in Bundle 20 is at pages 50 and 51.

CHAIRPERSON: Yes?

20 **ADV CHASKALSON SC:** At paragraphs 66 to 70.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And the fourth network he
identifies is sufficiently complicated for him to call it the
Spider's Web.

CHAIRPERSON: [laughs] Spider's Web. Yes?

ADV CHASKALSON SC: And that is dealt with in Bundle 9 at pages 266...

CHAIRPERSON: 266...

ADV CHASKALSON SC: ...338.

CHAIRPERSON: I am sorry?

ADV CHASKALSON SC: 338. It is almost – it is more than 70 pages.

CHAIRPERSON: Oh, 338?

ADV CHASKALSON SC: Indeed, Chair.

10 **CHAIRPERSON:** Okay.

ADV CHASKALSON SC: And it is paragraphs 401...

CHAIRPERSON: Yes?

ADV CHASKALSON SC: ...to 561.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And the abbreviated treatment of it in Bundle 20 is again pages and I have an incorrect reference there, Chair. I will come back to you with the ...[intervenes]

CHAIRPERSON: With the page numbers.

20 **ADV CHASKALSON SC:** ...with the correct page numbers. It is... But Chair, it starts at page 51.

CHAIRPERSON: Yes?

ADV CHASKALSON SC: And it runs through to page 56. Sorry, 58.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And it is paragraphs 71 to 95.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: So, that is where Chair will find the detail to which Mr Holden is going to testify at fairly high level today.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: But let us now start that testimony.

CHAIRPERSON: Okay, no, that is fine. I know that we
10 talked about the possibility that Mr Holden could get another time if we do not finish today in a way that satisfies us that he has dealt with issues properly in terms of time and we talked about the possibility of Thursday. I just mention that if you feel that the time constraints are not – are preventing him from doing justice to the issues subject to everybody being available, we could even look at Saturday morning.

ADV CHASKALSON SC: Thank you, Chair. Can I ask that we do not make a call on that today?

20 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: Let us see how the testimony goes first.

CHAIRPERSON: No, no that is fine.

ADV CHASKALSON SC: But later in the day
...[intervenes]

CHAIRPERSON: Ja.

ADV CHASKALSON SC: ...if we need to ...[intervenes]

CHAIRPERSON: Ja.

ADV CHASKALSON SC: ...take you up on either of those offers.

CHAIRPERSON: Ja. No, that is fine. I just want to make sure that we feel that he has been given enough time. You have been given enough time to deal with issues sufficiently.

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

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Thank you very much.

CHAIRPERSON: Okay, alright.

ADV CHASKALSON SC: Mr Holden, you have talked briefly about the first level laundries and the mode of laundry money. Can you explain at a very high level how these four networks that you have identified in your report operated? What was their structure, to begin with?

MR HOLDEN: Certainly, Chair. The laundries were
20 obviously incredible complicated but in analysing them it became clear that there was a certain patternicity the ways on which the laundry operated. In very broad terms, although there is nuances and exceptions in certain places, you have at the very top level a First Level Laundry vehicle such as Medjoul or first projects or Fortime and

receiving funds from state contractors.

Some - there the funds are then paid into a what I call an intermediary account or a high-level laundry vehicle. The funds are then paid into that intermediate – it comes from multiple different First Level Laundry entities which are then allocating to that account and then send onwards in the money laundry network.

Generally speaking, the funds are either send onto a second third party who aggregates the funds and then
10 makes those transfers onwards again. In most instances where we have been able to trace the funds flowing to some sort of endpoint, the funds generally end up offshore to what I refer to as an onshore/offshore bridge in my report. And an onshore/offshore bridge is very simple a company that receives and aggregates payments from this extended laundry network and then makes payments abroad into a very extended overseas laundry network.

The vast majority of funds which we have identified moving to this network enter into what I call the Hong
20 Kong/China laundry network which I have addressed in some detail in the evidence I gave with regards to Regiments, Asia, and Tequesta in relation to the Transnet kickbacks paid to them.

The essence of that incredible complex Hon Kong/China laundry is that it ran many hundreds of

different companies registered in Hong Kong and China that received funds from state capture and multiple other sources and then believable check those funds out into an eventual attended recipient. I think the point to be emphasised here is that in many instances the Gupta Enterprise was making use of pre-existing and independent criminal networks.

These are networks that existed independently of the Gupta Enterprise and prior to the Gupta Enterprise
 10 which the Gupta Enterprise ...[indistinct] into in order to launder(?) its funds support(?).

ADV CHASKALSON SC: And just to start at the First Level Laundry vehicles. Can I ask you to turn to page 157? We have addressed – we have addressed this last time, but just to refresh the Chair's memory with who these first level – what these entities that you call the First Level Laundry vehicles are. Can you go to page 157 of Bundle 9?

MR HOLDEN: Certainly.

20 **ADV CHASKALSON SC:** And there, you will have the replacement page, I would imagine, but in paragraph 197 there are a list of entities starting with Albatime. I think the Chair's document will still in the check(?) of commerce at paragraph N. Can you just briefly identify these?

CHAIRPERSON: One second, Mr Chaskalson.

ADV CHASKALSON SC: [No audible reply]

CHAIRPERSON: Thank you, Mr Chaskalson.

ADV CHASKALSON SC: Chair, do you have page 157 there?

CHAIRPERSON: Yes, I do.

ADV CHASKALSON SC: Mr Holden, will you just look at the entities listed from A to N or on your document? I think it may be O on your document because you have added on in the replacement page.

10 **CHAIRPERSON:** Oh, in mine as well.

ADV CHASKALSON SC: Oh. Then O was being added. Can you just confirm that these are what you describe at the First Level Laundry entities?

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: And maybe if you can just list them so that anyone watching or reading the transcript will know what these entities are?

MR HOLDEN: Certainly. We have at:

- 20
- (A) Albatime
 - (B) Birsaa Project
 - (C) Block Mania
 - (D) Chivita Trading
 - (E) Forsure Consultants
 - (F) Fortime Consultants
 - (G) Homix

- (H) Ismer
- (I) Jacsha Trading
- (J) Maher Strategy
- (K) Matson Capital
- (L) Medjoul
- (M) Pactrade
- (N) Shacob Commerce
- (O) Hostile(?)

ADV CHASKALSON SC: Thank you, Mr Holden. You have
10 now – before I took you back, you had briefly discussed
the structure of how these laundry networks worked. I
wonder if you could illustrate it with an example that you
address at Annexure 69 and that is in Bundle 13, page 605
because that probably provides an easier way of
understanding what you are talking about theoretically.
So, it is page 605, Bundle 13.

CHAIRPERSON: I have got it.

ADV CHASKALSON SC: Thank you, Chair. Now,
Mr Holden, can you take the Chair through this Annexure
20 69, this one-page diagram? And explain with reference to
the structure of these laundry networks, what you are
describing here.

MR HOLDEN: Certainly, Chair. I have shared my screen.
I am not sure if that is coming up on your side or not?

ADV CHASKALSON SC: So, can – if you start at the top

with Combined Private Investigations, who are they?

MR HOLDEN: Certainly. Combine Private Investigations is a firm that we have identified in the report receiving quite a large number of state contracts from multiple different sources providing, amongst other things, security services and it made quite substantial payments to what I call the First Level Laundry Network. And to work through the illustration.

ADV CHASKALSON SC: Please do.

10 **MR HOLDEN**: Certainly, Chair. So, this is one isolated example where you can track the disposition of one of the source of payments. At the top level, you have Combined Private Investigations which are the first in 2016 made a payment of R 1 575 760 74. It made that payment to Medjoul which I have already identified as a First Level Laundry vehicle.

Three days later, on the 4th of April 2016, Medjoul then transfers an amount of R 1 544 245 16 to an entity by the name of SAAMED(?) Bullion Group. And SAAMED
20 Bullion Group is a particularly active part of the extended laundry network that we are looking at. I have placed the SAAMED Bullion Group with what I call the Spider Web. The function of the SAAMED Bullion Group was what I call an intermediary function. It received multiple payments.

Many hundreds of millions of rands of payments

from First Level Laundry entities from multiple First Level Laundry entities. Aggregated those amounts and then distributes it into an extended local and international laundromats. On the same day, the SAAMED Bullion Group was paid that amount by Medjoul. It then transfers an amount of R 1 629 003.15 to GrainCorp Distributors and that is R 1 629 003.15.

The Chair will notice that it is slightly more than the amount that has been paid by Medjoul to SAAMED
 10 Bullion. I have included it here because all of the funds that appears in SAAMED Bullion Group tend to arise from state capture payments from the First Level Laundry entities. So, the amounts that were residual in the SAAMED Bullion account would have arisen from state capture in any event.

Again, on the same day, GrainCorp – if I may add is, what I call an aggregator prior to the – it is the onshore/offshore bridges. Its role was to receive deposits from multiple different sources from entities, like, SAAMED
 20 Bullion Group but also other unrelated sources. It was to aggregate those amounts and to bulk them, as it were, and then make an onward payment to an entity that would then transfer the funds abroad. That is GrainCorp Distributors function.

So, as you see, the following – on the same day,

on the 4th of April, R 1.7 million is transferred from GrainCorp to an onshore/offshore bridge called **Quite Big(?) [00:29:50]** Wholesalers. Quite Big Wholesalers was particularly active onshore/offshore bridge.

I am sure we will get to the exact number that we have been able to identify from [indistinct] sellers abroad. Again the function of [indistinct] centres was to receive the funds from feeder accounts such as [indistinct] distributors and then transfer the funds abroad into the extended Hong
 10 Kong China laundry and as you can see on that same day indeed [indistinct] Wholesalers does make a further payment on the 4 April 2016 of 1,870,000 which is R1 870 000 into an entity by the name of Success Stand Limited which is a company registered in Hong Kong. We - I addressed Success Stand Limited in relation to the Transnet kickback evidence again at the end of last year.

Success Stand is a company registered in Hong Kong that receives a truly vast amount of money from various different sources in South Africa and including
 20 have been paid by both Regiments Asia and the Tequesta Group from Hong Kong and we believe – or I believe, that is, that Success Stand forms part of a very complex international laundry network operating out of Hong Kong in China usually through HSPC bank accounts.

ADV CHASKALSON SC: Can you just refresh the Chair's

memory, Tequesta and Regiments Asia, who were they?

MR HOLDEN: Certainly, Chair. Tequesta and Regiments Asia are two companies that were controlled by Salim Essa. He was the director of both companies in Hong Kong. They were both recipients and designated recipients of kickbacks that were paid by China South Rail and China North Rail and its successor to - in relation to the various locomotive contracts that were awarded to those parties. I cannot remember the exact amount offhand but as far as I

10 recall both in total Regiments Asia and Tequesta Group received many hundreds of millions of dollars flowing from those kickbacks.

CHAIRPERSON: Are there variations in the amounts starting from what Medjoul paid to some Korean Group and from there up to Success Stand Limited the amounts being varied to be a little lower than the original amount or more than the original amount. Would those be attempts to disguise the – that is still the same amount that came from Combined Private Investigations or not necessarily?

20 **MR HOLDEN**: Certainly, Chair, I think there are probable two reasons here. One is, as you correctly identify, a means of making it harder to trace the origin of the funds.

The second reason is, certainly when they reach the stage of break or an ID, so they are receiving vast sums of money on a daily basis from multiple different sources and

what happens then is that the amounts that are paid in from the first level laundry networks by [indistinct] Group, so they comingle with a range of other funds to then fund [indistinct] payments abroad.

So I think it is both a combination of disguising the origin of the funds and also probably a simple accounting mechanism of bulking multiple different payments from different sources to fund specific dollar amount transactions abroad.

10 **CHAIRPERSON**: And would the issue of exchange rates in different countries be a factor as well, rand to dollars and so on?

MR HOLDEN: I would imagine so, Chair.,

CHAIRPERSON: You would imagine so?

MR HOLDEN: I would imagine so, yes.

CHAIRPERSON: Okay, alright.

MR HOLDEN: Certainly there is – the laundries could also probably extract their own fee and charge for processing the funds as well.

20 **CHAIRPERSON**: Ja, okay. Mr Chaskalson?

ADV CHASKALSON SC: Now you have identified 14 of the first level laundry vehicles of which Medjoul would be one in this case. Were these 14 used all at the same time or – I mean, how – what happens do you see here in relation to those 14 first level laundries?

MR HOLDEN: Certainly, Chair, let me just correct my evidence leader, it is actually 15 first level laundry, not 14.

ADV CHASKALSON SC: Thank you.

CHAIRPERSON: I think he has up to 14. Yes. And this file can go away for now, Mr Chaskalson?

MR HOLDEN: Actually what happened ...[intervenes]

CHAIRPERSON: I am sorry, this file can go away for now?

ADV CHASKALSON SC: File 13 can go away for a while,
10 yes, Chair, it will be 9 and 20 that we will spend most of our time in.

CHAIRPERSON: Okay, alright. Mr Holden, I think I interrupted you, do you want to just repeat what you said?

MR HOLDEN: Certainly Chair, apologies, there is a bit of a lag so I was talking over you by mistake.

CHAIRPERSON: Yes.

MR HOLDEN: So I do apologise for that. What it – returning to my evidence to this question, there were multiple different laundry methods that were used over
20 time. These were used sequentially and chronologically, they were not operating simultaneously. Generally speaking what we will see is the Gupta enterprise makes use of one particular first level laundry vehicle for multiple different first level laundry vehicles at a time and then at a certain point they are entirely discarded and a new set of

first level laundry and entities are there introduced and used.

When those new first level laundry entities are introduced and used they tend to then also make use of new extended local laundry networks and also new onshore and offshore bridges to move the funds abroad. It seems in certain instances, certainly in Homix, for example, that Homix was terminated as a first level laundry vehicle when it attempted to move funds abroad directly rather than to
10 its local laundry network into a company by the name of Morning Star International, another Hong Kong laundry vehicle which then led to the attentions of the Reserve Bank and at that point Homix was dropped and replaced by another set of laundry vehicles. So effectively what we have is four sets of roughly chronological laundry entities. First they were laundry entities and corresponding laundromats that operate over this point of time.

ADV CHASKALSON SC: Chair, I have just been notified that there may have been a scheduling clash and that there
20 is a separate issue relating to Mr Agrizzi and Mr or Ms Jiba that was going to be addressed at ten o'clock. Are you aware of that, Chair? And how should we deal with it?

CHAIRPERSON: Oh. Yes, no, I remember. Can I deal with that maybe between – at eleven, would that be fine? I think counsel for Ms Jiba is here. Yes, I completely forgot

about that.

UNKNOWN COUNSEL: Thank you, Chair. Sorry if I address you seated.

CHAIRPERSON: No, no, that is alright, that is alright.

UNKNOWN COUNSEL: Ja. I wanted to make a different proposition, Chair.

CHAIRPERSON: Yes, okay.

UNKNOWN COUNSEL: Which may save a bit of time because I am aware that my brother is hard-pressed.

10 **CHAIRPERSON:** Yes, yes, yes.

UNKNOWN COUNSEL: Chair, I think firstly it may have been a mistake because firstly, the matter was enrolled for the 15 June 2021.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And I was judicially engaged at the time and I requested to be accommodated.

CHAIRPERSON: Ja. Yes.

UNKNOWN COUNSEL: And the matter was then rolled over to today at ten o'clock.

20 **CHAIRPERSON:** Yes, yes.

UNKNOWN COUNSEL: But, Chair, my understanding and recollection - and it may well be that the Chair's recollection is congruent with mine.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: This whole purpose might even be

academic.

CHAIRPERSON: No, no, I think you are right because I think I saw your letter.

UNKNOWN COUNSEL: Yes.

CHAIRPERSON: When you appeared sometime back the issue that I had raised was that Mr Agrizzi did not have personal knowledge of any money being given to Ms Jiba and I wondered whether it would serve any purpose to cross-examine him and I think in your letter you alluded to
10 the fact that we then adjourned the matter at that stage on the basis that we would see whether there was any subsequent – there would be any subsequent witnesses who have personal knowledge who would give evidence and then we will take it from there. That is my recollection which I think is in line with yours.

UNKNOWN COUNSEL: That is spot on, Chair, you took it a step further.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And asked if there was objection
20 from Mr Agrizzi's representatives.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: On the position that you and I had debated and agreed upon.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And there was none.

CHAIRPERSON: Yes, yes, yes.

UNKNOWN COUNSEL: So unless there might have been subsequent corroboration but I checked there was none.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And I thought it would be risky or be seen as contemptuous if I do not come and clarify that position.

CHAIRPERSON: Yes. No, no, no, it...

UNKNOWN COUNSEL: That being the case then, Chair,
10 and I checked with Ms Jiba.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Our position still stands.

CHAIRPERSON: Yes, yes.

UNKNOWN COUNSEL: We do not wish to take the matter any further than that.

CHAIRPERSON: Yes, yes.

UNKNOWN COUNSEL: Because that is the understanding.

CHAIRPERSON: Yes.

20 **UNKNOWN COUNSEL:** And I thought there is no point in waiting for eleven o'clock and the Chair and I are in agreement then maybe Mr Chaskalson can have the rest of the day to deal with more pressing matters, Chair.

CHAIRPERSON: No, no, that is fine, I was aware of what had transpired last time – I mean, when you appeared but

to be on the safe side I preferred that it be set down and you come, everything is on record as to where we stand and then we take it from there because what then remains is I think one of two or three things, in the light of the remarks that I had made and our understanding, it seems to me that you would not be pursuing the application or you would withdraw it or if you say for formality I must dismiss it then we can see but I just wanted to make sure that there is some record of what happened to it.

10 **UNKNOWN COUNSEL**: Okay.

CHAIRPERSON: What would you prefer to be recorded?

UNKNOWN COUNSEL: Chair, I would not be inclined to ask you to dismiss it.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Nor would I want to have it withdrawn because there was a subsequent caveat.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Chair had also directed that in the light of what was raised in the second supplementary
20 affidavit of Mr Agrizzi, you had directed that the investigators must do a bit of digging on that.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And to the extent that that may or may not have been completed, I will still want to reserve my client's rights.

CHAIRPERSON: Yes, yes.

UNKNOWN COUNSEL: But for now the record can reflect that our position has not changed from your last *prima facie* view.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: And in the event that in the time left something comes out of what the Chair directed then we will come back and oblige accordingly.

CHAIRPERSON: Yes.

10 **UNKNOWN COUNSEL:** But it would not be fair to then come back and waste time on a matter that is proceeding.

CHAIRPERSON: Ja, yes.

UNKNOWN COUNSEL: So I needed to confirm that Ms Jiba's preparedness to cooperate remains unchanged.

CHAIRPERSON: Ja.

UNKNOWN COUNSEL: And so is my commitment to be of assistance to the Commission.

CHAIRPERSON: Yes. Well, as things presently stand, I mean, the matter related to BOSASA, as things presently
20 stand, there is – except maybe one or two matters which as far as I know are unconnected with them, the investigators are not doing any further investigation. So I do not think that anything is going to come up which has not come up in the past three and a half years. So if you want to – if you want me to simply adjourn pending you making a decision

as to whether what we should record I can adjourn and say you will write to the secretary and indicate what your final position is because we cannot leave it hanging, you know, it is either withdraw or dismissed or if you say it is not being pursued, at least that is what we record. What would you prefer? Shall we give you some time to...?

UNKNOWN COUNSEL: No, no, Chair.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: I had consulted client and we
10 have considered this quite carefully.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: I can confirm my instruction on record to be as follows.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: One, apropos her preparedness to testify in person, she is not pursuing that because that was linked to the extent that she may have to refute.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: Secondly, the application to cross-
20 examination Mr Agrizzi under these circumstances is now no longer persisted with.

CHAIRPERSON: Yes, yes.

UNKNOWN COUNSEL: And that is what the record can then reflect.

CHAIRPERSON: Can record, it can reflect, ja.

UNKNOWN COUNSEL: There is closure on the issue.

CHAIRPERSON: Yes, okay. No, that is fine, then that is noted, namely Ms Jiba is not persisting in the application and her request to give evidence in regard to the allegations by Mr Agrizzi falls away in the light of the fact that Mr Agrizzi does not have personal knowledge of having received any monies.

UNKNOWN COUNSEL: Correctly captured, Chair, and we are happy with that.

10 **CHAIRPERSON:** Yes. Okay, alright, thank you.

UNKNOWN COUNSEL: Might I then be excused, Chair?

CHAIRPERSON: Yes, you are excused.

UNKNOWN COUNSEL: And, Chair, in the event I do not come back I wish you fortitude as you conclude the ...[intervenes]

CHAIRPERSON: Thank you very much.

UNKNOWN COUNSEL: Mr Chaskalson, thank you for allowing me to cut in. Thank you, Chair.

CHAIRPERSON: Thank you, thank you. Sorry about that
20 Mr Chaskalson, I had forgotten and thank you for reminding me. It looks like I am beginning to forget too many things. Ja.

ADV CHASKALSON SC: There is quite a lot on your plate, Chair.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: Mr Holden, to go now a little further into these laundry networks, I mentioned earlier the passages in your report where you identified four separate networks. Can you very briefly tell the Chair about the first network that you describe as the Chivita network?

MR HOLDEN: Certainly, Chair, the Chivita network I refer to as the first level. It receives a very large amount of funds from multiple other sources prior to the Gupta enterprise getting involved which leads me to believe that

10 Chivita is a pre-existing and independent criminal enterprise.

However, the time period in which the Gupta enterprise starts moving state capture-related funds into Chivita is in January 2013. The first inward flow of funds that we see in relation to state capture is a deposit made by Combined Private Investigations on the 20 January 2013 for 500 000 and the last inward payment is on the 27 May 2014 by Regiments. So the Chivita network effectively operates for approximately a year and a half.

20 I have been able to calculate that Chivita is paid a total amount of 144,093,427, that's R144 093 427 in relation to state capture linked contracts. The table reference there, if I may, Chair, is table 114 inflow of funds, bundle 9, page 198. It also receives a further R9.1 million from Homix which I will deal with shortly.

Generally speaking, however, the bulk of the Chivita state capture funds inflows are from Regiments and it is – that is also what makes up the bulk of the funds received.

CHAIRPERSON: I am sorry, Mr Holden, what page did you say that was in bundle 9, the table?

MR HOLDEN: Apologies, Chair, it is table 1.4, it is page 198 of bundle 9.

CHAIRPERSON: Okay, thank you, you may proceed.

ADV CHASKALSON SC: You were saying, Mr Holden,
10 that the bulk of the Chivita inflows related to state capture come from Regiments. You identify in your report a feature of the early Chivita invoices that links these Regiments inflows to the Guptas. Can you tell the Chair about this?

MR HOLDEN: Certainly, Chair, quite a large number of original invoices that are submitted by Chivita to Regiments were discovered on the Regiments' servers and they are referred to, you will recall, Gateway pro forma. Gateway is a reference to a Gateway Limited, which I dealt with very extensively in my evidence regarding the Estina
20 flow of funds. Gateway Limited is an offshore company registered in Dubai under the administrative control of Mr Sanjay Grovo but under the effective control of the Gupta enterprise which was used to receive a very large number of payments in relation to state capture contracts and then dissipated through that offshore network and sometimes

returned back to South Africa.

ADV CHASKALSON SC: Can I then ask you to go to bundle 13, annexure 46? Bundle 13, page 383. And can you describe to the Chair what you see there?

MR HOLDEN: Let me just get to that quickly.

CHAIRPERSON: The page is 383?

ADV CHASKALSON SC: Chair, it is 383, that is correct.

CHAIRPERSON: Yes, okay.

MR HOLDEN: Can I ask for the annexure number again
10 please?

ADV CHASKALSON SC: It is annexure 46.

MR HOLDEN: Certainly, Chair, what we have here at annexure 46 is a cooperation agreement, so-called, entered into between Regiments Capital and Gateway Limited.

MR HOLDEN: And then if you go to annexure 47, which is in the same bundle, bundle 13, at page 396, straight after the agreement between Gateway and Regiments. Can you take the Chair first through the invoices that we see at
20 annexure 47 to 50 with the covering emails, that will be pages 396 to 407. Let us go first through all of those invoices and then let us go back into your statement to explain the significance of them.

MR HOLDEN: Certainly. Annexure 47, we have an email from Inderen(?) Pillay to Niven Pillay on the 15 May 2013

with the subject Gateway Pro Forma 13 May 2013 and an attachment called Gateway Pro Forma 13 May 2013.docx which is a Word document. On the following page ...[intervenes]

ADV CHASKALSON SC: Sorry, Mr Holden, can you just tell the Chair who Niven Pillay is?

MR HOLDEN: Chair, I will have to remind myself, there are so many names that are coming up in my evidence that I do not want to get this wrong.

10 **ADV CHASKALSON SC:** Leave it for now, I will take you to the part of your report where you deal with it in due course but just remember the names Inderen and Niven Pillay. Let us go through the invoices while we are there in one place and then we can see their significance when we go to the report.

MR HOLDEN: Certainly. So what we have in this invoice is a pro forma invoice, does not actually have a company name on top of that, it just has a place holder which I assume was supposed to be filled in, in order to process
20 the invoice. The invoice was to be sent to Regiments Capital and then an invoice is two amounts in relation to Transnet RMO and the total is for, including VAT, 4,321,776.48. That is R4 321 776.48.

ADV CHASKALSON SC: And if you can quickly run through annexures – the invoices that follow all the way to

annexure 50?

MR HOLDEN: Certainly, we have at annexure 48 an email sent from the same person, same recipient, that is from Inderen Pillay to Niven Pillay attaching a file called Gateway Pro Forma 12 June 2013 which is also the date the email is sent. The attached invoice again indicates that the invoice is to be directed to Regiments Capital, the company name, the company slogan and all sorts of other [indistinct] information was due to be added and that is an
 10 invoice in relation to Transnet RMO. The total figure is 966,801.62. That is R966 801.62.

Annexure 49 is an email from Inderen Pillay to one [indistinct] Vula and it is also – it is sent on the 22 October 2013, actually a Gateway Pro Forma invoice dates the 22 October 2013. The invoice that then appears on the following page is an invoice from Regiments Capital to Transnet which is invoicing for a total amount of 2,852,964. That is R2 852 964, which was due to be paid into Regiments Capital Standard Bank account and on the
 20 following page you have another pro forma invoice awaiting [indistinct] information which was to be sent to Regiments Capital, also in relation to the Transnet RMO and it is valued at 1,026,456. That is R1 026 456.

And then turning to the last invoice, which is annexure 50, we have – apologies, an email from Inderen

Pillay to Eric Wood of Regiments and Trillian which says – the subject line is Pension Fund Review Gateway Pro Forma, it attaches a document called Gateway Pro Forma Pension Fund Review, November 2013, PDF.

And on the following pages again another pro forma invoice awaiting in fact 26.57 information. That is dated the 31 August 2013 to be submitted to Regiments Capital. It provides for an amount of R2 million excluding VAT to be paid in relation to the Transnet pension fund review and
10 the total amount with VAT for that invoice is 2,280,000, that is R2 280 000.

ADV CHASKALSON SC: Can I then ask you to go to your report in volume 9 at page 166 where you deal with these invoices in Chivita?

MR HOLDEN: Certainly.

ADV CHASKALSON SC: Page 166 of bundle 9.

MR HOLDEN: I am there.

CHAIRPERSON: Just one second? Yes, you may continue.

20 **ADV CHASKALSON SC:** Can I ask you to see – to tell the Chair the link that you picked up between this Gateway pro forma invoice that you discussed at annexure 47 and Chivita?

MR HOLDEN: Certainly. The connection would identify the – has an invoice to be addressed to Regiments for the

amount of 4,321,776.48 including VAT and that is the exact amount that Regiments ultimately pays to Chivita on the 23 May 2013.

ADV CHASKALSON SC: So the pro form Gateway invoice is paid to Chivita on the 23 May 2013?

MR HOLDEN: That is correct, yes.

ADV CHASKALSON SC: Can I ask you to go up to page 164 where you have a table 79 which reflects all of the payments by Regiments to Chivita and can you identify that
10 payment of R4 321 776.48 on the 23 May 2013?

MR HOLDEN: Certainly, Chair, looking at table 79 it is actually the first entry, so that is the first payment that is made from Regiments Capital to Chivita Trading on the 23 May 2013.

ADV CHASKALSON SC: And if you stay on that table can you identify the payment of R966 801.62 which was on the Gateway proforma invoice 12 June 2013? R966 801.62. R966 801... [intervenes]

MR HOLDEN: So that will be the third entry on the
20 table that the [indistinct] is referring to is an amount of 966,802.08 which is obviously almost exactly the same amount as on the invoice.

ADV CHASKALSON SC: And Annexure 49 there was a Gateway proforma invoice for 1 026456. The file was called Gateway proforma 22 Oct 2013. Can you find a

payment corresponding to that to Chivita, 1 026456?

MR HOLDEN: Certainly, Chair. It is the sixth row on the table, populated table, and it shows a payment of 1,026,456.00 and that takes place on 18th of November 2013. Chair, for your reference that part of the table that I am identifying is at Flow of Funds Bundle 9, page 165, the very top line of that table.

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

CHAIRPERSON: That is Bundle 9, page 165.

10 **ADV CHASKALSON SC**: 165, Chair.

MR HOLDEN: 165.

CHAIRPERSON: Oh, that is where I am. Okay. Alright, thank you.

ADV CHASKALSON SC: And you said it was the very first entry on that page.

MR HOLDEN: Correct, Chair.

ADV CHASKALSON SC: And then lastly the fourth Gateway proforma invoice that we saw was Gateway proforma pension fund review Nov 2013. That was for an
20 amount of 2 280000 including VAT. Can you find the corresponding payment to Chivita?

MR HOLDEN: Certainly, Chair. That is the seventh row [indistinct] row and that appears directly underneath the transaction I've just dealt with and we had a payment of 2,280,000. That is R2.28 million and that is paid to

Chivita's ABSA Bank account on the 26th of November 2013.

ADV CHASKALSON SC: And that would be the second row of the table on page 165.

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: If we can move now from the Chivita network to the next network that you describe which is the Homix network. Can you tell the Chair very briefly the period in which the Homix network ran and the
10 amounts of money that went through the Homix network?

MR HOLDEN: Certainly, Chair. The first payment from State Capture that we have identified is a payment made by Neotel on the 3rd of April 2014. It is an amount of 34,533,519.88 and the last payment we have identified in relation to State Capture is made on the 29th of May 2015 by Regiments for an amount of 1,973,916.78. So the laundry, the Homix laundry operates for just over a year before it is discarded.

In that period Homix is paid an amount of
20 395,418,856.44. That is R395,418,856.44 of which an amount of 324,952,517.46 has been traced by myself into the Hong Kong China laundromat. Chair, for your reference the table that sets out the payments that are made in aggregate to Homix is table 114 which appears at page 198 of Bundle 9.

ADV CHASKALSON SC: And that R395,418,856 that is paid into Homix, is that money that comes from anywhere into Homix or is that money that is linked specifically to State Capture contracts?

MR HOLDEN: Chair, that specifically relates to State Capture contracts.

CHAIRPERSON: I think as you refer, Mr Chaskalson and Mr Holden, refers to various annexures, please mention both the annexure and the page. That is going to be
10 convenient to me.

ADV CHASKALSON SC: Thanks, Chair.

CHAIRPERSON: Or if you mention the page that is more convenient to me than the annexure, but it might be that mentioning both might be something you would like, but page number is easier for me.

ADV CHASKALSON SC: Certainly. The last table that Mr Holden referred to is Bundle 9, page 198 and it is table 114.

CHAIRPERSON: Yes, I have got. I have got.

20 **ADV CHASKALSON SC:** Then briefly to move to the third laundry network that you call the Forsure **Hostile(?)** laundry network, can you tell the Chair the period in which it ran?

MR HOLDEN: Certainly, Chair. In relation to Forsure, the first payment is on the 29th of May 2015 and the last is the

3rd of July 2015. So Forsure is used for approximately a month before it is discarded. And in relation to [indistinct] its first single payment relates to State Capture is the 2nd of June 2015 and the last payment is on the 3rd of July 2015, so again it is used for a day over one month before it is discarded.

In total Forsure was paid an amount of 16,890,928.70. That is R16,890,928.70 by Regiments and a further 14,820,000, that is R14.82 million is paid by
 10 Albatime to Forsure and Hostile(?) is paid an amount of 12,360,369.62 by Regiments. That is R12,360,369.62 and a further R17.76 million by Albatime.

ADV CHASKALSON SC: Now as you point out this network ran for just over a month from the end of May 2015 to the beginning of July 2015. What was significant about the end of May 2015 which may explain why there was a shift to this network?

MR HOLDEN: Certainly, Chair. The issue arose in relation to Homix. During the first years of Homix operation it
 20 moved funds abroad into what we call the Hong Kong China laundry network through a much more sophisticated local laundry. At some point at a much later stage in Homix's life it was then decided to move the funds directly from Homix to a Hong Kong company which is Morningstar International.

As soon as that happened that then raised the suspicions of the bank that held that account, which is Mercantile Bank, who then alerted the Reserve Bank and they very swiftly moved to take action to freeze those funds and freeze those payments. Effectively what that meant was that Homix had been discovered as it were and identified as a suspicious vehicle which then necessitated a very rapid move to a different set of laundry vehicles that could then process State Capture payments.

- 10 **ADV CHASKALSON SC:** After this month of the Forsure Hostile(?) network we move into what you describe as the spider web and you describe the spider web as one laundry network, but it has a lot of different component parts and different first level laundry entities that operate over different times.

Maybe if I can ask you to take the Chair to paragraph 72 of your executive summary that is Bundle 20 at page 52 where you describe almost the periodisation of this spider web laundry with reference to the initial laundry
20 vehicles. So can I ask you to go to Bundle 20, page 52, paragraph 72 of your executive summary?

MR HOLDEN: I am there. Should I share my screen so the public can see this table as well?

ADV CHASKALSON SC: That would be useful.

MR HOLDEN: I shared the screen. I trust that it is now

showing.

CHAIRPERSON: It is showing.

ADV CHASKALSON SC: Can you take the Chair through this table?

MR HOLDEN: Yes, certainly. What I refer to as the spider web network received funds related to State Capture of a total amount of 314,949,662.06, the total amount at the very end of the table. In that process there were 10 different first level laundry entities that were used and
10 which received quite substantially different amounts.

The most notable and the largest recipient was Fortime Consultants and it operated between July 2015 and August 2016, so just over a year and it received a total amount of 105,543,369.69 from State Capture related payments. Medjoul ran from August 2015 to August 2016 and it was paid an amount of 95,148,371.74 in relation to State Capture payments. Both the projects ran from January 2016 to September 2016, so nine months and it was paid an amount of 49,230,737.23 arising from State
20 Capture contracts.

Maher Strategy ran from November 2015 to January 2017 and it was paid an amount of 28,928,450.00. Pactrade which ran just in October 2016 was paid an amount of 4,291,766. Matson Capital also only operated in October 2016 and it was paid an amount of 1,970,000.

Jacsha was paid an amount – ran from – also only ran in October 2016 and it was paid an amount of 2,150,000. That is R2.15 million arising from State Capture contracts.

Shacob Commerce was paid between October 2016 and July 2017 in an amount of 24,589,767.40 and Matusa(?) was paid an amount – sorry, operated in April 2017 only and was paid an amount of 3,097,200.

ADV CHASKALSON SC: Thanks, Mr Holden. Now at the start of your evidence I gave the Chair references to where
10 you deal with the intricate details of each one of these four laundry networks that you cover in your report.

I do not propose to go through all four of the laundry networks, but possibly as an illustrative device can I ask you to take the Chair through Annexure 57 which is a diagram that describes features of the Homix laundry network. That is in Bundle 13, page 449. And I see you have it up there. Chair, can I ask whether the copy in your file at Bundle 13 is a double page and is big enough for you to follow? If it is not we may have some difficulties.

20 **CHAIRPERSON:** What is the page number?

ADV CHASKALSON SC: It is page 449 of Bundle 13.

CHAIRPERSON: I have got a diagram that can properly be described as a spider web itself.

ADV CHASKALSON SC: Chair, this is the simple laundry network.

CHAIRPERSON: Well, I have got the diagram here. You wanted to know something about it.

ADV CHASKALSON SC: Just whether it is in a form that is visible – that is legible to you so that we can ask Mr Holden to explain it to us.

CHAIRPERSON: Yes, the words could have been bigger but I think I can manage.

ADV CHASKALSON SC: Mr Holden, can you then take the Chair through Annexure 57, this diagram that you had
10 prepared of the Homix network?

MR HOLDEN: Certainly, Chair. So at the very top we have a number of entities that are indicated in green and green, I have identified them as green because that is the start or the go of the laundry network, sort of as I did in relation to Estina. Six entries we have, I will deal with one by one.

The first entry is Transnet including contracts involving McKinsey and what is being referred to as the Maputo Corridor Project which pays a very large number of
20 funds into Regiments over a period of time between April 2014 and May 2015. The second entry is SA Express which also does the same and transfers funds to Regiments.

There are such a huge number of payments that I do not identify every one, but the substance, the most

important element of that is that from Regiments between April 2014 and May 2015 an amount of 175,516,583.48 is paid from those sources to Homix in that period of time.

The third entry is Innovo Asset Management and we can see a line extending down and the amounts that Innovo Asset Management paid to Homix in this period was 6,384,000. That is R6.384 million.

ADV CHASKALSON SC: And can I just stop you there, Mr Holden. Can you just remind the Chair where that 6.38
10 - 6,384,000 came from before it reached Innovo Asset Management?

MR HOLDEN: Certainly, Chair. I do not want to make a mistake here, but as far as I recall it came from the State Capture contract involving Tsebo.

ADV CHASKALSON SC: Well, you may – well, which organ of State are we talking about?

MR HOLDEN: Oh, that was the Department of Agriculture and Rural Development in the Free State.

ADV CHASKALSON SC: Thank you.

20 **MR HOLDEN:** [Indistinct].

ADV CHASKALSON SC: No, you are correct on that. I cannot recall whether that is a payment that goes through Tsebo or that goes directly to Innovo, but we will clarify that in your report. Can you move then to Neotel, your next green box and maybe start with explaining where the

Neotel funds come from?

MR HOLDEN: Certainly. So the Neotel funds are again another State Capture related contract which I dealt with in my first evidence. This is in relation to contracts that were awarded by Transnet to Neotel and the first payment – well, in aggregate over this period of time Neotel which also trades as Liquid Communications transferred an amount of 75,573,519 to Homix in this period. In addition to... [intervenes]

10 **ADV CHASKALSON SC:** Sorry, Mr Holden, if I may, can I just correct you at that point. At the relevant time Neotel was Neotel. It has subsequently been purchased by Liquid Communications. So today what was Neotel is now a part of Liquid Communications.

MR HOLDEN: Thank you for that correction. Returning to the diagram. Neotel then also pays an amount to Digital Video Solutions and that amount is in reference to the CCTV contract that was awarded by Transnet to Neotel and ultimately Digital Video Solutions pays an amount of
20 119,700,000, that is R119,700,000 into Homix in this period.

The penultimate box over here is Liba Africa(?) and Liba Africa(?) pays an amount of R2 million to [indistinct] Strategy and [indistinct] Strategy then onward pays an amount of R1.8 million to Homix in this period.

And then the final box is Combined Private Investigations which then pays an amount of 17,510,400, that is R17,510,400 into Homix in this period. And I should clarify, Chair, that all of these payments are made into the same Homix bank account which is held at Standard Bank with the account number 11863897.

ADV CHASKALSON SC: Then... [intervenes]

MR HOLDEN: From that point... [intervenes]

ADV CHASKALSON SC: Please continue.

10 **MR HOLDEN:** Certainly, Chair. From that point the funds effectively move into two different streams and I will deal with the simplest one first, although it happens chronologically at a later stage and it is the stream that flows to the right, diagonally to the right following the Homix box. And what we have here is an amount of 66,329,001 that is paid between the 21st and the 28th of May 2015 and that is transferred from Homix's Standard Bank account into Homix's Mercantile Bank account and that Mercantile Bank account number was 4000564463.

20 And from the Homix bank account at Mercantile Bank it is then transferred into two offshore companies based in Hong Kong. The first amount or the first aggregate amount is an amount of 39,819,225.50 and that is paid to Morningstar International Trade. And the second amount is an aggregate amount of 12,034,450.50 which is

paid to YKA International registered in Hong Kong and YKA International is an entity that we see a very large number of payments going to which leads me to believe it is a part of the extended Hong Kong China laundry network.

As I pointed out earlier, Chair, it is precisely these payments, in particular the payments that were made to Morningstar International that attracted the attention of the Reserve Bank and Mercantile Bank and led to Homix's funds being frozen and Homix being discarded as a first
10 level laundry.

Now turning to the second stream which is unfortunately rather complicated. Between September 2013 and June 2015 there are 130 separate transactions in which Homix transferred a total amount of 324,095,719.87 to an entity by the name of Buko Trading. From Buko Trading – I should mention, Chair, that Buko Trading is an entity that appears to only handle funds from Homix or other first level laundry entities, so I believe that Buko Trading was set up specifically to handle State Capture
20 related payments.

That said, the individuals who ran Buko Trading seem to have a number of connections to the individuals who also ran Chivita Trading, which makes you think that those two entities were run by effectively the same organisation, although Buko Trading was exclusively and

specifically for handling Gupta Enterprise State Capture related funds.

From there we can see a number of different outgoing amounts. I am going to deal going downwards first, if I may. So downwards diagonally to the left we have an amount of 5,791,700.88 which was paid by Buko Trading to Chivita between April and May 2014. Subsequent to that there is an amount of 186,7 – I am going to zoom in slightly so it is a bit more legible, 186,700,560.81. That is
10 71 transactions between October 2014 and May 2015 that are paid from Buko Trading into an entity by the name of FGC Commodities.

FGC Commodities if I follow the line going further down so I do not break the flow, FGC Commodities was an entity that aggregated funds in order to be sent abroad. So it is effectively an onshore/offshore bridge that receives funds and then makes multiple payments abroad. And what we see is that I do not give a figure for this because it is a lot of comingled funds at the time, but effectively all of the
20 funds that are paid into FGC Commodities are paid to the Hong Kong laundry network, as you can see here FGC Commodities box they connect again to a further FGC Commodities box which is a slightly different ABSA Bank account where the funds are then pooled and then paid up to multiple different companies forming the Hong Kong

China laundry network.

The only exception to this is that on the 21st of April 2015 albeit that R186 million is paid to FGC Commodities, an amount of 3,200,294 is paid out to the entity by Komodo Wholesalers and Komodo Wholesalers is another onshore/offshore bridge that receives – which aggregates payments and then makes the payments abroad and you can see there that the payments are made again into the Hong Kong China laundry network.

10 Returning back up to the entity for Buko Trade, the third line going downwards is payments made to an exceptionally active and quite alarming onshore/offshore bridge by the name of Syngen Distribution and it is paid an amount of 71,922,955.65 between May 2014 and August 2014 in 32 discreet transactions and Syngen Distribution is paid back by Buko Trading arising from State Capture funds. Those amounts are then bulked and combined with a huge number of other inward from different sources and then form part of transfers out of Syngen Distribution into
20 the Hong Kong China laundry network.

The fourth entity going down and the last one going downwards and diagonally to the right shows a line between Buko Trading and Bay Breeze Holdings which shows an amount of R10.9 million which is transferred between the 8th of October 2014 to the 13th of May 2015

and there is 21 discreet payments that are made using State Capture funds in that regard. And in all instances those funds are then withdrawn in a very large number of cash withdrawals which unfortunately ends our ability to trace those funds as cash withdrawals are effectively untraceable at this point and we have not seen corresponding cash deposits in any other account which matches the amounts that are withdrawn from Bay Breeze Holdings.

10 I am now going to turn, if I may, to the left hand side of the diagram and proceed further upwards. So flowing diagonally upwards to the left there is an amount... [intervenes]

ADV CHASKALSON SC: Sorry, before you move to the payments to the left, can you in terms of the typology that you have been describing of how the laundry works with first level laundry entities, aggregators, onshore-offshore bridges, can you briefly describe to the Chair on this picture what the first level laundry entity or entities are,
20 where the aggregators are, where the onshore/offshore bridges are?

MR HOLDEN: Certainly, Chair. The first level laundry is Homix which runs from April 2014 to May 2015 and it appears very much at the centre of this diagram here. It is the one that receives all the inward payments from the

various State Capture contractors.

And then diagonally to the left of that – down and to the left is Buko Trading and Buko Trading is what I call an intermediary or an aggregator account and its function is to receive payments from multiple different first level laundry entities. So Buko Trading does actually receive payments from first level laundry entities besides from Homix and its job is to receive and bulk those funds and then there is different recipients, in this case we see one payment goes
10 to another first level ...[indistinct] Chivita which ran previously to Homix, but what we see here is FTC commodities and Syngen Distribution both of those are what I describe as onshore/offshore bridges, and their function is to receive payments from public trading but also from very many other sources and to pay those funds out into the international offshore laundry network, so both Syngen Distribution and FTC Commodities are offshore bridges, I don't actually have a name or ...[indistinct] for Baybury's Holdings but it is effectively an account that was
20 used exclusively to – or almost exclusively to receive inward payments from a very large number of sources beyond just Homix and to extract those payments in cash.

ADV CHASKALSON SC: Thank you. If you can now go back to the payments on the left hand side and maybe before we deal with these payments because they are fairly

specific can you give the Chair a reference where you deal with them in your report?

MR HOLDEN: Certainly, give me one second. In relation to the payments to – shall I give this ahead of time or as I am going through each payment.

ADV CHASKALSON SC: Maybe as you go through each payment will be easier.

MR HOLDEN: Certainly, okay, so I am going to start with the easiest first if I may. What we have is downwards to
10 the left is an amount of R450 000 and that is paid on the 30th of September 2013, and that is paid to ...[indistinct] of which Salim Essa is a sole director, then the second payment which is moving diagonally to the left, slightly downwards is an amount of R1million that is paid in two transactions between the 8th and 9th of April 2014 and that is paid to an entity by the name of Isidingo Personnel. The relevance of Isidingo Personnel is then revealed at Annexure 60, which appears at the Flow of Funds Bundle 13, page 495 ...[intervenes]

20 **CHAIRPERSON:** I am not sure what you're saying ...[intervenes]

MR HOLDEN: ...[Indistinct] ...[intervenes]

ADV CHASKALSON SC: I think just give the reference but explain to the Chair what we see there.

CHAIRPERSON: Ja sorry Mr Holden did you say Bundle

13 page 495 Annexure 60?

ADV CHASKALSON SC: That's correct Chair.

MR HOLDEN: That's correct [audio distorted]

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And just briefly ...[intervenes]

MR HOLDEN: ...[Indistinct – audio distorted] se see an email from Rajendra Nath to Salim Essa, and obviously Rajendra Nath was an employee of ...[indistinct] and Sahara Systems and obviously selling that ...[indistinct]
10 the Commission and effectively shows that Isidingo Personnel is engaging in business contacts with the enterprises, an associate company as it were.

ADV CHASKALSON SC: And do you recall what is attached to the email that is Annexure 60? It speaks for itself, so what we see ...[intervenes]

MR HOLDEN: ...[Indistinct – audio distorted]

ADV CHASKALSON SC: Maybe not, we don't need to waste the time but what there is, is a draft joint venture agreement with Isidingo Personnel that comes from the
20 Gupta Leaks, but maybe move on to your next item.

MR HOLDEN: Certainly, there is a payment to the attorneys Abbas Latim[?], the 10th of April 2014 for an amount of R2 830 000. As far as I understand the Commissioner did approach Abbas Latim Attorneys and they were unable to identify the matter against which that

payment was made unfortunately and then the final and most complicated of the payments outwards is an amount on the 9th of April 2014 but extends slightly upwards to the left, that is an amount of R4 413 369 [Four comma four one three, three six nine million Rand] and that is paid to Hulley & Associates, Michael Hulley the Hulley there, let me see ...[indistinct]

CHAIRPERSON: Hang on, one second ...[intervenes]

MR HOLDEN: Hulley has the ...[indistinct] affidavit
10 relation.

CHAIRPERSON: One second Mr Holden, you didn't use the references to the previous payment of Abbas Latim Attorneys where one finds the further – the annexure and so on, as you did with regard to Isidingo.

ADV CHASKALSON SC: Page 2 Chair, maybe if I can just give the reference quickly.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: It is at Bundle 9 page 250, paragraph 367B and the – and then later down at
20 paragraph 370E on page 252.

CHAIRPERSON: Thank you. Okay. Alright, you may then continue Mr Holden with regard to Mr - with regard to Hulley and Associates.

MR HOLDEN: Certainly Chair, so resuming where I left off on the 9th of April there's a payment, 9th of April 2014 there

is a payment of R4 414 369 from ...[Indistinct] Trading to Hulley & Associates and in relation to this there is an affidavit that has been submitted to the Commission, which is Annexure 61 and that appears at Flow of Funds Bundle 13 page 498.

ADV CHASKALSON SC: Mr Holden I wonder if you could take the Chair both to that affidavit but maybe to the narrative that you have in your report at paragraph 370 Bundle 9, page 250 so that you can take the Chair through
10 the narrative and then we can look at the affidavit and the annexures that flow from it. So if you could start at that ...[intervenes]

MR HOLDEN: ...[Indistinct – audio distorted] reference again.

ADV CHASKALSON SC: At page 250 of Bundle 9, paragraph 370.

MR HOLDEN: I am there okay.

CHAIRPERSON: I wonder Mr Chaskalson whether he should start after tea.

20 **ADV CHASKALSON SC:** This would be a convenient time to take the break because this will be quite a lengthy passage.

CHAIRPERSON: Yes, okay, let's take the tea adjournment until half past eleven.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV CHASKALSON SC: Mr Holden are you with us?

MR HOLDEN: I am indeed.

ADV CHASKALSON SC: Can you take the Chair through paragraph 370 of your report on page – Bundle 9 page 250.

MR HOLDEN: Certainly Chair. At paragraph 370 I write:

10 “Both Hulley & Associates and Asif Latib were
retained by Jacob Zuma in relation to various Court
applications including those relating to corruption
charges against him flowing from the arms deal.
Hulley & Associates furnished the Commission with
an affidavit attaching a ledger account of the client
file to which the button payment of R4 413 369 was
deposited, and a copy of that affidavit is attached at
Annexure 61.”

ADV CHASKALSON SC: And can you just give the Chair
the reference again where Annexure 61 is, I do not propose
20 you go there yet, we will go for the ledger, but Annexure 61
the reference for that.

MR HOLDEN: Certainly that is at Bundle 13, page 498.

CHAIRPERSON: That is Bundle 13, page 490?

ADV CHASKALSON SC: 498, Chair.

CHAIRPERSON: 498 okay, thank you.

ADV CHASKALSON SC: And you refer to the ledger, that you have a reference for the ledger, the ledger attached to that affidavit.

MR HOLDEN: Certainly Chair that is flow of funds 13, page 501.

ADV CHASKALSON SC: And if you have that ledger to hand, can you put it up on your screen? You address the ledger at - in your – at Sub-Paragraph A of paragraph 370, if you can take the Chair to that.

10 **MR HOLDEN:** Certainly at paragraph A I say it appears from the ledger it has to be affidavit of Mr Hulley but the client filled the question was a file operated on behalf of others plus the ledger has in respect of a client file with the reference MOT/MH-ALCO and has several line items with the description Latib, Asif Latib or Alko or variations thereof.

ADV CHASKALSON SC: And can you just identify some of those on your, on the screen that you are sharing?

MR HOLDEN: Certainly, as you can see here for example,
20 I am not sure if you can see my pointer but on the 19th of June 2014 we have an amount reflected of R10,000 against Alko/Mr Latib and on the 2nd of July 2014, we have a further amount of R10,000 against Asif Latib. Then if you go down further to the very bottom of that ledger we actually have the last four entries there. Three on the 2nd

of December 2014, and one on the 9th of December 2014 against the name Asif Latib or description Asif Latib or a deposit Asif Latib and company.

ADV CHASKALSON SC: Can I ask you to take the Chair to a payment of R200,000 on the 1st of October 2014 on that ledger.

MR HOLDEN: Certainly I will try and zoom in because it makes it easier to see. Certainly so Chair, we have here at the 1st of October 2014 against the description KJ Kemp
10 which is Advocate Kemp and an amount of R200,000 that is paid to - in respect of to Advocate Kemp.

ADV CHASKALSON SC: Now, you have seen statements of accounts in relation to that payment that Advocate, the late Advocate Kemp SC furnished the Commission, can I ask you to take the Chair to Bundle 13 starting at page 504, are you in Bundle 13 at the moment on your screen, but then go down to page 504 which is Annexure 62, which is a statement of an account, the late Advocate Kemp and...[intervene]

20 **CHAIRPERSON:** 50?

ADV CHASKALSON SC: 504.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Now what is the date of that account of that statement of account?

MR HOLDEN: That statement of that account is dated the

30th of September 2014.

ADV CHASKALSON SC: So it's before the payment of the R200,000 which was on the 1st of October, as I recall.

MR HOLDEN: That is correct.

ADV CHASKALSON SC: And can you just identify to whom that account is addressed?

MR HOLDEN: That account is addressed from the late Advocates Kemp SC to Hulley and Associates.

ADV CHASKALSON SC: And can you identify any items
10 on that account that where – or maybe before we to make sense of the of the statement, let us go down the following page to page 505, where there is a specific invoice relating to a particular matter, and can you describe the matter and the invoice number and the amount?

MR HOLDEN: Certainly, we have an invoice that is directed from the late Advocate Kemp SC again to Hulley and Associates, the invoice number is 0303/13, it relates to a specific matter in which Advocate Kemp acted and it is in a matter of Democratic Alliance and the acting National
20 Director of Public Prosecutions held of the directorate of DSO and Zuma, and it gives specific file reference there.

And then we have the next a description of the service of the former Advocate Kemp and it gives the date of the 6th of February 2013 and the description is on reading papers and on heads of argument in regards for

the interlocutory application for the production of the rules of the pre-record and a consultation with Michael Hulley on the 28th of February 2013. The total value of that amount plus VAT was R34,200.

ADV CHASKALSON SC: Now the annotations underneath, can you just comment on them?

MR HOLDEN: Certainly these appear to be annotations that were made by Advocate Kemp and it indicates the previous tables that have been made in relation to this,
10 what was outstanding and the previous payment was 23 649.96. I think it might be 647.96 apologies, so just – with that that payment the balance remaining on this particular invoice, the balance remaining against 34,200 is R10,542,04.

ADV CHASKALSON SC: And what is the annotation on the left?

MR HOLDEN: And that used to be part of a - the remaining adaptation we have is of R200,000 on the 1st of October 2014, so it appears as part of a broader set of
20 fees charged by Kemp and then on the left hand side it says please note this account is payable within 60 days.

ADV CHASKALSON SC: If you go back up to the overall statement on page 504, can you can you see how this invoice is reflected when the number was 0303/13?

ADV CHASKALSON SC: Certainly we have the first entry

on that particular table is dated the 12th of March 2013 and it is against an amount of the invoice 0303/13. The original amount it is clear from that particular line item was the original invoice amount of 34,200 against which a payment of R10.552, 04 and Advocate Kemp has very helpfully provided an annotation there which indicates balance, which is the balance that was due on that particular invoice.

ADV CHASKALSON SC: Can you then go down to page
10 508 and invoice 0803 and can you just describe to the Chair what you see there?

MR HOLDEN: Certainly, this is a further invoice that is submitted by the late Advocate Kemp SC to Hulley and Associates against the invoice number 0803/13 again, provides for the matter being contemplated that is Democratic Alliance versus the acting National Director of Public Prosecutions the head of the DSO and JT Zuma, Jacob Zuma on the 24th of July 2013, it gives the description of the particular services provided by Advocate
20 Kemp and it says on preparation of one day and on arguments with Victoria one day, dated the 24th of July 2013.

So it is two days all together to become clarifies and the total fee with VAT is R68,400 that was due to be payable within 60 days. Again, there is a very helpful

annotation at the bottom by Mr Kemp which he writes the balance of R200,000 which is the border invoice, which is paid on the 1st of October 2014 in the amount R50,124,33 with a balance owing of R18,275,67.

ADV CHASKALSON SC: And if you go back up to the statement the 30 September statement, can you show where that invoice is reflected.

MR HOLDEN: Certainly, if I recall correctly, it is invoice 0318/14 or the different one.

10 **ADV CHASKALSON SC:** It is 03/13 sorry, 0803/13.

MR HOLDEN: Ah there you go; apologies it is a little hard to read at times. We have on 30th of August 2013 we have against that invoice number 080/313 the original invoice amount of R68,400 and we have a due date of the amount of R68,400.

ADV CHASKALSON SC: So if you go – can you just scroll up so that we can see what the total amount owing on all Advocate Kemp SC's - scroll down sorry, the total balance as of 30 September 2014 was on all of these invoices.

20 **MR HOLDEN:** So for all of these invoices, the amount due was R402, 429,33.

ADV CHASKALSON SC: And included within that amount was I think it was the 60 - it was this 68 400 and the balance of 10 552 in respect of that matter involving Mr Zuma, do you know what that matter was?

MR HOLDEN: As far as I recall, that was a matter in which President Zuma made in ultimately unsuccessful attempts to resist an application by the Democratic Alliance, sort of view and set aside the decision by the NDP, the National Director of Public Prosecutions, not to proceed with the prosecution of Mr Zuma on the arms deal related corruption charges for which he is currently standing trial, is that matter, the Democratic Alliance successfully set aside this decision that was made by the
10 NDPD at the time not to prosecute Mr Zuma, which was then we activated the original prosecution of Mr Zuma, which he is now facing charges.

ADV CHASKALSON SC: So, this statement of account that we see was on the 30th of September before the payment of 200,000. Can we see the next statement of accounts on the 7th of November, which is after that payment, it is page 509. sorted?

MR HOLDEN: Sorry Mr you referred to a statement of 30th September. I am trying to look as if at August.

20 **ADV CHASKALSON SC:** I may I have - page 504 the statement made is at 504.

CHAIRPERSON: Oh, I am at 308, oh 30 September, okay, we were on different pages.

ADV CHASKALSON SC: Sorry, Chair.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: So as of 30 September, there was this amount of - can we just scroll down, 470,000 due and part of that amount was 68 400 and I think the balance of just over, I think it was 10,552 was the outstanding balance on the two invoices for the DA Zuma matter? Can we go to the next Statement of Account, which is in November, which is after that 200,000 payment that we saw on the ledger? and that statement of account is at page 509 and what you see – or firstly, do we see any
10 reference to invoice 0303/13 on the 30th of August 2013.

ADV CHASKALSON SC: Now that in September that had a balance of 68,400, what's happened to that balance?

MR HOLDEN: That balance has been reduced, there have been a payment made, you can see there is an annotation there of R50,134,33 leaving an amount to be paid of R18,275,67.

ADV CHASKALSON SC: And if we go back up and the total amount if we can scroll down and see what the total amount due is.

20 **MR HOLDEN:** So the total amount due is R270,429,33.

ADV CHASKALSON SC: So that is 200,000 less than it was – what was owing in September, if that annotation is correct, so now for my recollections the two numbers it is. So can you describe to me what we are seeing in these accounts? What is happening in the 200,000 that goes from

Homix to Bapu, to Mr Hulley, how is it being spent in relation to these matters of Mr Kemp?

MR HOLDEN: Certainly Chair, I am going to bring up the visualisation again just up in front of the long as well, what we see here effectively here from the state is that of the R200,000 that is paid in relation to J Kemp from Hulley and Associates of that amount R60,676,37 was in payment of Advocate Kemp's services of Hulley and Associates in representing the President Jacob Zuma in that particular
10 matter.

ADV CHASKALSON SC: The last item in relation to this description of the Bapu Laundry that I had asked you to address is just the Komodo Wholesalers Box and the FTC Commodities Box at the bottom the cross border payments into the Hong Kong, China laundry on the box, can I ask you to take the Chair very briefly to Bundle 9 page 343.

MR HOLDEN: Certainly, I am there.

CHAIRPERSON: Okay, I found it.

ADV CHASKALSON SC: And very briefly if you can just
20 describe what you see what you say in relation to FGC Commodities and Komodo Wholesalers from paragraph 577 onwards.

MR HOLDEN: Certainly we have a very brief description of the phones that are paid by Homix via Bapu to the FTC Commodities and identify there the total amount of

R186,700,516,81 paid to the FTC Commodities in 71 discrete transactions, which I mentioned just before the break and Komodo Wholesalers, which received a payment of R3,200,294 on the 21st of April 2015 from FTC Commodities, which was then paid out to the Hong Kong China mortgage network.

We were - the Commission has received evidence from South African Reserve Bank, which confirmed that the director of FTC Commodities, and an additional company
10 by the name of Bapu Wholesalers was a man by the name of Mahindra Govender, who very importantly, was also the sole director of Morningstar International Trade, which was receiving funds from the Gupta enterprise and was dissipating funds into and out of the Hong Kong laundromat on their behalf.

The Reserve Bank has indicated that he formed the subject of a previous report to the director of priority crime investigations during November 2015. Overleaf on page 4 sorry let me it is further back - at paragraph 581 I set up a
20 number, the total number of funds that I can definitively identify flowing from State Capture into the Hong Kong laundry via FGC Commodities and Komodo Wholesalers and that is an amount of R98,407,691,58 of which R69,910,189,22 emanated from Regiments related transfers, while R28,497,502,36 emanated from the

payments of R300million in relation to the Neotel and Transnet.

At Table 206 which appears at Telkom's Bundle 9 page 344, I set out how I have been able to trace the disposition of funds from State Capture contracts and how they flow -what portion of those funds then flow out via FTC to the Hong Kong laundry and you can see it is quite substantial.

ADV CHASKALSON SC: And all of these funds that
 10 emanate in Transnet's contracts with Regiments or Neotel, go through Homix, through Bapu, through FTC, where you have flagged it through Komodo as well and then come out on the Hong Kong laundry to the entities that you have listed on the right hand side, am I understanding it correctly?

MR HOLDEN: That is correct, Chair, we have on the left
 hand side of that table, which is the first three columns, we have the amount that the particular State Capture contractor was paid. So the first section of this table deals
 20 with payments to Regiments.

So for example, the first entry on the 29th of September 2014, you see an amount reflected of R16,054,050 that is an amount paid to Regiments in relation to that specific invoice number, which is CRX NMPP004 to the Transnet contract, and then be – the three

remaining columns then identify asked to be reflecting Baku and then onto the FTC Commodities how and when they exit FTC Commodities into the Hong Kong laundry network to carry on with that same top line, we see that eventually that amount of R16 million has been paid to Regiments after passing through this laundromat then exit South Africa on the 17th of October 2014, in an amount of R1,262,094 and that is paid to an entity by the name of Anjali Trading Company, which form part of the Hong Kong, China laundromat.

ADV CHASKALSON SC: And in fact, on your table, if you have got three other - three other payments, that can be traced back to those original payments by Transnet, oh sorry no, the three other payments can be traced back to a separate payment by Transnet on the 12th of November, I am sorry.

Mr Holden, I think at this point, we should probably move on from the Bapu Laundry and maybe take a look at a diagram that you have produced that now appears at page - in volume 20 page 320, the volume 20 page 320.

MR HOLDEN: I have now raised that on my screen.

ADV CHASKALSON SC: Chair, this is not yet an exhibit because it was not attached to Mr Holden's report, can we admit it as an exhibit?

CHAIRPERSON: I have just found it, yes, what exhibit

should it be?

ADV CHASKALSON SC: I think we are now at V, double V10, capital D.

CHAIRPERSON: Exhibit BB10, B...[intervene]

ADV CHASKALSON SC: It is D for dog.

CHAIRPERSON: That is after 10B?

ADV CHASKALSON SC: We have got a 10C as well, so I it is - I think we are now at 10D.

CHAIRPERSON: Okay, okay and the D is a small one, a
10 small letter?

ADV CHASKALSON SC: Yes, this is – oh no in fact the others I think are capitals.

CHAIRPERSON: Ja, the others are capital.

ADV CHASKALSON SC: Capital, so let us make it capital.

CHAIRPERSON: Okay. This diagram is admitted as Exhibit...[break in audio]

MR HOLDEN: ...those funds arising for state capture contracts on the right-hand column. Forgive me. I forgot
20 the specific dates, but my evidence leader wanted me to have reference to it.

ADV CHASKALSON SC: It is the dates between June and August 2016.

MR HOLDEN: Certainly, Chair. The amounts in the accounts and there are quite substantial of it, the transfers

from June to August, are all, ultimately, emanate from Trillian and in relation to specific contracts that Trillian held with Transnet. So, for example, you can see a number of things.

I think it is seven payments if my eyes do not deceive me that arise from payments made by Transnet and Trillian in relation to the property database contracts. There are other payments that are sourced – that are paid to Trillian by Transnet in relation to the freight
10 breakthrough – the general freight breakthrough contract, TFB/Soc-2(?) project.

And then five final payments all in August which are made by Trillian and ultimately emanate from the Eskom master services agreement paid in August 2016.

ADV CHASKALSON SC: Then can I ask you to go down to page 308 of Bundle 9? Where you deal – you just described payments that emanate from state capture contracts in that SAAMED Bullion. At page 308 – sorry, page 308, paragraph 503, we talk about payments from
20 SAAMED Bullion to Lethabile(?) Technology. Can you take the Chair through that?

MR HOLDEN: Certainly, sir. At paragraph 503, I note that Lethabile Technology was paid an amount of R 5 3084 728.84 by SAAMED Bullion Group. All of that money emanated from state capture funds. The relevance

here is that Lethabile Technology had two directors, namely, Zayno(?) Abadeen(?) Nugbee(?) and a son, Safras(?) Nugbee. Zayno Nugbee is a politically exposed person.

On the 11th of December 2014, Mr Nugbee was appointed to Transnet's Board Acquisition and Disposals Committee. And, obviously, the Commission has heard substantial evidence about the role of the BADC in relation to irregularities occurring at Transnet and certainly over
10 the period in which Mr Nugbee sat on the BADC.
Preceding...

ADV CHASKALSON SC: Please proceed

MR HOLDEN: Preceding to paragraph 504 and the supporting table 188, the payments that were made by SAAMED Bullion Group into their accounts of Lethabile Technology was paid almost immediately to Success and Limited and Success and Limited came up slightly earlier in my testimony as one of the most active recipients of funds from the state capture networks into the
20 Hong Kong network.

State capture is a – Success and Limited is a Hong Kong registered company, because these hundreds of millions of rands of payments and also payments from Regiments Asia and Tequesta Group on further laundering.

So, my conclusion is that and Mr Nugbee was

receiving funds arising from state capture and most likely laundering those funds on behalf of the Gupta Enterprise via the Hong Kong laundromat, or alternatively, that Mr Nugbee was receiving his own illicit inducements.

And that he was looking to move those funds abroad through the same laundromat used by the Gupta Enterprise. And at table 188, I set out the amounts that are paid from SAAMED Bullion to Lethabile Technology and then subsequently paid to Success and Limited.

10 **ADV CHASKALSON SC:** So, that was one member of the Transnet BADC. Let us go to another one, Mr Stanley Shane. Can you go to a new annexure, Bundle 20 at page 319?

MR HOLDEN: [No audible reply]

ADV CHASKALSON SC: And Chair, this diagram at 319, can we introduce it as a new annexure? And I think we are now at BB-10(g).

CHAIRPERSON: Yes, I think we are. The diagram at page 319, Bundle 20 is admitted and will be marked as
20 Exhibit BB-10(g).

**DIAGRAM AT PAGE 319 OF BUNDLE 20 IS ADMITTED
AND MARKED AS EXHIBIT BB-10(G)**

ADV CHASKALSON SC: Can you take the Chair through this diagram starting again with the payment from CNR to Bex?

MR HOLDEN: Certainly, Chair. So, this is a diagram that starts at the top with a payment from CNR Rolling Stock South Africa to Bex which I just described in relation to the universal auctions confident(?) concepts transactions. To reiterate, on the 25th of September 2015, CNR pays an amount of R 76 586 903.16 into Bex' Standard Bank account 2054833.

On the 12th of October, Bex transfers that amount into a second Standard Bank account that it operates –
 10 [break in transmission – speaker unclear] ...transfer as on the 12th of October 2015, R 76 585 630.43 into Bex's Standard Bank account 608483702001. In ...[indistinct] thereafter, on the 5th and the 6th of November, Bex transfers R 10 154 226.18 to a company by the name of Block Mania who operates an FNB account 62533675453.

And that aggregated amount is made up of three payments. The first is on the 5th of November 2015 for R 3.42 million, and an amount of R 115 000,00 on the 5th of November 2015, an amount of R 6 584 226.18 on the
 20 6th of November 2015 from Block Mania – and apologies, Chair, for the typo where the rand sign twice.

In ...[indistinct] [00:08:13] Black Mania transfers R 9 906 210.18 from those same funds to the account of a company by the name of Green Blossom which operated an account at FNB, First National Bank, of – with an account

number 625644567067 and this was made up of seven transfers that are made between the 9th of November 2015 and the 11th of November 2015.

I waited ...[indistinct] [00:08:49] because it is very ...[indistinct] [00:08:51] together those payments make up an aggregated amounts of R 9 906 210,18. And then using those same funds, Green Blossom then transfers an aggregated amount of R 9 370 800.00 into the account of Integrated Capital Management and again that is made in
 10 seven transfers and that is made between the 9th of November 2015 and the 16th of November 2015.

The essence of my diagram, Chair, is to show that the funds arising from the utterly egregious(?) contract between CNR and Bex which massively increased the costs accounts that are communication(?) projects. Those funds that – the success(?) fees(?) paid through to Bex ...[indistinct] [00:09:42] ended up being paid to – in part to Integrated Capital Management.

As the Commission is no doubt aware, at the time
 20 those payments are made, the directors were Clive Angel, Mark Chipkin, and Stanley Shane, who at the same time, Stanley Shane in particular ...[indistinct] of him, was also a Transnet Director and Chair of the Board Acquisition and Disposal Committee and he was also the Director of the Transnet Second ...[indistinct] Benefit Fund.

So, you have funds flowing from a very obvious fee, questionable corrupt contract with Transnet building(?) CNR and those funds eventually flowing to a company controlled by one of the men sitting on the Transnet Board approving those sorts of transactions.

ADV CHASKALSON SC: Let us dawn on Mr Shane for a while. Can I ask you to go to page 404 of your report, paragraph 717 which is in the context of this very payment we have pressed to Mr Shane's company from the amounts
10 that Bex was paid for making Transnet or persuading Transnet to pay more for the locomotives manufacturing facility to be relocated to Durban.

CHAIRPERSON: Is that page 404 of Bundle 9?

ADV CHASKALSON SC: It is, Chair. It will be in Bundle 9, ja.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: You have mentioned that Mr Shane was both a member of the board and the Chair of the Board Acquisitions and Disposal Committee. You also
20 mentioned his role on the TSDBF. Can you take the Chair through paragraphs 717 and 718 thought to 719 to see what Mr Shane did at the TSDBF?

MR HOLDEN: Certainly, Chair. I will read this and to make sure that I do not make any unfortunate errors. Under paragraph 717 I write:

“My tracing work has revealed that Integrated Capital Management, ICM, was paid R 9 370 800.00 in November 2015 derived from funds paid to Bex by CNR in relation to the Durban Relocation Project. Integrated Capital Management was directed by Mark Chipkin, Clive Angel and most certainly(?), Stanley Shane...”

As the Commission has already heard, Stanley
 10 Shane acted as a board member of Transnet on December 2014, June 2017, and a chair of the TSDBF over the same period. The payments to Integrated Capital Management. Well, that is received by them while Stanley Shane was a Transnet Director. At paragraph 718, I write:

‘All of the – the affidavits ...[indistinct]
 [distortion in transmission – speaker unclear]
 ...the affidavit of Mr Maritz is TSDBF which is attached as Annexure 12 to the record...”

It shows how at paragraph A(?), I write:

20 “At his first meeting as Chairperson of the TSDBF in December 2014.

Mr Stanley Shane intervened to prevent TSDBF withdrawing the Fund Management Bid(?) Board that previously made Regiments’ own(?) managers and replacing them with Old

Mutual because Regiments fund managers were then refusing to honour the terms of the proposal on the basis on which they awarded the Fund Manager tender.

Shane prevent on – prevailed on the TSDBF to engage Chipkin as an advisor in negotiations with Regiments' fund managers.

10 At a special meeting of the TSDBF on the 1st of October 2015 i.e., a month before the R 9 370 800.00 payments to ICM, Shane reports through the appointment of Regiments' fund managers to manage a R 9 billion portfolio of assets of the TSDBF as opposed to the R 1.3 billion portfolio having been the subject of a tender process in which they were successful bidders(?).

20 Regiments' fund managers control of the R 9 billion portfolio of TSDBF assets was a prerequisite of the four interests slots that the purported to conclude on behalf of the fund between December of 2015 and 2016..."

As I have pointed out elsewhere, in this report, these swops led to payments of more than R 228 million to Trillian and Albatime having used the fund more than R 200 million of the Tegeta purchase price for the Optimum

Coal Mine of which we will turn to slightly later, I would imagine.

“Giving the timing of Shane’s intervention in the TSDBF, it is quite possible that the R 9 370 800.00 payment to ICM was not merely a remuneration payment for their role in the Bex for Transnet but also a reward to Shane in securing Regiments’ position within the TSDBF as a platform from which assets of the TSDBF could be looted for the Gupta Enterprise...”

ADV CHASKALSON SC: And just for the Chair’s reference. That affidavit of Mr Maritz, Annexure 12, is in Bundle 9, page 653, is where the affidavit starts. It is a long affidavit.

CHAIRPERSON: Bundle 9, page...?

ADV CHASKALSON SC: 653, Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Chair, I think that we are about to move on to a new topic. We have heard in the meantime from T-Systems that they are not going to bring an application. They said they have not had enough time to do so.

CHAIRPERSON: H’m?

ADV CHASKALSON SC: My submission is that in those

circumstances, Mr Holden should be allowed to talk to his reporting relation to T-Systems.

CHAIRPERSON: Ja, I think they – I think that would be fine. There is a provision in the rules, if they feel that they were not given enough time for them to make an application for whatever relief, could mitigate or address their grievances if they feel that they are grieved. So, I would think that on balance it should be found to allow Mr Holden to deal with it.

10 **ADV CHASKALSON SC:** Thank you, Chair. Then we will turn to that after lunch.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And continue thereafter.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: We can – maybe to save time, Chair.

CHAIRPERSON: H'm?

ADV CHASKALSON SC: No, it is actually going to take too much – [laughs] – too much time.

20 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: Do you want us to start at this point or – so that we do not waste ten minutes or are you happy to take the lunch now?

CHAIRPERSON: Well, we can take the lunch break and restrict it to an hour so that whatever five minutes, ten

minutes we would have used to get to one o'clock, we can use after lunch.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Is that fine?

ADV CHASKALSON SC: [No audible reply]

CHAIRPERSON: Ja. From my watch, it is six minutes to one. So, we can resume at five to two.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Okay, we will adjourn, and we will
10 resume at five to two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV CHASKALSON SC: Thank you, Chair. Mr Holden,
last time that you testified we deliberately avoided
addressing any of the T-Systems issues. Can I ask you
now to address those issues and maybe to start by going
to your report in bundle 9 page 91 and take the Chair
through paragraphs 96 to 98 in relation to what you have
20 found out through your investigations in relation to T-
Systems. So it is bundle 9 page 91.

MR HOLDEN: Thank you, Chair. I am getting the audio
from the venue but I am afraid I am not getting the video
but I am sure the technicians can attend to that while I am
dealing with this. I hope that I can seen and heard.

CHAIRPERSON: We can hear you, we can see you, so there was something written on the screen, but we can see you, we can hear you.

MR HOLDEN: Terrific. Thank you. Okay, to turn to that reference, at paragraph 96 I write:

“On the 19(?) December 2009 T-Systems concluded five year or MSA or Master Services Agreement contract to provide IT equipment and data services to Transnet for a period of five years. The contract provided for Transnet to have a two year right of renewal.”

10

At paragraph 97 I wrote:

“T-Systems or TS have used [indistinct] in price connections to secure its position at Transnet and to more than double the term and value of its Master Services Agreement contract or MSA contract. As discussed more fully below, (indistinct – recording distorted) payments by state contractors to Gupta enterprise laundry entities over the period August 2012 until mid-July 2015, T-Systems made regular monthly payments of R81 830.91 into Zestakor, a company of Zeenat Osmany who is married to Salim Essa. In total, T-Systems paid Zestakor R3 051 639.21 to Zestakor Standard Bank account 2063977 through these

20

monthly payments.”

ADV CHASKALSON SC: And can you tell the Chair about T-Systems cession of its contract with Transnet to Zestakor? It is an issue addressed at paragraph 100.

MR HOLDEN:

“T-Systems relating to Salim Essa and Zestakor was cemented when T-Systems ceded to Zestakor their [indistinct] and rental elements of a Master Services Agreement with effect from 19 May 2015 after
10 Transnet had agreed to extend the Master Services Agreement for the full two years allowed for the extension under the Master Services Agreement. The cession agreement between T-Systems and Zestakor was concluded on the 1 December 2014 less than a month before the original term of the T-Systems MSA had expired.”

And I have the contract cession which is attached to the bundle – sorry, that is actually attached to the bundle of Mr Mahomed but I do not attach it to my submission because
20 it is quite extensive.

The substance here of what I am saying to cut through is that on the 1 December 2014 T-Systems agreed to give quite substantial portion of its contract under work under that contract from Transnet to Zestakor.

ADV CHASKALSON SC: You then deal with the demise of

all attempts to put the service out to tender to find a replacement service provider when T-Systems contract would expire. Can you address the Chair on that?

MR HOLDEN: Certainly. In November 2015 Transnet initiated a new procurement process to replace the MSA. As the procurement process from TMSA was extended with a succession of short term extensions, in February 2017 Transnet resolved to reappoint T-Systems despite the fact that Gijima had submitted a higher ranked bid at a
10 substantially lower price than T-Systems.

The board acquisitions and disposals committee that awarded the contract to T-Systems was chaired by the Gupta associates, Danny Shane(?) what I dealt with before the break. Shane motivated strongly for keeping the new contract with T-Systems despite the higher ranking of Gijima.

Another person who sat on the board in acquisitions and disposal committee at that time was then [indistinct] and I have pointed out his role in receiving gifts(?) state
20 capture funds and dissipating it out to the Hong Kong network.

ADV CHASKALSON SC: Can you then continue with your paragraph 102 where you talk about how this contract ultimately ended?

MR HOLDEN: Certainly. In October 2017 Transnet applied

to the High Court to have the decision to award the contract to T-Systems set aside and to replace that decision with an award to Gajima.

A year later, in October 2018, T-Systems finally withdrew its opposition to that particular application and that was awarded to Gijima. However, in the meantime and because the matter had to be resolved, the cession of the short term contract extensions meant that the T-Systems MSA remained alive until March 2019.

10 So, as we can see, the MSA was first granted to T-Systems in December 2009 and despite attempts for a number of years to have that contract moved to a different supplier, that MSA remained alive until March 2019, so close to a decade.

ADV CHASKALSON SC: Now you have talked about how part of the contract was ceded to Zestakor, which was linked to Salim Essa. Can you talk also about how the Gupta enterprise company Sechaba was engaged by T-Systems as a subcontractor?

20 **MR HOLDEN:** Certainly. Chair, Sechaba was listed as a supply development partners, selected as a supply and development partner with T-Systems and as a result it received quite substantial income from T-Systems as the supply development partner. Those funds that were received by Sechaba were then – a portion of its funds

were then transferred to Zestalar on a monthly basis as a retainer.

I have also noticed that Sechaba's bank statements, bank records indicate that Sechaba made multiple payments to first level laundry entities.

ADV CHASKALSON SC: And can you tell the Chair what the total amount of the payments from T-Systems to Sechaba was?

MR HOLDEN: Certainly, Chair. In total T-Systems
10 transferred an amount of R323 413 332.51 to Sechaba's Nedbank account 1940071216 in February 2015 and December 2017.

ADV CHASKALSON SC: And because it is not in the section of your – not in this particular section of the report, can I ask you just to go to page 208 of bundle 9 and table 122?

CHAIRPERSON: What page of bundle 9?

ADV CHASKALSON SC: 208.

CHAIRPERSON: Okay.

20 **ADV CHASKALSON SC:** And that is a table that runs for about five or six pages all the way through to page 213.

CHAIRPERSON: I have got it.

ADV CHASKALSON SC: So it runs from 208 to 213 and can you tell the Chair what that table lists?

MR HOLDEN: Certainly, Chair, that table 122(?) lists 169

payments made to Sechaba Computer Systems Nedbank account by T-Systems between February 2015 and December 2017, the total value of R323 413 332.51.

ADV CHASKALSON SC: Can I then ask you to go back to page 94 of bundle 9, page 94, and table – and describe to the Chair what you had set out in table 42.

MR HOLDEN: Certainly, Chair. There is two functions to this table. First it lists the period of time and the contract dates under which T-Systems was awarded its MSA and
10 then all the variations and modifications thereafter to have the effect of extending the Master Services Agreement so that T-Systems would continue to – the date that we have as the final payment that is under variation 5, which was for six months and that terminated on the 8 December 2018.

The column to the right are the contract dates, provides an aggregate amount that T-Systems was paid under those contracts over those periods but I think what is most interesting is the column to the far right which is
20 an annualised average payment and that, very simply is, I have made an effort to establish the amount that T-Systems was paid every year under those Master Services Agreement.

As you can see the amount that T-Systems earns every year increases substantially from 2015 onwards. So

between 1 January 2010 until the 31 December 2014 T-Systems earned an average of R263 408 760.30 per year from Transnet. From the 1 January 2017 to 30 September 2017 you have what is effectively a total payment for that year calculated pro rata of R813 475 948 which I take to – which I have interpreted as T-Systems ability to extract further funds from the state and for Transnet to be minded to reward T-Systems over this period of time despite the constant attempts to actually have the contract vacated
10 and being given to somebody else.

ADV CHASKALSON SC: Was the contract that T-Systems had in the period from 2015 when the annualised payment started increasing the same scope or a bigger scope or narrower scope than the contract that it had up to the end of December 2014?

MR HOLDEN: It was a narrower scope, Chair.

ADV CHASKALSON SC: And can you explain why it was a narrower scope?

MR HOLDEN: Certainly. Certain portions of that
20 agreement had already been ceded in particular the supply of rental agreements having ceded to Zestalar and then at a later stage, as I sure we will explain, to [indistinct] to them paid out as Zestalar.

ADV CHASKALSON SC: So with a narrow scope T-Systems was charging on an annual basis almost three

times as much according to that table?

MR HOLDEN: Absolutely, Chair, we have a situation here where T-Systems is no longer supplying the hardware in relation to the Master Services Agreement. The services providing have decreased but the amount they have been paid has increased very dramatically.

ADV CHASKALSON SC: Can we then move from Transnet to Eskom and this is something that you address from page 100.1 of your report, 100.1 of bundle 9 and it was not in
10 your original report, can you explain why?

MR HOLDEN: Certainly, Chair. When I originally submitted my reports to the Commission I noted that T-Systems had been paying monthly amounts to Zestalar from August 2012 and I suggested that the Commission should identify the cause of those payments. The Commission then conducted its own investigation. I understand that it has been investigating this matter for a while and in the process it identified an additional irregular T-Systems contract. This was a T-Systems and Eskom
20 Master Services Agreement concluded in 2009 for a five year period from the 1 January 2010 to the 31 December 2014 and then as with the Transnet example, they regularly extended with a succession of contract modifications until 2019.

So as with Transnet, T-Systems essentially held a

ten year contract or just under ten year contract for a contract that was supposed to only run for a number of years.

ADV CHASKALSON SC: At page 100.1 you have a table 45A which – well, can you tell the Chair what that table describes?

MR HOLDEN: Certainly. Table 45A sets out the total amounts that were paid to T-Systems as a result of this Master Services Agreement and thereafter the (indistinct –
10 recording distorted) and you can see the first four lines refer to the original Master Services Agreement between the 1 January 2010 and the 31 December 2014.

The following three lines note that there were modifications to that Master Services Agreement which increased the amount to be paid under that Master Services Agreement. The net effect was that all the original Master Services Agreement between the 1 January 2010 and the 31 December 2014, T-Systems was paid an aggregate amount of R4 506 794 902.54 and thereafter I
20 list the modifications that took place.

Modification 4 approved on the 9 December 2014.

Modification 5 approved on the 28 February 2015.

Modification 6 approved on the 13 December 2016.

Modification 7 approved on 16 February 2018, and

Modification 8, which is on the following page, it

was agreed to the 12 November 2018 and ran to the 30 June 2019.

I think there is a discrepancy that we picked up, Chair, between the amounts that were approved by Eskom to be paid under the contract and the amounts that were eventually paid to T-Systems. I have given all of those little figures so there is an amount approved with VAT excluded, an amount approved with VAT included and then we have also had – I have examined the T-Systems bank
10 statements and confirmed a separate figure.

So for the purposes of this report into my tallying, I rely on that final column which shows that T-Systems was paid a total under the Eskom MSA over these years an amount of R7 805 558 985.49. For the poor transcriber, that is 7, 805,558,985.49.

ADV CHASKALSON SC: Now in the next paragraph you refer to two letters that Eskom sent to T-Systems confirming that it had no intention to renew the contract beyond the end of 2014. Can I ask you to take the Chair to
20 those letters? They are at the end of this bundle 9 and the page reference is 914.5 for the first letter and 914.7 for the second letter, annexures 23.2 and 23.3.

MR HOLDEN: Okay, I am just getting myself there. If I am correct, the first is bundle 9, 914.4.

ADV CHASKALSON SC: That is correct, 914.4.

MR HOLDEN: Okay, that is actually the – that identifies the annexure number 23.2, the actual annexure is on the following page and this a letter that is directed from Eskom to Mr Gert Schoonbee who was the managing director of T-Systems South Africa on the 26 August 2013 and it essentially says that – well, I will read the quoted paragraph, it says:

10 “Given our longstanding arrangement and transparent relationship and as T-Systems being the incumbent we thought it prudent to inform you of the outcome of our presentation to Eskom Exco and board tender committee and their resolutions. The decision taken is that Eskom will follow an open tender process very soon so that new agreement is put in place on the expiry of the current MSA outsourced agreement. T-Systems will have every opportunity to respond to this open tender process.”

20 **ADV CHASKALSON SC:** That is August 2013, will you go down two pages to 23.4? Sorry, to 914.7, annexure 23.3 and describe to the Chair the letter from Eskom there.

MR HOLDEN: Certainly. We have a letter dated 29 September 2014 sent from Eskom to T-Systems South Africa at their address in Midrand for the specific attention of the Chief Financial Officer of T-Systems, Anya Hattingh. The letter is cc'd to a number of people, I will not go into

here, suffice to note that at paragraph – I will read the first two paragraphs of this letter just to read it into the record.

The first paragraph reads?

“We refer to the Master Services Agreement, MSA, entered into between Eskom Holdings Limited and T-Systems South Africa effective from 4 January 2010 and our letter dated 26 August 2013 whereby TSSA...”

That is T-Systems South Africa.

10 “...was informed of Eskom’s decision not to renew the MSA. Eskom, a service recipient, hereby notifies TSSA and places on record that the MSA will terminate on the expiry of the initial term and will not be renewed in accordance with clause 8.2 of the MSA. Clause 8.2, which refers, renewal would therefore not be applicable.”

The substance of these two letters, Chair, I think it is quite obvious that Eskom was informing T-Systems that they were intending on terminating T-Systems’ contract and
20 putting it out to open tender.

ADV CHASKALSON SC: And yet as we have seen four years later T-Systems was still in place. Can I ask you now to go to annexure 23.4 which is an internal T-Systems Group compliance report dated 24 June 2015 and describe to the Chair the significant feature of this document.

CHAIRPERSON: What is that page?

ADV CHASKALSON SC: 914.8, Chair.

CHAIRPERSON: Okay, thank you.

MR HOLDEN: Chair, this document is a final report on a compliance check that was performed at T-Systems South Africa by T-Systems head office on the 24 June 2015. The compliance check was into the appointment of what they called non-IT consultants at T-Systems South Africa. The relevant section for this discussion begins at Flow of
10 Funds bundle 9, 914.13.

CHAIRPERSON: Yes, actually that report starts at 914.9. I am just making that correction because Mr Chaskalson said 914.8 but that is where it is written annexure 23.4. Okay, alright. Okay, I am 914.13.

MR HOLDEN: Thank you, Chair, as you can see the issue there is with regard to the appointment of Salim Essa or T-Systems South Africa's engagement with Salim Essa. If I may, I will read the relevant extracts here. It says here:

“Salim Essa...”

20 Which they shortened to SE.

“...is a board member of Broadband Infraco BDI with whom T-Systems South Africa, TSSA, partnered on the Transnet network RFP as its bandwidth provider and the Department of Public Enterprises as the shareholder of Eskom, Transnet and also BDI, Salim

Essa has a strong network to Eskom officials and its stakeholders. After the engagements with Transnet regarding the network contract TSSA continued discussing with Salim Essa various different strategies to work together as part of TSSA's localisation and enterprise supply development strategy aligned with changes in BEE codes."

And here I think it is particularly interesting.

- 10 "TSSA considered various options to engage with Salim Essa concluding a consultancy engagement as sales agent and incorporation of specific subcontractors under the condition that it is aligned with TSSA's business models."

Slightly further down the page it reads:

"After these steps were taken the TSSA management decided not to formally..."

Sorry, I have skipped the important point, if I may go back.

It says here:

- 20 "TSSA started the necessary steps within the non-IT consultancy process namely starter filling and compliance risk evaluation template for use of non-IT consultants, starts with background checks, started the document real risk assessment..."

And I think probably the most important, it says:

“Assess local laws and obtain an internal legal option..”

Which I would imagine is supposed to be legal opinion.

“...on the use of Salim Essa as a sales consultant specifically the Prevention and Combating of Corrupt Activities Act. After these steps were taken, the TSSA management decided not to formally engage with Salim Essa as a sales agent but to informally use his network. In reward Salim
10 Essa introduced several local starter companies to TSSA [indistinct] and he requested TSSA to provide these companies with the opportunity to be included in the value chain where possible.”

The compliance report then refutes in a manner which I do not agree with, it says:

“Taken into account the abovementioned needs for the TSSA in terms of localisation, as an internationally-owned entity to improve their BBBEE rating to get the opportunity to share, present their
20 transformation strategy to potential public customers as Eskom, the decision to engage with the sub-contractors, especially Sechaba and Zestalar, and this as well as other projects can be comprehended. We had the possibility to check the relevant internal documents and information

available regarding the sub-contractual relationship with Sechaba and Zestakor. Based on these information as well as on the conductive interviews there is a normal contractual relationship in place without any irregularities. There is no indication for corruption or any other illegal behaviour...”:

Which I will discuss my response to that shortly. And then I emphasise this point.

10 “Nevertheless, the decision to engage Salim Essa in an informal way and without contractual basis led to a vast number of legal and compliance risks besides his incalculable legal and compliance risks, the informal engagement was a clear breach of the non-IT consultancy process.”

ADV CHASKALSON SC: Then maybe for completeness over the page?

MR HOLDEN: It says:

20 “The decision of the further preceding informal engagement a sales agent agreement is not acceptable due to compliance reasons that led to unnecessary risks because of a lack of transparency and documentation.”

ADV CHASKALSON SC: What do you make of this report?

MR HOLDEN: I think the report is quite shocking from a

number of perspectives. The first is that the report discloses that T-Systems was working extensively with Salim Essa and relying on Salim Essa for it to secure work with Eskom in particular. It makes it very abundantly clear that in reward Salim Essa had the opportunity to indicate to T-Systems which companies he would like to be added to what they call the T-Systems value chain according to the more prosaic terms which companies he thought should get contracts from T-Systems flowing from the Master
10 Services Agreement.

Frankly, Chair, I am astonished by the findings of this report. The factual matrix is disturbing enough but the fact that then T-Systems decided internally in its compliance check that this did not amount to an irregularity or corruption, I do not fully comprehend and I totally disagree with at least on the face of the information I have seen. It seems to me to be the essence of a problematic relationship for them to rely informally on an agent who had been told they cannot contract with formally, precisely
20 after they have conducted an investigation and sought an opinion under the terms of the Prevention of Corruption Act but then as a result of that informal engagement then handed contracts to people that that agent has specifically identified that T-Systems should include in the value chain as a reward for the services that it provided informally. I

think that speaks to part of an incredibly irregular contract and on the face of it a corrupt contract.

ADV CHASKALSON SC: Now this report was prepared in June 2015. Can you just take the Chair back to how long after June 2015 T-Systems continued to keep the contract that had apparently been procured with the assistance of Salim Essa in this way?

MR HOLDEN: Certainly, Chair. It retained contracts until the 30th of June 2019, so a number of years after the fact.

10 **ADV CHASKALSON SC:** Would it be fair to say that it is possible that in June 2015 people might not have known the role that Salim Essa was playing in State owned enterprises?

MR HOLDEN: I suppose it is possible, although within a short period of time his role was [indistinct] notable that he – that T-Systems undertook what would be quite a normal and rudimentary compliance exercise for Salim Essa, which was to establish whether his appointment as a sales consultant as you would do normally for a [indistinct]
20 contract and it did after review essentially establish that entering into that sort of relationship would fall foul of those particular compliance checks, in particular the Prevention of Corrupt Activities Act. So it appears to me that on its face T-Systems was aware of the fact on the date of this report that there were major irregularities

around his engagements.

ADV CHASKALSON SC: You think they could have had any doubts by 2019 when they were still holding onto that contract?

MR HOLDEN: No doubt whatsoever, Chair.

ADV CHASKALSON SC: Can I ask you to go to page 100.4 where you deal with the payments to Zestilor and Sechaba at paragraph 114.g? Can you tell the Chair what you say there?

10 **MR HOLDEN:** Certainly. Payments that T-Systems made to Zestilor and Sechaba straddled both the Eskom and Transnet contracts and are detailed in this report at tables 104 to 122. In addition to these tables as was... [intervenes]

CHAIRPERSON: Sorry. I am sorry, Mr Holden. Mr Chaskalson, 104 or 100.4?

ADV CHASKALSON SC: No, it is the table numbers, Chair. I will get those references for you. Table 122 is at Bundle 9 page 208 is where it starts for table 122. Table
20 104 I will find that and I will get that reference shortly, Chair.

CHAIRPERSON: Okay, alright. I am at 208, table 122. Okay. Okay, you may continue, Mr Holden.

MR HOLDEN: Certainly. Thank you, Chair. In addition to these payments as was the case at Transnet, the Gupta

Enterprise also benefited from direct payments made by Eskom as a result of changes to the T-Systems master services agreement after [indistinct] by Eskom beyond the original five year term.

At the time T-Systems ceded part of its contract to Zestilor in the renewal period, however at Eskom T-Systems ceded part of its contract back to Eskom, that Eskom would in source its wide area network services. Having then in sourced its wide area network services,
10 Eskom immediately outsourced to T-Systems' service providers including Zestilor those parts of the relevant services that T-Systems had already been outsourcing and I note that that process is described in a submission to the Chairman of Eskom Group Commercial Division on the 12th of March 2015 which I attach as Annexure 23.5.

ADV CHASKALSON SC: And can you tell the Chair how much T-Systems paid to Zestilor – sorry, how much Eskom paid to Zestilor on this contract that was created by the withdrawal of T-Systems to make way for Zestilor and other
20 contractors?

MR HOLDEN: Certainly, Chair. In total Eskom paid Zestilor an amount of R2,490,484.50 over the period of the next three years. I should note here that that is actually an amount that was considerably larger than the original amount that had been earmarked for Zestilor and in that

document I just noted the original earmarked amount that Eskom intended to pay Zestilor was R878,605.56. So there is quite a big discrepancy and clearly Zestilor benefited by receiving a larger amount of money from Eskom over this period.

ADV CHASKALSON SC: Then Chair, if I can just give you the reference for table 104. That is Bundle 9, page 185.

CHAIRPERSON: That is bundle?

ADV CHASKALSON SC: Nine.

10 **CHAIRPERSON:** Nine.

ADV CHASKALSON SC: Page 185.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: I think that concludes the T-Systems discussion but for the fact of aggregating the amounts that were paid to T-Systems under these contracts. I do not have my reference to hand. Do you have an easy figure before you of what the total amount that T-Systems got from these two contracts from Transnet and Eskom was?

20 **MR HOLDEN:** I can give the individual, but I have not actually added the two contracts together to be honest.

ADV CHASKALSON SC: Maybe just give us back the two individual amounts, aggregate amounts because they are significant in the broader scheme of things.

MR HOLDEN: Certainly. In relation to the Eskom MSA it

was an amount of R7,805,558,985.49. That is for the Eskom MSA. And then the total paid to... [intervenes]

ADV CHASKALSON SC: The total paid for – to T-Systems by Eskom we discussed a short while ago which is the R7,805,558,985.49 that we see in table 45A on Bundle 9, page 100.2. In your executive summary I am aware that there is a place where you add them together, but we can do the arithmetic ourselves at a later stage.

That concludes the discussion of T-Systems, but
10 while we are there can you briefly take the Chair through the explanation for the replacement pages and what has happened since your original evidence in relation to information concerning State Capture contracts and the like?

MR HOLDEN: Certainly, Chair. If I may, I actually now have the aggregate figure in front of me, if I could – if the [indistinct] would like me to go through that again.

ADV CHASKALSON SC: Well, let us hear the aggregate figure, because I think after the Chinese locomotive
20 companies it may be the biggest figure that there is.

MR HOLDEN: Indeed. The total aggregate figure that I have including the Transnet contract is R12,334,936,782.95 and again to save the anxiety of the transcriber that is 12,334,936,782.95.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Then can you then explain to the Chair the reason for the changes that were made to some of the tables and then I will take you to those specific changes?

MR HOLDEN: Certainly, Chair. On conclusion of my evidence in May the Commission was then subsequently approached by a number of organs of State to indicate that the payments that I had identified were incomplete and that I unfortunately undercounted certain costs such as, and we
10 will get to this, the figures supplied for McKinsey were supplied without VAT included. I was also very kindly contacted by Rudi Heyneke of the organisation Undoing Tax Abuse who undertook the not particularly rewarding or enjoyable process of recalculating all my calculations and he identified three payments that were made to Regiments that I did not reflect in my original report, so I need to increase the amount that is paid to Regiments under my counting.

ADV CHASKALSON SC: So now that you have done
20 these exercises, can I take you to Bundle 9, page 153 where you have an aggregate total cost to State in table 73. So maybe if we can start at the bottom of that table which is on page 155 of Bundle 9.

MR HOLDEN: Chair, I will share my screen so that the public can see the figures as well.

CHAIRPERSON: I have ended up – I see, Mr Chaskalson, I have ended up with two pages 153. I do not know if they are the same.

ADV CHASKALSON SC: Two pages 153 or 155, Chair?

CHAIRPERSON: Well, 153. There is one 155, it is just that as I was paging through I realised I have got two pages 153 that can be dealt with maybe some other time, but they look the same. I do not know if they are exactly the same.

10 **ADV CHASKALSON SC:** They are – they would not be exactly the same because – 153.

CHAIRPERSON: The one is a replacement page. I assume the other one which is not written replacement page.

ADV CHASKALSON SC: Yes, the difference between them, Chair, will be in paragraph 195 where there is the figure quoted for the total cost to the State of State Capture contracts.

20 **CHAIRPERSON:** Yes. Should one be 153B or something or should... [intervenes]

ADV CHASKALSON SC: The replacement page is the page that is the one that we would like to be there because it reflects the recalculated figure. But Chair, maybe for sort of housekeeping purposes if you can maybe draw a line through the other one, the original, but just keep it so

that you are aware of what has changed.

CHAIRPERSON: Okay. I will draw a line just across the page.

ADV CHASKALSON SC: Thank you and the replacement page is the one to... [intervenes]

CHAIRPERSON: That is the one... [intervenes]

ADV CHASKALSON SC: ...be referred to.

CHAIRPERSON: Ja. Okay, alright, otherwise page 155 is where we should be. Is that right?

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

CHAIRPERSON: Okay, alright.

ADV CHASKALSON SC: And Mr Holden, you have a new total there.

MR HOLDEN: Certainly, Chair. The new total cost that I have of State payments made in relation to State Capture contracts involving the Gupta Enterprise is R57,064,461,114.82 and again for the transcriber that is 57,064,461,114.82.

20 **ADV CHASKALSON SC:** And then if you can just briefly run through what has changed to get to this increased number. Obviously a large part of it is accounted for the Eskom – accounted by the Eskom T-Systems contract that was not in your original report. But can I take you first to the figure at three lines from the top of page 153, the Regiments Capital Transnet figure and can

you... [intervenes]

MR HOLDEN: I certainly can. As a result of the information that I was provided of additional payments, that amount has now increased to R1,023,161,529.89. That is 1,023,161,529.89.

ADV CHASKALSON SC: And then I think the next number that has changed is the payments to Regiments Capital by SAFCOL Forestry Company.

MR HOLDEN: That is correct. That figure has been
10 updated to include a new figure and that is R6,623,400 or 6,623,400.

ADV CHASKALSON SC: And then six lines below SAFCOL is the Eskom T-Systems contract. Then – and in addition I think it is seven lines from the bottom of the page there is the Eskom Zestilor payments which we have discussed. And there is a further payment on page 155 that was not on your original table from the Department of Water and Sanitation from TNA – linked to TNA Media. Can you briefly explain that oversight?

20 **MR HOLDEN:** Certainly, Chair. That amount has now increased to R5,924,333.64.

ADV CHASKALSON SC: And it is those changes that account for the increase to just over 57 billion. The other changes... [intervenes]

MR HOLDEN: That is correct, Chair.

ADV CHASKALSON SC: The other changes where some additional payments have been picked up are the totals paid to first level laundry entities and can I ask you in that context to go to page 194 of Bundle 9 and table 113 which aggregates all of those first level laundry payments. Maybe if we can start at the total which has changed and that is at page 198. Can you tell the Chair what... [intervenes]

MR HOLDEN: Certainly.

10 **ADV CHASKALSON SC:** ...that total is.

MR HOLDEN: Certainly, Chair. My recalculated figure for payments to first level laundry entities from State funds is R1,232,286,003.48. That is 1,232,286,003.48.

ADV CHASKALSON SC: And in your earlier report that figure was 1,207,032,055.67. Can you just take the Chair to the numbers that have changed and I think the first one is on page 195? The total number paid from Regiments Capital to Albatime, can you give the new number and can you explain what accounts for the change?

20 **MR HOLDEN:** Certainly. The new figure from Albatime to – from Regiments Capital is R232,267,385.20. That changes made again as the result of the very helpful and generous assistance provided by Rudi Heyneke who found that I had not included a payment that should have been made in and had as a result the total value of the

payments reflected was incorrect.

ADV CHASKALSON SC: And then there is a figure for Birsaa Projects. Again can you just explain that figure?

MR HOLDEN: Certainly, Chair. In relation to Birsaa Projects there is an amount of R2,227,150 that was not included. That was again picked up by Mr Rudi Heyneke as a result of his identifying the two payments to Regiments that I had not recorded in my original evidence.

ADV CHASKALSON SC: Sorry, two payments from
10 Regiments to Birsaa?

MR HOLDEN: Payments to Regiments from Transnet which then made further payments onto Birsaa.

ADV CHASKALSON SC: Ah. And then the last one – oh no, it is not the last one – is [indistinct] as well which needs some explanation, two down from Birsaa.

MR HOLDEN: Certainly, Chair. [Indistinct] we have an amount of R12,360,769.62 paid to it by Regiments. The error there, Chair, I actually did deal with those payments in my original report at a later stage in the report but in
20 compiling this tally this amount was not included originally, so it needs to be included now to increase the total amount paid by Regiments.

ADV CHASKALSON SC: And finally if we go down to page 197 there is a slight change to the amount paid by Combined Private Investigations to Medjoul.

MR HOLDEN: Chair, here the new amount paid to Medjoul is R12,372,962.22. The difference arises from the fact that there was a – on the spreadsheets I was working from what I assumed was a duplicated payment made – the same amount paid on the same day which I excluded from my original analysis in abundance of caution. And I have now been able to confirm by referring to the original bank statements that it actually was not a duplicate payment and as such I have included it again in the total figure.

10 **ADV CHASKALSON SC:** And then the last significant number that has had to be adjusted consequentially is the total paid to the Gupta Enterprise directly or indirectly. That is a number that we see at page 420 and in paragraph 749 at the foot of page 420 you have your new calculation for the total amount paid to the Gupta Enterprise directly or indirectly as a result of State Capture implicated contracts. Can you tell the Chair what that new number is?

MR HOLDEN: Certainly, Chair. That new number is
20 R16,217,793,047.18. That is 16,217,793,047.18, all of which was drawn from South African State funds or kickbacks paid related to State Capture.

ADV CHASKALSON SC: Thank you, Mr Holden. That is all of the adjustments to the figures. There is also what you wanted to refer to in today's testimony and hopefully

we will have the opportunity to do so is a submission that was made jointly by Open Secrets and Shadow World Investigations, Shadow World is of course your organisation. That is in Bundle 2340 and that is in relation to remedial action or measures in respect of corporate accountability for State Capture. Can you take or can we go to that document?

CHAIRPERSON: You say Bundle 23... [intervenes]

ADV CHASKALSON SC: Bundle 20, page 340.

10 **CHAIRPERSON:** 23 or 28?

ADV CHASKALSON SC: Bundle 2340, Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And can we give that an annexure number, Chair? Can we call it... [intervenes]

CHAIRPERSON: Let me get to it.

ADV CHASKALSON SC: VB10, I think we are at G now.
HH.

CHAIRPERSON: I am sorry.

ADV CHASKALSON SC: VB10... [intervenes]

20 **CHAIRPERSON:** Sorry, Mr Chaskalson. My Registrar thought I got Bundle 23. I do not have.

ADV CHASKALSON SC: Sorry, no, Bundle 20, Chair. 20.

CHAIRPERSON: Bundle 20.

ADV CHASKALSON SC: 20, I am sorry.

CHAIRPERSON: Oh, okay and page... [intervenes]

ADV CHASKALSON SC: Page 340.

CHAIRPERSON: Okay. Okay, I am at 340, Bundle 20. It is a letter from Shadow World Investigations. It should be exhibit... [intervenes]

ADV CHASKALSON SC: VB10H, Chair.

CHAIRPERSON: VB10H. The document that starts at page 340 from Shadow World Investigations and will be admitted and marked Exhibit VB10H.

ADV CHASKALSON SC: Mr Holden, without getting into
10 any detail in this document, because I would like to address the themes that you deal with there at a later stage, can you just briefly describe to the Chair what it is?

MR HOLDEN: Certainly, Chair. This is a set of discussions and arguments and recommendations that are made jointly by Shadow World Investigations and Open Secrets that looks specifically at the international best practice and experience and also the South African legal framework to arrive at a series of suggestions and recommendations about the best ways in which these sorts
20 of State Capture contracts could be punished and prevented in future.

ADV CHASKALSON SC: Hopefully at the end of your testimony we will get to explore some of the suggestions in that regard. But before we do that I need us to go back to the money laundry story and we dealt with the first level

launderers, we have dealt with the local laundry networks. What I now want us to look at is the movement from the local to the international and this is a topic that you address in your executive summary at Bundle 20, page 58. And maybe the place to start is where you - is this category that you describe as on-shore/off-shore bridges can you tell the Chair what you mean by, what you describe as on-shore/off-shore bridges?

MR HOLDEN: Certainly Chair, when I refer to an on-
 10 shore/off-shore bridge I am referring to a company that receives funds from multiple different sources in South Africa inland and then undertakes to bulk those payments and then pay out those amounts to recipients abroad. In the cases that we have looked at it mostly moves into the Hong Kong China launder market that I identified.

ADV CHASKALSON SC: Now again this is a topic that you deal with in considerable detail in your report, and we are not going to be able to go into that detail so if I can – Chair if I can give you the references where this party of
 20 the laundry process is addressed in the report.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: It is Bundle 9, pages 340 to 387, paragraphs 564 to 679 and then in the executive summary it is Bundle 20 pages 58 to 64.

CHAIRPERSON: Bundle?

ADV CHASKALSON SC: 20 page 58 to 64, paragraphs 98 to 125.

CHAIRPERSON: Paragraphs 98 to 125?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Now what you show in both of those places is that you have identified 12 companies that have been playing this role of on-shore/off-shore bridges. The companies in question and the amounts that you see
10 passing through them from State Capture are neatly set out in paragraph 126 of your executive summary at Bundle 20, page 64 and maybe if you could go there and take the Chair to what you have discovered in relation to these 12 companies.

MR HOLDEN: Certainly Chair. In this table I set out the total amounts that we see transiting via these, paid to these on-shore ...[indistinct – audio distorted]

CHAIRPERSON: I am sorry Mr Chaskalson I missed ...[intervenes]

20 **MR HOLDEN:** ...[Indistinct]

ADV CHASKALSON SC: Sorry Chair, it is bundle 20 page 64, paragraph 126.

CHAIRPERSON: Okay thank you. Yes you can continue Mr Holden.

MR HOLDEN: Thank you Chair. In total ...[indistinct]

R388 630 198,41 emanating from State Capture funds that were paid to these on-shore/off-shore bridges and the vast majority of which was then onward paid to the Hongkong China Laundromat. The table that appears thereafter lists those on-shore/off-shore bridges and the total amounts paid in relation to State Capture. It also identifies the route that the funds took to reach that point and identify there for example in the first entry FTC Commodities is paid an amount of R186 700 560,81 and the route there is

10 from Homix ...[indistinct] being paid to FTC Commodities and as I proceed down the table ...[indistinct – audio distorted] aggregate figures that were transferred to on-shore/off-shore bridges and the particulars routes that were taken to which those on-shore/off-shore bridges and eventually to be paid into off-shore recipients.

ADV CHASKALSON SC: Certainly what for me has been the most alarming feature of the work that you have done is reflected in the table at page 127, can you take the Chair through that table because what it reflects to me is

20 that what we see in State Capture is just the tip of the iceberg of money laundering that has taken place inside South Africa.

CHAIRPERSON: Page 127 ...[intervenes]

MR HOLDEN: Certainly Chair ...[intervenes]

ADV CHASKALSON SC: Sorry Chair, it is still Bundle 20

page 65.

CHAIRPERSON: Oh it is paragraph 127.

ADV CHASKALSON SC: 127, it is that table at the foot of page 65.

CHAIRPERSON: Yes. You may continue Mr Holden.

MR HOLDEN: Thank you very much Chair. I echo Advocate Chaskalson's statement that one of the most disturbing features of following the Gupta Enterprise funds has been discovering these incredibly active and elaborate
10 on-shore/off-shore bridges of which the Gupta Enterprise funds only cater for a smallish portion, in total just looking at those on-shore/offshore bridges that we have been able to identify just encasing the Gupta Enterprise related funds we have identified 3 659 separate transactions moving from these on-shore/offshore bridges offshore and most often and most frequently into the Hongkong China laundry network and the total [no audio].

ADV CHASKALSON SC: I am just going to call Mr Holden to see if we can sort out. In the meantime I think the
20 technical problem may be here.

CHAIRPERSON: Yes, I think the technicians must look at it.

MR HOLDEN: I am not sure if you can hear me now?

CHAIRPERSON: We can hear you now. Ja, we can hear you now.

MR HOLDEN: Apologies but ...

CHAIRPERSON: You are back in the hearing now, no longer on the phone to Mr Chaskalson.

ADV CHASKALSON SC: The image of you is frozen with you holding the phone to your ear, but we can hear you. Maybe what we should do is to – I have been asked Chair if we can take a five minute adjournment for the technicians just to restart the system.

CHAIRPERSON: Okay, alright, we will take a five minutes
10 break. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us hope the technical glitches there will not be more of them.

ADV CHASKALSON SC: Thanks Chair.

CHAIRPERSON: Yes let us continue.

ADV CHASKALSON SC: Mr Holden you were describing to the Chair the table at Bundle 20 page 65. Can you pick up where you were when we were looking at that table?

20 **MR HOLDEN:** Certainly Chair just to go back to my original point. So these are the onshore/offshore bridges that we have identified in the tracing of the Gupta Enterprise funds and in total we can see an amount of R4 969 623 134.70 in the 3 659 separate transactions.

As I was saying before my internet connection

started playing tricks on me it was interesting to see that in conducting the flow of funds exercise of tracing these – these Gupta Enterprise funds to their final point that the – the South African Reserve Bank seemed to be – had been traversing some of these topics for quite a while before – before I got there and very, very helpfully the Reserve Bank then was supplied – supplied the findings of their investigations to the commission which I – I have then reviewed and what emerges is an incredibly disturbing
10 pattern of huge – huge flows of funds abroad into Hong Kong in particular via these offshore networks and illustrates a rather – a truly shocking scale of the – of organised crime in South Africa but also the role that these – that these very small handful companies we have identified as playing in making those funds paid abroad.

Effectively what we see to the Gupta Enterprise involvement in using these companies is the Gupta Enterprise is making common cause with and using the same networks that is linked to some of the most extreme
20 and murderous organised crime. I refer particularly here to the case of a global which we identified was receiving payments for 00:02:51. The Reserve Bank when they were investigating this issue the individual who was running that particular onshore/offshore bridge which is represented here as Ubuzusa they intended to bribe the Reserve Bank

official and the Reserve Bank official then worked closely with the Hawks to set up a sting in which that individual then proffered another bribe to the Reserve Bank official was arrested and subsequently charged and – and successfully prosecuted for the crime of corruption.

What was disturbing was that in the preparation and the announcement around that specific trial that was confirmed by Shaun Abrahams who was then of the NPA that the funds that Ubuzuza and 00:03:38 Global were involved
 10 in – in moving abroad included payments inwards from some of the most murderous organised crime groupings in the country and some of the crimes contemplated and which raised those funds included things like people trafficking, drug trafficking and various heinous sexual offences.

What we effectively see here is the Gupta Enterprise making use of the worst possible organised crime networks you could possibly imagine to move state funds abroad.

CHAIRPERSON: Just – just to – to make sure I understood what you said about the official from the Reserve Bank was
 20 investigating he was offered a bribe by an individual official from Ubuzuza and then when he brought in the Hawks another bribe was offered to the Hawks.

MR HOLDEN: No sorry Chair but that is not so clear. What happened was that the individual offered a bribe to the Reserve Bank official who acted totally in good faith and a

totally upstanding way and informed his superiors that this bribe had been offered and also informed the Hawks. And on that basis the Hawks worked with the Reserve Bank official to set up a further sting at a restaurant where the individual was arrested by the name of Ms Tiyang Wang appeared at the restaurant and offered the Reserve Bank official a bribe again and as she was being monitored she was arrested by the Hawks.

CHAIRPERSON: Okay. Okay. Thank you.

- 10 **ADV CHASKALSON SC:** Now you talk about the scale of – of the laundering that – or the laundering networks that are crossing over from South Africa into the Hong Kong laundering network. Let us just turn to the scale of the network on the other side and in this regard you – you talk at page 66 of Bundle 20 of the scale of the Hong Kong China laundering network and you refer in particular to an internal HSBC report that was triggered by HSBC experience with Regiments Asia and Tequesta.

- 20 Can you tell the Chair about that report and what it reveals?

MR HOLDEN: Certainly Chair. As Advocate Chaskalson mentioned this report was written internally within HSBC to establish their exposure to the Gupta Enterprise and I was triggered because of the payments that were made to Regiments Asia, Tequesta and Morning Star arising from

Transnet kickbacks which were paid into the HSBC accounts.

The internal investigation – HSBC investigation then sought to establish where the funds paid to Regiments Asia, Tequesta and Morning Star went and what sort of exposure that created for the bank as a result – and the figures were alarming pointing to the fact that the amounts paid in by the Gupta Enterprise into this truly vast internationally money laundering scheme was in relative terms very small.

10 The HSBC investigation identified that there were 167 different companies that received payments from Regiments Asia and Tequesta in the space of two and a half years.

Of those 92 companies that received payments from Regiments Asia, Tequesta and Morning Star 92 of those companies held accounts at HSBC and then when – by the time the HSBC had initiated an investigation 32 of those accounts had been closed but 60 of the accounts were still open

20 HSBC then did an analysis of the disposition of funds into an out of those accounts and very disturbingly HSBC's investigation revealed that just these 60 accounts that were identified received 50 339 payments to a total value of 4.2 billion dollars and these 60 accounts made onward payments to 5 556 further beneficiaries of which 55

were also paid by Regiments Asia, Tequesta and Morning Star. The total value of onward payments was 3.78 billion dollars with 32 653 transactions.

I do not know if that is just an executive summary but I do in main body of my report the HSBC internal investigation was of the opinion that the number of transaction that had taken place the extent of the dispersion of funds made it effectively impossible to trace these ultimate end points of these funds so sophisticated was this
10 network.

And it seems very obvious on this basis that there exists a truly vast international money laundering network that the Gupta Enterprise was tapping into and which was operating at the time and which HSBC seems to have played some sort of role providing the bank accounts for.

ADV CHASKALSON SC: Chair just for reference purposes that – that HSBC report is annexure 89 and it is in Bundle 15 – page 2 of Bundle 15.

CHAIRPERSON: Bundle 15 page?

20 **ADV CHASKALSON SC:** 2.

CHAIRPERSON: 2.

ADV CHASKALSON SC: There is another disturbing discovery that you made in relation to the Elcanani network and two of the companies that you identify as onshore/offshore bridges John Sitel and Truth Haven [?]

can you – you address this at page 66 of Bundle 20. Can you tell the Chair what the Canani network is and what your investigations showed in relation to their presence in South Africa?

MR HOLDEN: Certainly Chair. The Canani money laundering investigation also referred to as a MLO was placed under the United States office of foreign 00:10:54 control sanctions in 2016 along with its mastermind Eltif Canani who headed it and who most appointed his family to
10 run it. At the time of the award – of the sanctions notice and Mr Canani's eventual arrest he was described as the world's most wanted money launderer.

The Elcanani money laundering organisation was a vast money exchange and money laundering operation that operated for many, many years. It operated a 00:11:33 exchange called the El Serouni Exchange based the UAE but also moved funds from around the world.

The US Ofax sanctions designated five companies associated with the money laundering organisation called
20 Mazaka General Trading, LLIC, Jet Link Textile Trading, Seven Sea Golden Trading LLC, Aida Trading LLC and 00:12:00 Trading LLC.

I think the most disturbing feature of this is that the US investigation established that the Elcanani network their money laundering network was being used for a vast range

of – of again heinous criminal activities.

There was laundering money for multi-national, international drug cartels and was also involved in receiving dissipating and laundering funds for terrorists groups such as Al-Qaeda.

ADV CHASKALSON SC: And how does – how does Elcanani only become relevant to our investigation?

MR HOLDEN: Certainly Chair. We identified at a relatively late stage in this investigation that there were entities that
10 were making payments using Gupta Enterprise funds into the – the Hong Kong offshore network.

We then identified that certain of these companies were also making use simultaneously of – of this Elcanani network and to make sure that I get the – the exact figures right at paragraph 134 of my executive summary I note that South African Reserve Bank records show that Donsontel 11 – sorry 133CC paid an amount of 2 060 231.00 dollars that is 23 966 952.69 in February and March 2015 to one of the Elcanani network companies called Seven Seas Golden
20 Trading and also to Aida Trading.

At the same time John Sitel was making payments to the Hong Kong network. The other company that I identified was True Haven which transferred R52 202 220.00 to four different Elcanani, Emelo companies including Jet Link Trading, Seven Seas Golden Trading, 00:14:09 Trading. At

the same time as it was making payments abroad to the Hong Kong China network.

What I find particularly disturbing is that the True Haven and John Sitel were also as they were proceeding with these payments paying funds into the same extensive local laundry network that was used by the Gupta Enterprise.

For example True Haven made a number of payments into a company by the name of Smart Fabrics
10 Trading which was a very active account.

Fortime Consultants made a payment of that amount into the same company. Smart Fabrics also received a payment from a company by the name of Rich Rewards which as I set out in this spider web analysis in my report was a key part of that spider web – spider web network and actually had developed a joint venture relationship or sought to develop a joint venture relationship with Sahara Computers.

Smart Fabrics also received a further 13 payments
20 from a company by the name of Anchor Import and Export which was controlled by Devenshen Moodley who also controlled a number of the different onshore/offshore bridges that were used by the Gupta Enterprise including Pinetree Wholesalers, Grain Core Distributors and Damler Trading.

What was also interesting was that – that the director of Donsentel once Donsentel was subject to a SAAB order moved its operations to a company by the name of Styla Fashions and Styla Fashions ended up paying R1.5 million into a company by the name of C&C Distributors which was the feeder fund for an onshore/offshore bridge called CC Holdings which mostly paid out to the Hong Kong China network and that precise 00:16:13 was also used at the same time by 00:16:14 Moodley and which was

10 distributing state capture funds.

So if I am to cut through all of that information what we essentially have here is we can see the operation of two vast international money laundering networks that are operating abroad but which are playing a vital role in laundering the funds of criminal enterprises in South Africa and that – the Gupta Enterprise emerges from this because the Gupta Enterprise was making use of the same local laundry as the same – as those entities making funds payments into the Elcanani network were which indicates

20 that the criminal networks they were working together with – also the criminal networks used by the Gupta Enterprise were closely related if not the same as the ones paying out to the Elcanani network.

ADV CHASKALSON SC: There is one further point before we leave this point. You talk about Anchor Import and

Export are you able to tell the Chair anything about the cross border payments from Anchor to an entity called ReMoon Import and Export – an entity based in UAE.

MR HOLDEN: Certainly Chair. I do not have the specific transfer records in front of me but I can tell you that that recipient agreement has been identified in relation to the arrest and the bail application of Mr Iqbal Sharma and as far as I recall and I hope I do not get this wrong this was an entity that was receiving payments that was eventually
10 payments onwards to Iqbal Sharma or at least receiving payments for the benefit of Iqbal Sharma.

ADV CHASKALSON SC: Before we leave these onshore/offshore bridges I want to raise – to take you to the part of your report where you describe payments through these bridges directly into the Gupta Enterprise Dubai company called Griffin Line but I – I notice that although and I must actually take some of the blame here in earlier drafts of the report we had together settled versions that explained the connection between the Gupta's and Griffin
20 Line but somehow in editing and finalising the report relevant evidence was not included. So I am going to ask if we can introduce a series of emails for the purposes of explaining who Griffin Line are and then we can get into the analysis of how money flows to Griffin Line. So for that purpose can we go to Bundle 20 page 288 and Chair I am

going to ask Mr Holden really to speak to a bundle of emails that one finds on the Gupta Leaks.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: We can identify each one with a separate annexure number or should we just give the whole bundle an annexure number instead?

CHAIRPERSON: And call it like a bundle of Gupta Leak – emails Leak emails or something like that.

ADV CHASKALSON SC: Relating to Griffin Line Trading.

10 **CHAIRPERSON:** Ja we can give – we can do that and then – and then we will give one exhibit number and the rest are part of it but on separate pages.

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Ja. Okay we can (talking over one another).

ADV CHASKALSON SC: So Chair the bundle runs from – well the pages are Bundle 20 pages 288 to 317.

CHAIRPERSON: Yes to 22

ADV CHASKALSON SC: 288 to 317.

20 **CHAIRPERSON:** Okay.

ADV CHASKALSON SC: And can we make that bundle of emails annexure VV10I?

CHAIRPERSON: And what are we going to call them?

ADV CHASKALSON SC: A bundle of emails relating to Griffin Line Trading.

CHAIRPERSON: The bundle of emails starting from page 288 of Bundle 20 up to page 327?

ADV CHASKALSON SC: 317 Chair.

CHAIRPERSON: 3 – up to 317 those emails will be admitted as Exhibit VV10I and they will – reference will be made to the page of each email as we go along.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Mr Holden on that basis can you
10 start with page – Bundle 20 page 288 and describe to the Chair what you see there?

MR HOLDEN: Certainly Chair. At this page we have an email from Ronica Ragavan to Tony Rajesh Gupta on the 12 October 2015 with the subject Dubai New 00:23:12. The substance of this email is to indicate to Tony Gupta that two new companies were being formed in Dubai and that one of the companies was called VKS Jewellery Trading LLC and the second was Griffin Line Trading LLC indicating that the Gupta's had control over that.

20 **ADV CHASKALSON SC:** Then if we go to 289 the following page. Can you describe what you see there?

MR HOLDEN: Certainly Chair. We have an email from Ronica Ragavan to Tony Gupta that was sent on the 5 November 2015 attaching a – an attachment called Agent or Representation Agreement and the draft agreement is then

attached to that. And the agency representation agreement the draft one is between a principle yet to be established and Griffin Line Trading LLC which indicates again that the Gupta Enterprise was controlling or drafting the process of entering into a joint agreement on behalf of Griffin Line and as a result I believe that Griffin Line was under their control.

ADV CHASKALSON SC: Can I ask you to go to page 291 where you actually see what you have just described.

10 **CHAIRPERSON:** Just before he does that.

MR HOLDEN: Yes.

CHAIRPERSON: Mr – just before he does that Mr Chaskalson I think what I agreed to here may cause confusion. I think what we should do is these emails we have given them Exhibit VV10I I think what we should do is maybe mark them abcd then – so they share the same exhibit BB10I but the first one at 288 is A and the rest are BCD up to the end.

ADV CHASKALSON SC: Thanks Chair well then ..

20 **CHAIRPERSON:** That can be done later.

ADV CHASKALSON SC: Or I could very quickly...

CHAIRPERSON: Ja we could do that ja.

ADV CHASKALSON SC: Do that now.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: So that would be A then Chair if

we go to the email on 289

CHAIRPERSON: Ja.

ADV CHASKALSON SC: Can that be B?

CHAIRPERSON: Ja.

ADV CHASKALSON SC: The...

CHAIRPERSON: On my file I will just write B and somebody can later on can write the full exhibit number.

ADV CHASKALSON SC: Certainly Chair. And then there is an attached agreement that starts at 291 if that can be C?

10 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: And the – I think the next one is at 307 on my notes. If we can make that D – an email at 207 – D.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And at 312 there is another email which is E.

CHAIRPERSON: Do you skip 308 or it is part of.

ADV CHASKALSON SC: I apologise Chair you are absolutely right. So it is 308 must become E.

20 **CHAIRPERSON:** Ja.

ADV CHASKALSON SC: And the annexure – the passport that is photographed at 310 can be F.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And then 312 will be G.

CHAIRPERSON: I am sorry. The passport runs from 309

to?

ADV CHASKALSON SC: It runs from...

CHAIRPERSON: To 311.

ADV CHASKALSON SC: 3 – I think it starts on 310. There is one page on 310 and there is a second page on 311.

CHAIRPERSON: Okay. So 310 would be G.

ADV CHASKALSON SC: No 310 would be F.

CHAIRPERSON: What have you got at 309 that I have marked as F?

10 **ADV CHASKALSON SC:** 309 is part of the same email as 308.

CHAIRPERSON: Oh okay, okay. Okay so 310 is F.

ADV CHASKALSON SC: And 312 is G.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And there is a letterhead at 313 which should be H.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And that is the full bundle Chair.

CHAIRPERSON: Okay. No thank you.

20 **ADV CHASKALSON SC:** So – Mr Holden can you then go to 307 which is annexure VV10ID and describe to the Chair what you see here?

MR HOLDEN: Certainly Chair. We have an email from Ronica Ragavan to Tony Gupta at Sahara.co.za sent on the 19 December 2015 in which Ronica Ragavan notes that

“Dear Sir, our agreements are as follows: All commodity and grains are in Griffin LineTrading LLC and then in brackets it gives the name (Kamal Singhala). Kamal Singhala was the son of Aja Gupta and we understand that he was the – a director of Griffin Line Trading.

ADV CHASKALSON SC: And lastly if we can go to 312 which is VV10IG and if you can describe to the Chair what you see there.

MR HOLDEN: Certainly. We have an email from Ronica
10 Ragavan to Ashu Chawla that is sent of the 15 February 2016, with subject Griffin Line New and attached the document called Griffin-Line-New.doc and on the following page, what we have is a new document setting out Griffin Line’s stationery. So, this is the letterhead of Griffin Line Trading and that it get use to the same correspondence. Effectively what we have is, Griffin Line’s letterhead and stationeries being designed by the Gupta Enterprise.

ADV CHASKALSON SC: Then, can we go back to Bundle 9 to see the payments that are made, not through the
20 offshore laundry, but straight into Griffin Line and if we can start at page 384, Bundle 9?

MR HOLDEN: I am there.

CHAIRPERSON: 384, you said?

ADV CHASKALSON SC: That is correct, Chair.

CHAIRPERSON: Okay, I have got it.

ADV CHASKALSON SC: And can you describe to the Chair who Barlow(?) Zone were?

MR HOLDEN: Certainly. Barlow Zone was an onshore/offshore bridge and it received funds arising from state capture via a feeder(?) account by the name of Zacobite(?). Zacobite was in turn a SAAMED Bullion, who was paid from state capture funds. So, Barlow Zone is the ultimate endpoint of an onshore/offshore network that received(?) or dissipate state capture funds.

10 **ADV CHASKALSON SC:** And at table 227 at the foot of page 304, can you describe to the Chair what is reflected there?

MR HOLDEN: Certainly, Chair. What we have here is the tally(?) of all the payments that are made from SAAMED Bullion to Zacobite which is the feeder account for Barlow Zone between the 15th of February 2016 and the 22nd of April 2016. The total amount is R 7 675 000.00. Of particular relevance and importance are ...[indistinct] are the payments that are made April 18 to onwards to April
20 26.

ADV CHASKALSON SC: And then, can you explain what the relevance of those payments are, maybe by going down to page 385, paragraph 677?

MR HOLDEN: I am sorry – the reference?

ADV CHASKALSON SC: 385, paragraph 677.

MR HOLDEN: What we see is [speaker unclear – distortion in video link] Zacobite made [speaker unclear – distortion in video link] ...a very large number of payments which we believe ended up with Valo Zone and in particular, those dates were show that the funds going from SAAMED Bullion to Zacobite was exactly the same time that Valo Zone was made six payments to Griffin Line General Trading valued at R 3 536 970.06. So, I believe that state capture funds transmitted via SAAMED Bullion
10 then onto Zacobite, then onto Barlow Zone and then to Griffin Line abroad.

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

MR HOLDEN: At table 228, which is the following page, I then set out those specific payments that are made from Barlow Zone to Griffin Line Trading and as you can see, the dates generally accord with the amounts that I was discussing previously being paid from SAAMED Bullion to Zacobite.

ADV CHASKALSON SC: And can we then look also at
20 Seattle Trading and Griffin Line and that is an issue that you address at page – no, I have got the wrong reference. I am sorry about that. I need to... Maybe to go back up to page 380... If one starts at page 379, table 225. The heading of table 225 is actually on the previous page 378, but if you can take the Chair through that table and explain

what one sees there?

MR HOLDEN: Certainly, Chair. What I am describing here, it is again forms part of the Spider Web, as I call it, the network of money laundering entities. Here, what I am addressing is, payments by SAAMED Bullion to Shizari(?) Trading and I calculated that Shizari Trading was paid R 23 509 527.16 by SAAMED Bullion in 47 payments.

The payments are all made between the 18th of April 2016 and the 13th of July 2016 and all of the
 10 payments to Shizari Trading were funded with funds that ultimately derived from state capture and table 225 then sets out the payments that are made to Shizari by SAAMED Bullion by having identified the underlining source of funds which all comes from the Gupta Enterprise and the source of funds is identified in the far-right column.

ADV CHASKALSON SC: And then at – if you can skip forward to 666 where you describe certain payments from Shizari that ended up at Griffin Line.

CHAIRPERSON: That is paragraph ...[intervenes]

20 **MR HOLDEN**: Certainly, Chair.

ADV CHASKALSON SC: Triple... 666, Chair, on page 380.

CHAIRPERSON: Ja, okay.

MR HOLDEN: Thank you, Chair. I will ignore the ...[indistinct] of that number for the moment. The Shizari

Trading acted as a clearing house and a feeder account, receiving multiple payments from multiple different sources and these were then paid onto two separate onshore/offshore bridges.

One was called Seattle Clothing Manufacturers and the other one was called Line For(?) Trading. And what I deal with at paragraph 666 is that I have been able to trade that R 2 867 000,00 of the funds that were paid by SAAMED Bullion/Shizari, transited via Shizari to Seattle
 10 Clothing Manufacturers and then into the account of Griffin Line Trading abroad.

So, we have a very direct line of state capture funds moving to the local network onto the onshore/offshore bridges and then to Griffin Line.

ADV CHASKALSON SC: If you can discuss the detail of that at paragraph 667 on page 381?

MR HOLDEN: Certainly. I provide at paragraph 667 again a list of transactions and how this flowed. I also put that into ...[indistinct] into table form, which maybe slightly
 20 easier to follow at table 226.

ADV CHASKALSON SC: So, if you can explain table 226?

MR HOLDEN: Certainly. We have the first set of payments – it describes, essentially, the route of payments to Griffin Line. The first entries are all payments from SAAMED Bullion to Shizari Trading and the total was – I

have given the total, aggregated funds there, which is R 4 574 954.40.

Following that, it is all the amounts paid by Shizari Trading drawing on those same funds also on the 21st of April to Seattle Clothing Manufacturers. And the total we can identify, a total amount of R 5 865 800,00 going from Shizari Trading to Seattle and then of that amount, we can see five transactions that happened on the 21st of April to the 22nd of April.

10 The ones that are most notable occur on the 22nd of April 2016 and that is two payments for 100 000 Dollars or R 1 434 000,00 from Seattle Clothing's Bidvest Bank settlement account to Griffin Line Trading.

ADV CHASKALSON SC: And – sorry, what was the date of that – those two payments?

MR HOLDEN: It is the 22nd of April 2016.

ADV CHASKALSON SC: Do you know what was happening in the greater Gupta family on the 22nd of April 2016?

20 **MR HOLDEN:** You caught me at a bit of loss there. I would imagine it was – I know these funds originally emanate from funds that to Albatime. I think there may have been a wedding at that time.

ADV CHASKALSON SC: [laughs] I think you may be right. You remember the destination of that wedding?

MR HOLDEN: That wedding was – I know it was not in South Africa, but I cannot recall. There are so many different weddings. [laughs] It may be – I think it is the wedding in Dubai, but it may also be the wedding in Turkey that we addressed in the Transnet evidence ...[intervenes]

ADV CHASKALSON SC: I think it was the wedding in Antalya, Turkey.

MR HOLDEN: That is correct.

ADV CHASKALSON SC: But we can establish those facts
10 in due course.

MR HOLDEN: [laughs]

ADV CHASKALSON SC: Weddings are sufficiently important that one pays money directly and not through international money laundering networks. The – I think that takes us to the end of the money laundering section. The last big section that I want to deal with you – within your evidence is tracking the origins and fate of all of the money that was used to purchase the Optimum Coal Mine.

And I would like us to take a great deal of time on
20 this for two reasons. The first is that it is a very useful illustration of how state capture funds are recycled into Gupta Enterprise operating companies inside South Africa. The second is.

I mean, for this Commission, it is of symbolic importance because it was in many respects the events

relating to the purchase of the Optimum Coal Mine that gave rise to the Public Protector's report that led to the creation of this Commission.

So, I do not want us to rush it and I would ask, Chair, if we could deal with that topic separately, but there is some preparatory materials that I can continue to deal with. I am not sure at what stage the evening session takes over from us today.

CHAIRPERSON: Well, I think we can go up to five.

10 **ADV CHASKALSON SC:** I will certainly – I would not expect us to need as much as five for the preparatory.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: I would not want to start the Optimum casing exercise.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: Because it is a particularly complicated ...[intervenes]

CHAIRPERSON: Okay. Then if less than an hour is – would be adequate for your purposes, that is fine.

20 **ADV CHASKALSON SC:** Certainly, Chair.

CHAIRPERSON: H'm.

ADV CHASKALSON SC: In relation to the Optimum Coal purchase, we are going to be dealing with a number of companies within – what I call the Centaur(?) Group. It is Centaur(?) Mining inside South Africa and Centaur(?)

Ventures Limited, Bermuda. Maybe before we describe who Centaur is. Can I ask you to turn to Bundle 16, which is part of an application... Sorry, Bundle 16, page 206, which ought to enable us to identify some of the key corporate players here.

MR HOLDEN: Certainly. I am there.

ADV CHASKALSON SC: Now this document formed part of an application by South African companies to, I think, Standard Bank which assist in getting ...[intervenes]

10 **CHAIRPERSON**: ...six?

ADV CHASKALSON SC: At 206.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: It is a company chart.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And, Chair, just to locate where it comes from. The South African companies were seeking Reserve Bank approval to receive a loan from Centaur Ventures Limited, which is an offshore company, and they included this document as part of their application for
20 Reserve Bank approval. Mr Holden, can you take the Chair through this fairly simple structure of the Centaur Companies Group and just explain who these players are?

MR HOLDEN: Certainly, Chair. We have at the very top entity, we have Centaur Ventures Limited, which is also referred to as CVL as an acronym. Centaur Ventures

Limited and based in Bermuda as the ...[indistinct] case. 50% of Centaur Ventures in Bermuda is held by Centaur Holdings and 50% is held by Aakash is a short name of the name Aakash Jahajgarhia.

Aakash Jahajgarhia married into the Gupta family at the Sun City wedding when he married Vega Gupta. Centaur Holdings is controlled by two individuals, Daniel McGowan, and Simon Hoyle. Below that, we have Centaur Mining registered in Mauritius for CMM and that is 100%
 10 owned by Centaur Ventures Limited. Following that, is Centaur Mining South Africa which is 100% owned by Centaur Mining Mauritius.

And then below that, although not necessarily relevant to our tracing exercise, is an entity by the name Tokicap (Pty) Ltd in South Africa which is 74% owned by Centaur Mining South Africa and 26% owned by Aerohaven.

For the purposes of this discussion, the most important thing to bear in mind, I would argue, is that Aakash Jahajgarhia 50% holding in Centaur Ventures
 20 meant that therefore also had – he also held a 50% shareholding in Centaur Mining Mauritius and then Centaur Mining South Africa.

ADV CHASKALSON SC: I said earlier that this was part of an application to Standard Bank for Reserve Bank approved and in relation to a loan. Can I ask you to go to

page 199 of Bundle 16 and just identify the document that we see there?

CHAIRPERSON: On what page, 216?

ADV CHASKALSON SC: 199.

CHAIRPERSON: 199.

MR HOLDEN: May I proceed?

CHAIRPERSON: Yes, you may proceed.

MR HOLDEN: Thank you, Chair. The loan – what appears here is that a loan facility agreement dated the
10 5th of January 2016 entered into between Centaur Ventures Limited and Centaur Mining South Africa and the essence of this contract is that Centaur Ventures agreed to loan an amount of R 1.5 billion to Centaur Mining South Africa and this is the specific loan against which the Centaur Mining seeking Reserve Bank approval through Standard Bank.

ADV CHASKALSON SC: And just to remind the Chair. Centaur Ventures is based where?

MR HOLDEN: Centaur Ventures is based in Bermuda and Centaur Mining is based in South Africa.

20 **ADV CHASKALSON SC**: Now, that 1.5 million(sic) loan facility in January 2016 extended by Centaur Ventures Limited turns out to have been funded by Griffin Line. And to show this to the Chair, I would like you to take the Chair to some judgments of the Bermuda High Court, and those appear at – it begins with page 19 of Bundle 16. Well, let

us go to the front page of that judgment before we get to page 19. So, the cover page of the judgment is on page 16, and can you briefly describe to the Chair what the context – or first who the parties are and what the judgment is about and what the context is.

MR HOLDEN: Certainly, Chair. So, as the cover page indicates. This was an ...[indistinct] Supreme Court Bermuda in the civil jurisdiction in the Commercial Court and the application is... [speaker unclear – distortion in
10 video link] ...was draw(?) back at the description ...[indistinct] line(?) trading NLC(?) and the respondent is Centaur Ventures Limited, and it was heard before the Honourable Chief Justice, Belinda(?) Howman(?).

The essence of this application is that Griffin Line was seeking to assert its rights to what they believed were funds owing to – from Centaur Ventures and to receive – to achieve orders issued by the Bermuda High Court that would prevent Centaur Ventures from dissipating certain assets for certain funds. They were frustrating Griffin
20 Line's attempt to reclaim those funds they believed they were owed.

ADV CHASKALSON SC: Now the origin of Griffin Line claim against Centaur is set out at page 19, paragraphs 10 to 11. Can you take the Chair to those paragraphs?

MR HOLDEN: Certainly. It states here:

“In the statement of claim filed on the present proceedings, Griffin Line asserts that it entered into a loan facility agreement on the 15th of February 2016 with CVL ...[indistinct] agreement and material terms of this agreement provided that:

(a) Griffin Line agree to make available to Centaur Ventures Limited a loan facility of 100 million Dollars.

10 (b) The money drawn down by CVL under this facility would bear interest at the rates of 4% per annum. The draw-down interest together as referred to as the personal(?) amount.

(c) The first loan amount was repayable on or before 14th of August 2016. However, the original payment date under the first facility agreement was, according to the case(?) advance by Griffin Line, extended on
20 three occasions by written agreements between Griffin Line and Centaur Ventures Limited, first on the 7th of August 2016 ...[indistinct] ...the payment date was extended by two months to 14 October 2016, second on the 11th of October 2016, the date was further

extended for a further two months to 14 December 2016, and third, on 13 December 2016, the date was extended by six months to 14 June 2017...”

At paragraph 11 it notes:

10 “The first facility agreement is a three-page document signed on behalf of Griffin Line by Mr Singala (that is the son of AJ Gupta) and on behalf of CVL by Mr McGowan, despite the fact that under this agreement, Griffin Line had agreed to lend Centaur Ventures Limited an amount of 100 million Dollars, it did not provide any security in respect of the amounts advanced by Griffin Lines to CVL.

Under this agreement, Griffin Line was content to assume the position of ...[indistinct] lender...”

ADV CHASKALSON SC: Now the date of that loan agreement was 15 February 2016, and that loan agreement
20 was for 100 million US Dollars. Can you tell the Chair how 100 million US Dollars compared to R 1.5 billion in terms of exchange rates around that time?

MR HOLDEN: Certainly, Chair. 100 million US Dollars is almost exactly equal to R 1.5 billion.

ADV CHASKALSON SC: And the facility agreement that

Centaur Mining and Centaur Ventures Limited had concluded that we saw in Annexure 129 or at – sorry, what – the – sorry, I have lost my reference again – at page 199 of Bundle C of R 1.5 billion. Do you recall what the signature date of that agreement was? Maybe I can take you there.

MR HOLDEN: I have it.

ADV CHASKALSON SC: Sorry?

MR HOLDEN: So, that is the 5th of January... [speaker
10 unclear – distortion in video link]

ADV CHASKALSON SC: 2016. Now, we will go on in due course to analyse what happens to the funds that come into Centaur Mining Limited from Centaur Ventures Limited, but let us – before we get there, we need to see where and when those funds from Centaur Ventures...

CHAIRPERSON: Can you still hear us, Mr Holden?

MR HOLDEN: [No audible reply]

CHAIRPERSON: Oh, he cannot hear us. If the – if it will not take much time, we do not have to adjourn, the
20 technicians must tell us if – oh, that is back. Can you hear me now, Mr Holden?

MR HOLDEN: Yes, I can, Chair.

CHAIRPERSON: Okay, alright. Let us continue.

ADV CHASKALSON SC: Thank you, Mr Holden, but there is one further detail that I would like us to note in that

Bermuda judgment and that appears at paragraph 12. Can you go to paragraph 12? It is on Bundle 16, page 19, one nine and describe what you – and read what you see there and describe its significance?

MR HOLDEN: Paragraph 16?

ADV CHASKALSON SC: No, paragraph 12. Sorry. On page 15. Paragraph 12, page 15.

MR HOLDEN: Certainly. At paragraph 12, it notes that:

10 “In accordance with the terms of the first
 facility agreement, CVL or Centaur Ventures
 Limited drew down the sum of 99 222 862
 Dollars during the period from 16 February
 2016 to 26 November 2016 during the period
 18 April 2017 and 31st of July 2017, Centaur
 Ventures Limited repaid Griffin Line
 9 999 234.91 US Dollars...”

20 **ADV CHASKALSON SC**: And just to foreshadow where we
 are going to be going, Mr Holden. Can you tell the Chair
 what happened to that 99 222 862 Dollars that Centaur
 Ventures Limited drew down from Griffin Line? Where did
 that money end up?

MR HOLDEN: Certainly. Chair, that money ended up in Centaur Mining’s accounts in South Africa. From Centaur Mining’s accounts in South Africa, it was then disbursed in a number of different directions, both to elements of the

Gupta Enterprise, but then also, most substantially, used to fund the purchase of Konki(?) Inc and a very large portion of the Optimum Coal Mine purchase that was undertaken by the Gupta Enterprise.

ADV CHASKALSON SC: And, Chair, I think on that note, we should probably ...[intervenes]

CHAIRPERSON: Okay.

ADV CHASKALSON SC: The next instalment of the serial can come later in the week.

10 **CHAIRPERSON:** Okay.

ADV CHASKALSON SC: Because now we need to get into the very microscopic details of how the Optimum Coal Mine was bought.

CHAIRPERSON: Okay. No, that is fine. What is your estimate of how much time that one will need?

ADV CHASKALSON SC: Chair, I think certainly two hours would be sufficient.

CHAIRPERSON: Okay, okay.

ADV CHASKALSON SC: I am looking at Mr Holden and
20 he is nodding.

CHAIRPERSON: Ja, are you nodding Mr – do you think that is a reasonable estimate? Okay.

MR HOLDEN: Yes, I was nodding very vigorously Chair would have picked up.

CHAIRPERSON: Yes, okay. No, that is fine. So it is – so

we hope that the tentative arrangement for Thursday can happen but we will talk. If there is a need to get another day or time this week we will try and look at that.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Ja. Okay, alright. I am going to adjourn. I must just check whether the next work stream is already here. I think it would be Eskom in regard of Mr Masango, be brief evidence and it would be Mr Hulley in regard to Mr Mabuyakhulu. Mr Seleka is already here.

10 Okay, alright, I will take a ten minutes adjournment and then I will come back. Oh, Mr Hulley is also here. I think Mr Hulley, we will start with Mr Masango because he will be very quick and thereafter we will adjourn. I will then hear Mr Mabuyakhulu and thereafter there will be cross-examination of Mr White. Okay, alright, we are going to adjourn for ten minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Good afternoon Mr Seleka, good evening everybody.

ADV SELEKA SC: Good evening, Chairperson.

CHAIRPERSON: Yes. Are we ready?

ADV SELEKA SC: We are ready Chairperson. The next witness is Mr Masango.

CHAIRPERSON: Good afternoon Mr Masango, good

evening to you.

MR MASANGO: Good afternoon Chair.

ADV SELEKA SC: He is legally represented Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: The legal representatives can place themselves on record.

CHAIRPERSON: They can do so from where they are if their mic is working.

MR OLDWAGE SC: Good afternoon Mr Chair. Oldwage,
10 you will recall that I have appeared before you.

CHAIRPERSON: Yes, I remember you.

MR OLDWAGE SC: I represent Mr Masango on instructions of Galatio Attorneys, seated to my right. In this row are the two attorneys from that firm.

CHAIRPERSON: Thank you.

MR OLDWAGE SC: Thank you.

CHAIRPERSON: Thank you for coming back Mr Masango.

MR MASANGO: Thank you Chair.

CHAIRPERSON: Welcome back, ja. Yes, Mr Seleka?

20 **ADV SELEKA SC:** I believe Mr Masango will be ready to take the oath or the affirmation.

CHAIRPERSON: Yes, please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record.

MR MASANGO: Abram AB Masango.

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

MR MASANGO: No.

REGISTRAR: Do you consider ...[intervenes]

CHAIRPERSON: I am sorry. I think you are speaking very soft. Maybe you should take off your mask. I think there is enough social distancing.

MR MASANGO: Thank you Chair.

CHAIRPERSON: Thank you, start afresh please.

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

MR MASANGO: Abram AB Masango.

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

MR MASANGO: No.

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

MR MASANGO: Yes.

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

MR MASANGO: So help me God.

ABRAM AB MASANGO: (d.s.s)

CHAIRPERSON: Thank you.

ADV SELEKA SC: Yes, thank you. Thank you

Chairperson.

CHAIRPERSON: Yes. For the benefit of the public, Mr Seleka you might just wish to indicate the limited areas on which Mr Masango will testify or be questioned.

ADV SELEKA SC: Thank you Chair. Mr Masango has been asked to come back and he has kindly agreed to do so on the basis to present his evidence in regard to the pointing out of the premises at Melrose Arch which, at which the offices of Mr Essa were located.

10 In regards to, particularly in regard to the meeting that Mr Masango testified about, having attended on the 10th of March 2015. He has submitted an affidavit in that regard and will take the Chairperson through that. One, and number two, there are certain, at least two allegations that have been made against Mr Masango, one of which is that he was again at Melrose Arch sometime in December 2015, and introduced to one Ms Bianca Goodson and Mr Masango can put his comments in regard to that allegation and there is also an allegation we may want to put to you
20 Mr Masango, which we raised to what Mr Koko has said about a criminal case that he laid against you and others.

That ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: Is in a nutshell the issues.

CHAIRPERSON: Okay.

ADV SELEKA SC: The bundle in which Mr Masango's affidavits are contained, is Eskom Bundle 14(A). The first affidavit is on page 3 of that bundle. I believe in that affidavit we would have admitted it on Mr Masango's previous appearance, but I could do so ...[intervenes]

CHAIRPERSON: Ja well, it is Exhibit U25.

ADV SELEKA SC: Yes, U25.

CHAIRPERSON: Ja.

ADV SELEKA SC: Because there are two now Chair
10 ...[intervenes]

CHAIRPERSON: That is the one that starts at page 3.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: He has since submitted a subsequent affidavit ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: And I was wondering whether we should make the first one Exhibit U25.1.

CHAIRPERSON: No.

20 **ADV SELEKA SC:** Is it fine Chair?

CHAIRPERSON: We have already admitted as U25.

ADV SELEKA SC: As U25.

CHAIRPERSON: We cannot change now.

ADV SELEKA SC: Then the second affidavit is on page 49.1 in the same bundle.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Masango, please go to that page.
49.1.

CHAIRPERSON: Can you see it?

MR MASANGO: 49 ...[intervenes]

ADV SELEKA SC: Yes, you are there. Just give me the
page number where you are now.

MR MASANGO: On the black is written Eskom 14
...[intervenes]

10 **ADV SELEKA SC:** Ja.

MR MASANGO: 049.

ADV SELEKA SC: 049, ja. Turn the page.

MR MASANGO: Yes.

ADV SELEKA SC: There is the affidavit.

MR MASANGO: Okay.

ADV SELEKA SC: Yes.

CHAIRPERSON: Mr Masango, if you ... if we can hear you
well with your mask on that will be fine, but usually there
are challenges but we know the situation, so if you would
20 ... you feel strongly you must say so, but I believe there is
enough social distancing, but if you feel uncomfortable
without it, you must let us know.

MR MASANGO: Okay Chair, thank you.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: So you are on page 49.1 Mr Masango?

The affidavit runs up to page 49.2. You see that?

MR MASANGO: Yes.

ADV SELEKA SC: I see you are a little bit slow.

MR MASANGO: I am there.

ADV SELEKA SC: Is something bothering you there?

MR MASANGO: No, no I am there.

ADV SELEKA SC: Okay.

CHAIRPERSON: Okay.

ADV SELEKA SC: Okay, there is a signature then against
10 the name Abram Masango, Abram AB Masango. Do you
confirm that to be your signature?

MR MASANGO: I do confirm.

ADV SELEKA SC: And the affidavit is dated 15 March
2021, was signed at Witbank. Do you confirm that?

MR MASANGO: I do confirm.

ADV SELEKA SC: Do you confirm the contents of this
affidavit to be true and correct?

MR MASANGO: I do.

ADV SELEKA SC: Thank you. Chairperson, I would beg
20 leave to have this affidavit then admitted as Exhibit U25
and Chairperson will guide me, point 1 or point 2?

CHAIRPERSON: I put A. Is that fine?

ADV SELEKA SC: No, it is fine Chair.

CHAIRPERSON: Or is that going to be inconsistent with
how we have done it in this bundle? We can say point 1.

ADV SELEKA SC: Okay.

CHAIRPERSON: How have we dealt with it?

ADV SELEKA SC: We have been giving them point 1, point 2, point 3.

CHAIRPERSON: Okay, let us make it point 1 then.

ADV SELEKA SC: Yes.

CHAIRPERSON: The affidavit of Mr Abram AB Masango that starts at page 49.1 will be admitted and marked as Exhibit U25.1.

10 **ADV SELEKA SC:** Thank you Chairperson, together with the affidavits ...[intervenes]

CHAIRPERSON: Together with the annexures.

ADV SELEKA SC: The annexures thereto.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you Chair. Mr Masango, this affidavit relates to your pointing out at the premises at Melrose Arch. Just remember to speak to the microphone. You had received a request from the Chairperson and you could explain how you then complied with that request, for
20 you to point out the premises.

CHAIRPERSON: Ja, basically as you say in your affidavit Mr Masango, when you gave evidence I said it might be necessary for you to go back to the area in Melrose Arch where you say you met with Mr Salim Essa and Mr Koko on the 15th of March 2015 to see whether you can identify the

premises.

What happened since then?

MR MASANGO: Chair, thank you. Subsequent to that there was an arrangement with your investigators, a scheduled time. We met around the area. Then I led them to show them the building that in my recollection was the building.

CHAIRPERSON: And what date was that? Was that on the 5th of March, that is what you say, 2021?

10 **MR MASANGO:** Yes Chair.

CHAIRPERSON: Yes. Continue.

MR MASANGO: So I went there with my attorneys and then we drove around. I could see the building that is similar because of the balcony and then I also went at the back, though at the time when I went there I never went on the back, because of the arrangement of the buildings.

The only exhibit for me that will convince me that is the place, is to see the balcony. So I saw the balcony. Then I also went at the back to see that there is not
20 another building looking like ...[intervenes]

CHAIRPERSON: Looking like this.

MR MASANGO: The one that I see on the other side. Then we went back, where in front of the balcony I indicated to the investigators that this balcony looked familiar, and then in terms of the pictures that you have

Chair ...[intervenes]

CHAIRPERSON: Well, before we go to the pictures. Is there something that you could immediately recognise as something that was not there previously, that was now there when you went the second time?

MR MASANGO: Yes Chair, when I looked at the balcony, I could see that the balconies that I see, they look familiar but as you enter between the two buildings there was a boom gate. Now in my mind I could not recall observing
10 the boom gate.

But remember Chair, as I testified, as we were walking in, talking to him on the phone I was looking at the balcony, then I got out of the car, went straight to the entrance. So hence I said that as you were entering, I saw the boom gate.

The first time I went there, I was concentrating ... I never recorded or I could not recall seeing the boom gate, whether it was there or not. But I am of the view that I was on the phone, looking at him. So ...[intervenes]

20 **CHAIRPERSON:** Are you saying on the first occasion you went there, you do not recall seeing the boom, the boom gate?

MR MASANGO: Yes.

CHAIRPERSON: But you are not in a position to say definitely it was not there, because you were speaking on

the phone?

MR MASANGO: Correct Chair.

CHAIRPERSON: It might have been there.

MR MASANGO: Yes.

CHAIRPERSON: It is just that you might not have noticed it.

MR MASANGO: Correct Chair.

CHAIRPERSON: Okay. Is there something else that looked like something that you have not noticed before, of
10 any significance other than ...[intervenes]

MR MASANGO: No, other than the boom, no Chair. Except Chair, I must point out that when I saw the balcony and then the entrance at the steps I saw it but the more I go in, I could not identify with the place inside. As we move with the steps I could see similar offices that I saw.

CHAIRPERSON: Now was that the only building with a balcony in that vicinity with balconies or were there other buildings with balconies?

MR MASANGO: So Chair ...[intervenes]

20 **CHAIRPERSON:** In the vicinity of the building that we thought was the one where you had been on the first occasion?

MR MASANGO: No Chair.

CHAIRPERSON: [indistinct]

MR MASANGO: Ja, no Chair. Between the two buildings

that we were in, the building that the photo is here is the only building between the two buildings that was having the balcony.

CHAIRPERSON: Yes.

MR MASANGO: And for me trying to make sure that I am seeing the right place then we went around to behind of this other building.

CHAIRPERSON: Ja.

MR MASANGO: To see whether the following building
10 ...[intervenes]

CHAIRPERSON: Had balconies.

MR MASANGO: Had balconies. I could not see. I said then it should be this one.

CHAIRPERSON: Yes. Okay, Mr Seleka?

ADV SELEKA SC: Thank you Chair. So you were busy explaining Mr Masango in relation to the, you were about to go to the photographs to explain the place and your pointing out thereof.

MR MASANGO: Yes Chair. In terms of the photograph the
20 balconies that I was referring to is C1 and C.1 which is on page 14, 49.7, 49.6.

CHAIRPERSON: Okay, let us start. Is the building at 49.6 the same building as the one that is shown at page 49.7? Is that the same building?

MR MASANGO: Yes Chair, it is the same building.

CHAIRPERSON: Maybe let us ask this question. These photos, these pictures were they taken in your presence?

MR MASANGO: Yes, the investigators were having the cameras.

CHAIRPERSON: Yes.

MR MASANGO: From our side we did not take any picture.

CHAIRPERSON: Yes, and did they show you the pictures before you uttered with them on that day?

MR MASANGO: Well, I only received the pictures after we
10 have parted.

CHAIRPERSON: Yes, like how long after, a day or two or a week?

MR MASANGO: I do not remember exactly but it was quick to file this affidavit, not a week.

CHAIRPERSON: It was less than a week?

MR MASANGO: Yes.

CHAIRPERSON: Okay. So when you look at the pictures at that stage, did you recognise them? I am talking about 49.6 and 49.7.

20 **MR MASANGO:** Yes Chair.

CHAIRPERSON: As reflecting any building that you had seen on the, on the day you were with the investigators there?

MR MASANGO: Yes Chair, 49.6 and 49.7 I could identify with them when I see them on the picture.

CHAIRPERSON: Yes, and what building is that?

MR MASANGO: Ask again Chair?

CHAIRPERSON: What building is that one on page 49.6 and 49.7?

MR MASANGO: That is the building Chair that I recognise as a building that I went to when I went to the Melrose Arch meeting.

CHAIRPERSON: Oh, okay. Alright. Now is 49.6 a different side from 49.7 or are they same side of the building?

MR MASANGO: The two they are on the same side.

CHAIRPERSON: They are on the same side?

MR MASANGO: Yes.

CHAIRPERSON: Okay. Now I see that there is a balcony or there are balconies there. Now if you look at 49.6 there is a balcony. Is there any significance about that balcony that you want to tell me about?

MR MASANGO: Ja, look Chair. If I look at the top balcony, it is the balcony that looks familiar and the place where he was standing.

CHAIRPERSON: When you say he was standing, who are you talking about?

MR MASANGO: Mr Koko, Majela Koko.

CHAIRPERSON: Okay. Mr Seleke, continue.

ADV SELEKA SC: Thank you Chair. So Mr Masango,

these two pictures or photos, on page 49.6 and 49.7, do they show the back part or the front part of the offices?

MR MASANGO: It is the front part.

ADV SELEKA SC: Is this the front part?

MR MASANGO: Yes.

ADV SELEKA SC: So where will be the entrance if you are looking at these photographs. Is the entrance visible on these photographs? On these two.

MR MASANGO: On these two you will not see it exactly
10 because you must come, the balcony are more on the left hand side and the entrance with the steps is more on the right hand side of the same building.

ADV SELEKA SC: Okay. Now can you please explain, if you say Mr Koko was standing on the top balcony where would you have been with the car and be able to see him waving at you?

MR MASANGO: When you look at page 49.3.

ADV SELEKA SC: 49.3?

MR MASANGO: Ja. At page 49.3 you see a pole. You see
20 a pole and then you see there is a person there walking.

ADV SELEKA SC: Yes.

MR MASANGO: Where the person is walking it is more towards the entrance side, towards the steps.

ADV SELEKA SC: Yes.

MR MASANGO: Between the person and the pole is more

of a street then on the side there is parkings.

ADV SELEKA SC: Yes.

MR MASANGO: So in other words on the side of the pole there is parkings there but there is a road before the parking. So you drive on the road, you park next to the road, then you travel towards where the person is walking. There are steps.

ADV SELEKA SC: And now if we stay on 49.3, you could explain let me see, I want to make it easier for you. You
10 would have parked the car, I want to understand how you are approaching the building and you are able to see Mr Koko on the balcony. Whether by reference to any of these pictures you could explain that.

You follow what I want to get to?

MR MASANGO: Ja, I follow what you are saying.

CHAIRPERSON: While you are looking, what is the name of the road that you were on as you were speaking to Mr Koko and he was giving you directions where you moved from one road to another, one street to another or was it
20 just one street?

MR MASANGO: Chair, it is one street Chair.

CHAIRPERSON: Yes.

MR MASANGO: Like this is a building this side.

CHAIRPERSON: Ja.

MR MASANGO: And this is a building this side.

CHAIRPERSON: Yes.

MR MASANGO: So you could drive between the two buildings.

CHAIRPERSON: Oh, the road is between the two buildings?

MR MASANGO: The road is between the two buildings and there is some parkings

CHAIRPERSON: Ja.

MR MASANGO: There is some few parkings on the left
10 towards this building but the building that we were going in is this side.

CHAIRPERSON: So when you say the road was between those two buildings, one of those buildings ...[intervenes]

MR MASANGO: And the road does not go through.

CHAIRPERSON: Yes, okay.

MR MASANGO: It does not go through.

CHAIRPERSON: It stops?

MR MASANGO: Ja, you go in, you park next door. Then you go towards this building where you see C.1 and C and
20 then there is steps there. If this photo were, if it was possible that the photo on 49.6 and 49.7 together with the photo on 49.3, if there was an opportunity to put them ...[intervenes]

CHAIRPERSON: In one line.

MR MASANGO: Then it would become ...[intervenes]

CHAIRPERSON: It would show?

MR MASANGO: Ja, you will see the balcony. Then towards the left on the right hand building, you see the steps and then on the other side you will see the parkings but not many cars could park there.

CHAIRPERSON: Oh, look at 49.4 that is not it? I see buildings on either side.

MR MASANGO: Yes Chair, 49.4 ja that is how the buildings are.

10 **CHAIRPERSON:** Okay.

MR MASANGO: Ja.

CHAIRPERSON: And would that road be the one you are talking about?

MR MASANGO: Ja, yes. Yes, you can see this other building on the left hand side, there is this building on the right hand side.

CHAIRPERSON: Yes.

MR MASANGO: And then you can see a car parked there Chair.

20 **CHAIRPERSON:** Yes, I can see a car there.

MR MASANGO: That is the parking that I am referring to. Either you stop there, you get off, you park there. So when he was on that balcony you can see the balcony there and you can see the steps going up. So I got off the car. Then I followed the steps.

CHAIRPERSON: Yes.

MR MASANGO: Yes.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Thank you Chair. Then Mr Masango, if you go back to 49.7, there seems to be a couple of balconies there. In fact, the photograph depict a couple of balconies and the one with the red arrow pointing.

MR MASANGO: Yes.

ADV SELEKA SC: Now how were you able to identify
10 which of these balconies is the right one on which you would have seen Mr Koko?

MR MASANGO: Chair, the one on C1.1 is the one because when you enter through the steps, the steps lead you to these balconies but towards your right at the corner, that is where the offices are. So if you are standing on this one, on this balcony you are nearest to the office that is at the corner.

So there is no way that you would be standing on the further balcony because the offices were on the right
20 hand side.

CHAIRPERSON: Okay. So looking from outside in the street, was there anything that enabled you to see that this was the balcony where he was standing or you were only able to conclude that this was the one after you had moved around and I do not know if you went inside and see where

the offices were and you were able to conclude that he could not have been on another one because this was the closest?

MR MASANGO: Ja, look Chair. This was the only balcony that I see and it brought some memories ...[intervenes]

CHAIRPERSON: Yes.

MR MASANGO: And then I said this looks like the balcony. There is nothing else other than that balcony.

CHAIRPERSON: Ja.

10 **MR MASANGO:** That could, I remember.

CHAIRPERSON: Do you know whether it was the last one before the end of the building or not? Was it in the middle? There are other balconies on either side of it.

MR MASANGO: Well Chair, when you look at C1.1 you could see it is the same building as it goes further. It has got other balconies.

CHAIRPERSON: Yes.

MR MASANGO: But the one that he was standing it was not far from the steps.

20 **CHAIRPERSON:** Yes.

MR MASANGO: In other words it was nearest.

CHAIRPERSON: Yes.

MR MASANGO: Yes.

CHAIRPERSON: Okay. Mr Seleka, I just need to remember what Mr Pamensky's evidence was. Did he

confirm that this building, shown in these pictures here was the building where Mr Salim Essa's offices were?

ADV SELEKA SC: Ja.

CHAIRPERSON: Because you remember we asked him to ...[intervenes]

ADV SELEKA SC: Yes, no.

CHAIRPERSON: To help us.

ADV SELEKA SC: We did.

CHAIRPERSON: But you do not recall? I know that he
10 gave positive evidence.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I am just not, I do not remember. He gave the address of a ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Where the offices were in fact if I recall correctly, but I think he would have been shown these pictures or was he not shown?

ADV SELEKA SC: I was about to say that step was not done Chair, because I think the pictures look familiar or
20 the same, but what we did not do with him was to exchange and having confirmed that this is the same premises.

CHAIRPERSON: Ja.

ADV SELEKA SC: I am reluctant to answer because of that reason.

CHAIRPERSON: Ja. Okay, what is necessary therefore, is

to is that he showed these pictures and asked to indicate whether he is able to identify. He can look at the affidavits as well.

ADV SELEKA SC: Yes.

CHAIRPERSON: If he is able to say the pictures relate to the same building or not, where Mr Salim Essa's offices were.

ADV SELEKA SC: Correct.

CHAIRPERSON: So from your side Mr Masango, you say
10 when you looked at the balconies, this appeared to be the one you, that Mr Koko where he was standing.

MR MASANGO: Correct Chair.

CHAIRPERSON: On the outside, that you used to recognise or identify this one as C1. It was simply when you looked at it, it appeared to be the one?

MR MASANGO: Correct Chair.

CHAIRPERSON: Okay. Was there anything else because you have told us that you did not, you had not noticed the boom before, on the first occasion. Is there anything else
20 that you saw on the second occasion when you went with the investigators that gave you an indication that you were right to think this was the building?

MR MASANGO: Yes Chair. Chair, I want to go back to the issue of the boom.

CHAIRPERSON: Ja.

MR MASANGO: Because when we were going there with the investigators, we stood between the two buildings and looked around.

CHAIRPERSON: Ja.

MR MASANGO: Then I see these booms.

CHAIRPERSON: Ja.

MR MASANGO: At the time when I went for the first time on the 10th of March, I got off the car. Saw him, got into the steps. As I was going up I meet him there, then we go
10 to the office and as I was leaving I left the [indistinct]. I just got off the steps, got into the car.

CHAIRPERSON: Ja.

MR MASANGO: But the difference this time is when we were identifying the building, we stood and then I tried to see what I remember, and then when I see the booms I said but I do not remember these booms. But the balconies looks the same, and then I asked the investigators to go, for us to go at the back.

We went at the back. I said well, I am not familiar
20 with this place, but the balcony looks the same. Then from there, we proceeded to the steps. We went in with the steps. As I was going up with the steps, then I started to have more confidence that now looks like the place.

As I start to lift up my eyes, to try and see whether it is the offices that I saw, and when I look at the offices,

then I could confidently say we did not even walk to the office. I show the investigators that those offices that are there, they look like the one.

Though I could not Chair, call it and say it is this office and this office and this office, but standing on the stairs I could show them and say those offices look the same. The only thing that Chair, that I could not remember whether was because the offices in the corner on the first floor and on the second floor are the same. Whether it is
10 the first floor or the second.

CHAIRPERSON: Yes. But did you say the offices, Mr Salim Essa's office were in the corner or something?

MR MASANGO: At the corner. So before you go to the corner there is two offices, then there is a corner. Ja, those offices, before the corner I think one, two, three.

CHAIRPERSON: Ja.

MR MASANGO: Somewhere there, but now the setup there on the first floor and the second floor are the same.

CHAIRPERSON: Yes.

20 **MR MASANGO:** And the numbering of these offices are numbered. They have not changed. They are still ...[intervenes]

CHAIRPERSON: Ja ...[intervenes]

MR MASANGO: The numbers, the numbers were black. I could not remember their number. What was it.

CHAIRPERSON: Ja, but ...[intervenes]

MR MASANGO: But the numbers we could see, actually the numbers made me to believe that these numbers looked familiar.

CHAIRPERSON: Yes. Okay.

MR MASANGO: But if you were to ask me what was the number of the office, I would not be ...[intervenes]

CHAIRPERSON: You would not be able to tell. Okay, alright. So you say Mr Salim Essa's office was close to a
10 corner?

MR MASANGO: To a corner ja. You will see one, two those offices.

CHAIRPERSON: Ja, ja and that corner was it the end of the building or what?

MR MASANGO: No, it turns.

CHAIRPERSON: It turns, okay.

MR MASANGO: It goes to the corner, it goes like this.

CHAIRPERSON: Okay, okay, okay. So do you recall whether they, his office was on the first floor or second
20 floor or third floor?

MR MASANGO: Chair, I did not remember but I ... I think either first floor or second floor.

CHAIRPERSON: Ja.

MR MASANGO: Because we did not go high up.

CHAIRPERSON: Okay. Alright. You can continue Mr

Seleka. I think it will be important ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Maybe if you ask Mr Pamensky what needs to be, Mr Pamensky need to be shown the building that Mr Masango identified.

ADV SELEKA SC: Yes.

CHAIRPERSON: On the second occasion as the building where Mr Salim Essa's offices were, and because he knows in which building they were. He might say no, no, no Mr
10 Masango is mistaken. That is not the ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: Building. Mr Essa's offices were not in this building, they were in another building or he might say yes, this is right. That is what needs to be investigated and he can then [indistinct] give us an affidavit.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Ja. I am trying to open his affidavit.

CHAIRPERSON: Ja, okay.

20 **ADV SELEKA SC:** But for the reason I conveyed to you.

CHAIRPERSON: Ja, no. I think let us move.

ADV SELEKA SC: Yes.

CHAIRPERSON: I do not have anything further to ask Mr Masango on this. I think you can, unless you have some question you can move on to the next topic.

ADV SELEKA SC: So Mr Masango, when you were there with the investigators, did you have to ask somebody to confirm these premises or you independently could recall upon inspection of the premises, upon being there, walking around that this is where I was back on the 10th of March.

MR MASANGO: Ja, Chair through you Chair. I walked around that building. We drove. As we drove you see different buildings, but when we were closer to this one, the one that I was suspecting that that is the one, then I
10 requested that we park, I walk outside. Ja, that is how I identified ...[intervenes]

ADV SELEKA SC: So it was an independent recollection?

MR MASANGO: Ja, I was walking with the investigators and my attorney.

CHAIRPERSON: Ja. Did anybody on that day tell you anything about what address Mr Salim Essa's offices were?

MR MASANGO: No Chair.

CHAIRPERSON: I may have not heard you correctly, but did you say you were leading the investigators on the
20 second occasion?

MR MASANGO: Yes Chair. Before you get to Melrose Arch, at the entrance that is where we met, myself the investigators.

CHAIRPERSON: Yes.

MR MASANGO: And the attorneys.

CHAIRPERSON: Yes.

MR MASANGO: And then we drove ...[intervenes]

CHAIRPERSON: You were driving ahead?

MR MASANGO: Ja, I was driving yes.

CHAIRPERSON: Oh, okay. Alright. Until you reached the building that you were suspecting was the one.

MR MASANGO: Yes.

CHAIRPERSON: Okay. Okay, Mr Seleka.

ADV SELEKA SC: I see that you do say in your affidavit
10 that you recall the office to be unit 11A. Now that
recollection, can you explain it because I seem to have
understood you that on that occasion when you were there,
you did not pick up the office number or something to that
effect.

MR MASANGO: Yes Chair, the when we were going up
with the steps, I pointed at the office at the corner. As you
see on page 49.5, I pointed at the corner to say this office
looks like and then the investigator then confirmed that
what you are pointing is 11A.

20 **CHAIRPERSON:** Oh, okay.

MR MASANGO: So in other words I could not recall and
say the office of 11A, but I just pointed out ...[intervenes]

CHAIRPERSON: Yes.

MR MASANGO: Because there were numbers.

CHAIRPERSON: Yes.

MR MASANGO: The investigators said where you are pointing it is 11A.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Okay. Well, you will recall when you were here I did ask you whether that was your first and last time for you to be at these offices that we are talking about, and I see that you do say in the last paragraph of this affidavit as well, which is on page 49.2. Paragraph 8. You say this was the first and only time that I attended any
10 meeting at this office.

Now we have asked you to comment on the statement made by Ms Bianca in her affidavit, in which she says that during December 2015 and let me make this clear, because this meeting is 10 March 2015. So December 2015 she says she was at the offices of Mr Essa.

Mr Essa introduced you to her as you being an official from Eskom. So she says I was introduced by Essa to Abram Masango, Eskom group executive of transmission
20 as Trillian's representative. The ...[intervenes]

CHAIRPERSON: You ...[intervenes]

ADV SELEKA SC: Thank you Chair. Do you have any comment on that Mr Masango?

MR MASANGO: Through you Chair, I do not recall meeting in that office again, but if you allow me Chair, I did meet

Bianca ...[intervenes]

CHAIRPERSON: Yes.

MR MASANGO: I think I met her once. I met her at Megawatt Park in front of Koko's office. When you go to Megawatt Park there are launches in front of the offices. My office was next to Eddie's office and then as you go further to the CEO's office, Koko's office was there.

So what I recall is that as I was walking on the corridor, there were two ladies not sitting on the launch but
10 standing. Edwin called me. Edwin was our chief, in Mabelane was our chief procurement officer. Then he called me, then he introduced me to the two ladies, and one of those ladies, those two ladies it was Bianca.

But it was for the first time I met her and then I do not recall or remember meeting her.

ADV SELEKA SC: Meeting her at Melrose Arch?

MR MASANGO: No, I do not recall.

ADV SELEKA SC: At Mr Salim Essa's office.

MR MASANGO: No.

20 **CHAIRPERSON:** Do you not recall but it might have happened or are you definite that you never met at Mr Salim Essa's offices, because she seemed quite definite in her evidence. So are you saying you do not recall but maybe it did happen or are you in a position to say you are definite that it did not happen?

MR MASANGO: Chair, I do not recall.

CHAIRPERSON: Recall, you do not recall.

MR MASANGO: I do not recall ...[intervenes]

CHAIRPERSON: Okay.

MR MASANGO: Meeting her, other than what I recall that I met her at Megawatt Park.

CHAIRPERSON: Yes.

MR MASANGO: Chair, I must also say that when I, because Bianca's affidavit was sent to us. When I read it,
10 I tried to remember. I could not, except that I remembered that at some stage I was in the African Pride Hotel but not in Melrose Arch.

So I do not recall Chair.

CHAIRPERSON: Have you other than on the 10th of March 2015, did you ever meet Mr Salim Essa anywhere after that?

MR MASANGO: Chair, after the 10th of March I never met Salim Essa. But I must indicate Chair that Mr Koko during his suspension he used to call the meetings, but not at
20 Melrose Arch because I recall one meeting where I met Koko around that area. There is a hotel. I think it is African Pride.

I met Koko there. Koko used to call the meeting during his time he was suspension, and when I was with Koko in the entrance of the hotel, we were sitting like in a

corner. Because I was still travelling to Mpumalanga, so I met Koko.

I saw Salim Essa passing, but he never ... he was far from us. I said but I have seen that guy. Then I was with Koko, I never bothered. I listened to what Koko was saying, then I left. I am saying that Chair, because during his suspension Koko used to call us, to want to see us.

That is where me and Koko I started not attending those meetings because I felt they are not [indistinct].

10 **CHAIRPERSON:** Do you have any reason why you think Ms Bianca Goodson might say she saw you in Mr Salim Essa's offices if that is not what happened? Is there any reason you can think of? Do you think she is mistaken or do you think she might have a better recollection than you?

MR MASANGO: Chair, I will not comment Chair on that.

CHAIRPERSON: You would not comment on that.

MR MASANGO: Ja, I will not comment on that Chair.

CHAIRPERSON: Yes.

MR MASANGO: But what I recall is that Edwin introduced
20 me to her.

CHAIRPERSON: Ja.

MR MASANGO: And there were two ladies. I cannot remember the other lady, but you could see that Edwin and them, they were going into Koko's office. They were standing here, waiting.

CHAIRPERSON: Okay. Mr Seleka?

ADV SELEKA SC: Mr Masango, I am reminded of another question. When Ms Nonhlanhla was here, about your meeting with her, there was one meeting you described as having been on the side of the road and she said no, but you did not meet on the side of the road. Do you think you can explain yourself on that aspect?

MR MASANGO: Yes, I can.

ADV SELEKA SC: Yes, please do?

10 **MR MASANGO:** Ja. Chair, I stand by what I said that because Nonhlanhla was staying in Midrand, I was staying in Mpumalanga. So because I missed the meeting on site, because after the Megawatt Park meeting I was supposed to go inside and then I get called at Melrose Arch.

I then called her as I was going back. Then I, but like I said Chair, before I called her I tried to call Dan Marokana. Could not get him and I called her, and then the next person after Melrose Arch that I talked to, it was her.

20 The reason Chair, I am saying that, we met on the side of the road as he was going up, me going down to Mpumalanga. Then the following day which was the 11th, like I explained Chair previously that when I wake up the following day on the 11th, I saw a lot of missed call on my phone.

It was around five o'clock and then when I called the number I did not get the response, but there was a voice message that said I must meet the Chairman at Megawatt Park at eight. Then out of that, I decided not to travel to the project off site. I decided to travel from home to Megawatt Park.

My first meeting at site, was at seven o'clock and I was going to have a teleconference meeting with Dan Marokana. All the projects were going to connect to that
10 meeting that was going to be set by Dan Marokana. So instead of going to site to connect, because there is meeting now, this urgent meeting at eight that I am supposed to attend, go and see the Chairman and there is a seven o'clock meeting.

Then I decided that I rather drive to Megawatt Park. Then I attended the first meeting at seven. At Megawatt Park, on ground floor. It was Chaired by Peter Sebula, because Dan Marokana was not there. Peter Sebula Chaired the meeting.

20 The meeting was scheduled, I cannot remember the exact time, but five to eight, then I left the meeting. I walked with the steps to the third floor to meet the Chairman. So travelling from Witbank to Megawatt Park, it is one and a half hour to two hours.

So there is no way that I could have driven to site,

wake up five o'clock, prepare, drive to site, from site drive to Megawatt Park and make a seven o'clock meeting. I must say Chair, I am also alive to the contradiction between what Nonhlanhla is saying and what my version is.

CHAIRPERSON: Yes. No, no that is fine. It might not be a material complication.

MR MASANGO: Yes.

CHAIRPERSON: It will be looked at further with everything, whether you met on the side of the road or
10 elsewhere. It may be that [indistinct] what was discussed and what you conveyed to him and what she, to her and what she said.

But whether or not it is material is something that will be looked at in the context of all the evidence.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you Chair. I have been able to open the affidavit of Mr Pamensky and he says, it reads:

20 "To the best of my knowledge Mr Essa occupied an office situated at Unit 11A, first floor, 1 Melrose Boulevard, Melrose Arch, Johannesburg."

I see that ...[intervenes]

CHAIRPERSON: Oh, he mentions 11A?

ADV SELEKA SC: 11A, yes.

CHAIRPERSON: Which is the office that you say you identified and the investigators at the office you are identifying is 11A?

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay.

ADV SELEKA SC: I see he had, he also did the pointing out ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: On the 5th of March 2021, which the
10 date, it coincides with your date Mr Masango. Were you there together or on separate times?

CHAIRPERSON: Well, Masango was on the 5th of March.

ADV SELEKA SC: Yes, it is the same date as ...[intervenes]

CHAIRPERSON: Oh, is it the same date?

ADV SELEKA SC: Yes.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: Were you there together or on separate times?

20 **CHAIRPERSON:** Do you know Mr Pamensky?

MR MASANGO: Ja, Pamensky used to be a board member.

CHAIRPERSON: A board member yes. Did you see him on the day you went there with the investigators?

MR MASANGO: No, I did not see.

CHAIRPERSON: You did not see.

MR MASANGO: Yes.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: Yes. Then lastly Mr Masango, Mr Koko has been here, and as ...[intervenes]

CHAIRPERSON: Do you confirm that the two of you called each other Maki?

MR MASANGO: Yes Chair.

CHAIRPERSON: You confirm. Okay, no he said the two of you used to get on very well. He said you were, he put his
10 two fingers together, he said you were like this. He said you were the same WhatsApp group.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay. Continue Mr Seleka.

ADV SELEKA SC: But now he, it seems things have turned around Mr Masango, because he mentioned a couple of times that he has laid a criminal charge or opened a criminal case against you and others in regard to, if my recollection serves me well, the corruption as he says that took place at Kusile Medupi power stations. Are
20 you aware of him having done so?

MR MASANGO: No, I am not aware of Koko laying a criminal charge against me. There is an alleged case at Kusile that I am attending.

CHAIRPERSON: Yes, I think the one he was talking about, I think he said he laid the criminal complaint, I do not know

whether 2016 or 2017. I think 2017 ...[intervenes]

ADV SELEKA SC: I cannot remember ...[intervenes]

CHAIRPERSON: Well, what he did say if I recall correctly, because when he was giving evidence and he was telling me how close the two of you had been for a number of years, I asked him when it was that your relationship, the relationship between the two of you changed or soured.

My recollection is that he may have said that was 2017. Maybe 2016 ...[intervenes]

10 **ADV SELEKA SC:** 17 Chair.

CHAIRPERSON: Was it 2017?

ADV SELEKA SC: I think that is 17, yes.

CHAIRPERSON: Ja, ja. So it may be that that is the time he is talking about. Do you not know that he laid any criminal complaint against you and others in 2017 or 2016?

MR MASANGO: Chair, what I know is that there is a case that was, there is an alleged case that I am attending. It is on pre-trial now. Laid by Eskom.

CHAIRPERSON: But do you know whether that one was
20 laid with the police as far back as that or are you talking about a case that is recent.

MR MASANGO: Yes, the case Chair was laid in 2017.

CHAIRPERSON: Oh, okay.

MR MASANGO: Was laid in 2017. When I look at it, though it was laid by the security manager.

CHAIRPERSON: Not by Mr Koko?

ADV OLDWAGE SC: Chair, might I assist?

CHAIRPERSON: Yes.

ADV OLDWAGE SC: So there is no case. I represent Mr Masango in those proceedings.

CHAIRPERSON: Yes.

ADV OLDWAGE SC: There is absolutely nothing to do with Mr Koko.

CHAIRPERSON: Yes.

10 **MR OLDWAGE SC:** What I can be sure of is that the docket contents of that matter has been discovered to the defence.

CHAIRPERSON: Yes.

ADV OLDWAGE SC: I had read those papers.

CHAIRPERSON: And there is no statement by ...[intervenes]

ADV OLDWAGE SC: There is certainly no charge preferred against Mr Masango where Mr Koko is the complainant and I can take it one step further. Mr
20 Masango was required to appear and launch a bail application and what he was required to do in that application was to disclose whether there were any other cases pending against him at the time.

He made the disclosure that there was not and so I do not want any confusion ... Mr Masango has perhaps not

correctly answered this with reference to the date, but present we as the defence team have no knowledge of any such case and certainly the matter which is presently pre-trial in the specialised commercial crimes court, has absolutely nothing to do with Mr Koko and he is not the complainant in that matter.

I just want to provide clarity in that regard.

CHAIRPERSON: Of course it may well be that the complainant would be reflected as Eskom. Is the position
10 that in the docket you have not come across any statement made by him to the police as well?

ADV OLDWAGE SC: And so, he is certainly not what is in the ordinary cause described as the A1, in other words the first information of the crime is generally the complainant in criminal matters.

CHAIRPERSON: Ja.

ADV OLDWAGE SC: And he is certainly not that person and I have not come across any affidavit from him in that disclosure process.

20 **CHAIRPERSON:** Yes.

ADV OLDWAGE SC: And my attorneys who are with me today, also confirm that they also have not seen such an affidavit.

CHAIRPERSON: Yes, okay. Alright.

ADV SELEKA SC: But Chair, the simple way to resolve

that Chair, is to obtain what Mr Koko had promised to give me. Which was copies of the, he said he has documents that show that he opened this case.

CHAIRPERSON: Ja.

ADV SELEKA SC: And that he is keeping them in the boot of his car, but they walked away without giving them to me, so I have just reminded his attorney ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: If he could provide me with that.

10 **CHAIRPERSON:** Okay. So Mr Masango, when did you hear for the first time that according to Mr Koko he laid a criminal complaint against you, I think he said for corruption. When did you hear that that is what he is saying or that there is such a thing for the first time?

MR MASANGO: Chair, it is the first time I hear today that Koko laid a criminal charge against me.

CHAIRPERSON: When he gave evidence and subsequent you did not get to know that that is what he had said?

MR MASANGO: I did not follow all his ...[intervenes]

20 **CHAIRPERSON:** His evidence.

MR MASANGO: His evidence.

CHAIRPERSON: Yes. So when you gave evidence before this commission, was it last year or early this year? Whenever it was, did you have any knowledge that Mr Koko may have laid some criminal complaint against you?

MR MASANGO: No Chair.

CHAIRPERSON: Because he if I am not mistaken, his evidence suggested that you may have given the evidence that you have given about the meeting of the 10th of March 2015 and said he was part of that meeting, because of the fact that he had laid a criminal complaint against you for corruption, but what I did raise with him was that on his version, your relationship at the time, with the two of you was good, and according to his own version that
10 relationship was good until I think 2017.

But in the meantime you had told [indistinct] Melrose Arch on the 10th of March. So the relationship at that time on his version was still fine. But that is the context, that is what he was saying if I recall correctly. So you say you do not know anything about him having laid a complaint?

MR MASANGO: Yes, I did not know anything Chair, about him laying a criminal charge against me.

CHAIRPERSON: Okay, alright. Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chair.

CHAIRPERSON: I do not have anything further.

ADV SELEKA SC: Ja. Now I do not think I have either. The 1st of December 2020, that is when you testified.

CHAIRPERSON: Okay.

ADV SELEKA SC: The, ja I think we have clarity on this

issue of ...[intervenes]

CHAIRPERSON: Because it was the issue of the identification of the building.

ADV SELEKA SC: Yes.

CHAIRPERSON: It was the issue, the evidence of Ms Bianca Goodson.

ADV SELEKA SC: Yes.

CHAIRPERSON: Then it was what Mr Koko had said. Those were the three issues, ja.

10 **ADV SELEKA SC:** Those were the issues, ja.

CHAIRPERSON: Okay. If you do not have any questions, I am going to ask counsel for Mr Masanga, is there any re-examination?

ADV OLDWAGE SC: I do have Mr Chair, two or three questions.

CHAIRPERSON: Yes, I am quite happy for you to either do it from there if your mic is working or if you want to come to the podium, it is fine. Whichever, okay. You want to do it from there?

20 **ADV OLDWAGE SC:** I can do it from here Mr Chair.

CHAIRPERSON: Ja, it is fine. Okay, you may do so.

ADV OLDWAGE SC: Thank you. Mr Masango, I draw your attention to Exhibit U, page 31. If you could kindly turn to that page and in particular the paragraph numbered 18.3.2.

CHAIRPERSON: I am sorry. What page in Bundle 14 is

that?

ADV OLDWAGE SC: Mr Chairperson, page 31.

CHAIRPERSON: Eighty one?

ADV OLDWAGE SC: Three one. It is U31, B54-007. It is the affidavit of Ms Bianca Goodson.

CHAIRPERSON: Ja, okay. Go ahead.

ADV OLDWAGE SC: Are you there Mr Masango?

MR MASANGO: Page 31?

ADV OLDWAGE SC: U31.

10 **MR MASANGO:** U ...[intervenes]

CHAIRPERSON: That would be the exhibit number. U31 will be the exhibit number ...[intervenes]

ADV OLDWAGE SC: B54-007.

CHAIRPERSON: Have you got the black number, the black pagination on the left of the corner?

ADV OLDWAGE SC: 431 Mr Chair.

CHAIRPERSON: 431?

ADV OLDWAGE: Indeed.

CHAIRPERSON: Okay. Page 431 Mr Masango.

20 **MR MASANGO:** Yes, I am on page 431.

ADV OLDWAGE SC: Paragraph 18.3.2, I am going to quote it for you. It reads:

“During or about week 50 2015(6 to 12 December) and in Essa’s office, I was introduced by Essa to Abram Masango, Eskom

group executive of transmission as Trillian's representative."

Now before we deal with that caption, how many meetings did you attend at Essa's office, the office that you have described the location of here today?

MR MASANGO: I recall one meeting, that was on the 10th of March 2015.

ADV OLDWAGE SC: Recall means that is what you remember?

10 **MR MASANGO:** That is what I remember.

ADV OLDWAGE SC: Is there any reason why you do not remember any other meeting at these premises?

MR MASANGO: There is no other reason, but the meeting that I remember is the one on the 10th of March 2015.

ADV OLDWAGE SC: Now can we accept that it was just that meeting at that office with Essa?

MR MASANGO: That is what I recall. That is what I remember.

ADV OLDWAGE SC: Is it possible that you could have
20 forgotten about having another meeting with Mr Essa, Mr Masango?

MR MASANGO: One of the reason that I remember the meeting of the 10th, is because I also recall the contents of the discussion on the 10th. So if there was any other meeting, I should also at least remember the reason or

what transpired in that meeting.

ADV OLDWAGE SC: Thank you. Now we can return, what Ms Goodson alleges in this affidavit, is that Essa introduced you to her as the group executive of transmission. You see that?

MR MASANGO: I do, through you Chair.

ADV OLDWAGE SC: Now have you ever held the position of group executive of transmission with Eskom?

MR MASANGO: I never held any position of group
10 executive of transmission in Eskom.

ADV OLDWAGE SC: So therefore Ms Goodson must have been mistaken when she introduced you in that capacity, do you agree?

MR MASANGO: Yes.

ADV OLDWAGE SC: Mr Masango, you have been asked about the testimony and the affidavit of Ms Kraai. Where were you on the morning of 11 March 2015? Can you recall?

MR MASANGO: In the morning of the 11th I was, in the
20 morning I was in Witbank. I left Witbank. I attended a seven o'clock meeting at Megawatt Park.

ADV OLDWAGE SC: Did you attend a meeting with Ms Kraai at Kusile on that day 11 March, yes or no?

MR MASANGO: No.

ADV OLDWAGE SC: Have you requested your diary for

the period 2015 from Eskom so as to assist you with an understanding of your whereabouts during that year?

MR MASANGO: On the 11th?

ADV OLDWAGE SC: Just listen to the question. Have you asked for your diary, for access to your diary from Eskom for the period 2015?

MR MASANGO: I asked for specific dates. I asked for specific dates.

ADV OLDWAGE SC: And have you been given access to
10 your diary?

MR MASANGO: No.

ADV OLDWAGE SC: As I understand your evidence, you were on friendly terms with Mr Koko during your tenure at Eskom, is that correct?

MR MASANGO: Yes, that is correct. Not towards the end.

ADV OLDWAGE SC: Do you have any cause to have falsely implicated Mr Koko with reference to the meeting with Essa?

MR MASANGO: Ask the question again?

20 **ADV OLDWAGE SC:** Do you have any cause to falsely implicate Mr Koko? You will recall, let me put the context for this question. Koko has suggested that there is a witch hunt against him and that people have falsely implicated him, in particular you with reference to your evidence concerning this meeting with Essa, where he was present.

My question to you is do you have any cause to falsely implicate Mr Koko?

MR MASANGO: No.

ADV OLDWAGE SC: Thank you Mr Chair, I have nothing further.

CHAIRPERSON: Thank you very much. Thank you very much Mr Masango. You are now excused.

MR MASANGO: You are welcome Chair.

CHAIRPERSON: Your legal team is also excused if they
10 wish to ...[intervenes]

ADV OLDWAGE SC: Thank you Mr Chair.

CHAIRPERSON: Okay. We, I am going to adjourn for about ten minutes to allow Mr [indistinct] to set up before the next witness. We adjourn.

ADV SELEKA SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good evening Mr Hulley. Good evening everybody.

20 **ADV HULLEY SC:** Good evening Mr Chair.

CHAIRPERSON: Good evening Mr Dixon.

ADV DIXON SC: Good evening Chair.

CHAIRPERSON: Good evening.

ADV HULLEY SC: Evening Chair.

CHAIRPERSON: Thank you, thank you.

ADV HULLEY SC: Mr Chair, today's proceedings relates to the evidence of Mr Mabuyakhulu. You have granted him leave to cross-examine Mr Trevor White on the question of the one million rand donation and before he may do so, he is required to testify.

You will recall that he had testified on a previous occasion where you had to consider whether you were going to grant him, at that stage you were considering whether to grant him leave to cross-examine Mr White.

10 **CHAIRPERSON:** Ja.

ADV HULLEY SC: Thank you.

CHAIRPERSON: Yes, and we stopped at a time when there seemed to be some confusion as to ...[intervenes]

ADV HULLEY SC: There had been some confusion as to ...[intervenes]

CHAIRPERSON: What Mr White's diagram really meant and an affidavit has been obtained.

ADV HULLEY SC: Two affidavits, in fact three affidavits have been obtained.

20 **CHAIRPERSON:** Yes, I think just deal with that so that we are all on the same page ...[intervenes]

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: As to where we are.

ADV HULLEY SC: So pursuant to your directive Mr Chair, we obtained a supplementary affidavit from Mr White in

which he explained what his intention was in relation to the donation. So that has been clarified. We also obtained an affidavit from Colonel du Plooy.

That has been included in the bundle and then during the course of last night we obtained an affidavit from Mr Mabuyakhulu in which he responded to their affidavit and that has also been included in the bundle.

CHAIRPERSON: Well, I have not seen Colonel du Plooy's affidavit. I have not seen Mr Mabuyakhulu's latest
10 affidavit.

ADV HULLEY SC: So Colonel du Plooy's affidavit is to be found, I can take you to it, can be found at page 248 of LEA27.

CHAIRPERSON: There is a bundle in front of me here. Do you want to make sure the record reflects what bundle we are using.

ADV HULLEY SC: So it is Bundle LEA27.

CHAIRPERSON: Ja.

ADV HULLEY SC: And ...[intervenes]

20 **CHAIRPERSON:** Okay, and Colonel du Plooy's affidavit is at what page?

ADV HULLEY SC: It is at page 248 of that bundle.

CHAIRPERSON: What does it deal with?

ADV HULLEY SC: So in essence it deals with the very same issue that has been dealt with by Mr White, in his

affidavit and he explains the ... he explains why in his view, Mr Mabuyakhulu was in fact the person who came up with the story about the one million rand donation having been received, which related to Dr Savoy having been received by Mr Mabuyakhulu from Mr Tshabalala.

CHAIRPERSON: It looks like it is not a short affidavit.

ADV HULLEY SC: It is a fairly substantial affidavit. In fact, it runs from page 248 and contains a number of annexures. With all its annexures it runs to page 502 and,
10 but some of those affidavits that are attached to his affidavit, are in fact affidavits which have already been included elsewhere.

So they would in fact be duplications, but Colonel du Plooy's affidavit is one affidavit, together with annexures and I would ask that that particular annexure, affidavit be marked as Exhibit RR7.8.

CHAIRPERSON: His affidavit is 35 pages and then the annexures.

ADV HULLEY SC: The affidavit is 35 pages, together with
20 the annexures. Runs into ...[intervenes]

CHAIRPERSON: Well, his affidavit alone is 35 pages.

ADV HULLEY SC: Correct.

CHAIRPERSON: And then with the annexures, will the annexures take it to what page?

ADV HULLEY SC: Take it to page 200, sorry 503.

CHAIRPERSON: What prompted Colonel du Plooy's affidavit, was he asked to do one or he watched Mr Mabuyakhulu's evidence and decided to put up an affidavit?

ADV HULLEY SC: We had asked him to consider the same issues that have been put to Mr Trevor White, because the evidence dove tailed with each other.

CHAIRPERSON: Ja.

ADV HULLEY SC: So we thought it would be important for
10 both of them to consider the issue.

CHAIRPERSON: Proceed, because I am seeing it for the first time, I now do not know whether what he says there, whether there is anything that would need to be put to Mr Mabuyakhulu in the first place, or whether he raises anything that is different from what Mr White is saying.

ADV HULLEY SC: Well, he covers exactly the same territory as Mr White, but in addition to what Mr White has said, he also adds two important additional documents. He refers to a letter that was referred to by Mr White but not
20 attached. He attaches that and then he refers to an affidavit that was obtained from Mr Zwele Mkhize during the course of the investigation which he says provides support for his view that in fact it was Mr Mabuyakhulu who provided that version that the donation was received from Dr Savoy.

CHAIRPERSON: Where is Dr Mkhize's affidavit?

ADV HULLEY SC: So if you would turn to Mr Chair, to page 490.

CHAIRPERSON: Four nine zero?

ADV HULLEY SC: That is correct. You will see there that is the first page of the affidavit and that affidavit goes as far as page 498.

CHAIRPERSON: This is not a satisfactory situation. It is not satisfactory. Why was he not asked to give this
10 affidavit much earlier, Colonel du Plooy. Why did he not give it much earlier? I could have had a chance to read it. Was he asked recently?

ADV HULLEY SC: He was asked at the same time as Mr White was asked. His affidavit is a little bit more substantial and it required certain additional evidence. As I say, he has covered the same territory as Mr White, but in addition to that he has managed to locate additional documents to support him, or what he is saying.

One of those additional documents is ...[intervenes]

20 **CHAIRPERSON:** But I was not even informed that there was an affidavit being awaited from him. Mr White's one I got and I read it.

ADV HULLEY SC: Yes.

CHAIRPERSON: So I had an idea, I had an idea when I allocated the date, I had an idea that that is the affidavit

that has been provided. I did not even know Colonel du Plooy had been asked to provide an affidavit. At least, I would have asked that he would be given strict deadlines, strict deadlines.

A strict deadline.

ADV HULLEY SC: Yes, yes.

CHAIRPERSON: So that he could not provide it one day before the hearing.

ADV HULLEY SC: Yes. I can say that for the purpose of,
10 because it covers the same territory as I have said and it is all concerned with one issue and one issue only, i.e. who was the source of the information relating to the donor.

CHAIRPERSON: Okay. Let us see, Mr Dixon is there anything you wish to say at this stage before we start?

MR DIXON: Chair, I do not have anything to say. Mr Mabuyakhulu wanted to give evidence ...[intervenes]

CHAIRPERSON: Yes.

MR DIXON: I am going to leave it to him ...[intervenes]

CHAIRPERSON: Yes.

20 **MR DIXON:** To make his point.

CHAIRPERSON: Okay, no that is fine. Okay. What we will do is we will, I will allow Mr Mabuyakhulu to give evidence and to be questioned and then when he is done, then we will allow you to cross-examine Mr White.

MR DIXON: Thank you, that would be appreciated.

CHAIRPERSON: Yes. Okay, alright. Mr Mabuyakhulu can you hear us?

MR MABUYAKHULU: Yes, I can Mr Chairperson.

CHAIRPERSON: Good evening.

MR MABUYAKHULU: Good evening.

CHAIRPERSON: Thank you for availing yourself again and in the evening.

MR MABUYAKHULU: Thank you very much Chair.

CHAIRPERSON: The registrar will administer the oath or
10 affirmation. You did hear what I said just before your counsel disappeared, namely that we will start with you. After you have finished, then Mr White will be cross-examined by your counsel.

MR MABUYAKHULU: That is correct Mr Chair.

CHAIRPERSON: Okay, alright.

REGISTRAR: Please state your full names for the record?

MR MABUYAKHULU: My full name is Michael Mabuyakhulu.

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

MR MABUYAKHULU: No, I do not.

REGISTRAR: Do you affirm that the evidence you will give will be the truth, the whole truth and nothing but the truth? If so, please raise your right hand and say I truly affirm.

MR MABUYAKHULU: I truly affirm.

MICHAEL MABUYAKHULU: (D.s.s)

CHAIRPERSON: Thank you. Okay, Mr Hulley, do you want to lead ...[intervenes]

ADV HULLEY SC: Thank you Mr Chair. Mr Mabuyakhulu, you will recall that on the previous occasion that you testified before the Commission relating to a one million rand donation that you said you had received from Mr Tshabalala for the ANC Kwazulu Natal. Do you recall that?

MR MABUYAKHULU: I do.

10 **ADV HULLEY SC:** Now you deposed to a number of affidavits which are before the Commission and I would like you just to confirm that, before I continue to question you and to lead your evidence about your response to the allegations that were made by Mr Trevor White.

I would like to take you to your affidavit. Can you turn with me to Bundle LEA27. Mr Chair, and if you could turn to page 5 of that bundle.

MR MABUYAKHULU: It is, what is in my file is Exhibit RR7.

20 **ADV HULLEY SC:** That is, in the top right hand corner you would see RR7/MM/005. For your benefit Mr Chairperson it will be LEA27 in the top left hand corner and we are looking at page 5 specifically.

MR MABUYAKHULU: That is 27 ...[intervenes]

CHAIRPERSON: Bundle MMA27, Exhibit RR7 I think and

you said page 5 Mr Hulley?

ADV HULLEY SC: It is page 5 of that bundle.

MR MABUYAKHULU: Page 5?

CHAIRPERSON: Ja, when you say page 5 you will recall from last time Mr Mabuyakhulu ...[intervenes]

MR MABUYAKHULU: Yes.

CHAIRPERSON: It is 275 and 005 but we just say page 5.

MR MABUYAKHULU: No I did find it Mr Chair.

CHAIRPERSON: Okay.

10 **ADV HULLEY SC:** And this purports to be an affidavit of Michael Mabuyakhulu. Is that correct?

CHAIRPERSON: You say it purports?

ADV HULLEY SC: Well, before I can I need to ascertain ...[intervenes]

MR MABUYAKHULU: [indistinct]

CHAIRPERSON: I guess he wills say no, it does not purport. It is mine.

ADV HULLEY SC: Ja. Now ...[intervenes]

CHAIRPERSON: But I think you may be right
20 ...[intervenes]

ADV HULLEY SC: Until I know what his answer is.

CHAIRPERSON: Until he confirms.

ADV HULLEY SC: Thank you Mr Chair. If you would turn with me sir, to page 16 of that bundle, you will see there that is a signature of a deponent and the document itself is

signed on the 10th of February of 2020 and you have got the details of the Commissioner of Oaths on the following page.

Is the signature of the deponent, is that your signature?

MR MABUYAKHULU: That is correct Mr Chair.

ADV HULLEY SC: And is this the affidavit that you deposed to on the 10th of February 2020?

MR MABUYAKHULU: Yes, that is correct Mr Chair.

10 **ADV HULLEY SC:** And do you confirm that the contents of this affidavit are true and correct to the best of your knowledge?

MR MABUYAKHULU: That is correct Mr Chair.

ADV HULLEY SC: Mr Chair, I will ask that this be marked as Exhibit RR7.1.

CHAIRPERSON: Did we not admit this affidavit last time?

ADV HULLEY SC: We did admit it the last time, but of course on that occasion it was admitted because as part of an application, sorry the sequence number was different
20 and of course it was part of ... it was not part of the bundle LEA27.

CHAIRPERSON: Yes, but it cannot be admitted under different each time. Once it is admitted, it is admitted.

ADV HULLEY SC: Very well.

CHAIRPERSON: I think it must carry the same exhibit

number that was used to admit it last time.

ADV HULLEY SC: The difficulty I think is that I am not sure that we assigned an exhibit number to it on that occasion because it was just for the purpose of the application, at that stage it only had the heading SEQ32.

CHAIRPERSON: Well, if it was admitted it would be, it would have been assigned an exhibit number. If it was not assigned then it was not admitted. So ...[intervenes]

ADV HULLEY SC: Then I believe ...[intervenes]

10 **CHAIRPERSON:** But we need to know as a matter of fact whether it was admitted ...[intervenes]

ADV HULLEY SC: My junior says that it was admitted as RR7.

CHAIRPERSON: Yes. It must carry the same exhibit number.

ADV HULLEY SC: My document simply does not contain that, the correct number but I will take it that it is RR7 ...[intervenes]

CHAIRPERSON: Ja, I am sure your junior is ...[intervenes]

20 **ADV HULLEY SC:** [indistinct]

CHAIRPERSON: I am sure she is certain.

ADV HULLEY SC: Then if I could ask you to then consider a supplementary affidavit that was also admitted on that occasion, and ...[intervenes]

CHAIRPERSON: Okay, I am sorry. Your junior said it was

admitted as Exhibit R?

ADV HULLEY SC: She says it was admitted as Exhibit RR, I need to confirm it but she says it was RR7 that it was admitted as.

CHAIRPERSON: Ja, okay. Okay.

ADV HULLEY SC: Then if I could take him to the most recent affidavit, and if you could turn with me sir to page 129.1. This is your most recent affidavit.

CHAIRPERSON: What is the page number?

10 **ADV HULLEY SC:** 129.1 Mr Chair.

CHAIRPERSON: Yes.

ADV HULLEY SC: Have you got that Mr Mabuyakhulu?

MR MABUYAKHULU: Well, in this bundle I have, 129 is the one of the annexures that I submitted in the previous documents.

CHAIRPERSON: 129.1. Look for 129.1 ...[intervenes]

MR MABUYAKHULU: That is the point I am raising Mr Chairman. I do not have this 129.1.

CHAIRPERSON: Oh.

20 **MR MABUYAKHULU:** I have, I do not have that one.

CHAIRPERSON: You only have 129?

ADV HULLEY SC: Mr Mabuyakhulu, your ...[intervenes]

MR MABUYAKHULU: I have 129, then I got 130 which is a different document.

CHAIRPERSON: Oh.

MR MABUYAKHULU: Not from the Commission to me.

CHAIRPERSON: Okay.

ADV HULLEY SC: You deposed to an affidavit, sorry. You deposed to an affidavit on the 21st of June.

CHAIRPERSON: Okay, I am sorry. I think Mr Dixon wishes to assist?

ADV DIXON SC: Yes.

CHAIRPERSON: Yes, Mr Dixon?

ADV DIXON SC: My attorney is going next door where Mr
10 Mabuyakhulu is.

CHAIRPERSON: Yes.

ADV DIXON SC: And he is going to give him a copy
...[intervenes]

CHAIRPERSON: Of the right one?

ADV DIXON SC: Of his most recent affidavit and tell him if
that is going to 129.1 2 3 4 etcetera.

CHAIRPERSON: Okay.

ADV DIXON SC: So he should be in the position to answer
the question.

20 **CHAIRPERSON:** Yes, okay. Alright. I think that is helpful.

MR MABUYAKHULU: For the purpose of the record Mr
Chairman ...[intervenes]

CHAIRPERSON: Yes.

MR MABUYAKHULU: Whilst I am waiting. I had those
supplementary affidavit ...[intervenes]

CHAIRPERSON: Yes.

MR MABUYAKHULU: [indistinct the 21st of June 2021.

CHAIRPERSON: Yes. Is that the one we are talking about, ja 21st of June 2021.

MR MABUYAKHULU: That is the latest supplementary affidavit.

CHAIRPERSON: That is the latest, yes.

MR MABUYAKHULU: Which I deposed to yesterday.

CHAIRPERSON: Yes, okay ja. That is the one we want to,
10 that starts at page 129.1. Has your attorney given it to you now?

MR MABUYAKHULU: I received it Chairman.

CHAIRPERSON: Yes, so you can paginate it as 129.1 that is the first page and it goes up to the last page of your affidavit will be 129.12.

MR MABUYAKHULU: Done Chairman.

CHAIRPERSON: Okay, alright.

ADV HULLEY SC: Thank you Mr Mabuyakhulu. Now if you could look at the signature on the last page of that
20 document, 129.12 once again there is a deponent and above that deponent is a signature. Is that your signature?

MR MABUYAKHULU: That is correct yes Chair.

ADV HULLEY SC: And you deposed to this before a Commissioner of Oaths, is that correct?

MR MABUYAKHULU: That is correct.

ADV HULLEY SC: And this is the affidavit that you deposed to in response to the allegations or to the affidavit that was prepared by Mr White and Colonel du Plooy, is that correct?

MR MABUYAKHULU: Ja, that is correct.

ADV HULLEY SC: And do you confirm that the information or the evidence contained in this affidavit is true and correct to the best of your knowledge?

MR MABUYAKHULU: That is correct Chair.

10 **ADV HULLEY SC:** Thank you Mr Chair. Can we mark this particular document as Exhibit RR7.2.2.

CHAIRPERSON: I guess you asked me to first admit it before we mark it. To admit it, you are asking me to admit it before we mark it. Ja. You want it to be marked as exhibit?

ADV HULLEY SC: RR7.2.

CHAIRPERSON: 7.2.

ADV HULLEY SC: 7.2.2.

CHAIRPERSON: Oh, okay. The affidavit of Mr Michael
20 Mabuyakhulu that is dated 21st of June 2021 that starts at page 129.1 is admitted as an exhibit and is marked as Exhibit RR7.2.2.

ADV HULLEY SC: Thank you Mr Chair. Now Mr Mabuyakhulu, I will get to the *aspects* of your evidence, but I want to go through chronologically through the

events, as you understand the events and I would like you to turn to page 163 of the same bundle.

MR MABUYAKHULU: I found it Chair.

ADV HULLEY SC: And this is the affidavit of Ms Ngobane Zulu. But on the affidavit itself it simply says Sibusiwe Nomuso Ngobane.

MR MABUYAKHULU: Yes, I can see it Mr Chair.

ADV HULLEY SC: Now just to go back in terms of the chronology. According to Ms Ngobane, the ... she was part
10 of a partnership, a firm of attorneys known as Ngobane Wills Incorporated, and you were contacted by a Mr Senzo Mnxuno to make contact with Ms Ngobane. Is that correct?

MR MABUYAKHULU: I have no knowledge of that.

ADV HULLEY SC: Pardon me?

MR MABUYAKHULU: I am saying I have no knowledge of that.

ADV HULLEY SC: Well, would it be correct ... let us look at the affidavit and then you can tell me what you agree with and which aspects you disagree with. If you turn to
20 paragraph 4 of page 163, she says that:

“In 2009 I was approached by Mr Senzo Mnxuno who was the provincial secretary at the time.”

Do you know Mr Mnxuno?

MR MABUYAKHULU: I know him very well Mr Chair.

ADV HULLEY SC: And is it correct that he was the provincial secretary at the time?

MR MABUYAKHULU: He was the provincial secretary at the time, that is correct.

ADV HULLEY SC: “He advised me that he had been contacting by the SAPS investigators who were investigating a donation that was allegedly made to the ANC, KZN. At the time Mr Mnxuno shared the contact details of the investigator in order for me to get more details on what was required from the ANC Kwazulu Natal and to be in a position to properly advise.”

10

Turn over the page to page 164, at paragraph 5.

She says:

“My colleague at the time, Mr John [indistinct] and I had reached out to the investigator whose name I no longer recall. He advised that they were investigating fraud and corruption allegations against a number of individuals. He further advised that our client, the ANC, was alleged to have received a donation of one million rand. However, there was no such evidence in their possession. He therefore required the ANC, KZN to confirm receipt of the donation by submitting an

20

affidavit to him.”

In paragraph 6 she says:

“Following this engagement ...”

CHAIRPERSON: Sorry Mr Hulley. I do not want you to read the whole version.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: I think you did ask Mr Mabuyakhulu that question, a certain question and I did not hear the answer. Have you had a chance of reading Ms Ngobane’s affidavit
10 Mr Mabuyakhulu?

MR MABUYAKHULU: Yes sir, I have had a chance of reading Ms Ngobane’s affidavit.

CHAIRPERSON: Yes.

MR MABUYAKHULU: It was submitted to me [indistinct] very short notice.

CHAIRPERSON: Yes.

MR MABUYAKHULU: But I have made every effort to be able to go through it.

CHAIRPERSON: Yes.

20 **MR MABUYAKHULU:** The point I referred to earlier Mr Chairman, in response to the question ...[intervenes]

CHAIRPERSON: Yes.

MR MABUYAKHULU: From Mr Hulley ...[intervenes]

CHAIRPERSON: Ja.

MR MABUYAKHULU: That I said I had no knowledge of,

he was asking whether I was aware of the communication between Mr Senzo Mnxuno and Ms Ngobane, and that is the point I say I have no knowledge of.

CHAIRPERSON: Okay, no that is fine. Well, Mr Hulley ...[intervenes]

ADV HULLEY SC: Perhaps I can summarise ...[intervenes]

CHAIRPERSON: Maybe you can go to the real issue, because I know that you, we all know what the real issue is.

10 **ADV HULLEY SC:** Thank you Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: Well, according to her she says that after she had explained to Mr Mnxuno what the investigation, the criminal investigation was about and that it related to a donation, Mr Mnxuno then contacted you directly in order for you to be the one to provide the information to her.

Would that be correct?

20 **MR MABUYAKHULU:** I cannot recall that, in that particular context. I do recall however that I was able to have a communication with the attorneys of Ngobane Wills Incorporated and in my own memory that communication happened with one of the partners in the firm that was Mr John Wills.

ADV HULLEY SC: Sorry, that was mister who? John

Wills.

MR MABUYAKHULU: Mr John Wills.

CHAIRPERSON: Mr John Wills, yes.

ADV HULLEY SC: Well, did you have contact with Ms Ngobane at all?

MR MABUYAKHULU: I have absolutely no recollection of being in contact with Ms Ngobane. As I said even the correspondence that I had, and I have attempted to go back down memory lane to remember whether I actually
10 ever had a communication or meeting with her, and I just cannot recollect that I was in a meeting with her.

I was saying Chair, I did have consultations with the same firm, but it was not necessarily Ms Ngobane, it was Mr Wills.

ADV HULLEY SC: Very well, and the contact that you made or the first occasion when you were brought into this particular investigation, was it Mr Senzo Mnxuno who approached you to ask you for information or to ask you to make contact with Ngobane Wills Incorporated?

20 **MR MABUYAKHULU:** I cannot remember who really approached me, but I cannot deny that it might have been Mr Mnxuno, but as I say Mr Chairman, what is not in dispute is the fact that I was actually in consultation at some point, in 2010, the beginning of 2010 with one of the departments or the firm of Ngobane Wills Incorporated, and

in my memory that person that was dealing with that matter was Mr Wills.

ADV HULLEY SC: Now in as much as you do not recall whether you dealt with Ms Ngobane at the time, your recollection is that you dealt with Mr Wills at all stages. In as much as that may be so, do you recall that you actually ... you had suggested that an affidavit should be prepared to be sent to the police?

MR MABUYAKHULU: I would not have said that Chairman
10 that the affidavit should be prepared to be sent to the police.

CHAIRPERSON: Ja.

MR MABUYAKHULU: I remember that I did, the one thing I remember Mr Chairman which is [indistinct] by the date of the 2nd of February 2012, that Mr Wills wrote after that consultation, that letter of the 2nd of February is a detailed imposition that I as the Treasury actually asked them to be able to write on my behalf particularly Mr Wills at the time. That letter is [indistinct].

20 **CHAIRPERSON:** Okay, maybe before Mr Hulley continues, Ms Ngubane I think was quite clear that he had a discussion with you. What she was not clear about when she gave her oral evidence is whether a certain statement or certain information came from you or from Mr Mzila, but she seemed to be quite clear her recollection that she

dealt – she had a discussion with you and she said that Mr Mkunu had said he was going to contact you and ask you to be in touch with her and you were in touch with her.

Now you say you do not have a recollection, but she seems to be quite clear. Do you think it is possible that you might not recall but she did talk to you about the matter or are you definite that you never had a discussion with her, you only had a discussion with her partner, her business partner?

10 **MR MABUYAKHULU:** Mr Chair, I would only propose the purpose of being able to traverse with [indistinct] that I may not recollect how I was informed of the need to assist the ANC with the investigation that was pending. As I did say in my previous appearance before this Commission, Chairman, that I ceased to be the Provincial Treasurer on the 22nd or 21st of June 2008 and I was not even part of – member of the relevant committee.

And surely as I say someone from either Mr Mkunu or from the ANC office would have contacted me to say
20 during the time when you were Treasurer there are matters that requires you to be able to deal with and they may have indicated that of course we may have actually then spoken to the attorneys of Ngubane Wills Incorporated. That part I do not think would be much of an issue of being contested.

But I am simply saying from the veracity of my

memory when I remember the process of then being drawn into the process of dealing with the matter, I then had a consultation with Mr Wills which I do remember and that consultation then resulted in the letter that was then written on the 2nd of February 2020 where it was the first time in that letter that it actually outlined firstly that I made it clear that I was the person who had received the money and I declare that I have received the money in cash and I made it clear that I received the money from Mr Shabalala.

10 So I think it is that letter and I am [indistinct].

Now in trying to remember in the process whether Ms Ngubane was ever part of that, I am saying, Chairman, I have no recollection. I do have recollection that I did of course interface with Ngubane Wills Incorporated and I am saying that is hence that letter of the 2nd of February 2012. But be as it may, Mr Chairman, if the claims are made by Ms Ngubane that I had given her instructions, the first point that I am raising there, and I am saying this hypothetically because I have no recollection of me
20 meeting with her, but if we had met Ms Ngubane at the time was one of the partners at Ngubane Wills.

Secondly, already by the time Ms Ngubane had been an admitted attorney. If Ms Ngubane says I would have given instructions to her to depose an affidavit, not for myself but for someone else, I would find that being the

person that understands the law and an admitted attorney that you would not – she would not have accepted those instructions from someone else other than the person for whom she had to depose the affidavit for. So that is why I say, Mr Chairman, I really have no recollection. But nevertheless, it is not the kind of instruction that I would have given in any event.

MR HULLEY: When you say it is not the kind of instruction that you would have given, why do you say
10 that?

MR MABUYAKHULU: I say it on [indistinct] opinion because I would not have said to an attorney, a practicing attorney, admitted attorney that go and frame an affidavit on behalf of someone else and put the thing that that person has no personal knowledge of and then actually make that person to sign for it, because what is a sworn affidavit. And I say Ms Ngubane being an admitted attorney and being a senior partner, a partner in that firm for that matter, would have actually said to me there is no
20 way I can take those instructions from you.

CHAIRPERSON: Well, I think, Mr Hulley, sometimes the use of language that lawyers and judges are used to can create a problem when the witness is not a law person and you use the word instruction and it can mean different things for lawyers.

MR HULLEY: Indeed, Mr Chair.

CHAIRPERSON: Let me put it this way. My recollection of Ms Ngubane's evidence, Mr Mabuyakhulu, is that when the two of you had a discussion following upon her discussion with Mr Mkunu and Mr Mkunu having contacted you to contact her, when the two of you had a discussion she would have wanted to prepare an affidavit.

Now I do not remember that she said you instructed that an affidavit be made as such, but she wanted to
 10 prepare an affidavit. And she says you said to her that Mr Mzila would be the person who would depose to the affidavit. And then she said when she was giving her evidence that that was consistent with the practice whenever she did ANC matters. She said whenever she was representing the ANC the matter would be discussed and the ANC would then identify who would depose to an affidavit on its behalf and she made an example. She said for example I do not know whether if it is a regional matter they would say it is the Regional Secretary who must
 20 depose to an affidavit.

So she says you said it would be Mr Mzila who would depose to the affidavit and that is why then she contacted Mr Mzila. But she said that the information that she had, she got, was that this donation had come from Dr Savoy. In her affidavit that she furnished to the

Commission she said that you told her that the ANC had received a donation of R1 million from Dr Savoy, but when she gave evidence she said she was not sure whether she got that information about Dr Savoy being the donor from you or whether she got it from Mr Mzila, but she said it would have been one of you. But she said in the end you said Mr Mzila was going to be the one who would depose to an affidavit. That is what she said. Do you have any comments?

- 10 **MR MABUYAKHULU:** Let me comment, Chair. Thank you very much for that clarity. I have already mentioned, Mr Chair, that I really have no recollection of a consultation that I had with Ms Ngubane, so that I want to place at that level.

The second part, Mr Chair, is that as I say if Ms Ngubane asked the point of a referee which I do not have recollection of, to refer her to someone, I think it would have been probably if it was an administrative matter. If it was not an administrative matter then I would
20 probably [indistinct] my understanding give an instruction or rather to refer [indistinct]. Even then, Mr Chairman, I am saying I am speaking under correction because I do not have any recollection of that.

What is factual though, Mr Chairman, I that at the point when I was made, and I think at some point in the

beginning of 2010, when I was made that there was a pending investigation, that there were certain answers that need to be provided with regard to the question that the investigators were posing, it is then that I met with Mr Wills and therefore in our discussions with Mr Wills I then indicated because those matters in my view would have not been administrative matters.

And I say that relative to the evidence that I already have given before this Commission, that it was those
10 matters that I was responsible for, hence I actually then are able to indicate with very almost clarity that first of all I was the one who received the donation. I then will clarify that I received that donation of the cash. I then clarify that I authorised the use of that money to disperse for the cost of upcoming conference in June 2008. Then I also said I think in paragraph 4 which the lawyer said, that I actually received that money from donation from Mr Shabalala.

So I think that sequence would have been the sequence that I remember because it would have been very
20 difficult for me to refer Ms Ngubane if she questioned me about the substantive part, even if I say I have no recollection, but if the issue is about the donation, receipts and all of those issues because I was the one who dealt with it, I would have taken that responsibility the same way that I did in the consultation with Mr Wills of the same

company, Ngubane Wills Incorporated.

CHAIRPERSON: Well, when one reads Ms Ngubane's affidavit and when one has regard to her evidence it would seem that what was an issue at that time was whether this donation had been received by the ANC or not. And in paragraph 5 of her affidavit she says or I see that in her affidavit she says you requested her to assist with drafting an affidavit. Okay, she says in paragraph 5:

10 "After I briefed Mr Mabuyakhulu about the request from the investigator he confirmed to me that the ANC KZN had indeed received a donation of R1 million from a certain Dr Savoy when they were preparing for one of the ANC conferences."

I have indicated that in her oral evidence she has qualified that to say she is not sure whether she got the information about Dr Savoy from you or from Mr Mzila. And then she says:

20 "I asked him if there was any proof of this donation being made or an acknowledgement sent to the donor. He advised that such administration would have been handled by Mr Delani Mzila who deals with day-to-day ANC finance matters. Mr Mabuyakhulu then requested me to assist with drafting the affidavit confirming receipt of this donation as he was certain that it had been

received. He also advised that Mr Delani Mzila would be the deponent and will accordingly sign the affidavit once he confirmed the details in his records regarding the receipt of the donation.”

So if one has regard to that evidence, to what she says, it would seem that if that is true it would make sense to say if the question is whether the ANC received the donation if it was thought that there would be records confirming receipt, then the person who should sign should be
10 somebody who has got those records. What do you say to that?

MR MABUYAKHULU: Well, my first thing is that, Mr Chairman, you now have my statement on record.

CHAIRPERSON: Yes.

MR MABUYAKHULU: And consistently that I have said I received the money... [intervenues]

CHAIRPERSON: Yes.

MR MABUYAKHULU: Not anybody else from Mr Shabalala and I have said that in my previous appearance before this
20 Commission that Mr Shabalala gave that money to me and I received it from the ANC offices. And therefore we did not, and I have said this, that we did not issue any receipts in this regard. So it would have been not possible for me to refer Ms Ngubane to Mr Mzila when in fact the knowledge of having dealt with that matter is within my purview and

not within the purview of Mr Mzila.

And that is the reason why I will still be saying when the first matter in my recollection firstly came to me that there was this pending matter, it was the time that then I then had a consultation and then in that consultation I made matters to be very clear and I made that very clear information to the firm of Ngubane Wills Incorporated in their letter dated the 2nd of February 2010 to clarify these matters so that the person that had the knowledge would
10 be the one that takes the responsibility.

CHAIRPERSON: Mr Hulley.

MR HULLEY: Thank you, Mr Chair. Now in her affidavit she also says that the reason why Mr Mkunu contacted you to get further information was because once he realised that it related to a donation he said since you were the relevant Provincial Treasurer at the time that is the person for us to contact. Now is it correct that you were the Provincial Treasurer in Kwazulu-Natal at the time, i.e. in 2007-2008?

20 **MR MABUYAKHULU:** It is common cause, Mr Chairman.

MR HULLEY: So if there was a concern about that you would have been the right person to contact, is that correct, about a donation?

MR MABUYAKHULU: That is correct.

MR HULLEY: Then if we could look at the document that

was prepared by Mr Mzila or for him to depose to and can I ask you to go to Bundle RR4 at page... [intervenues]

MR MABUYAKHULU: There is one point, Mr Chairman, before – can I request one point, Mr Chairman, that I want to make before we go to the next question?

CHAIRPERSON: Yes. Yes.

MR MABUYAKHULU: This one point, Mr Chairman, I think it is important for us to actually make here. I say so because I had the benefit of listening to the evidence of
10 Ms Ngubane yesterday.

CHAIRPERSON: Yes.

MR MABUYAKHULU: As she was leading her evidence. The first thing that [indistinct], Mr Chair, in her evidence in the affidavit that she made before this Commission, she made it clear that she actually I had confirmed that the money had come from a Dr Savoy, the donation. And when you asked her a question she somehow actually changed that value and said it is instruction is coming from clients. And if I am not mistaken Chair asked I think two or three
20 times.

Now, it is important I actually place that issue on record because there is another matter that I thought although the conclusion that [indistinct] made that it could have been either myself or Mr Mzila, but I think there is another possibility and that possibility is also before this

Commission. And in the letter dated the 2nd of February 2010 and down there I think in one of the paragraphs towards the end mention is made that the same firm also represented the ANC and therefore by extension myself and Mr Mzila, but it also represented Mr Shabalala who was – from whom we had received the donation.

Now, I am saying, Mr Chairman, looking at the consistency of my evidence from the beginning up to now, this Commission is entitled to go and look at it, I have
10 indicated consistently that the only person that I know from whom I received this donation was Mr Shabalala. And for anyone to simply try and attribute to me a name that I did not know and that I would not have known until very later in the day when my legal team traversed what had occurred in the issue of indaba.

So I really want to simply then say – refute that vehemently, Mr Chairman, that I would not have spoken about a Dr Savoy because I would not have had knowledge of that. And therefore that is borne out by my version that
20 I have actually put here. You can go from that letter and all of my supplementary affidavits, I am very consistent in this because it is not a tailor-made version, it is what it was and how I have actually always understood it. So I thought it is important for you, Mr Chairman, to make that point very clear.

CHAIRPERSON: No, no, that is fine. For the record I can indicate to you that the Commission did approach Mr Shabalala so that he could give his version, but his lawyers wrote and said he wished to – he did not wish to put up a version because of the criminal case that is coming up, he did not want to incriminate himself. So we do not have his version.

Certainly it might have been helpful if we had his version as well, but I am just mentioning that so that it is
 10 not a situation where somebody might say but why was Mr Shabalala not asked to give a version himself. Okay, alright. Mr Hulley, continue.

MR HULLEY: Thank you, Mr Chair. Now, if I understand your latest opposition correctly, you are saying that there is a third possibility as to where these instructions may have been obtained from and that possibility is that Mr Shabalala himself would have told the firm of attorneys that the money was paid over to the ANC by – sorry, that the money was received from Dr Savoy the amount of
 20 R1 million. Is that correct? Do I understand your proposition correctly?

MR MABUYAKHULU: [Indistinct] is that in – the point I am raising, Mr Chairman, that in the context of Ms Ngubane no longer having any vivid recollection where she got the information, it must be placed on record that at

the very same time the same firm was also acting for Mr Shabalala. Now unfortunately no one asked her the question when she appeared yesterday whether in fact did she ever have any encounters or any consultation with him.

CHAIRPERSON: Yes, okay... [intervenes]

MR HULLEY: But I think that is the Commission... [intervenes]

CHAIRPERSON: Yes.

MR HULLEY: Let us not concern ourselves with that for
10 present purposes. Would you accept that the amount of R1 million that had been received according to you from Mr Shabalala that Mr Mzila would not have known of who the source was of that amount of money unless you had given him that information?

MR MABUYAKHULU: He would not have known. Mr Mzila would not have known. The reason why he would have not known is because that money had been received by the Provincial Treasurer and indeed Mr Mzila does confirm in
20 his second affidavit that when I informed him I did not mention any name and I did not mention the amount of money.

MR HULLEY: Yes. Now if you would turn with me to page 1843 of Bundle RR4.

MR MABUYAKHULU: One?

MR HULLEY: 1843.

CHAIRPERSON: I am sorry, just repeat the bundle and the page number.

MR HULLEY: Pardon me, Mr Chair. It is Bundle RR4. It deals with Mr Trevor White and it is Bundle D for your purposes, Mr Chair.

CHAIRPERSON: Okay. We must keep an eye on the time because we must be able to give Mr Mabuyakhulu's counsel time to – I do not suppose his cross-examination of Mr White would be long, but we must give time. I think
10 we must try and not go beyond 19:30 with Mr Mabuyakhulu. Which affidavit are you... [intervenes]

MR HULLEY: I am referring to the first affidavit which is at page 1843 of Mr Delani Mzila. It is his affidavit which is dated 4 May 2009.

CHAIRPERSON: Okay, alright. Continue. Have you found it, Mr Mabuyakhulu?

MR MABUYAKHULU: Yes, Mr Chair, I found it.

CHAIRPERSON: Okay, right. Continue, Mr Hulley.

MR HULLEY: Now he says in paragraph 2 of that
20 affidavit, now bear in mind that this affidavit was subsequently retracted by him, but he says in paragraph 2 that:

“In the course of my duties I confirmed that a donation of R1 million was received by the African National Congress from a donor who I am advised

was a certain Dr Savoy.”

Now let us deal with the first part of that allegation. He says:

“In the course of my duties I confirmed that a donation of R1 million was received by the African National Congress from a donor...”

Is it correct that you advised him, that is Mr Mzila, that an amount of R1 million was received by the ANC from a donor? Is that correct?

10 **MR MABUYAKHULU**: It is not correct.

MR HULLEY: So you did not advise him that an amount of R1 million was received from a donor?

MR MABUYAKHULU: It is not correct that I advised Mr Mzila that there was R1 million received from a donor. I advised Mr Mzila that we had received money from a donation. I never mentioned to him the amount as well as from whom. That is why Mr Mzila in his second affidavit made that point very clear.

Now to try and therefore – because we must also
20 understand, Mr Chairman, that Mr Mzila, and I cannot speak for him, he can only speak for himself, but it is now common cause that the veracity under which this very affidavit that Counsel is asking me on, it is the same affidavit that was withdrawn by Mr Mzila.

MR HULLEY: Yes, I understand that, but I am asking you

a different question. I am asking you is it correct that you advised Mr Mzila that you had received an amount of R1 million from a donor for the ANC. Forgot about Mr – forget about the second part of that sentence. I am worried only about the first part. Did you so advise him, yes or no?

MR MABUYAKHULU: No, Mr Chairman, I do not think that I would actually be said that I should say yes or no to an affidavit that is already under questionable by the very
10 same person deposed to it. The point I am making here, if a different question is being asked, if I advised Mr Mzila that I had received the donation and the point I am saying, Chairman, which is also part of my affidavit, I confirm that I did inform Mr Mzila that I had received a donation but I never told him how much?

CHAIRPERSON: Okay I think that does answer it.

ADV HULLEY SC: Thank you Mr Chair. Then he says in paragraph 3:

“Mr Sipho Shabalala had advised the organisation
20 that such a donation had been made and when the money was requested Mr Shabalala brought the money to our offices in cash.”

Did you advise him of that that is Mr Mzila, did you tell him that, the information that is contained in paragraph 3?

MR MABUYAKHULE: I do not remember that I told Mr

Mzila that Mr Shabalala brought the money in cash but it is true that Mr Shabalala did bring the money in cash to the office, as I have already testified before.

ADV HULLEY SC: Then he says:

“I am aware that the money was utilised to pay various service providers for items related to the Provincial Congress held in August 2008.”

Is it correct that you advised Mr Mzila of that as well?

MR MABUYAKHULE: Mr Mzila would have, of course
10 known as I shall work with him that in the lead up to the Provincial Conference, we actually paid some of the items outside of the ANC banking account at the time and he was also a part of the Preparatory Committee for the conference of which I have also participated in.

ADV HULLEY SC: So if I understand you correctly, you are saying that both of you knew this information that is contained in paragraph 4, is that what you are saying?

MR MABUYAKHULE: What I am saying, Chairman is that Mr Mzila would have known that we would actually have to
20 pay with – we pay service providers, and which we did, outside of the donation – or from the donation that has been raised by and through the Provincial Treasurer at the time, that is correct.

ADV HULLEY SC: Yes, but remember, Mr Mzila did not know about the R1million, he knew that a donation had

been received, if I understand your testimony correct, he knew that a donation had been received, and he knew that because you had informed him of that.

MR MABUYAKHULE: I informed him because actually I can see the donation, yes.

ADV HULLEY SC: And he knew also that certain items were paid but he would not have known that the items that were paid for came from the R1million, because he did not know about the R1million.

10 **MR MABUYAKHULE:** No, there were a number of fundraising activities. I make this point very clear in one of my affidavits. If my recollection serves me well Mr Chairman, it is the affidavit of the 19th of October 2010, where I said at the time where the package of donations, and this was one part of the package of donation, because the cost that we are dealing with is far more than just a R1million. So I think from that point of view, knowing the cost expenditure that we had to deal with, and what needed to be done, as I said I was part of the Preparatory
20 Committee that sometimes I would not make it, and he would go there and if he had gone there he would give me the report of what was discussed in the Preparatory Committee.

So we were therefore in constant communication, because we worked in the same office, although I must say

that when it come to the donation it was the treasurer that was responsible for that.

CHAIRPERSON: So is the – are you accepting that even if, on your version, some of the items that related to preparations for the conference, where he is with money that included this donation, do you accept that Mr Mzila did not know at the time that included in the money that may have been used to purchase some of the items was money that came as part of the R1million donation that you had
10 received.

In other words, he would have known that some money that had been donated had been used, but he would not have known that included in the money that was used was, perhaps was money that was part of a donation that you had not – that you had received, he would not have known that, do you accept that or not?

MR MABUYAKHULE: According Mr Chairman, what he would have known is that they would have been a fundraising and donations that have been raised from
20 which some of the purchase items were actually paid through that fundraising initiatives and activities because, as I say, I cannot started remember that I actually indicated to him - of course, I am talking here about almost 15 or 16 years back, but I do not remember that I actually had sat down and said to him, we had received

this donation of a R1million.

I remember I would have said, there would have been items that would have been fundraised for it that we would have raised and Mr Mzila would have worked out of those coming out of the Preparatory Committee of conference and that was that he would have worked together on those items in that, and ensuring that those items get to be paid.

As I say Mr Chairman, that is my recollection and I
 10 am indeed did guard, I said take the advice that arose in light of Mr Mzila's affidavit that he actually deposed, okay the second affidavit where he made mention of this, now, I do not have myself a recollection, sitting and saying to Mr Mzila - among donations, there was a one particular donation that we have received of a R1million, that I do not have a recollection of.

CHAIRPERSON: Okay, who in the ANC did you disclose -
 to whom in the ANC did you disclose that you had received this donation of R1million and you had not referred it to the
 20 relevant office so that a receipt could be issued and records could be made. Is there somebody within the ANC to whom you made this disclosure to say, I have received a donation of R1million on behalf of the organisation and I did not refer it to the office for a receipt to be made or for a record to be made?

MR MABUYAKHULE: There are two processes Mr Chairman before I deal with that question.

CHAIRPERSON: Yes.

MR MABUYAKHULE: The first you would have donors who were not willing to be acknowledged and that you would have to respect that process of the donors. Then you would have donors who would have wanted just to be acknowledged, and some donors that would have actually put money into your fundraising account and therefore,
10 they would have chosen that route.

And it was all at the discretion of the donors at the time, what route they would feel comfortable with but I think it is important, Chairman, that in the - my last appearance, I dealt with this question that the Chair is raising and I guess if you go to the transcript, it can be found and I remember the Chair raising vividly as he does, and I said...[intervene]

CHAIRPERSON: I must have forgotten.

MR MABUYAKHULE: The thing of the donors was the
20 manner in which you handle it, we did not handle it in an open meeting but it would, of course, be able to brief the officials of the ANC and I then put in the premise of the existing affidavit of Dr Mkhize and others who were part of the officials.

They would actually have known for me that we had

received a donation, then I would have briefed that layer of leadership to officials because as I did say, in my previous appearances, Chairman, that we handle the issues of donors in a particular manner because we were sensitive that that information needed to be treated in a manner that would not go and actually present it to anyone and for that reason, I think if Mr Chair would allow me, I know that we have a problem of time Chair.

CHAIRPERSON: Yes.

10 **MR MABUYAKHULE:** But I think it would be fair for me just to take the Chair to the report that I had submitted myself, as that we are dealing with these matters very briefly in my – at the time, that report Mr Chairman and only it is on page – it starts on page 368, it starts on page 366, no 365.

CHAIRPERSON: Mr – do you know which?

ADV HULLEY SC: The witness is referring to Bundle A27, Mr Chair.

CHAIRPERSON: Oh, okay, it starts at page 320.

20 **MR MABUYAKHULE:** It starts on 365.

CHAIRPERSON: Yes.

ADV HULLEY SC: The report, in fact starts on page 363, Mr Chair.

CHAIRPERSON: Okay, yes.

MR MABUYAKHULE: Now, if you go to that report Mr

Chairman I think you have the benefit of the doubt of why we handle the matters in a particular way, and if you go to page 374 of that report I made mention on paragraph 2 from the bottom, and I will read it out, now I refer you back and this is my report, I say:

“From the Chair we ...[indistinct - distorted] for this approach because of the ANC organisation that belongs to the people of South Africa and our only insurance that ...[indistinct - distorted] continue to
 10 serve the majority of the poor and underprivileged is that our movement must be sustained by ...[indistinct - distorted] and cannot be traded at the Johannesburg Stock Exchange to the highest bidder.”

Now you see that point in the last paragraph at the request of time I will leave that. The point I am raising there, the point I was raising there is connected with the ...[indistinct - distorted] point that I gave ...[indistinct - distorted] as a proposal under page 376 paragraph 8.10. Now in that
 20 paragraph 8.10, page 376 I will say that the contents ...[indistinct – distorted] should adopt the resolution when they think ...[indistinct - distortion], develop a conference and fundraising guidelines for all the structures that we move now in the province and the fact ...[indistinct - distortion].

Now to end there if you go to the first paragraph on page 367 of the same report Chairman I make mention there of a case that became such a big concern for us because when the matter was taken up by one of our leaders at national level the ANC matters ended up being viewed in the public domain, and for that reason at the end of this report of the Chairman, which is my last point, on page 378 I say as I end this report the entity is today the 20th of June 2008 and have ...[indistinct - distortion]

10 balance, and then I go and go to those jurisdictions, now I want to say here the ...[indistinct - distortion] chairman that I ...[indistinct - distortion] February and there was a reason why, because that transfers had more than 3 600 ...[indistinct - distortion] to about 3 700 or so ...[indistinct - distortion] but it was a huge meeting and for that reason I raised these issues outside of ...[indistinct - distortion] because in keeping with what I said previously we would not report on the individual interventions except that we would do so to the leadership and when we report on

20 interventions it would be the global reports and that is the point I have raised and in here I raised those issues which was the banking situation of the ANC at the time, where we are in terms of the banking statements of the ANC and I could not put them here because that information would have ...[intervenes] it.

I also reported on donations, that second paragraph and what the donations or the situation of donations was at the time.

The third time that I reported on were the legal cases and what we were exposed to as a movement, and I reported that as well and then ...[indistinct - distortion] liabilities generally. These are matters that you wouldn't actually go and to specifically take in a huge meeting because that would then cause difficulties for the
10 movement, but I said in that report that we should then be able to have a comprehensive approach of how we deal with it.

So I am giving this context to the Chairman that as I said the leadership would know exactly of donations and that is the officials, you brief them because it is important that it is collective leadership in that level, so they will be briefed about this.

This is why Dr Mkhize is actually saying that he knew about this donation because as it is important that as
20 the Provincial Treasury and that he said that in his affidavit, but I wouldn't make him now officials but I am just saying these things they already have indicated but the officials would want that you would take into consideration to report these matters, you wouldn't go through an ...[indistinct - distortion] meeting ...[indistinct -

distortion].

It is a point I raised in my ...[indistinct - distortion]
Chairman ...[indistinct - distortion].

CHAIRPERSON: Yes as I said earlier on – Mr Mkhize's affidavit, I have it, Dr Mkhize's affidavit ...[intervenes]

ADV HULLEY SC: Perhaps we can consider that.

CHAIRPERSON: I don't recall that I have recently read it but does he say – does he say you told about this specific donation of R1million or does he say you talked to him in
10 general about donations that had been received?

MR MABUYAKHULE: Let's go to paragraph – to page 487.

CHAIRPERSON: 487, yes.

MR MABUYAKHULE: 497, this is an affidavit of Dr Mkhize.

CHAIRPERSON: What is the page?

ADV HULLEY SC: Page 497 Mr Chair, of Bundle LUA27.

CHAIRPERSON: Oh okay, yes.

MR MABUYAKHULE: Dr Mkhize talks this donation, he
20 says I am aware that Mr Shabalala had requested that Dr ...[indistinct - distortion] make the donation to the African National Congress and I am also aware that a donation of R1million was received from Mr Shabalala by the African National Congress. These ...[indistinct - distortion] is a consequence of the report I received from the very fact

that the ANC ...[indistinct - distortion] at the time Mr Mabuyakhule, It is indeed so that when this donation was requested when it was received I have no personal knowledge.

The ANC here Mr Chairman have I mean certainly there is another interpretation which I am not *au fait* with that comes from Mr ...[indistinct - distortion] and that is to read, because Mr Mkhize does not say hear, he says he heard it from me, but he does not say that he was aware
10 that we should have requested that ...[indistinct - distortion] information to the African National Congress and that also came from me.

CHAIRPERSON: Yes.

MR MABUYAKHULE: I do confirm that with donation I have reported the donation to the officials and of course Mr Mkhize being one of the officials he would have known that I had received the donation ...[indistinct - distortion], okay. But if therefore there is any other inference beyond that, that I wouldn't ...[indistinct] I have already indicated there
20 is no way I would have known that ...[indistinct] has actually had paid money. In any event Mr Chairman it is now a matter of common cause that ...[indistinct] other people, on one side we have that ...[indistinct] it was all utilised for the benefit ...[indistinct] Mr Trevor White says so, for the benefit of Mr Shabalala and on one hand was

this amount of R1million, so there couldn't be two amounts of money and there is absolutely no evidence that it would have come from the same source, so I am very clear Mr Chairman that Mr Mkhize would have known from the report that I would have given to the officials because I start with the officials, but I would not have reported to the official about ...[indistinct] because I never knew that.

CHAIRPERSON: Yes, okay. Now was there or wasn't there a procedure in the ANC that governed the receipt of
10 donations, was it not compulsory that if anybody received a donation on behalf of the ANC they needed to make sure that it was put into the records, even if the identity of the donor would not be given?

MR MABUYAKHULE: Yes Mr Chairman it is a point that I am dealing with, it is in my supplementary affidavit.

CHAIRPERSON: Yes.

MR MABUYAKHULE: It is a point that ...[indistinct] in the previous appearance and that we say ...[intervenes]

CHAIRPERSON: I am sorry if I keep on asking you
20 questions that I have asked you Mr Mabuyakhule.

MR MABUYAKHULE: Yes, you did ask me that.

CHAIRPERSON: Yes, okay, I think deal with that briefly ja.

MR MABUYAKHULE: I will. I remember clearly Chairman at the time when I asked the question that with

the benefit of hindsight we could have handled the situation differently or better if I can use that term. And I am not saying at the time there were no procedures that the ANC could have followed, but in this particular instance we received this donation on or about the 11th of June 2008 and we were only about nine days away from, in fact almost eight days away from the conference if you include the registration day, they started on the 19th, so already we were actually slumped with the pressure of having upfront

10 payments for some of the services that we procured for the conference. It is at that point then that when therefore I reported to the leadership at the time and that was as a treasurer that it actually then said to ...[indistinct] why that we are actually are able to use the donation and that is when then I was able to use the donation for that upfront payments, so the point the Chair raised I did actually indicate the last time when I appeared that yes Chair we could have treated this different or better but in this particular instance we were also dealing with the pressures

20 at the time of as I say we almost left with eight days from the starting of conference formally which is meaning the registration on the 19th of June.

CHAIRPERSON: Is that answer to this effect, in other words are you saying there were procedures that governed what must happen when anybody received donations in

cash in particular but they were not followed in this case because of the circumstances that you are applying, is that the position?

MR MABUYAKHULE: I am not saying that they were not followed in this case.

CHAIRPERSON: Okay.

MR MABUYAKHULE: I am saying that where there were instances where you would have some difficulties and challenges you would have ...[indistinct] expected that as a
10 Treasurer you would go and actually inform the officials so that you are part of the collective, you are not a treasury alone, when you were elected you were elected as part of the collective, that selected the ...[indistinct] of the official and that is where you would also discuss if the Chair remembers that is where I said you would then be able to provide the details of donations and fund raising which you ordinarily don't provide in a meeting. When you go to a meeting you ...[indistinct] then report it in a globular figure because it wouldn't actually be reported one by one. If
20 you recall Chair I even said that in my ten years stint as a provincial treasurer at no stage did we actually itemise individual donations one by one, because in our formal reports then to the formal structure, but we would report that and confer that with the officials, because those are the people that were the leadership that you would actually

take into your confidence in these matters.

CHAIRPERSON: So if you received a donation did the procedures and the rules of the ANC allow for example that you could – or anybody, whether it is you or anybody, could take it home for the night and even if he or she received it in the office take it home, come back with it the following day or was there an obligation to say it must be recorded in the records of the ANC that so and so received so much even if they don't record who the donor was, was there no
10 such obligation in terms of the rules or procedures.

MR MABUYAKHULE: Chair we can go back to the ANC constitution and that constitution simply confers the right to the assets and management of assets and the right to the treasurer of the organisation, national treasury level, provincial level, be it at whichever level.

Now I wouldn't go so far as generalising Mr Chairman and say any of this, in this particular instance you will then have a person in terms of the rules and procedures and constitution of the ANC that would have
20 actually been the one who authorised and remember Chair that I did say in receipt of the donation I received it in the offices of the ANC and then I said I logged it into the cash, the safe in that office, in Treasury's office, so in other words it is not a question that I took the money and I went to phone ...[intervenes]

CHAIRPERSON: Ja, no that was ...[intervenes]

MR MABUYAKHULE: ...I don't believe ...[indistinct] Chair.

CHAIRPERSON: Ja, no you did say you locked it in a safe in the office

MR MABUYAKHULE: Yes.

CHAIRPERSON: Ja. Okay, but to clarify you are saying your understanding is that there was nothing in the procedures of the ANC or any instruments which obliged that donations be recorded in the records of the organisation even if the identity of the donor was not disclosed?

MR MABUYAKHULE: I am now talking ...[indistinct] Chair back in 2005, 2008, and we ...[indistinct] some of the things, the point I am not saying, I am not coming and say to the Commission there was no procedural process, there was a process. And as I said even as I start with the process you would have some of the donors that would want to donate directly into the ANC account, into the fundraising account, that would actually not become ...[indistinct] because it is will go straight to the ANC account.

Some of the donations, donors will donate the ANC in cash but they would actually still want us to ...[indistinct] that, in that instance further we will then go back and say here is the donors that actually raised

money, let them acknowledge that donor who wants to be acknowledged. Now – so we were then the procedure was there so that we do have to deal with donation but I am simply saying to the Chair that you would have from time to time exceptional circumstances that may actually allow you that you would actually utilise the fact, in case you did so at least you ...[indistinct] your obligation to report to the officials hence I am saying to you Chair and this is what is honoured by Mr Mkhize's affidavit, Dr Mkhize's affidavit,
 10 that indeed I gave the report to the officials that we had received this one million donation.

CHAIRPERSON: Okay, Mr Hulley?

ADV HULLEY SC: Thank you Mr Chair. This is what Mr Mkhize says and I don't understand the distinction that you draw, Mr Mkhize says I am aware that Shabalala had requested, Mr Shabalala had requested that Dr Savoy make a donation to the African National Congress, and I am also aware that a donation of R1million was received from Mr Shabalala by the African National Congress. This
 20 awareness, in other words of all these facts is as a consequence of reports I received from the then Treasurer of the ANC in KwaZulu Natal, Mr Mabuyakhule, and you are saying that he got it from you. Ms Ncubani is saying that she got it from either you or Mr Mzila. Mr Mzila says it definitely didn't come from him. You acknowledge that Mr

Mzila could not have not known then, so that leaves only one person who could have given that information which is what Mr – Dr Mkhize says, it is you.

MR MABUYAKHULE: No Mr Chairman I am very clear on this matter, and I am clear as daylight, there is no way I would have known that there would have been a donation that would have come from a Dr Savoy. Now it is a point I have raised even in the previous appearance. We have a scenario where in the case of the entire donation of Dr
 10 Savoy's donation we now know from the reports before the High Court and from Mr Trevor White's forensic auditor's report that that money was deposited in the account of ...[indistinct] on the 12th of March 2007 and that is ...[indistinct] even before the money was deposited according to that report, the discussions began on the 19th of February and all of those funds they were actually utilised in its entirety by the 21st of August 2007, that amount was ...[indistinct – distortion] 98 cents.

CHAIRPERSON: May I interrupt you? May I interrupt
 20 you Mr Mabuyakhule? I think the question that Mr Hulley is putting to you when you go to the paragraph in Dr Mkhiza's affidavit to which you referred us in that affidavit – in that paragraph what Dr Mkhize is saying is that he is aware that Mr Shabalala requested Dr Savoy to make a donation to the ANC and he is aware that the ANC did

receive a donation of R1 million. But what he does also say is that this awareness – he is aware of this information because of reports that you made to him so Mr Hulley's question is here is a situation where Dr Mkhize says he got this information about connecting this donation with Dr Savoy from you and Dr – Mr Hulley is saying Ms Ngubane also in her affidavit said she got this information from you. Although in her oral evidence she then said she was not sure whether she got it from you or from Mr Mzila.

10 So the question that he is really asking is, what do you say about the fact that Dr Mkhize says he got this information from you as well which is the same as what Ms Ngubane said in her affidavit as opposed to what she said in oral evidence.

MR MABUYAKHULU: Well I think let us be fair Mr Chairman.

CHAIRPERSON: Yes.

MR MABUYAKHULU: Let me answer the question I think let us be fair.

20 **CHAIRPERSON:** Yes.

MR MABUYAKHULU: I am saying let us be fair because I think it would be unfair that when a witness had appeared before the Chair and she recounted her own part of the version and that version is still to become valid to be put to me. I have already indicated that I did not actually gave

that information because my own version is consistent with the knowledge that I have articulated that I have no knowledge of any other person other than Mr Shabalala who actually paid over the funds to me. And I never asked Mr Shabalala about the source of the money.

CHAIRPERSON: Yes.

MR MABUYAKHULU: That is consistent throughout. Now in this particular instance of Dr Mkhize I have indicated that and it is part of affidavit here Mr Chairman and I say it to
10 the 00:02:40 in the interpretation it is not what – that interpretation is 00:03:50. That would be part of the awareness that Mr Mkhize is referring to which I do not dispute. The fact that I would have reported to the officials about the donations that I had received from Shabalala. But I would not have known that part. The only person that can answer that fully would have been Dr Mkhize. And I would not want to place him in any other proximity insofar as 00:03:15 concerned save that the fact I have had for themselves as well.

20 **CHAIRPERSON:** Ja okay.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: I see we have gone beyond half past seven.

ADV HULLEY SC: The – we understand that there is – we have also got to be concerned about the support staff as

well.

CHAIRPERSON: Yes so ...

ADV HULLEY SC: Also the lockdown.

CHAIRPERSON: Yes. So – so we need to give them an opportunity. What – what does – what else – do you still have anything other than maybe what Colonel Du Plooy adds? Is there – was there something else that ...

ADV HULLEY SC: He – I just wanted to traverse certain aspects of the second affidavit of Mr Mzila.

10 **CHAIRPERSON:** Yes.

ADV HULLEY SC: And I was inclined to take him through correspondence that preceded the letter of the 2 February so that we could understand the context of the letter of 2 February of 2010.

CHAIRPERSON: Ja. Well we certainly should not deny them the opportunity to cross-examine Mr White.

ADV HULLEY SC: Absolutely.

CHAIRPERSON: Ja. What do you propose to do?

ADV HULLEY SC: Well it is now quarter to Mr Chair I am
20 not sure how much time perhaps I could be afforded perhaps ten or fifteen minutes.

CHAIRPERSON: Let me talk to Mr Dickson. Mr Dickson.

ADV DICKSON: Yes Chair yes.

CHAIRPERSON: Do you – do you have an idea of how much time you would need to cross-examine Mr White?

ADV DICKSON: Well Chair it is very (talking over one another).

CHAIRPERSON: All – all I can say is that in the one trial that you and I did against each other many, many years ago you were very, very much straight to the point. That is my recollection but I am not – I am not pressurising you to – to do anything other than you know do a proper job for your client.

ADV DICKSON: Yes. Well I hope that I am still going to be
10 straight to the point but it also depends on the answers I get from Mr White.

CHAIRPERSON: Of course.

ADV DICKSON: It is going to be very quick or it can longer.

CHAIRPERSON: Yes.

ADV DICKSON: But – but if we getting close to time I am not too sure whether Mr Hulley is getting anywhere with Mr Mabuyakhulu.

CHAIRPERSON: Yes.

ADV DICKSON: By cross-examining him on (inaudible).

20 **CHAIRPERSON:** Ja.

ADV DICKSON: He seems – he has given three affidavits. His – with evidence of length.

CHAIRPERSON: Ja.

ADV DICKSON: We – we have not had a chance to put his side of the story to Mr White yet.

CHAIRPERSON: Ja. Ja. But your estimate assume you get short answers from Mr White what is your estimate of how much time you might need?

ADV DICKSON: Well I would like to think about half an hour.

CHAIRPERSON: About half an hour.

ADV DICKSON: But it may be shorter.

CHAIRPERSON: Ja. Ja. Let me give Mr Hulley ten minutes.

10 **ADV HULLEY SC:** Thank you Mr Chair.

CHAIRPERSON: And then – if there are any outstanding questions they can be put in writing to Mr Mabuyakhulu and he can respond in an affidavit.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: Now Mr Mabuyakhulu if you could turn with me to Bundle RR4 at page 1846.

CHAIRPERSON: Mr Mabuyakhulu can you come back on the screen which I understand you do by unmuting yourself.

20 **MR MABUYAKHULU:** Oh I am still on the screen.

CHAIRPERSON: Ja you are back now – you were not but you are back now.

MR MABUYAKHULU: Okay, okay thank you Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: Now he says this is Mr Conzela this is

his second affidavit now. He says that:

“On the 20 – the 20th to the 22nd June 2008 ANC Provincial conference was held in Pietermaritzburg KwaZulu Natal. A while after the conference I was approached by former – former Provincial Treasurer Mr Michael Mabuyakhulu. He asked whether I had noticed that certain items of the budget for the conference have not been paid for by the ANC Provincial Treasurer’s office and further informed me that these items had been paid for donations money.”

10 Is that an accurate account of what transpired between the two of you?

MR MABUYAKHULU: My recollection is that Mr Chairman is that as we were working in the lead up towards the conference I as I said earlier that there was a Preparatory Committee that I would attend and if I was not there even if I was then in 00:08:21 that Preparatory Committee of conference because it was necessary that at least I was appraised that what was going on with regards to the preparations of conference because I had other
20 commitments because I was also a MEC at the time. So I – I would not be able to interpret it that it did actually after a while – my understanding is that we would have worked with Mr Mzila. As I have indicated already I would have dealt with the issues of the fund raising side and the donation side and therefore he would probably then given me the

information with regard to what would have needed to be paid out which would not ordinarily been paid out – out of the ANC account. That is my correct recollection of the events.

ADV HULLEY SC: Now If I understand correctly he would have been responsible for paying money out of the ANC account, is that correct?

MR MABUYAKHULU: No a bookkeeper does not become responsible. The bookkeeper is able to do the requisitions
10 to the Provincial Treasurer.

ADV HULLEY SC: I see.

MR MABUYAKHULU: And then the officials in the main the Provincial Treasurer working with the Provincial Secretary would be the one that finally if they are paying money out of the ANC account that would be the signatories. The Financial Manager is not a signatory. He or she accounts to the Treasurer.

ADV HULLEY SC: So if I understand correctly what – what is being said over here and what you are saying is that
20 these amounts were not paid out of the ANC's bank account, is that correct?

MR MABUYAKHULU: I am saying that these – there are expenditures that we actually as I have already indicated that we receive donations at the time when we have pressures of conference upcoming conference that we have

to pay those upfront so we actually did not wait because at the time when the ANC get accounts in anyway if my correction is correct we did not have sufficient funds that would have actually covered that. That is why we were actually fundraising.

ADV HULLEY SC: So in other words the amount of R1 million was not paid into the – into the bank account but rather was used – as soon as it came it in or shortly after it came in it was used to pay for various items that formed
10 part of the – that were required for the Provincial conference. Is that correct?

MR MABUYAKHULU: Mr Chairman it is common cause that I have indicated that in my recollection my statement of 29 October 2010 I did indicate so that this R1 million donation that we received from Mr Shabalala was part of the package of donations that we needed to actually raise for the cost of the upcoming conference. And that is what I have already put before this commission that because of pressure we actually did not actually put the money into the bank
20 account and we were able use it to defray the up – the cost of upcoming conference.

ADV HULLEY SC: Now Is it correct that if I understand correctly were you supposed to be a witness for the SAPS? Were you supposed to assist the SAPS in this inves – in the investigation into this R1 million or R1.053 million?

MR MABUYAKHULU: I am not sure what are you saying (inaudible).

ADV HULLEY SC: I am asking you were you going to be a person who was going to assist the SAPS – I am talking about the South African Police Service – were you going to assist in the investigation in relation to this R1.053 or in relation to the R1 million that had allegedly been received as a donation?

MR MABUYAKHULU: Mr Chair I think that journey we have
10 traversed because I have made mention that when I was contacted of this matter and my recollection is that it is early in 2010 I then had the first consultation with Ngubane witness and in particular with Mr 00:12:33 wherein a letter that was actually crafted on the 2 February 2010 was of course to the SAPS and the investigators in response to the questions that had been raised by them. Then later on then I then deposed an affidavit dated – on the 29 if I am not mistaken it was either 19 October 2010 and that that affidavit in the way it was constructed it was specifically
20 responding to the question that it actually come from the investigators. So I am not sure what – what else.

ADV HULLEY SC: Well what I am trying to understand from you is in what way were you going to assist the SAPS?

CHAIRPERSON: Well Mr – I do not know whether you do not want to go to the point that you mentioned about

Colonel Du Plooy because I thought there was a point there.

ADV HULLEY SC: Yes.

CHAIRPERSON: I think the – the fact of the matter is the SAPS were investigation is it not and they wanted information from – from the ANC about it. I am not sure whether you do not want to look at that point that you say Colonel Du Plooy raised.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Ja.

10 **ADV HULLEY SC:** Can you turn with me Sir to – to the letter of – which appears at page 330 – sorry forgive me not to page 330 – it appears at page 233.

CHAIRPERSON: 233.

ADV HULLEY SC: That is correct Mr Chair.

CHAIRPERSON: Okay.

MR MABUYAKHULU: Yes Mr Chairman.

ADV HULLEY SC: Now this is a letter which is addressed to Ngubane Wills Incorporated it is dated the 7 September 2009 and in this letter certain questions are posed to the
20 attorneys pursuant to the receipt of the affidavit of Mr Mzila in which – the first affidavit of Mr Mzila and here you will see that they not very happy with the response. They say:

“I will send Superintendent Du Plooy’s telephone conversation with you on the 31 August 2009 refers. I confirm that the

investigating officer Superintendent Du Plooy has received a statement of your client Mr Delani Mzila by the office of Commissioner Brown. The statement was presented to Advocate Wendy O'Brien the senior State Advocate who is seized with the prosecution of this matter."

And pursuant to that they raised a series of questions. Now it was subsequent to this letter going out
10 that the – a response was received on page 241.

MR MABUYAKHULU: Yes Chairman.

ADV HULLEY SC: Do you have it? And in paragraph 4 of that letter this is a response now to Advocate 00:16:32 O'Brien it says:

"Whilst the ANC is desirous of cooperating with your investigations we are of the view that the information you seek is beyond what is reasonable in the circumstances. The ANC has made it clear that it received the
20 R1 million donation which originated from Dr Savoy in the statement already supplied under the name of Dr – Mr D Mzila."

Now that is the statement that they were asking questions about. But on the following page at page 242 they say three paragraphs from the bottom.

“Also of concern to both of our clients is the leaking of confidential information to the press. Of particular concern is the Sunday Tribune lead article of 18 October 2009 which says “Cops probe R1 million ANC draft.”

Now if you look at that letter – that particular article and if I could take you to page 248. You have it?

MR MABUYAKHULU: Page?

10 **ADV HULLEY SC:** 348.

CHAIRPERSON: I mention Mr Hulley that we have gone beyond ten minutes but ...

ADV HULLEY SC: I will not be very long.

CHAIRPERSON: Let us finish here.

ADV HULLEY SC: I will just connect this with the 2 February.

CHAIRPERSON: Ja and of course whatever has not been covered.

ADV HULLEY SC: It can be..

20 **CHAIRPERSON:** It can be put by way of – put to Mr Mabuyakhulu by way of 00:18:10 questions and he can provide a written affidavit.

ADV HULLEY SC: Thank you Mr Chair.

CHAIRPERSON: Ja.

ADV HULLEY SC: Have you got it Sir?

MR MABUYAKHULU: I do have page 348.

ADV HULLEY SC: So this is an article which was referred to in your attorney's letter. So if you go to the – page 348 you will see the third paragraph it says

“Shabalala informed Savoy that Intaka would be sent an invoice against which he should make payment. The document said Savoy received an invoice from a Durban firm of attorneys for an amount of R1 053 million and that this was paid to Intaka.”

10

So it is clear from the attorneys letter that they were aware that the amount that was being sought or that information was being sought about related to an amount of R1 053 million. You accept that?

MR MABUYAKHULU: Well let us put this matter into context Mr Chairman. Let us start with the letter that is dated – the letter that you referred me to. That letter at the beginning Chairman it is explicit it says:

“We refer to the conversation with the writer yesterday.”

20

And of which that conversation now is not be 00:19:26. We act for both the ANC and Mr Sipho Shabalala. This letter is 00:19:32 explicit that it was not necessarily acting on my instructions because as I have placed on record Mr Chairman I was no longer part of the Provincial

leadership at the time. So I would not have had any knowledge of this and secondly I would not have been able because as I say if saying we are acting on behalf the ANC as well as on behalf of Mr Shabalala. Now as for the articles of the media I – with all due respect Mr Chairman I do not think I would actually want to venture into commenting on media articles that I really have no knowledge of.

CHAIRPERSON: Ja.

10 **MR MABUYAKHULU:** So I cannot comment on media articles I think I – I really just would not.

ADV HULLEY SC: So when on the 2 February of 2010 when your attorneys responded and said – and wrote to Advocate O'Brien they said the following and this is at page 1841 of Bundle RR4. This is the letter that you were referring to earlier on.

MR MABUYAKHULU: Yes Mr Chairman.

ADV HULLEY SC:

20 “We refer to our previous correspondence regarding the above and advise that we have consulted with the senior member of our client the ANC MEC Michael Mabuyakhulu who at the material time was the Provincial Treasurer of the ANC in KwaZulu Natal. We are instructed to convey to you the following.

1. That in his capacity as the Provincial Treasurer at the time Mabuyakhulu authorised the receipt of R1 million donation from the ANC member Mr Sipho Shabalala.

2. That he wishes to place on record that such a donation was received in cash and was verified to be R1 million.”

And then – so they speaking about the R1 million that
10 Advocate O’Brien was asking you about – or asking the attorney about. You see that?

MR MABUYAKHULU: No Mr Chairman. We are rehashing the ground of 00:21:47. Let me once again for purposes of assisting the commission for work. I have actually said this and I am repeating myself I think for the umpteen time Mr Chairman. As I recall as early as sometime early in 2010 I then was actually – it was brought to my attention there were issues that had occurred during the time when I was Provincial Treasurer. Because I was no longer part of the
20 Provincial Executive Committee or the leadership structures. Although I am ANC but I was no longer part of the executive structure of the ANC. Now when that was – as it is correctly captured that we have consulted with a senior member of our client ANC Michael Mabuyakhulu. That – this letter that it became an outcome of that

consultation. That is what I said the previous time I appeared before this commission and I have actually consistently accepted that the valuing of the – the clarity that is actually better there is what I personally then indicated to them insofar as accepting responsibility of receiving the money which is now common cause which I received. The only issue Mr Chairman that I think we have to put to bed and possibly for me it is one matter issue because there are two issues only Mr Chairman and they
 10 are 00:23:21 issues.

The first issue is the R1 053 million which was dispersed and we did not put into the 00:23:31 trust account. That means that one can be R53 000.00 I do not know anything about it. I never benefitted anything if I benefitted so I have absolutely nothing to do with the R1 053million.

Then there is a donation that was raised through Mr Shabalala that I received of R1 million. Now the issue here is this one (indistinct)? If this is not one and the same then
 20 we actually have one clear issue here. That is the issue. We can fight the issue until the chickens come home roost but I think that is how far clear the issues are.

The second issue Mr Chairman as far as I am concerned is the issue of whether the allega – the charges that were withdrawn against the ten accused including one

Michael Mabuyakhulu. Whether those charges were correctly and legitimately withdrawn against those ten accused and that is the issue because Colonel Du Plooy and others were claiming to make an issue on behalf of Advocate Dunyu.

We now have got for clarity proof of records of the NPA before this commission. We also have got the letter that the then DPP Director of Public Prosecutions of Natal Advocate Moipone Noko has actual (indistinct) clarifying
 10 how those processes occur. For me Mr Chairman these are the two issues here and therefore as I said I had nothing to do with R1 053million that went into the Cabone and Chezi. We now know for a fact that how it was dispersed and for whose benefit it was dispersed. And the man I am talking about is a 00:25:23 concerned and there is no substantial evidence that shows that that money had come from the same source. So it is as simple as that and as they try and fight this question it will not be consuming the commission's time with all due respect Mr Chairman.

20 **CHAIRPERSON:** We have to stop here.

ADV HULLEY SC: Thank you Mr Chairman.

CHAIRPERSON: We have to stop here. The – you may receive questions – written questions in due course if Mr Hulley has further questions. That can be dealt with by way of a response in an affidavit but I think now we need to give

your counsel an opportunity to cross-examine Mr White.

ADV HULLEY SC: Thank you Mr Chairman.

MR MABUYAKHULU: Thank you Mr Chairman.

CHAIRPERSON: Yes thank you Mr Mabuyakhulu thank you.

MR MABUYAKHULU: Thank you - thank you Sir.

CHAIRPERSON: Yes. Mr White are you there?

MR WHITE: I am Chair.

CHAIRPERSON: Okay. Okay where is Mr White?

MR WHITE: Mr Chair I am virtually – I am on the – I
10 should be on the screen.

CHAIRPERSON: Oh. Okay now you are on – on the
screen. Thank you for availing yourself even in the evening
to try and assist the commission and to avail yourself for
cross-examination. The Registrar will administer the oath
or affirmation to you and thereafter we will let Mr Dickson
who represents Mr Mabuyakhulu put questions to you. Okay
please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR WHITE: Trevor Shaun White.

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

MR WHITE: I do not.

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

MR WHITE: I do.

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

MR WHITE: So help me God.

CHAIRPERSON: Thank you very much Mr White. Mr Dickson.

ADV DICKSON: Thank you Chair.

CHAIRPERSON: Mr White – Mr White, Mr Dickson appears
10 before the commission virtually so he will conduct his cross-examination virtually. Okay Mr Dickson.

ADV DICKSON: Thank you Chair. Mr White I do not know if you can see me here I can see you.

MR WHITE: Yes I can.

ADV DICKSON: Yes and can you hear me properly?

MR WHITE: Yes I can.

ADV DICKSON: Okay. Can we just get a few things that I am sure you will not disagree with out of the way. You are a forensic auditor, is that correct?

20 **MR WHITE:** That would be correct.

ADV DICKSON: So your instruction in a case like this where you are doing reports is to investigate financial records, bank accounts and the kind of things that fall within your ambit and then draw certain conclusions from those documents and the facts that you found in those

documents. Is that correct?

MR WHITE: That would be correct.

ADV DICKSON: And you have done that admirably in this case in relation to the Cobene – Cabone and Shezi records. You agree:

MR WHITE: Yes I will not dispute that I have done it admirably yes.

ADV DICKSON: Okay well the one thing that I do not think we will agree about is the assessment of evidence is not in
10 your field. The assessment of evidence and legal argument after an analysis of evidence is something that Mr Hulley can do and I can do and ultimately the Chair will make up his mind about these things but that is not within your field, is it?

MR WHITE: That is correct.

ADV DICKSON: And finally your conclusions also must be sustainable, not so? In other words evidence. It must point to one conclusion only and not a whole number of possibilities where you have been selected about your
20 choice. Do you follow?

MR WHITE: I do.

ADV DICKSON: Okay. So, can we start then with TSW-19 and TSW-21? Do you have them available to you? They are in this bundle at pages RR-7-MM-038 and 039.

MR WHITE: [No audible reply]

ADV DICKSON: Are you able to locate them there, or do you have them independently?

MR WHITE: Yes, I have them.

ADV DICKSON: Okay, now ...[intervenes]

CHAIRPERSON: I am sorry, Mr Dickson. Just repeat where they are to be found?

ADV DICKSON: Yes. They are to be found in this bundle. That is the ...[indistinct] bundle at RR-7-MM-038 and 039.

CHAIRPERSON: Pages 38 and 39?

10 **ADV DICKSON:** Yes, 38 and 39 of TSW-19 and TSW-21 which formed the basis of the original of the evidence of Mr White.

CHAIRPERSON: Mr Hulley, are you able to assist me because I am not sure whether Mr Dickson has the same bundle.

ADV DICKSON: No, I have got ...[indistinct]. It is attached to the affidavit of ...[indistinct] [speaker unclear – distortion in video link]

ADV HULLEY SC: I believe it is in Bundle RR-4 and I
20 believe he is referring to the TSW series. It would be in your D-Section, Mr Chair.

CHAIRPERSON: Exhibit RR-4 has got RR-40(?), has got Trevor ...[intervenes]

ADV HULLEY SC: So, TSW-21 is at page 1978, I believe.

CHAIRPERSON: But what is the bundle on the spine?

What is it written?

ADV HULLEY SC: It should be Trevor White.

CHAIRPERSON: Ja.

ADV HULLEY SC: And then, it would be RR-4 and you would have the B one.

CHAIRPERSON: Ja.

ADV HULLEY SC: That is correct.

CHAIRPERSON: Okay, and what page must I go to?

ADV HULLEY SC: So, TSW-21 is at page 1978.

10 **CHAIRPERSON:** 1978...

[Background discussions between parties – unclear]

CHAIRPERSON: 1978... Oh, TSW-21?

ADV HULLEY SC: That is so, Mr Chair.

CHAIRPERSON: Okay.

ADV HULLEY SC: TSW-19 is at page 1958.

CHAIRPERSON: Okay, which is TSW were you...?

ADV DICKSON: I am still...

CHAIRPERSON: 31?

ADV DICKSON: Mr Chair, I am starting with TSW-19.

20 **CHAIRPERSON:** 19?

ADV DICKSON: Yes.

CHAIRPERSON: Okay.

ADV DICKSON: Are you on the same page, Mr White?

MR WHITE: I have it, Chair.

ADV DICKSON: Okay ...[intervenes]

CHAIRPERSON: I do not – I see TSW-21, but not 19.

MR WHITE: Two pages earlier.

ADV DICKSON: Two pages earlier, probably.

CHAIRPERSON: Two pages earlier. I have got the end of somebody's affidavit. I do not know whether that is Mlotshwa(?). That is ...[intervenes]

ADV DICKSON: Chair, on page 1958.

CHAIRPERSON: 1958?

ADV DICKSON: That is correct.

10 **CHAIRPERSON:** Okay. Okay, I have got it. Thank you.
Thank you, Mr White.

ADV DICKSON: Okay.

CHAIRPERSON: Yes, okay.

ADV DICKSON: So, Mr White, you gave evidence on the 21st of January 2020. And I can assure you that what you are saying – I am going to read you just four lines. It is much easier than finding it. That, in case you wanted to look at it, it is page 39 of your evidence and about line 9... Sorry, it starts at line 8. You say:

20 “[speaker unclear – distortion in video link]
 ...by ...[indistinct] trusted(?) fund(?) [speaker
 unclear – distortion in video link] ...was paid
 from personal expenses of Mr Shabala, the
 Head of the Department of Health in KZN and
 subsequently in cash to the MEC of Traditional

Affairs and Local Government,
Mr Mabuyakhulu...”

Okay?

MR WHITE: [No audible reply]

ADV DICKSON: That is your explanation and to questions as to what you were trying to show about TSW-19. Are you with me so far?

MR WHITE: I am.

ADV DICKSON: Okay. So, the part of that concerns the
10 issues here ...[indistinct] tonight are that the central character in this diagram is ...[indistinct] and on the right-hand side, mid to right-hand side, roundabout, or could that be about one o'clock on the clock, there is record of an amount of R 1 053 000.00 paid on the 12th of March 2007 and it has got an invoice number and that is paid to the venue, Khobone(?) and Shezi Attorneys.

MR WHITE: That is correct.

ADV DICKSON: And you gave evidence that a fictitious account was produced by these attorneys to balance up, on
20 the other side of the page, in accounting terms for the amount being paid to them. That is correct, hey?

MR WHITE: Not quite, Chair. I mean, they gave an invoice for services that were not rendered.

ADV DICKSON: Yes. So ...[intervenes]

MR WHITE: So, it was not a fictitious account. They

issued an invoice for services that were not rendered. Now then at to give it justification for the donation that was being paid.

ADV DICKSON: Okay, I am sorry. You corrected me. It is a false account.

MR WHITE: It is an invoice. It is not an account. They issued an invoice.

ADV DICKSON: They issued an invoice, and it was for no work done.

10 **MR WHITE**: For services that were not rendered. Yes, that is what I said.

ADV DICKSON: Right. And that money went into Khobone and Shezi's accounts. And then you have an arrow going up to S D D Shabalala and you have got a different amount. Is that R 1 056 205,00 ...[indistinct]?

MR WHITE: That is correct?

ADV DICKSON: And then you have got an arrow which says from Mr Shabalala, one million cash to Michael Mabuyakhulu and a further one million cash to the ANC.

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

ADV DICKSON: Is that right?

MR WHITE: Well, Mr Dickson, you omitted part of the description on the first arrow. The arrow been Khobone and Shezi Attorneys and S D D Shabala. You must read out the part that says: Paid various personal expenses of

S D D Shabala, 19 February 2007 to 21 August 2007.

ADV DICKSON: Yes. No, you are absolutely correct. I am glad you mentioned that because that then can take us to TSW-21. Are you happy to do that?

MR WHITE: I am.

ADV DICKSON: So, that money train, as it were, that I have just described to you on your own diagram, is now highlighted and enlarged in TSW-21, but it represents the same course of money. Is that not true?

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

ADV DICKSON: Okay. So, you have got, for example, the amount from Intaka to Khobone and Shezi Attorneys. When you got an amount in excess of R 1 053 000.00 being paid to the Shabalala's to pay their debtors. No, their creditors. I am sorry. Is that correct ...[indistinct].

MR WHITE: Ja, the extent was not all their creditors, some of them are their own entities, but yes it was paid for their benefit.

ADV DICKSON: For their benefit? Okay, then I think we
20 can agree on that. And then, the writing is very, very small, but we have done a blow-up of all of those expenses and for example, let us take Mr Shabalala's company, Blue Serenity. You know that that is Mr Shabalala's company, do you not?

MR WHITE: I do.

ADV DICKSON: And there was more or less three hundred thousand that was taken out of that, just over a million rand, and it was paid through Khobone and Shezi to Mr Shabalala's company, Blue Serenity, not so?

MR WHITE: Correct. It was exactly R 300 000,00.

ADV DICKSON: Right. And then you have various amounts that were paid to ...[indistinct], and those were in respect of invoices issued to Odwandwene(?) Family Trust and the payments were made by Khobone and Shezi
10 Attorneys. Am I right?

MR WHITE: Chair, I do not recall off hand invoices were issued for or two, but I do recall that most of these expenses were relating to farming matters on Mr Shabalala's farm.

ADV DICKSON: Yes, okay. So, I think we agree on that because Dairy(?) Quip(?) appears to be an agricultural concern. So is ...[indistinct], an agency. So, it is Bell(?) Equipment, Natal Aerial(?), UCL Bank, which I think is a null, and so on. But I think that we both agree that this
20 money was spent on – to benefit the two Shabalala's in Blue Serenity, a company, and in various agricultural concerns. Do you agree with that?

MR WHITE: I do.

ADV DICKSON: Okay. So, you are not suggesting that the money came back from those creditors of the

Shabalala's, are you?

MR WHITE: I am not?

ADV DICKSON: So, once the money was expended, it was gone, disappeared? It has been used. Is that correct?

MR WHITE: Well, it was used to pay those specific entities. Correct.

ADV DICKSON: Yes, yes, but it was not put in Mr Shabalala's pocket. It was used to pay Mr Shabalala's
10 creditors and various other entities. So, it was used up. That is the point I am asking you about.

MR WHITE: The ones that went to third parties, I agree. What happened to the money that went to Blue Serenity, I do not know.

ADV DICKSON: Yes. Well, I suppose, once it went to Blue Serenity, it was still available to Mr Shabalala, but I think the question, really, arises in relation to TSW-21, is that, where you have the dotted line of one million to Michael Mabuyakhulu, that could not have been, on your
20 own information, it could not have been the money that was paid to Intaka to Khobone and Shezi Attorneys.

MR WHITE: So, Chair, if we take, it could not have been the exact months. It was – there was not cash involved. So, it – the original amount was an electronic transfer. So, we are not talking about the same cash notes. So, it is

obviously going to be different cash notes because the R 1 million payment from Mr Shabalala to Mr Mabuyakhulu on behalf of the ANC is alleged to have been made in cash and I use that word quite carefully.

But, Chair, from my investigation, if the money was paid and for all intense and purposes, let us assume it was paid, because there is - Mr Mabuyakhulu has gone to great lengths to say he did receive it. The fact that no one else in the ANC ever saw that money is a separate discussion.

10 It was never received. It is not included in the financial records.

So, there is a lot of reasons why I am sceptical that the ANC actually received the money, but if it was intended for the ANC as Dr Savoy from Intaka originally said, great lengths to have gone through by Mr Shabalala to have it laundered through Khobone and Shezi trust account. And subsequently, if we continue on that brain of thought, he laundered it through his personal operations and he then provided money up by the end.

20 The exact source of where he got the cash from, I do not know. And he then provided cash to Mr Mabuyakhulu.

ADV DICKSON: Well, Mr White, that is very interesting because that is what I have put to you just now. You are talking about a money laundering exercise, but what I am

seeing here on TSW-21 is Mr Shabalala enriching himself and his wife by paying a hundred(?) people that they owed money to.

MR WHITE: But Mr Dickson, he then takes the million rand out of his own money and pays it across to the ANC. It would ...[intervenes]

ADV DICKSON: How do you make a ...[indistinct]? Have you spoken to Mr Shabalala?

MR WHITE: I have not.

10 **ADV DICKSON:** You see, Mr Mabuyakhulu has told us already that Mr Shabalala was charged with fundraiser. So, would you just assume for a moment that Mr Shabalala did do fundraising and paid that money that he raised to Mr Mabuyakhulu to pay it to the ANC? Would you just consider that as a possibility?

MR WHITE: Mr Dickson, it is – anything is a possibility, okay? But in the circumstances, where anybody for the entire period of this investigation was talking about this one specific million rand. There are numerous documents,
20 and I am happy to stay as long as everybody else is, and I can go through as to why I have come to the conclusion that it is the same money. The affidavit of Dr Gillian(?) Keys(?) is just one example of where you would link it to be the same money based on Mr Mabuyakhulu's information that Dr Keys said he received from

Mr Mabuyakhulu.

ADV DICKSON: Okay. Well, Mr White, I will go through those other pieces of evidence that you are relying upon but let us just to be absolutely clear for a start. They are not financial records. They are pieces of evidence on which other people are far better qualified to make statements than you.

MR WHITE: So ...[intervenes]

ADV DICKSON: I will give you the examples and then you
10 can comment, alright?

MR WHITE: [No audible reply]

ADV DICKSON: First of all ...[intervenes]

MR WHITE: Maybe, Mr Dickson, before you give me examples, if I could just respond to that statement?

ADV DICKSON: Okay.

MR WHITE: So, what I have done in my reports is to summarise all the evidence from all the sources, okay? Whether it be from a bank statement, from an affidavit of Dr Savoy to the various of affidavits of Mr Mzila, various
20 letters from Nkubane(?) Wills Attorneys. To put all that together in one place. So, I did not just trace the Flow of funds, because otherwise the flow of funds would have stopped at Mr Shabalala. So ...[intervenes]

ADV DICKSON: Okay.

MR WHITE: So my job was not only to summarise what

was in the bank statement. It was to do a complete investigation in assisting the police and put it together in such a way that everything was in one place or for somebody easy to understand. The point being that individual witnesses which I refer to in my report would then, ultimately, have to come and testify as to the specifics things that are made in dispute.

ADV DICKSON: Okay. Well, let us just go through the other things. We will get back to TSW-21 again. We will
 10 go through the other things. Ms Sibona(?) Ngubane(?) Zulu changed her evidence when she gave it. Alright?

MR WHITE: So, I think she said she was not sure. I do not know that she ...[intervenes]

ADV DICKSON: [laughs]

MR WHITE: ...take her evidence together with that of Mr Mzila, who testified ...[intervenes]

ADV DICKSON: Well... Ja.

MR WHITE: ...but I am sure you – but ...[intervenes]

ADV DICKSON: We will get there ...[intervenes]

20 **MR WHITE:** ...but you got – Mr Dickson, if I can complete my answer. You cannot take it in isolation because she is referring to what – it has got to be – you have got to match all of it together. You cannot just take one little piece and another little piece and take it on its own.

ADV DICKSON: Yes, I know, but Mr White, that is what I

was saying in the beginning when we first started. When you want to make a circumstantial case, it all has got to point in one direction and if a whole lot of your circumstances falls to pieces because people repent their evidence, then your theory is no longer valid and that is what I am putting to you.

And if you will give me an opportunity, I will take you through each of the pieces that you rely upon, to show you that your evidence and your conclusions are flawed.

10 Do you follow where I am going?

MR WHITE: I do.

ADV DICKSON: Okay. So, we first of all, we got Ms Ngubane-Zulu. I did not hear her evidence, but my client tells me she changed her evidence from her affidavit. Not that she could not remember anymore. She made an affidavit last(?) night, okay?

MR WHITE: So ...[intervenes]

CHAIRPERSON: Well, let me say ...[intervenes]

ADV DICKSON: [speaker unclear – distortion in video
20 link]

CHAIRPERSON: Mr Dickson...

ADV DICKSON: [Indistinct] [speaker unclear – distortion in video link]

CHAIRPERSON: Sorry, Mr White. She said, Mr Dickson, she was not sure ...[intervenes]

ADV DICKSON: Yes?

CHAIRPERSON: ...whether she got the information from Mr Mabuyakhulu or from Mr Mzila, but she said she got it from one of them.

ADV DICKSON: Yes, but the affidavit says something different.

CHAIRPERSON: Ja, the affidavit says ...[intervenes]

ADV DICKSON: [Indistinct] ...[intervenes]

CHAIRPERSON: Ja, the affidavit is more definite.

10 **ADV DICKSON:** Yes, right. Well ...[intervenes]

CHAIRPERSON: Yes, you may continue.

ADV DICKSON: So, we have got that, that piece of evidence, which I would suggest to you, from a legal point of view is subject to doubt. We then got Mzila who retracted his affidavit. Now, when you are considering what Mr Mzila said, are you looking at the first one or the second one or are you, like most lawyers, have to – are forced to the conclusion that you cannot look at either of them? What one are you doing?

20 **MR WHITE:** So, that is not for me to make the ultimate decision on which one can be relied upon.

ADV DICKSON: Ja.

MR WHITE: You have the facts that come from both, okay?

ADV DICKSON: Alright.

MR WHITE: Because the first one – if I take the version that is set out in his second one, is what Mr Mabuyakhulu allegedly told Nkubane Wills which was then put into an affidavit that was drafted for Mr Mzila to sign. Mr Mzila, when he subsequently realised what he has got himself involved in, said: I do not want to be involved. I want to withdraw that statement. I do not have personal knowledge of anything of it. And effectively, his second statement says: I have no knowledge of any of these
10 issues.

ADV DICKSON: Yes, that is right. He retracted the first one.

MR WHITE: But the point being, what is critical, is that in his second affidavit and I am not – I can find it. I just do not remember the exact wording, but was that in his second one, he said information to the first one was not prepared by himself.

ADV DICKSON: Yes.

MR WHITE: Now, if you take that with the statement, you
20 have just said, that Ms Ngubane-Zulu was contradicted or changed her statement yesterday when she testified. She said it was either Mr Mabuyakhulu or Mr Mzila. Mr Mzila said it was not him. So, on that basis, the only other option could be Mr Mabuyakhulu.

MR WHITE: Well, that is your answer, but I am – what I

am putting to you is that analyses of evidence is not whether it is the one thing or the other and it leads to the conclusion, it must be X instead of Y. It is really uncertain(?) when you have heard all the evidence that it is there. And what I am putting to you is that so far I have dealt with two people. Both of whom, I would say, doubtful witnesses. You do not agree?

MR WHITE: I will put the facts and that is for the Chair in this instance to decide and ...[intervenes]

10 **ADV DICKSON**: Yes.

MR WHITE: ...for that proceeding to decide. It is not for me to decide whether to doubt the witness or not.

ADV DICKSON: Correct. Okay. Then we go on to Dr Zweli Mkhize, where he says that he has no personal knowledge. Well, he is, obviously, putting forwarding something that he heard from someone else.

MR WHITE: But, Mr Dickson, let us – dispute that that is an accurate statement of ...[indistinct]

ADV DICKSON: [Indistinct] Well, ...[intervenes]

20 **MR WHITE**: If you go to ...[intervenes]

ADV DICKSON: [Indistinct] [speaker unclear – distortion in video link]

MR WHITE: If we go to Dr Mkhize's statement which is in RR-7 at page 497.

ADV DICKSON: Yes?

MR WHITE: Let me just check that the Chair has it.

CHAIRPERSON: You can proceed.

MR WHITE: So, if we look at that paragraph that it is at paragraph 27.

ADV DICKSON: Yes.

MR WHITE: Now I know it has been read out ...[indistinct] this evening already, but if you look at the English and we interpret it as it – exactly as it is written, in my view, there can be no doubt that Dr Zweli Mkhize is saying he received
10 this information about this donation. He does not say these donations. He is not talking about a number of donations. He is talking about one donation from Mr Mabuyakhulu.

ADV DICKSON: Yes.

MR WHITE: The only thing he says he does not know is, when it was requested and when it was received. It is one donation. The original request he is talking about is the request to Intaka and the final receipt is the receipt by the ANC. So, it is in – in this paragraph, my understanding if I
20 read it exactly as it is written, it says ...[indistinct] donation.

ADV DICKSON: Okay. Now, are you prepared to recommend that a criminal prosecution is brought on that paragraph 37?

MR WHITE: Mr Dickson, that is not my job.

ADV DICKSON: Okay ...[intervenes]

MR WHITE: I am here to present the facts. You are trying to say that I do not have any facts. I am saying, here is a fact, and it is for someone else to decide what they do with it.

ADV DICKSON: Okay. Moving on. You have got no version from Mr Shabalala?

MR WHITE: Mr Dickson, obviously ...[intervenes]

ADV DICKSON: [Indistinct]

10 **MR WHITE:** ...in the matter.

ADV DICKSON: Yes ...[intervenes]

MR WHITE: ...based on – he elected to remain silent.

ADV DICKSON: Right.

MR WHITE: So his awarding(?) statement ...[indistinct]

ADV DICKSON: Yes. When you got the letter from Ngubane Wills, the first one in November is quite clearly, from the instructions of Mr Shabalala, for ...[indistinct] ...the statement but ...[intervenes]

MR WHITE: Well ...[intervenes]

20 **ADV DICKSON:** The letter of Ngubane Wills for the 2nd of February 2010 ...[intervenes]

MR WHITE: But Mr Dickson, sorry. Just – I do not think we are going to come back to the letter of the 29th of November 2009, which I made a statement without ...[intervenes]

ADV DICKSON: Yes.

MR WHITE: ...me to comment.

ADV DICKSON: Okay, comment. Where does this information come from? From the letter – the context itself?

MR WHITE: Well, if I look at the letter, it says: We act for both the ANC and Mr Sipho Shabalala.

ADV DICKSON: Yes.

MR WHITE: So, my understanding would be, the letter
10 cannot be written on behalf of only Mr Sipho Shabalala. It must be written on behalf of ANC as well. And then in the fourth paragraph, it says: The ANC has made it clear. Now, Mr Shabalala cannot make it clear. It is the ANC.

And from what other information, and it is amongst all the different documents, Mr Mabuyakhulu said he is the only person who can comment about that and if what Mr Thulu(?), if what Ms Ngubane-Zulu says is correct, also said, anything to do with donations, you have to speak to the Provincial Treasurer, which was Mr Mabuyakhulu at the
20 time.

ADV DICKSON: Yes. Okay. So, you gave what is in that letter, did you?

MR WHITE: Well, I put it as part of the puzzle.

ADV DICKSON: Ja, okay. And then I will take you to the next paragraph(?), which does implicate Mr Mabuyakhulu

because it says in the first paragraph that it was written on his instructions, which RR -14, it is W-1841. It is the letter from Ngubane Wills on the 2nd of February 2010. Have you got that at hand?

MR WHITE: I do. I have it.

ADV DICKSON: Okay. So that – I think it is attached to your affidavit as well. I am sorry. I am not there. Okay. So, you have got that letter?

MR WHITE: Yes.

10 **ADV DICKSON**: That is the one that Mr Mabuyakhulu has traversed this afternoon. It was written from information that he gave Mr Wills(?), okay?

MR WHITE: Just – not the entire letter? I just want – just on that context.

ADV DICKSON: Okay.

MR WHITE: No, is it the entire letter or part – I mean, is it all the contents straight from Mr ...[indistinct], or just part of it?

ADV DICKSON: Well, it is probably Mr Wills ...[indistinct]
20 as well, but the information comes from Mr Mabuyakhulu.

MR WHITE: So then some of the ...[indistinct], you cannot be correct.

ADV DICKSON: Like what?

CHAIRPERSON: Well, Mr White. Mr White, I think let Mr Dickson put his question in regard to that letter. Then

you can answer. What is your question in regard to the letter, Mr Dickson?

ADV DICKSON: My question is that in relation to the instruction to convey the following facts to you and it is then got one to seven facts that are set out, okay? Are there any one of those facts that you can dispute with proper evidence?

MR WHITE: I would dispute the last sentence of paragraph 7. The last sentence of paragraph 7 says:
10 Specifically, it was included in the globular amount of R 7 227 707,00 listed as a donation in the income statement.

ADV DICKSON: Okay. On what basis do you dispute that?

MR WHITE: In order to say that it can only be included – only – the numbers that they start with are from after a receipt has been issued. Mr Mabuyakhulu has himself said in his affidavits and when he had testified ...[intervenes]

ADV DICKSON: Yes.

20 **MR WHITE:** ...that no receipt... [speaker unclear – distortion in video link] So, it would be impossible for it to have ended up in these numbers because there is no starting point, there is no record of it. So, it cannot be included in the amount that was included in the income statement. And secondly, if all these amounts that have

been referred to, to date, that it was - . this is what was used to spend the money on.

ADV DICKSON SC: But you have been told this afternoon.

MR WHITE: No, we have not, with respect. Yes, we have been told but it is Mr Mabuyakhulu's version with no support for it, no documentary support. The point being is if you did not receipt the money then it is not in the income side of your income statement. Therefore, you cannot
 10 spend it on expenses because your financial statements are not going to balance if you do not have an income offset by an expense. So your financial statements will not balance if it was not receipted but it was subsequently used for – to pay expenses. Unless all this is happening outside of the accounting records of the ANC which means that effectively the financial statements are just a farce. If that is the case then I would have to accept that that is what happened.

ADV DICKSON SC: Okay, that is fine because that is
 20 really the point that Mr Mabuyakhulu has given you an explanation, he has given long explanations about every single question that he was asked by Mr Hulley and what you do is this, you either have to tack together a whole lot of, should I say, dubious witnesses or you have to listen to him and accept his evidence. If you accept then it all

makes sense, does it not?

MR WHITE: Mr Dickson, obviously it will make sense to him but whether all the pieces of the puzzle, there is so many pieces that discredit what Mr Mabuyakhulu is saying, that there is another version. In his version there is not a single person that corroborates his version. No one else ever saw this million rand. No one else ever counted the million rand. Are we saying the Provincial Treasurer would count it himself when it was brought to the office? Nobody
10 has ever seen this money.

ADV DICKSON SC: So is that – are those your problems with it?

MR WHITE: No, Mr Dickson, there is – I think in amongst the documents that I have got, referred to here, there is hundreds of pages of information about it. So it is not fair to say is that your problem with it. There is – if you string together the whole chronology of what happened from when the million rand first started out to Mr Mzila's first affidavit, the various questions from that, the police, the
20 prosecutors, etcetera, to Mr Mabuyakhulu's subsequent statements.

I mean, Mr Mabuyakhulu very calmly said to today Ms Ngubane Zulu had nothing to do with this matter, she never dealt with it. It is funny that the police write their letter to her, they do not write it to John Wills, they write it

to her. I will show you the page.

MR WHITE: That is fine, I want to go back to TSW21.

CHAIRPERSON: Just one second, Mr Dickson, I am aware that we have gone beyond half past eight in terms of this stuff. I have been told by the secretary that the staff have been given some exemption with regard to the curfew but I do not want to keep them here beyond a certain time.

ADV DICKSON SC: Yes, but Mr Chair, can I ask one last question?

10 **CHAIRPERSON**: Beyond a certain time ...[intervenes]

ADV DICKSON SC: Can I ask?

CHAIRPERSON: Sorry?

ADV DICKSON SC: Can I just ask one last question?

CHAIRPERSON: No, no, you may, you may, but I am also keen to make sure that you have had enough time. So if you say it is your last question because otherwise we can explore whether you can get another opportunity. If you say it is the last question ...[intervenes]

ADV DICKSON SC: No, no, I think ...[intervenes]

20 **CHAIRPERSON**: You are not aggrieved then that is fine.

ADV DICKSON SC: No, it is just one more question.

CHAIRPERSON: Okay, alright.

ADV DICKSON SC: If permitted, Mr Chair, then we can pack it up.

CHAIRPERSON: Okay, alright.

ADV DICKSON SC: TSW21, back to where we were just now. If, for example, you took – you see Mr Shabalala's name is over on the left hand side of the page?

MR WHITE: Correct.

ADV DICKSON SC: Right, if you took an arrow from Mr Shabalala with R1 million in it and then the arrow ended at Michael Mabuyakhulu. In other words, the million rand came from Mr Shabalala from independent fund raising rather than money he had already spent, would that not
10 make more sense?

MR WHITE: No, it would not, Chair, because I mean all along it is has been the same money that has been spoken about in this investigation. So every letter that has been written by the police all along, it has been the same money that has been spoken about. So no, it would not make sense.

ADV DICKSON SC: Well, so the follow-up question is that even though it is quite clear to me, and I am hoping to the Chair, that this money, the 1 053 million has been spent by
20 the Shabalalas. You insist still that it is the same money.

MR WHITE: So if the money was received by Mr Mabuyakhulu then my view is that it was laundered by Mr Shabalala through various means, one of which was the Khuboni and Shezi trust account. The second one was his own personal financial affairs and it was then paid across

and my understanding ...[intervenes]

ADV DICKSON SC: For example, he paid Martins Plumbing some money and do you think he was going to get it back from him so he could make the donation?

MR WHITE: No, Mr Dickson, I have already said that he did not get the money back.

ADV DICKSON SC: Okay.

MR WHITE: But I said he laundered through his personal financial affairs, is the terminology I used.

10 **ADV DICKSON SC:** Okay, fine. I think I have taken it as far as I can with Mr White. Thank you very much. Thank you, Chair, those are our questions for the witness.

CHAIRPERSON: Yes. No, that is fine but you are happy that you have dealt with the issues or would you like another opportunity to complete your cross-examination?

ADV DICKSON SC: No, Mr Chair, I think that we have dealt with the financial side of Mr White's evidence and obviously Mr Hulley and obviously you, Mr Chair, would be in a better position to evaluate the evidence.

20 **CHAIRPERSON:** Yes.

ADV DICKSON SC: But I do not want to pursue that any further.

CHAIRPERSON: Okay.

ADV DICKSON SC: Been given an opportunity to comment on it but I do not think it is necessary for me to

ask any further questions about that.

CHAIRPERSON: Okay, okay, no, that is fine. Okay, I think that we must ...[intervenes]

ADV HULLEY SC: That concludes, I would think.

CHAIRPERSON: H'm?

ADV HULLEY SC: I would think that concludes the proceedings for today.

CHAIRPERSON: Yes, yes, we – that will conclude the proceedings for this evening. Let me then thank Mr
10 Mabuyakhulu and Mr Dickson and Mr White for availing themselves this evening. Let me thank you, Mr Hulley and your team.

ADV HULLEY SC: Thank you.

CHAIRPERSON: Let me thank the technicians and the staff, thank you to everybody for staying until this time so that we can try and cover some ground and finish the Commission's work as soon as possible. So thank you very much to everybody.

MR WHITE: Thank you, Mr Chair.

20 **CHAIRPERSON:** Thank you very much. For the benefit of the public I just mention that tomorrow I will hear the evidence of Mr Gigaba in the morning. I think I will also hear the evidence of Major General Mnonopi in the morning and then I will have Mr – I think Agrizzi later in the day as well as Mr Xaba.

ADV HULLEY SC: That is correct.

CHAIRPERSON: Yes, Brigadier Xaba.

ADV HULLEY SC: Brigadier Xaba, my apologies.

CHAIRPERSON: Okay, we are going to adjourn for the evening. We adjourn.

INQUIRY ADJOURNS TO 23 JUNE 2021