

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

29 JUNE 2021

DAY 419



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 29 JUNE 2021

REGISTRAR: Good morning

AMBASSADOR CWELE: Yebo. Yes Hi.

REGISTRAR: Do you take the – I am well, how are you Ambassador? Do you take the oath or the affirmation Sir?

AMBASSADOR CWELE: I take the oath.

REGISTRAR: Thank you Ambassador. I am informed the DCJ that you are ready to begin – waiting for him to log on now – DCJ is logging in now.

10 **CHAIRPERSON:** Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

ADV SEMENYA SC: Chair good morning.

AMBASSADOR CWELE: Good morning Chair.

CHAIRPERSON: Good morning, good morning. I am terribly sorry about this delay. There have been challenges from my side. I understand there were some challenges of a technical nature but my Registrar who normally helps me is not well and did not come to assist me today but I only
20 saw her message about ten minutes to ten. So when I have nobody I cannot make a move – I cannot do anything technologically. So – so I have needed to try and see how I am going to manage so that is why there has been this delay. But we – we can start now. Good morning Ambassador Cwele.

AMBASSADOR CWELE: Good morning or good afternoon Deputy Chief Justice. I am not sure which one to [?].

CHAIRPERSON: Well you see because it is English you have got to think about whether it is morning or afternoon and if you are in another country where it is afternoon and I am in a country where it is morning it gets confusing. But if you used Zulu then you would not bother about whether it is morning or afternoon.

AMBASSADOR CWELE: Sawubona – Sawubona.

10 **CHAIRPERSON:** Sawubona Ambassador.

AMBASSADOR CWELE: Sawubona Chief Justice.

CHAIRPERSON: Okay all right. Thank you for availing yourself – thank you. All right Mr Pretorius – okay no Mr Pretorius you want to start?

ADV PRETORIUS SC: Thank you Chair. Your connection is not consistent so we having difficulty hearing you. You freezing occasionally.

CHAIRPERSON: Is that so?

ADV PRETORIUS SC: Yes. But let us – let us continue and
20 I will let you know if it is such that we need to take a break for some technical assistance.

CHAIRPERSON: Yes. There is some – there is somebody – there is a technical person from the court who I think he might have left now but he is going to come back so that he is available to assist me from this end if there are technical

glitches. So let us continue but obviously any glitches that can be fixed from somewhere else it can be fixed from somewhere else and that would be helpful.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: If the glitches are not from this end.

ADV PRETORIUS SC: Chair the witness set down for today as we now know is Ambassador Cwele. He is testifying remotely from China so there is a time difference but we – on your direction will try and finish by one o'clock our time
10 which is well within the Ambassador's capacity in China. May the Ambassador be sworn and then I can just outline what documents and files should be before you Chair.

CHAIRPERSON: Okay no that is fine. My acting Registrar will administer the oath or affirmation. Registrar please do that.

REGISTRAR: Ambassador

AMBASSADOR CWELE: Yes.

REGISTRAR: Could you please state your full names for the record.

20 **ADV PRETORIUS SC:** Doctor Siyabonga Cyprian Cwele.

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

AMBASSADOR CWELE: No, no objection.

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

AMBASSADOR CWELE: I do.

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

AMBASSADOR CWELE: So help me God.

REGISTRAR: Thank you excellent.

CHAIRPERSON: Thank you very much – thank you very much. Okay Mr Pretorius.

10 **ADV PRETORIUS SC:** Thank you. Chair you should have before you a number of bundles. The principle bundle prepared for the Ambassador's evidence is SSA Bundle 05. It is Exhibit YY19. It comprises just on 800 pages.

CHAIRPERSON: I have got it.

ADV PRETORIUS SC: And then in addition you should have before you Exhibit PP1, PP2 and PP3.

CHAIRPERSON: I have got them.

ADV PRETORIUS SC: And then SSA Bundle 2A and 2B.

CHAIRPERSON: I have got them.

20 **ADV PRETORIUS SC:** We probably will not need those to the time available but they should be available for you.

CHAIRPERSON: Okay no that fine. I have got them. Let us try and see if we can finish by one o'clock but if we have not done justice to the issues we – we could use a little bit of time after lunch and hopefully maybe we will not

need more than thirty minutes but let us play it ear and see how it goes and let us just do the best we can. But of course we want to – the bottom line is that the issues should be dealt with properly.

ADV PRETORIUS SC: Understood Chair. Ambassador

ADV SEMENYA SC: Chairperson might I just place myself on record. I am appearing on behalf of Doctor Cwele.

CHAIRPERSON: Oh I – I thought I saw somebody but I did not have enough time to see who it was. That is why I
10 asked whether Ambassador Cwele was legally represented
you - I am sure you did not hear. Okay that is – that is
Advocate Ismail Simenya SC. You representing
Ambassador Cwele.

ADV SEMENYA SC: Indeed Chairperson.

CHAIRPERSON: Okay no thank you very much – thank you. Okay, all right. Let us continue then. Mr Pretorius.

ADV PRETORIUS SC: Ambassador I understand that you were Minister of State Security during the period September 2008 to May 2014, is that correct?

20 **AMBASSADOR CWELE:** That is correct Sir.

ADV PRETORIUS SC: And prior to that you were Chair of the Joint Standing Committee on Intelligence. Do I understand the position correctly?

AMBASSADOR CWELE: That is correct I was the Chairperson.

ADV PRETORIUS SC: Yes. Ambassador we would like to deal today with certain categories of evidence that have already been led. The first of which is the fate of the contemplated investigation or the actual investigation into the Gupta brothers that originated within the State Security Agency at the time.

As you will know from the evidence of Messrs Shaik and the others who testified they became aware of a report in a Sunday National newspaper to the effect that one
10 Fikile Mbalula had reported to the ANC NEC of certain matters that had occurred involving him and the Gupta's in relation to his appointment as the Minister of Sport before it occurred. You are aware of that series of incidents are you?

AMBASSADOR CWELE: If I am correct they said in 2012 – 2011.

ADV PRETORIUS SC: Yes 2011 is the date given.

AMBASSADOR CWELE: I have heard of that from their evidence.

20 **ADV PRETORIUS SC:** Right. Now they Messrs Shaik, Njenje and Maqethuka discussed that incident and determined that it is a matter that should have or should be investigated and you are aware of their evidence in that regard. I am not going to detail that evidence simply to put on record by way of preparatory information for questions

to follow that this decision was taken by the three senior officials within the SSA, correct?

AMBASSADOR CWELE: I have read that in their evidence Chair.

ADV PRETORIUS SC: Right. There was another reason for them having decided to conduct an investigation and that was the report received by them from a foreign agency that the Gupta's intended to purchase a Uranium Mine and there was a concern about that.

10 **AMBASSADOR CWELE:** Are you asking question? I have – I have seen that in their evidence. I was not aware of it.

ADV PRETORIUS SC: Right. Now to get to your own involvement in these issues is it correct that you summoned the top 3 persons we have just mentioned to your offices?

AMBASSADOR CWELE: No that is not correct Chair. The correct version is that if you have read my statement it was not in 2011 as they claimed that they had a super 00:13:08 in 2011. It was in 2010. It was in 2010 as I have put it I
20 called Mr Njenje to my office in Cape Town which is Deputy and to come and explain what I have discussed as I have said with my deputy – with his deputy in his absence. Because I first requested to hear from Njenje about these allegation of interception at monitoring – yes.

ADV PRETORIUS SC: Well who told you about

interception?

AMBASSADOR CWELE: I have put in my statement. It was a DDG of Njenje – DDG of Domestic branch what was called NIA then.

ADV PRETORIUS SC: Was he communicating directly with you in relation to investigations?

AMBASSADOR CWELE: No. As I have said my first interaction with the Gupta's – I first met them in the ANC fund raising dinner in Durban. That was somewhere
10 between the 20th and the 24th of September 2010 when we have National – General Council of the ruling party. That was a fund raising dinner of the ruling party. I have explained what happened in my presence in the DP – if you want me I can go into details. But what worried me was the allegation of intercepting a person.

ADV PRETORIUS SC: Yes please explain to the Chair.

AMBASSADOR CWELE: I called Njenje and I was told he was on leave.

ADV PRETORIUS SC: Before we get there if I may
20 interrupt you Ambassador Cwele.

AMBASSADOR CWELE: Ja.

ADV PRETORIUS SC: The 00:14:40 communication about an alleged interception came directly from a subordinate of the head of the SSA to you. You were communicating directly with him about operations, correct.

AMBASSADOR CWELE: I was communicating directly because Mr Njenje was alleged to be on leave at that time.

ADV PRETORIUS SC: All right.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: What was the communication about?

AMBASSADOR CWELE: I was – I wanted to communicate first with Njenje. I was told he is not around, he is leave for that week.

10 **ADV PRETORIUS SC:** And what did you want to communicate with him about?

AMBASSADOR CWELE: I wanted to ask whether they were conducting any interception and to these people or the so called Gupta's as they alleged and he did say yes we are. I asked him, did you have the direction of the Judge? He said, no they were instructed by the top 3 which was the top management.

ADV PRETORIUS SC: So are you saying now Ambassador that you – someone told you that there was in fact an
20 interception.

ADV PRETORIUS SC: That is what happened in that first meeting yes.

ADV PRETORIUS SC: Who told you that?

AMBASSADOR CWELE: Unless – it is the DDG for – for Domestic Branch what was called MIA then. Unless you

want me to disclose the name.

ADV PRETORIUS SC: (Inaudible)

AMBASSADOR CWELE: He was the DDG of Mr Njenje.

ADV PRETORIUS SC: Right and according to your evidence he told you directly that there was an interception – what interception was this?

AMBASSADOR CWELE: Not for 00:16:37.

ADV PRETORIUS SC: (Inaudible) interception tape.

AMBASSADOR CWELE: It is the interception –
10 interception of communication.

ADV PRETORIUS SC: Right that is not clear from the evidence that we have on your affidavit but we will come back to that in a moment. You then – how did it come about that the top 3 met with you in Cape Town in your office?

AMBASSADOR CWELE: I then requested the DDG to come with his director which was Mr Njenje when he comes back from leave. But instead of him coming with the DDG he came with these other top 3 people in the meeting in
20 Cape Town.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: So I see most of the statement they are saying I summoned them especially Mr Shaik. I never summoned Mr Shaik to that meeting. I never asked even – I do not know what they mean by summon to come

to that meeting. I never asked him. I never asked Mr Maqethuka to come. I asked for Mr Njenje and his deputy.

ADV PRETORIUS SC: Now – Ambassador it is not necessary to debate the difference between summoned and called but as I understand it you called Njenje and his deputy to your office in Cape Town.

AMBASSADOR CWELE: Yes that is correct. Yes Sir.

ADV PRETORIUS SC: You then had a meeting pursuant to that with the top 3.

10 **AMBASSADOR CWELE:** That is correct.

ADV PRETORIUS SC: Right. That meeting I think it is common cause on the papers was a tense and confrontational one

AMBASSADOR CWELE: You know Chair about tense but I was enquiring about whether they had the direction of the judges. You know, if you want to intercept a person as a Minister who is responsible for oversight one of the responsibilities is that I must make sure that they act within the law. If somebody is alleging interception and a
20 direct – a Deputy Director General says, no they did not have the direction of a judge that worried me a lot. Because those things have happened in the past. Those bad incidences.

ADV PRETORIUS SC: Yes well – Ambassador the three persons besides yourself who attended the meeting are all

at one that this was not discussed at the meeting but let us just clarify it was quite permissible for the SSA to conduct an investigation.

AMBASSADOR CWELE: It is. It is permissible.

ADV PRETORIUS SC: Correct.

AMBASSADOR CWELE: I had no problem with investigations.

ADV PRETORIUS SC: And you had ...

AMBASSADOR CWELE: The problem I had was
10 investigating without a direction of a judge.

ADV PRETORIUS SC: Yes and well the question is, did you communicate to the three at the meeting that firstly an operational decision to conduct an investigation was a decision that they made and were authorised to make without any interference from your part. Was that clear to them?

AMBASSADOR CWELE: I made it clear as I said the meeting lasted too long Mr Pretorius. We started in the early evening it finished in the early hours of the morning.

20 **ADV PRETORIUS SC:** No the question is a simple one. Was it made clear to them Ambassador firstly that any operational decision to conduct an investigation.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: And I stress the word investigation was theirs to make.

AMBASSADOR CWELE: It was clearly put to them.

ADV PRETORIUS SC: And they were free to make ...

AMBASSADOR CWELE: And I will try and explain so that you understand. I was one who called the meeting. I am the one who also concluded the meeting. After listening to all the stories I made it clear that if you believe that there is some wrongdoing by any person we are authorised by law to investigate and even intercept that person.

ADV PRETORIUS SC: Yes well that is not stated within
10 your affidavit Ambassador.

CHAIRPERSON: Mr Pretorius let him finish. Let him finish Mr Pretorius.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: I think he has not finished his answer.

AMBASSADOR CWELE: I said – I made it clear after listening to all the discussion particularly from Njenje because it was Njenje who was answering. That I had no problem with them doing any investigation but it must be done in terms of the law. If you are intercepting a person
20 you must have a direction of the judge. It is put there in my statement.

2. The other problem I also had because there were many things emanated in that meeting was the issue of conflict of interest particularly by those director – Deputy – particularly in concerning Njenje in this matter. I will

explain later in details why I said so.

I clearly remember saying, when we employed you we asked yourselves to – and the 00:22:02 to stop all business operation we were doing because we were coming to this environment. But I was disappointed now that he was conducting businesses and he was also investigating people in relation to his personal interests in those businesses. Those were the things I put at the summary. I did say also that as I said at no stage I said they must stop
10 the investigation. I said go and get a direction from a judge because if it is true there is no judge who will refuse you – the direction from the allegations they were putting. There were many allegations they were putting and I was convinced that it would be easy for them to get a direction from the judge.

ADV PRETORIUS SC: Yes. You are aware of the fact that the three persons besides yourself you attended that meeting deny that there was any discussion about interception. Yes Chair. DCJ you are on mute. Can you
20 hear?

CHAIRPERSON: Okay can you hear me now? You can – (bad audio).

ADV PRETORIUS SC: For part of when you were apparently talking Chair you were on mute but even when you unmuted you were still not audible.

CHAIRPERSON: Okay can you hear me now?

ADV PRETORIUS SC: We can hear you now.

CHAIRPERSON: Okay all right. I was saying earlier on that there were a few seconds when my connection stopped and I did not hear what the Ambassador was saying. I wanted him to go back so that I do not lose anything of importance. I had heard some part and then I think there may have been about maybe 20 seconds or so. Or maybe – Ambassador do you want to just summarise your last
10 answer. I did hear that you – I did hear that the fact that you said you called the meeting, Njenje was the one who was answering most of the time. You made it clear to them that they were entitled to investigate if they wanted to investigate but you had a problem with the – with them intercepting people’s communications without the directive of a Judge but you made it clear to them that otherwise they could investigate. You also – I heard you also say that there was an issue of conflict of interest on the part of Mr Njenje and you remember having told him when you are
20 – when he was appointed that he should make sure that there was no conflict of interest. If I have – If I have heard everything of importance in what you said they can just tell me the parts that you think I did not hear.

AMBASSADOR CWELE: Ja the las part I said when we employed Mr Njenje other – everything is correct Chair.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: We told him he must stop his business interests.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Because he could not do business while he is in charge of State Security.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: And he agreed. Same thing was said to Moshe but in this respect I said I was then
10 disappointed in that meeting after the discussion – lengthy discussion that there was – he was still pursuing some business mining in business and – and they now using the same people who are his business partner to intercept them. I said that is wrong. It should not happen because that is a conflict of interest. That is why we spend a lot of discussion on that but I summarise it like that at the end
Chair like you are correctly putting it.

CHAIRPERSON: Okay no that is fine. Mr Pretorius I said earlier on if we go into after lunch maybe thirty minutes but
20 we can go even to three if it becomes necessary.

ADV PRETORIUS SC: Thank you Chair. Well –

CHAIRPERSON: Did you hear me Mr Pretorius?

ADV PRETORIUS SC: I am just going to go as far as I can in the time allotted and any decision will be yours Chair.

CHAIRPERSON: But – but I – I want you to use your own

judgment whether you are able to do justice to the issues. You must tell me when you think there is need for more time otherwise we are not going to be able to do justice to the issues because the bottom line.

ADV PRETORIUS SC: Absolutely Chair.

CHAIRPERSON: Ja – the bottom line is that we must do justice to the issues.

ADV PRETORIUS SC: Ambassador there were two issues discussed at that meeting so far at least according to your
10 evidence. The first issue was the injunction from yourself that if there was to be an interception of communications it should be done according to the law. In other words a judge's directive should be obtained. Correct?

AMBASSADOR CWELE: Yes. That is correct.

ADV PRETORIUS SC: Now the version of the three persons concerned is that there was no such discussion at that meeting.

AMBASSADOR CWELE: I am not sure what is their version but I called the meeting and that was the reason.

20 **ADV PRETORIUS SC:** All right.

AMBASSADOR CWELE: I – that is the first thing I put when I – that is why I was saying Mr Chair the constraint I have I put this in my several statement I do not have access to these documents. I do not have access to the records of those minutes because the record of those

minutes will clearly indicate and if I remember correctly some of the- that meeting was recorded. So we have asked for these minutes and – but I called the meeting about this alleged interception. That was the main reason I called.

ADV PRETORIUS SC: Yes we have heard your version Ambassador.

AMBASSADOR CWELE: The issue of business interest arose while we were discussing the issue of interception.

10 **ADV PRETORIUS SC:** I will come to the issue of the business interests in due course.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: But as I understand it the conclusion on your evidence was that they were perfectly authorised, entitled to continue with the investigation provided if there was an interception to be conducted that would be done with a judge's approval in terms of the legislation. Is – do I understand the position correctly?

AMBASSADOR CWELE: That is correct.

20 **ADV PRETORIUS SC:** There would be therefore no need for them to take further steps by going directly to the President to reverse any negative decision that you had communicated to them. They could just simply go back to Johannesburg or Pretoria and continue the investigation. Correct.

CHAIRPERSON: It looks like

ADV PRETORIUS SC: We have all frozen Chair.

CHAIRPERSON: Well you are not frozen but I think the Ambassador is. I do not know whether the technicians will do anything. I think the technicians will – will – should work on it. Registrar are you able to get hold the technicians and see if they are working on it. Zonaka. It looks like she cannot hear me.

ADV PRETORIUS SC: Now the problem maybe one in
10 China Chair.

CHAIRPERSON: Oh – oh ja maybe.

ADV PRETORIUS SC: Or somewhere between.

CHAIRPERSON: Ja. I wonder whether – one second. Is he back? He is on his way. Zonaka can you hear me now?

REGISTRAR: Yes I can DCJ.

CHAIRPERSON: Are you able to get hold of the technicians to check whether it is a problem in China or on our side?

REGISTRAR: I will do.

20 **CHAIRPERSON:** Maybe Mr Pretorius maybe we should use this time when they are attending to the technical problems to take the tea break.

ADV PRETORIUS SC: Okay there – the Ambassador is back but Ambassador you are on mute.

AMBASSADOR CWELE: I am back Chair. It was an

internet connection that was the problem.

CHAIRPERSON: Oh (inaudible).

AMBASSADOR CWELE: Ja it was an internet connection.

CHAIRPERSON: Oh okay all right. Okay. Let us continue. Well if he is back let us continue we will take it quarter past eleven.

ADV PRETORIUS SC: Let us just recap Ambassador. There were two issues discussed at that meeting according to the evidence. The one was the investigation into the
10 Gupta's and any interception that might be involved in that investigation and the other was the conflict of interest as you describe it in relation to Director Njenje. In relation to the first issue as I understand it the conclusion of the meeting was that the SSA officials at the highest level were perfectly entitled and authorised to continue with the investigation provided that if there was to be any interception of electronic communications that would be done with the approval of a judge in terms of the Regulation – in terms of the legislation. Is that the
20 position?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: That being so there would be no need for the top 3 to go over your head to the President in relation to their concern that the investigation was being halted.

AMBASSADOR CWELE: I was not aware that they went to the President. I only read that later. They never informed me that they went to President.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: But they had the rights – they used to meet the President without me anyway.

ADV PRETORIUS SC: Yes. Well Ambassador the only point I am making is that there was no need – if they were concerned there was no need for them to be concerned
10 about the investigation and their ability to continue the investigation. There was no need to address the President on that issue. Correct.

AMBASSADOR CWELE: No according to me there was no need. I was not even aware that they went to see the President on that issue.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: But as I have read your statement they did not see the President only on that issue.

20 **ADV PRETORIUS SC:** Well let us deal with the second issue.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: And that is the conflict of interest issue. Was your communication to Njenje that unless and until he seized his personal business interests or

terminated his personal business interests he could not conduct the investigation.

AMBASSADOR CWELE: No. I did not expect Mr Njenje to be involved in business. At the end while he said yes I will tell you it was about the mining company, the business. And at the end he said no he was not directly involved it was somebody who was holding his shares in that company who was directly involved. But I said even if you are not directly involved now that you are involved in that company
10 and we are then investigating your people, your business partners you cannot use state security resources to investigate your dispute you have with your business partners. That is what I said.

ADV PRETORIUS SC: But did you see his personal business affairs as being a hurdle or obstacle to the continuation of the investigation as such?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: And did you communicate it?

AMBASSADOR CWELE: It was his behaviour which was a
20 problem because eventually he said, no he was not directly involved. But it was him who was explaining how this relationship with the mining company how Gupta's got the stake in their companies and all sort of those things.

ADV PRETORIUS SC: Well ..

AMBASSADOR CWELE: At the end when I was saying but

– but I asked you not to be involved in business he say no I was not directly involved. I had my business partner who was doing these things for me. I said but why were you even dealing (inaudible) your business partners here – businesses.

ADV PRETORIUS SC: All right. On that issue there was nothing to preclude the investigation from continuing.

AMBASSADOR CWELE: No. No.

ADV PRETORIUS SC: All right.

10 **AMBASSADOR CWELE:** As I have said the investigation on what they alleged they were investigating I said any judge will easily give you a direction to do that investigation.

ADV PRETORIUS SC: Okay so again there was nothing that you communicated to them on your version at that meeting that would have required them to go and have a discussion with the President in relation to the continuation of the investigation.

20 **AMBASSADOR CWELE:** No except that I did express my great displeasure that they were doing business and at the same time they were part of the state security but there is nothing else which I said, yes.

ADV PRETORIUS SC: All right. So in a word the investigation as far as you are concerned at that meeting could continue without hindrance.

AMBASSADOR CWELE: I had no power. What I said should not happen. I want to be clear. What I categorically put should not happen is to intercept any citizen without following the legal prescripts of asking a judge. That one I put it very clear that it should happen. When it is our problem with investigation going on anyway that is why I encourage them to go to the judge if they want to continue with interception and get the direction.

ADV PRETORIUS SC: So as I understand your evidence
10 now is that you actually encouraged them to continue with the investigation.

AMBASSADOR CWELE: At no stage I stopped the investigation.

ADV PRETORIUS SC: No, no you put a positive spin on the – on your attitude.

AMBASSADOR CWELE: I said

ADV PRETORIUS SC: To an extent to go ahead – you get the directive from the judge.

AMBASSADOR CWELE: I said

20 **ADV PRETORIUS SC:** You have encouraged the – I am sorry Ambassador.

CHAIRPERSON: Hang on. You are both speaking at the same time. Okay.

ADV PRETORIUS SC: If I can just finish my

CHAIRPERSON: Question okay.

ADV PRETORIUS SC: I understand your evidence Ambassador you actually encouraged them to continue with the investigation amongst other things to go and get the directive from the judge.

AMBASSADOR CWELE: I am not sure I did say that if they continue with the investigation they must get the direction of the judge. I did say to them in my view there was going to be no difficulty from any judge from the reason they were giving me to grant them that direction.

10 **ADV PRETORIUS SC:** Yes. Well I am...

CHAIRPERSON: What – what was their response to this difficulty you said you had about this part of their investigation namely interception of somebody's communications without the judge's directive?

AMBASSADOR CWELE: Ja. Their story changed Chairperson their response was that no actually they were not doing interception. The DDG misinformed me. They were just doing 00:40:41. Not interception that was their response. But I said if they want to continue with any
20 interception they must go and get a direction of the judge.

CHAIRPERSON: So at the meeting you said to them you are understood that they were engaged in interception of communications and you wanted to know whether they had a directive from a judge permitting them to do that. And in response they said they were not doing interception they

were doing – I think did you say scoping – I am not sure?
Is that the sum total of their response?

AMBASSADOR CWELE: Ja. Like environmental scanning.

They were just scoping ja.

CHAIRPERSON: Ja. Okay.

AMBASSADOR CWELE: Ja. Let me – that is fine. Ja.
They said the DDG who informed me that they were
intercepting was wrong. And I asked them why did you not
bring him to the meeting because I requested you to come
10 with him. They said no they thought they would bring the
senior people. But they were denying that they were
intercepting but they were just scoping. Yes.

CHAIRPERSON: And scoping does not need a judge's
directive I guess.

AMBASSADOR CWELE: No.

CHAIRPERSON: Oh okay. And what was your response to
this? When they said this was that the end of this
discussion about interception or not?

AMBASSADOR CWELE: It ended when I asked them why
20 they did not bring the DDG who informed me that – who in
actually because that was the word from that DDG.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: And then they were invasive to
that answer, no we thought we should come as senior
leaders. But I did not ask Mr Maqethuka to come to the

meeting. I did not ask also Mr Shaiks to come to the meeting because the matter was with the SSA. Yes. It was really domestic bribes which was – yes.

CHAIRPERSON: Yes. Would this discussion about interception have been right at the beginning of the meeting more or less?

AMBASSADOR CWELE: It was – it was the first thing Mr Chairperson. I was chairing the meeting.

CHAIRPERSON: Yes.

10 **AMBASSADOR CWELE:** I told them I have had this meeting. I told them about the incidents what happened in the ANC fund raising dinner. The meeting I had with the Deputy Director General and what he said. And I asked them to respond. I asked Mr Njenje to respond to that.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Okay. Mr Pretorius continue.

ADV PRETORIUS SC: Chair it is eleven – oh yes. I presume you take the short adjournment at eleven fifteen?

20 **CHAIRPERSON:** Ja.

ADV PRETORIUS SC: Ambassador the version and you are aware of this of the three – the top three is that at no stage during that meeting did any discussion about interception and the lawfulness of interception take place at this point.

AMBASSADOR CWELE: I have not seen that evidence. I have read all their statements so Chair unless you can highlight to me.

ADV PRETORIUS SC: No they –

AMBASSADOR CWELE: What is – what – yes.

ADV PRETORIUS SC: They do say or it is said that the – there was no discussion about interception. I can give you the reference if you like but you can – you can rest assured.

10 **AMBASSADOR CWELE**: Okay that is not true. That is not true. That was the first question they have to answer. That was the first thing I put to them.

ADV PRETORIUS SC: The second point of difference is that they concluded from that meeting that you did not wish the investigation and I stress investigation to continue.

AMBASSADOR CWELE: No that is not correct Chair.

ADV PRETORIUS SC: All right.

AMBASSADOR CWELE: I think I have explained that Chair.

20 **ADV PRETORIUS SC**: All right. And because of the conclusion that they drew they found it necessary to meet with the President and actually asked you or told you that they were going to do so.

AMBASSADOR CWELE: No they never asked me and I was not aware that they went to the President.

ADV PRETORIUS SC: Yes. But as I understand your evidence there would have been no need to complain about any attitude that you took to the President.

AMBASSADOR CWELE: I cannot speak about that – that will be their own judgment.

ADV PRETORIUS SC: Ja well I (inaudible).

AMBASSADOR CWELE: According to what I have said. I was not expecting – as far as I am concerned there was no need to go to the President.

10 **ADV PRETORIUS SC:** Right.

AMBASSADOR CWELE: On that matter.

ADV PRETORIUS SC: Yes. Would you accept that even if Mr Njenje was conflicted he denies it but even if he was that would not preclude the SSA from continuing with the investigation. Correct.

AMBASSADOR CWELE: No he never denied it Chair.

ADV PRETORIUS SC: Well...

20 **AMBASSADOR CWELE:** As I have said the meeting took I think from about half past six until about one or two in the morning.

ADV PRETORIUS SC: Ja. Ambassador the question is that...

AMBASSADOR CWELE: So he did not deny the conflict of interest.

ADV PRETORIUS SC: No he denied a conflict of interest.

He did not deny his business interest but I do not want to debate that with you at present. What I want to put to you is that even if there was a conflict of interest as understood by yourself that would not preclude the SSA from continuing with the investigation, correct.

AMBASSADOR CWELE: It should not preclude them from continuing with the investigation Chair.

ADV PRETORIUS SC: Right. He did...

CHAIRPERSON: Sorry Mr Pretorius. The two of you may
10 be speaking at cross-purposes. I think what the Ambassador wants to say and he must tell me if I misunderstand him. He wants to say to do with the question of whether Mr Njenje denied the conflict of interest at that meeting whereas I understand Mr Pretorius to be saying either at the hearing (bad audio) evidence before the commission which I think or you may have been speaking at cross purposes. Mr – Mr Ambassador do you want to comment on this?

ADV PRETORIUS SC: Chair you became inaudible once
20 again for a great deal of what you said so perhaps you could repeat it.

CHAIRPERSON: Yes okay. Let me check whether the Ambassador can hear me now.

AMBASSADOR CWELE: I can hear you now Chair.

CHAIRPERSON: Can you hear me? Okay all right.

AMBASSADOR CWELE: Ja I can hear you.

CHAIRPERSON: I will – yes I was saying to

AMBASSADOR CWELE: You are cutting.

CHAIRPERSON: Me that Mr Pretorius (Inaudible).

ADV PRETORIUS SC: Chair you are inaudible again or at least the connection is not relaying your ...

CHAIRPERSON: What I am saying. Okay. Can we take the tea break – can you hear that part?

AMBASSADOR CWELE: Ja we can hear that.

10 **CHAIRPERSON:** Oh okay can we take the tea break

ADV PRETORIUS SC: That is perfectly audible Chair.

CHAIRPERSON: Okay all right. Let us take the tea break until twenty five past and then the technicians can attend to the problem that we are having. Okay thank you. We adjourn.

AMBASSADOR CWELE: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **REGISTRAR:** The Chair is ready... [speaker unclear – distortion present]

CHAIRPERSON: [No audible reply]

REGISTRAR: DCJ, can you hear us?

CHAIRPERSON: [Speaker unclear – distortion in video link] Registrar, I am here now.

REGISTRAR: Thank you, Mr Chair.

CHAIRPERSON: Can you hear me?

REGISTRAR: Yes, I can.

ADV PRETORIUS SC: Yes, we can hear you.

CHAIRPERSON: Can everybody hear me?

ADV PRETORIUS SC: Very clearly, Chair.

CHAIRPERSON: Okay, thank you very much. Let us continue. We – I have got somebody to attend to technical glitches from this side now. So, let us hope -if there are any problems, they can be sorted out quickly. Okay,
10 alright. Let us continue, Mr Pretorius.

ADV PRETORIUS SC: In the meeting that we had been discussing, at least as far as we are concerned, this morning, or, as far as you are concerned, this evening. Is it correct that you told Njenje that he could not use state resources to pursue private interests?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: And you also said that in communicating this to Mr Njenje, you were discharging your responsibility as Minister to prevent the abuse of
20 state resources?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: The implication of that is, that unless and until Mr Njenje abandoned his private interests, the investigation could not continue.

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: State resources were being used for an improper purpose, as I understand what you said.

AMBASSADOR CWELE: I did direct him. You remember, I told you that at the beginning, there was an agreement that they will abandon any business interests. I showed disappointment that there was some link to business interests. I knew that ...[intervenes]

ADV PRETORIUS SC: Yes, it was ...[intervenes]

AMBASSADOR CWELE: ...the investigation.

10 **ADV PRETORIUS SC:** Yes. Well, it is more than disappointment on your version. And for the record, I am referring to SSA-05 at page 720, paragraph 74 and SSA-05, 720 at paragraph 35. The import of those statements was that the investigation was an abuse of private resources which had to be stopped and that was the reason for your intervention.

AMBASSADOR CWELE: Yes, I did say the abuse of the state resources was not acceptable. I still maintain that, but I did not say the investigation into the Gupta matter on
20 whether they alleged their investigating must stop.

ADV PRETORIUS SC: Well, you said that Njenje could not use state resources to pursue private interests. In other words. The use of state resources should be halted.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: ...investigation.

AMBASSADOR CWELE: No. I did not say the investigation. I am saying. Him pursuing his business interest and competing with his business partners when they have got conflict must stop. That one I did say must stop.

ADV PRETORIUS SC: Ja. Well ...[intervenes]

AMBASSADOR CWELE: I did not say the investigation they were conducting must stop.

10 **ADV PRETORIUS SC:** But how does one conduct an investigation without the use of state resources? Does not one follow from the other?

AMBASSADOR CWELE: No, no. You will remember, Mr Njenje was a director. He was not involved in direct investigation in this case. My understanding. But his intervention and directing people that do this investigation was wrong because they knew it was conflicted.

ADV PRETORIUS SC: As part of the SSA, he would have at least remotely been connected with an investigation
20 which used state resources.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: And you say that the use of state resources should be halted for as long as those private interests existed. That is your evidence.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Okay.

CHAIRPERSON: Okay. I am sorry. Can I understand this? Was your position, Ambassador, at that meeting that the investigation which was – which required the use of state resources should stop until such time that what you regarded as the conflict of interest had ended, had been terminated?

AMBASSADOR CWELE: No ...[intervenes]

CHAIRPERSON: What was the position? What had to
10 stop?

AMBASSADOR CWELE: The – what had to stop was what was alleged to be interception without a direction. The two – what had to stop was Mr Njenje to continue doing business interests while he is still in the State Security Agency.

CHAIRPERSON: Now the issue of interception.

AMBASSADOR CWELE: H'm?

CHAIRPERSON: You said that they had said to you they had not been – they had not conduct – they were not
20 conducting any interception.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: And the matter ended when – that issue ended when you asked them why they had not brought along the DDG who had told and then they said to you: We thought it should just be the senior three who should come

to the meeting. You said that is where that issue ended?

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: And you said that was quite early in the meeting because that was the first issue you raised.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Okay. Now, why would you have said that should stop, the interception, in circumstances where they had said there has been no interception and ...[intervenes]

10 **AMBASSADOR CWELE**: [speaker unclear – distortion in video link]

CHAIRPERSON: ...you seemed to have accepted that?

AMBASSADOR CWELE: Yes. Now, I had to – not that I had accepted that. There are two versions.

CHAIRPERSON: Ja. Yes.

AMBASSADOR CWELE: The first version was that there was interception. That is what I have heard in a meeting a week prior.

CHAIRPERSON: H'm.

20 **AMBASSADOR CWELE**: ...in the coming(?) now, was that no, there was no interception. It was scoping(?).

CHAIRPERSON: H'm.

AMBASSADOR CWELE: I thought - interception without direction of that must stop.

CHAIRPERSON: Yes. Okay. And then on the issue of the

conflict of interest. You said it was Mr Njenje who had a conflict of interest from your information. Is that right?

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Now... And from what you have told me. It seems that he was not the one directly involved in the investigation or conducting the investigation. It was somebody else who – in his department. Is that correct?

AMBASSADOR CWELE: Yes, Chair.

CHAIRPERSON: So ...[intervenes]

10 **AMBASSADOR CWELE**: But ...[intervenes]

CHAIRPERSON: Yes?

AMBASSADOR CWELE: But as I have told you.

CHAIRPERSON: Yes?

AMBASSADOR CWELE: When I had a meeting with his director, Deputy Director General ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...the way instructed when I asked Njenje why he had intercepted and did not do that. He said the way he instructed by top chain.

20 **CHAIRPERSON**: Yes.

AMBASSADOR CWELE: And above him was Mr Njenje who was supervisor. Yes.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Okay. So, now why – if Director Njenje

was not the one actually conducting the investigation, other than that he may have given instructions that somebody must conduct the investigation. Why would you link the termination of the conflict of interest to the abuse of state resources? Because it was going to be somebody else conducting the investigation.

AMBASSADOR CWELE: Yes, Chair. That is correct. As I have said. The meeting did not – was not a short meeting. Mr Njenje went at length explaining this relationship with
10 Guptas.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: That is what then led to me to believe in that there was a conflict...

CHAIRPERSON: H'm, h'm.

AMBASSADOR CWELE: ...in his involvement on his partner in the mining(?) and the Guptas and the Guptas trying to rob them and asking for more stakes(?) and all these things. It was then when I asked him but why are you doing this, doing this business interest while they are
20 here? Then he changed: Oh, no, no, no, no. I am not directly involved.

But he was one who was explaining in detail how Gupta – how they got the state(?) first. How the Gupta wanted their state for free. How they wanted to increase. How other people were giving them better offers. I listened

and at the end I said: Oh, right. I think you are involved in something quite funny, and I am actually worried what will happen when this thing comes in the media. Because it was clear to me from his own explanation how they got the license was irregular.

How they were then involved with these Guptas, trying to ...[indistinct] each other with shares(?). Was something funny. They were in court. It did not ...[indistinct] all those things. And I became worried
10 because when things are in court, the inquiries then come to me as the Minister. They did not go to the DG. It is by the time how do you respond to these things when they come?

So that is why the meeting took so long and my unhappiness then was that there should not be business dealing where you have clearly demonstrated you were part of this company whether direct or indirectly. Now we are busy using state resources ...[indistinct] same people yet they were business partner, yet you are in court, yet it is
20 very not very clear how you all got this license.

So those were the people which were coming to me to say: Well, these things are wrong. And I did put them to them that these things are wrong, and they must stop. But not ...[indistinct] what they were calling the investigating the Guptas for. Yes.

CHAIRPERSON: But the – as I understand you. You say you asked – you said the abuse of state resources should stop. Is that correct?

AMBASSADOR CWELE: Ja.

CHAIRPERSON: Now in the context of that investigation, what was the abuse of state resources? Was it not the investigation?

AMBASSADOR CWELE: No, the abuse of state resources, Chair, is partly(?) being investigation. I will
10 explain why I have a problem.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: If you say you are the business partner of Mr Pretorius.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: Now Mr Pretorius who
...[intervenes]

CHAIRPERSON: On a lighter note. I will never go into business with him. [laughs]

AMBASSADOR CWELE: [Indistinct]

20 **CHAIRPERSON:** No, no I am just being light-hearted.

AMBASSADOR CWELE: [Indistinct]

ADV PRETORIUS SC: Thankfully, I have no business, Chair.

CHAIRPERSON: [laughs]

AMBASSADOR CWELE: [Indistinct] If Mr Pretorius say

now he wants 50% of your business, but he did not contribute anything. You got this business and ...[indistinct] away(?), rogue way you got it, but he demands now 50%. And you got Advocate Semanya who is giving you five times what this person is offering you for the 50%. And I said you are involved in ...[indistinct], directly or indirectly and that should stop.

And you cannot use our own state resources to pursue your own personal business interest. That is what I
10 said. That one should stop. Not that the investigation they are conducting according what they said should stop, but then him being the DDG and using his own ...[indistinct] of business interest to instruct officials to do interception, not investigation. I did not say investigation must stop.

CHAIRPERSON: If there was good reason for an investigation to be undertaken into the Guptas ...[intervenes]

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: ...and he was the director of the branch.

20 **AMBASSADOR CWELE:** H'm?

CHAIRPERSON: What do you say he should have done? Let us say he became aware that there was a good reason to launch an investigation into the Guptas. It so happened that for argument sake he had conflict of interest.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Should he have ignored whatever there was on the basis that if I say this investigation must be undertaken I will have – I will be accused of abusing state resources because of this conflict? Or should he have said: Look, I will not conduct the investigation myself, but let me get somebody else senior, but the investigation must still continue? What should he – how should he have dealt with that if your – if indeed there was a conflict?

AMBASSADOR CWELE: Yes. If there was a conflict, it(?)
10 be very careful. He will still continue with the investigation, but he will follow the due processes of the investigation because intelligence agencies are heavily regulated.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: You would not allow or direct that there must be interception without a directive.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: You will make sure that the investigation, whoever, junior official or senior official who
20 is doing it, is doing it properly.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: That is what I will expect. Not that he should stop the investigation.

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

AMBASSADOR CWELE: Yes.

CHAIRPERSON: But at what stage then, if it did it that way, the way you have explained ...[intervenes]

AMBASSADOR CWELE: Yes ...[intervenes]

CHAIRPERSON: ...leave out for argument sake the issue of the interception and getting a judge's directive, because they disputed that. They said they had not been doing that. There are different versions. But if you leave that out and you look at everything else that needed to be done to pursue the investigation. Would it have been fine for
10 him to get somebody within his department to pursue that investigation? To do all the other things that are supposed to be done and to say it is your investigation. You go ahead. You can report back to me. Would that be acceptable?

AMBASSADOR CWELE: [Indistinct]... but you must remember, Chair.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: I never said they must stop the investigation.

20 **CHAIRPERSON:** Yes.

AMBASSADOR CWELE: I said if you want to intercept, please go to the judge. And Mr Pretorius say that – I even said I believe it would be very easy to get the judge granting permission for the reason you were mentioning what he ...[intervenes]

CHAIRPERSON: Yes, yes. So ...[intervenes]

AMBASSADOR CWELE: So... And two. I did not call the meeting because of conflict of interest. Primarily the meeting was around the interception without a direction(?). Yes, the issue of conflict of interest then arose because he himself was explaining this thing how – because when I asked him about this business interest, he did explain at length.

CHAIRPERSON: H'm, ja.

10 **AMBASSADOR CWELE:** But the main purpose of the meeting was not the conflict of interest, but it did arise.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: You see, I understood you to say you asked them to or him to stop the abuse of resources of state resources. So, I am trying to understand at a practical level. What was his approach ...[intervenes]

AMBASSADOR CWELE: [Speaker unclear – distortion present]

20 **CHAIRPERSON:** H'm.

AMBASSADOR CWELE: Because abuse(?) – if you allege to be intercepting without a direction as a ...[indistinct] feature(?) you know ...[indistinct] That is an abuse, you see? So that we understand this abuse.

CHAIRPERSON: H'm?

AMBASSADOR CWELE: There is abuse and then the issue of conflict of interest because arose during those discussion. I then raised but why are you involved in this ...[indistinct] with these people of ...[indistinct]

CHAIRPERSON: H'm.

AMBASSADOR CWELE: And now you are claiming that they are trying to rob you of your business when he ...[indistinct] to stop the business but will not have any conflict of interest maybe you are doing your investigation.

10 It is then he said: No, I ...[indistinct] involved indirectly, not directly.

CHAIRPERSON: H'm. Mr Pretorius, do you want to take it from there?

ADV PRETORIUS SC: Yes, thank you, Chair. Your evidence today and I will put your affidavits to you in a moment, Ambassador.

AMBASSADOR CWELE: Okay.

ADV PRETORIUS SC: As I understand it, is clear, that at the conclusion of that meeting they could not – that is the
20 top three – have been any under illusion that you opposed the investigation on principle. That they continue – could continue with your approval provided if there was interception they got the say so of the judge.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right. The version on paper,

however, is somewhat different, but let me just conclude that proposition with one more that you confirmed before the break and that is that there would have been no need for the top three to approach the President to reverse your opposition to or any perceived opposition to the investigation. Correct? We have established that.

AMBASSADOR CWELE: No, there was no opposition to the investigation.

ADV PRETORIUS SC: Alright. Okay.

10 **AMBASSADOR CWELE**: Yes.

ADV PRETORIUS SC: That answers the question partly. But in the passages that the judge has just been dealing with. You made it very clear in your own words to Njenje: Mr Njenje, you cannot use state resources to pursue private interests. In other words. You were saying to Njenje this investigation is being conducted for the purpose of pursuit to the private interests and you cannot use state resources to do that. That is what you are saying here. Do you want to go to the passage?

20 **AMBASSADOR CWELE**: Yes.

ADV PRETORIUS SC: [No audible reply]

AMBASSADOR CWELE: Which passage are you referring to?

ADV PRETORIUS SC: I am referring to paragraph 34 on SSA-05 at page 720.

CHAIRPERSON: Just repeat the reference, Mr Pretorius.

Bundle ...[intervenes]

ADV PRETORIUS SC: SSA-05, page 720.

CHAIRPERSON: Bundle 5? Oh, this one?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: 720.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: That will be black numbers?

ADV PRETORIUS SC: Yes.

10 **AMBASSADOR CWELE:** Oh, on 20?

CHAIRPERSON: Bundle 5, page 720. Bundle 5 is the one that has Exhibit 19. Are you looking at a hard copy or electronic copy?

AMBASSADOR CWELE: I am looking at the hard copy. My 720 talks about ad(?) paragraph 82 to 94, PAN Project.

ADV PRETORIUS SC: Yes. Ambassador, we are talking about the page references in the top left-hand corner of the bundle.

20 **CHAIRPERSON:** Look at the black page numbers. You see at the top of each page there are red numbers and black numbers.

AMBASSADOR CWELE: Oh. All mine are black.

CHAIRPERSON: Ja, use the black ones. Use the black numbers.

AMBASSADOR CWELE: The left-hand side?

CHAIRPERSON: Yes.

AMBASSADOR CWELE: It says SA-05-720.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But we will ...[intervenes]

AMBASSADOR CWELE: [Indistinct]

CHAIRPERSON: We will just say 720. We will not start from SSA when we refer to pages.

AMBASSADOR CWELE: Okay. That is correct.

10 **CHAIRPERSON:** Paragraph 34, Mr Pretorius?

ADV PRETORIUS SC: Correct, Chair.

CHAIRPERSON: Yes, okay. Continue, Mr Pretorius.

ADV PRETORIUS SC: At the bottom of the paragraph:

“I even reminded Mr Njenje that conducting private business while at the helm of the Domestic Branch was against what we had agreed before his appointment, let alone utilising state resources to pursue private interests...”

20 **AMBASSADOR CWELE:** Ja, but you must read the whole of 34, *né*? Can I read it for you?

ADV PRETORIUS SC: Well ...[intervenes]

CHAIRPERSON: Ja?

ADV PRETORIUS SC: Perhaps – even ...[indistinct] you can ...[intervenes]

AMBASSADOR CWELE: No, that is very important because ...[intervenes]

CHAIRPERSON: Ja, let him read it Mr Pretorius.

ADV PRETORIUS SC: [No audible reply]

CHAIRPERSON: Okay, read it Ambassador.

AMBASSADOR CWELE: It says:

“The meeting with Mr Makashu(?) that you are refers to in these paragraphs was indeed called by me.

10 There is a Cape Town meeting.

It is untrue that I called the meeting because of the relationship between Guptas family and former President, Mr Zuma.

I reiterate. My primary concern related to business relationship Mr Njenje was having with Gupta and his alleged instruction to institute an illegal interception of that Gupta person.

20 I requested to be furnished with a directive of the judge authorising such interception which they did not have.

I mentioned to them that they must get a direction(?) if they want to proceed with such interception as law requires.

At no stage did I ever say or suggest that they

must stop any legal operation that they were pursuing.

I even reminded Mr Njenje that conducting private business while at the helm of Domestic Branch was against what we have agreed before his appointment...”

Just reminded, you see?

CHAIRPERSON: H’m.

10 **AMBASSADOR CWELE:** “...not alone utilising the state resources to pursue private interests...”

So, if you read it correctly, then you will understand what I say.

CHAIRPERSON: H’m.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: But if you extract just a sentence, at the end, you will not understand the contents.

20 **CHAIRPERSON:** Well, let me put this – check this, Ambassador. As I recall. The evidence of the top three before the Commission was that two of them made it clear that they did not think you instructed them to stop the investigation.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: That is correct, Chair.

CHAIRPERSON: I think there is one of them, I do not know which one, who ...[intervenes]

AMBASSADOR CWELE: [Indistinct]

CHAIRPERSON: ...whose recollection was that he would had ...[intervenes]

AMBASSADOR CWELE: [Indistinct]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: But where they were all unanimous. It was that your stand, your position during the meeting was that you were opposed to the investigation even though
10 two of them said you did not say to them they must stop it. So, I just wanted to say. That is what they said. But I think ...[intervenes]

AMBASSADOR CWELE: Can I ...[intervenes]

CHAIRPERSON: I think you have made your position that you were not opposed ...[intervenes]

AMBASSADOR CWELE: Yes.

CHAIRPERSON: ...to the investigation. And actually, as far as you are concerned, they could carry on the investigation as long as they did it in a lawful way.

20 **AMBASSADOR CWELE:** Yes.

CHAIRPERSON: And of course you have talked about the conflict of interest. Is that right?

AMBASSADOR CWELE: That is correct, Chair. May I assist the Chair?

CHAIRPERSON: Ja.

AMBASSADOR CWELE: In most of my statements and affidavit, I have raised the issue of accessed the documents.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: If Chair wants the truth ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...[indistinct] should be kept in the ministry.

10 **CHAIRPERSON**: Yes.

AMBASSADOR CWELE: Because the meeting was in Cape Town. They should be filed in Cape Town office.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: The transcript, the record of the meeting is what were tell the truth.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Okay, no, thank you very much.

20 **AMBASSADOR CWELE**: And Chair has got the power to ...[indistinct] I can tell you. That meeting happened, I think end of September of early October, but it was ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...not too long after that ANC meeting ...[intervenes]

CHAIRPERSON: Yes.

AMBASSADOR CWELE: ...in Durban(?)

CHAIRPERSON: Yes.

AMBASSADOR CWELE: It should have been probably around the 1st of October 2010.

CHAIRPERSON: Yes. Well, at a certain stage. I was going through your application for leave to cross-examine and I realised that you were complaining that, or you were making the point that you needed certain documents in order to be able to put your side of the story properly.

10

I made enquiries and was informed by the Legal Team that a communication had been sent to your attorney to say they must approach SSA directly to get documents. And as I understand the position. I was told that whether they did so or not, the Commission, I think, does not know, but I was told that the Commission did inform your lawyers to say they must approach SSA directly.

But insofar as there are documents that might been seen as critical. For myself, I certainly would ask the Secretary with the assistance of the Legal Team of the Commission to try and get that. You have made the point that this meeting was recorded and that there should be even a recording and so on. So, I think attempts should be made to try and get that.

20

UNIDENTIFIED SPEAKER: ...[Indistinct]

CHAIRPERSON: Oh, okay, alright. Okay, Mr Pretorius, continue?

ADV PRETORIUS SC: The meeting in Cape Town, was that recorded?

AMBASSADOR CWELE: That is correct, that is what I have said, it was recorded.

ADV PRETORIUS SC: And where would that recording be now?

AMBASSADOR CWELE: As I have said, the recordings of
10 the meetings, they are kept in the office where they are. The meeting was in Cape Town, minister's office.

ADV PRETORIUS SC: Well we will [inaudible – speaking simultaneously]

AMBASSADOR CWELE: We have really appealing and we have asking because we did not get any assistance from SAA in terms of reports.

ADV PRETORIUS SC: Alright. Ambassador, did you make it clear to Njenje that he was not permitted or authorised to use state resources to pursue private interests?

20 **AMBASSADOR CWELE:** I said I reminded him, if you read my statement, because I agreed.

ADV PRETORIUS SC: Yes, your words were:

“Let alone utilising state resources to pursue private interests.”

That was a reference to the investigation.

AMBASSADOR CWELE: That was a reference to what appeared, that he was still linked to the business.

ADV PRETORIUS SC: Well, the words are clear, I will not debate those. But in doing so, in making these communications, as I understand it, you were discharging your responsibility, and I use your words, to prevent or preventing abuse of state resources. That was your stance. You were intent on preventing the abuse of state resources and you were discharging that obligation in this
10 meeting.

AMBASSADOR CWELE: As I said, as a minister, you are answerable for whatever the services(?) are doing and we have had many instances where things went wrong and it was my duty to keep on telling the management on things which should not happen.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: It was not the first meeting, in many meetings we were [indistinct] that, that we need to act professionally and also avoid abusing any of the state
20 resources because when you have got resources to Intelligence you have got powerful tools.

ADV PRETORIUS SC: You are also on record as having said – this is also in your affidavit at page 691 of bundle 5, you can go there, if you wish.

CHAIRPERSON: What is the page number, Mr Pretorius?

ADV PRETORIUS SC: 691.

CHAIRPERSON: 691.

ADV PRETORIUS SC: You are on record as saying, and I quote:

10 “I later confronted Njenje who could not give me the direction of the judge for the monitoring of the Gupta family. He could not produce it, making his conflict of business interests more untenable. I invite him to produce the directions for the covert surveillance of that operation.”

From that statement it appears firstly that you demanded the authorisation of the judge and you wanted to see it and his failure to do so made his alleged conflict of business interest untenable for you, not just something you should raise, but untenable. That is a very clear statement of opposition to the continuation of the investigation.

20 **AMBASSADOR CWELE:** No, you are wrong, I have explained that. The first thing we discussed I confronted him whether he had a directorship. Remember I told you what I had been informed by his deputy the previous week. He could not produce any. It was after long discussion this thing that they were doing, [indistinct] and not even from him, I think it came from one of the directors, not from him. When we started, I asked him, do you any direction to intercept this people? He said no.

ADV PRETORIUS SC: Well, they also told you that they were not intercepting, that is the ...[intervenes]

AMBASSADOR CWELE: That was later, yes. That came later.

ADV PRETORIUS SC: Yes, alright, let me ...[intervenes]

AMBASSADOR CWELE: And, if I remember well, it did not come from him.

ADV PRETORIUS SC: Yes, let me put the position to you.

AMBASSADOR CWELE: Ja.

10 **ADV PRETORIUS SC:** In your evidence this morning, Ambassador, giving the Chair the impression that you did not express any opposition in principle to the investigation and you made it clear to them that the investigation could continue, subject to the directive of the judge being obtained. The passages I am putting to you paint a different picture.

AMBASSADOR CWELE: Oh.

ADV PRETORIUS SC: The (indistinct – recording distorted) of you taking a stance that could well be
20 interpreted as being in opposition to the continuation of the investigation.

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: [inaudible – speaking simultaneously] putting to you.

AMBASSADOR CWELE: These were my responses to my

statement, but as I have explained, at no stage – and they are also saying so, at no stage did I ever said they must stop the investigation.

ADV PRETORIUS SC: Well, let us look at paragraph 18 on page 705.

AMBASSADOR CWELE: 705?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: I am sorry, Mr Pretorius, are you moving away from 690?

10 **ADV PRETORIUS SC:** Yes, Chair, I am now going to 705.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: There you say ...[intervenes]

CHAIRPERSON: And what paragraph?

ADV PRETORIUS SC: Paragraph 18.

CHAIRPERSON: Okay, alright, I have got it.

ADV PRETORIUS SC: Reads:

“I inquired whether the surveillance...”

And you there referred to surveillance, not interception.

20 “...was authorised by a designated judge as required by law. To this day I was never given a copy of the direction by the designated judge. My intervention was that no surveillance should be done unless authorised by law.”

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: So that statement is clear, that you

could not conduct any surveillance at all until and unless you produced to me that authorisation from the judge.

AMBASSADOR CWELE: Interception is part of surveillance, Mr Pretorius.

ADV PRETORIUS SC: Well, that is precisely the point but what you were talking about here was surveillance, not interception.

AMBASSADOR CWELE: Interception is part of surveillance.

10 **ADV PRETORIUS SC:** No.

AMBASSADOR CWELE: Surveillance is part of interception.

ADV PRETORIUS SC: Ambassador, you are far more knowledgeable on these issues than I am, as you now point out. But surveillance is far broader [inaudible – speaking simultaneously]

AMBASSADOR CWELE: No, interception, let me tell you what it is about. Let me just help you.

20 **CHAIRPERSON:** Hang on, Ambassador, let Mr Pretorius finish.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Surveillance is a far broader concept than interception.

AMBASSADOR CWELE: Interception is electronic surveillance, that is what it is, it is electronic surveillance.

ADV PRETORIUS SC: There could be surveillance that does not require the intervention of a judge.

AMBASSADOR CWELE: They may be found but interception is electronic surveillance, Mr Pretorius.

ADV PRETORIUS SC: Yes, I know that but what you say here and the DCJ can make up his own mind, I do not want to belabour this point, it is semantic, we are clear on the meaning.

10 “My intervention was that no surveillance should be done unless authorised by law.”

And there you were referring to the direction of a judge.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right. You make it clear again at page 706, paragraph 21. There you say:

“I made it plain that any surveillance of the Gupta family must be authorised in law and that Njenje must stop doing private business whilst in office.”

AMBASSADOR CWELE: Yes.

20 **ADV PRETORIUS SC:** Right. And then at page 719, paragraph 32, you say ...[intervenes]

AMBASSADOR CWELE: Paragraph?

ADV PRETORIUS SC: 32, page 719. You say:

“I have pointed out that the only concern I had about the investigation of the Gupta brothers was whether the surveillance was authorised by a

designated judge. No such proof was furnished to me.”

AMBASSADOR CWELE: It is page 7...? I am just lost.

ADV PRETORIUS SC: 719.

CHAIRPERSON: Paragraph 32.

AMBASSADOR CWELE: Yes, I am in paragraph 32. Yes, what is the passage?

ADV PRETORIUS SC: You say there:

10 “I have pointed out that the only concern I had about the investigation of the Gupta brothers was whether the surveillance...”

And I stress the word surveillance.

“...was authorised by a designated judge. No such proof was furnished to me.”

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Okay. In summary, it appears that the version that you are putting before the judge today differs at the very least in [indistinct] from the version that appears in the affidavits.

20 **AMBASSADOR CWELE**: No, it is still the same. All my statements are still the same.

ADV PRETORIUS SC: Alright, well we can look at the two and compare, Ambassador.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: I want to put to you the version of

Mr Shaik who says you instructed that the investigation be stopped.

AMBASSADOR CWELE: I do not know how I could instruct the investigation to stop, to be honest.

ADV PRETORIUS SC: Yes, it would be quite improper for a minister to tell operatives or officials ...[intervenes]

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: ...to stop an investigation. Do you agree with that?

10 **AMBASSADOR CWELE**: I agree and I did not stop any investigation.

ADV PRETORIUS SC: Alright, okay.

CHAIRPERSON: Would it be part of – what role would you be permitted to play in regard to whether an investigation should or should not be conducted or should or should not be pursued? Would it be permissible for you to approve an investigation that it should be conducted or to oppose it even if you do not say it must stop? What would be acceptable for a Minister of State Security in a situation
20 where the leadership of SAA, as we know it now, thought that there is good reason to conduct a certain investigation?

AMBASSADOR CWELE: The Minister has got no role.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: The only role I just said as a

Minister is a supervision role.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: So that things were done according to the law.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: I do not authorise investigations, I do not direct investigation as a Minister.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: I get reports when the
10 investigations are done.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Yes, because I do get.

CHAIRPERSON: Yes. So if their version were to be true that – at least the version of two of them, that even though you might not have instructed that the investigation be stopped nevertheless you expressed very strong opposition, that would not be something that would be appropriate for you to have done, if it did happen.

AMBASSADOR CWELE: I did not express any opposition,
20 Deputy Chief Justice or Chairman, to the investigation. I put that (indistinct – recording distorted).

CHAIRPERSON: Ja. Okay, alright, Mr Pretorius?

ADV PRETORIUS SC: Yes. Just for the record, Chair, Shaik's evidence was clear that the Minister instructed that the investigations be stopped. Well, even if that became

clear from the context and what was communicated at the meeting.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Mr Njenje said although he might not have said so in so many words, in effect the Ambassador was telling them to stop the investigation.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Mr Maqetuka said:

10 “The only aspect on which I differ with Ambassador
 Shaik in his evidence before the Commission is the
 place where the meeting with the President took
 place.”

So the versions are compatible if not precisely the same in their description of the detail.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I want to put the outcome to you, Ambassador. There were two consequences of that meeting. The first is that the top three went to see the President to discuss the continuation of the investigation.

20 Correct?

AMBASSADOR CWELE: I do not know, I said I was not aware of that meeting, it is what I wrote.

ADV PRETORIUS SC: Alright. There is no basis upon which, or knowledge, that you have to contradict that.

AMBASSADOR CWELE: Yes, correct.

ADV PRETORIUS SC: The second thing is the investigation to all intents and purposes stopped.

AMBASSADOR CWELE: Mr Pretorius, really, who stopped the investigation?

ADV PRETORIUS SC: That is precisely the point. Three persons who were intent ...[intervenes]

AMBASSADOR CWELE: Let me start with this ...[intervenes]

CHAIRPERSON: Okay, Ambassador, you asked him the
10 question, Ambassador, let him respond. Mr Pretorius, you are responding ...[intervenes]

ADV PRETORIUS SC: Three persons intent on pursuing an investigation meet with you in Cape Town, hear what you have to say, decide they have to got the President to clarify whether this investigation can continue or not and conclude after meeting you and after meeting the President that the investigation should stop and it does stop despite their keenness and despite their intent to conduct the investigation. It stopped.

20 **AMBASSADOR CWELE:** What I can say, it was not stopped by me. I do not know who stopped it. The (indistinct – recording distorted) because it was not stopped by me. The statement of Mr Shaik is the only statement. The other two directors were very clear that there was no instructions from me to stop the investigation.

I will ask if you can go – that is why we ask to cross-examine these people because we are going to expose the lies of this person(?) that I instructed the investigation to stop. He is the only one who is saying that but even him, he say even if I instructed, they were not going to stop. So why did they stop? So because clearly others were clear that at no stage did I said they must stop the investigation. I can go through their statements, if you want to.

ADV PRETORIUS SC: Well, so can we and we will do so,
10 Ambassador, but for the present, you make the point precisely, they did stop the investigation.

AMBASSADOR CWELE: Not by me.

ADV PRETORIUS SC: Well...

CHAIRPERSON: One second, Mr Pretorius. If, Ambassador, you wanted to refer to certain statements or evidence by them, I want to give you that opportunity because it is a very important part of the issues that we are looking at if you particularly wish to draw to my attention certain statements which support what you are
20 saying, that is fine.

AMBASSADOR CWELE: Okay. Maybe in general terms I will go then to maybe Maqetuka's statement.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: If you read Njenje's statement, first one because there are so many versions of these

statements. Njenje, I think, is only one who wrote one statement. Others wrote two or three. And he never even mentioned the meeting in Cape Town, nè? When we come to Maqetuka, I hope – I have read these things but I am trying to get what is the documents. But, Maqetuka, whatever, in his first statement ...[intervenes]

CHAIRPERSON: Well, one second, Ambassador. Mr Pretorius, are you able to assist the Ambassador to tell him where to find Mr Maqetuka's affidavit?

10 **AMBASSADOR CWELE:** I think I will find it EXHIBIT PP3.

CHAIRPERSON: EXHIBIT PP3, what bundle is it, are you able to...?

AMBASSADOR CWELE: Go to annexure MM1, the first statement.

CHAIRPERSON: Oh, okay. PP3, I have got it. Yes?

AMBASSADOR CWELE: I am just trying to go to the point.

CHAIRPERSON: Yes, I see that on this one you will not find black numbers for pagination but you can use the red numbers for this one.

20 **ADV PRETORIUS SC:** They had not been invented by that stage, Chair.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: I will try and get it but...

CHAIRPERSON: Well, I can tell you that I see in paragraph 4, Ambassador, where Maqetuka's statement,

which I think is the first one, in paragraph 4 he said – no, not paragraph 4, paragraph 7, at the end, he says ...[intervenes]

AMBASSADOR CWELE: It is the same, ja.

CHAIRPERSON: Ja, is that the paragraph you are looking for?

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Okay, read the relevant part that you want to draw my attention to.

10 **AMBASSADOR CWELE**: Ja, paragraph 7, if you go to what starts with page 3 on top, where you reading from.

CHAIRPERSON: Yes, ja.

AMBASSADOR CWELE: It says:

“The meeting ended without resolving the matter. Later we learnt from the media that Minister has instructed us to stop investigation.”

We learnt from the media. I do not which we were learning from.

20 “I have to state that I do not recall him having given such an instruction. To put it very clear, that I did not give that instruction.”

So Mr Pretorius, you say they are collaborating. Certain statements of Mr Maqetuka is trying to collaborate what Mr Shaik was saying. But it is even there he does not say that I said I must stop the investigation.

CHAIRPERSON: Yes. Okay, alright. Thank you. Mr Pretorius?

AMBASSADOR CWELE: So the conclusion is wrong, Chair, Mr Pretorius' conclusion is wrong.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: Let us deal with the first statement of Mr Maqetuka which appears at page 12 of that bundle of EXHIBIT PP3.

CHAIRPERSON: Are you referring to an annexure to his
10 statement?

ADV PRETORIUS SC: I am referring to his first statement at the beginning of the bundle, Chair.

CHAIRPERSON: Oh.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: Ja?

AMBASSADOR CWELE: Paragraph?

CHAIRPERSON: That starts from what paragraph?

ADV PRETORIUS SC: Well, the investigation into the Gupta affairs is dealt with at page 12, paragraph 52, but I
20 want to refer the Ambassador to paragraph 58 on page 14.

CHAIRPERSON: No, it looks like, Mr Pretorius, you and I – there is something wrong with your file references. You said you are looking for Mr Njenje's statement, Mr Pretorius, is that right?

ADV PRETORIUS SC: Mr Maqetuka.

CHAIRPERSON: Mr Maqetuka and you are using the bundle that we were using just a few minutes ago when the Ambassador was looking for a page?

ADV PRETORIUS SC: Yes, we are in EXHIBIT PP3. I will come to Njenje in a moment, Chair.

CHAIRPERSON: Okay, no, no, no, I am looking – I think we were not – I do not think we were in that one, I do not know if it is a duplication. Okay, I have taken another one now that has got PP3. The other one has got – you said
10 page 12, I think I have got the right one, now.

ADV PRETORIUS SC: Ja and if you go to page 14?

CHAIRPERSON: Page 14. Yes, I have got page 14. Have you got it, Ambassador?

AMBASSADOR CWELE: Yes, Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Paragraph 58:

20 “Minister Cwele stated that he had called us to the meeting because he had been told that Mr Njenje was conducting an investigation into the relationship between the Gupta family and the former President which he believed to be irregular. He paused there and looked around at us to, I believe, gauge our reaction.”

Then there is an interlude at paragraph 59. Paragraph 60 reads:

“After the presence of the Minister’s officials had been sorted out Minister Cwele stated that he objected to the Gupta investigation because in his view it was not being pursued *bona fide* but was rather being pursued by Mr Njenje in order to protect his own business interests which were in conflict with those of the Guptas.”

Do you see that?

AMBASSADOR CWELE: Yes.

10 **ADV PRETORIUS SC**: Then over the page, paragraph 61:

“Mr Cwele never responded to this...”

And that is what was set out in paragraph 60.

“...and it was clear that we would not be able to resolve the issue with the Minister. I therefore told Minister Cwele that there were no purposes in debating the issue any further and that it was our intention to take the matter up with the former President directly.”

Paragraph 62:

20 “I do not remember the Minister categorically and directly instructing us to stop the investigation. However, he made it quite clear by his attitude to the investigation that it should be stopped. He was not interested in the merits of the investigation and sought only to question Mr Njenje’s motives for

pursuing it.”

Do you see, that is his version.

AMBASSADOR CWELE: Okay, let us start in paragraph 58.

CHAIRPERSON: Five eight?

AMBASSADOR CWELE: Paragraph 58 on page 14.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: Yes, Chair, I have explained the reason why I called the meeting. I did not call the meeting
10 because of the relationship between Guptas and the President, I called the meeting because of the alleged illegal interception. So I just want to put that on record because that is what he says and also on page 60, the way that paragraph is written, I have tried to explain to the Chairperson that know that Njenje’s business was in conflict with the Gupta’s business, they were business partners according to what he said in that meeting. At page 61 I have explained Chair, no one said they are going to the President and as I said if you want me to get the
20 transcript of that meeting because at one stage some of them deemed the meetings took very short and because of a disagreement people walked out. It is not true. We finished the meeting correctly, very late, after lengthy discussions.

CHAIRPERSON: H’m.

AMBASSADOR CWELE: And I summarised what was my concern and what should happen, as I have explained to the Chairperson that they were going to see the President, I am just trying to put that.

CHAIRPERSON: Would the information be - would there be any declassification necessary to obtain the transcript or the minutes and so on, as far as you know?

AMBASSADOR CWELE: All the document, why I cannot get all of them they are tagged there as classified
10 document, even the transcript recording.

CHAIRPERSON: Okay, no, that is fine.

AMBASSADOR CWELE: But maybe to conclude.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: He still say he did not give any instruction, I do not know where this thing Mr Pretorius gather, they gave instruction.

CHAIRPERSON: Well, he read earlier on you may recall, he read a passage where, as I recall, one of them said in his statement or affidavit that you in effect, stopped or
20 instructed them to stop, even though I am putting notes now in my own words, even though you did not expressly give the instruction. He so - Mr Pretorius said refer to a passage where somebody - one of them was saying, in effect, your opposition was such that even though you were not saying stop this thing, to them, it was clear that you

were actually saying they must stop it without expressly saying so that that is my understanding of a passage that he read.

But an another one, I think it is Maqethuka says he has no recollection of you giving an instruction to stop and then of course, I think Mr Moshaik is saying no, you did actually give the instruction but I think maybe we have given the matter enough consideration, maybe we should move on Mr Pretorius.

10 **ADV PRETORIUS SC:** Yes, well, if we could just clarify, Mr Njenje's evidence that was clarified in the transcript to be his evidence of 26 November 2019 and the passages appear at SSA 5 page 303 to 304.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: Which document now?

ADV PRETORIUS SC: The same, Bundle SSA 5 the document before you Ambassador. Do you want to go to 105.

20 **AMBASSADOR CWELE:** 104 to 105, is it a transcript statement?

ADV PRETORIUS SC: No, I am sorry, we must look at the figure the page numbers at the top of the page, it is page 303, my apologies.

CHAIRPERSON: That cannot be the same bundle then Mr Pretorius?

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Because the same bundle goes up to 161.

ADV PRETORIUS SC: It is bundled 5, SSA 05, I am referring to.

CHAIRPERSON: Okay, Bundle 5, what page again?

ADV PRETORIUS SC: 303.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: Is that page with the SSA
10 805305 on the left?

ADV PRETORIUS SC: 303 on the left, yeah.

AMBASSADOR CWELE: Okay.

CHAIRPERSON: The black numbers, use the black numbers ambassador, page 303. Have you got it?

AMBASSADOR CWELE: Yeah, they all black, Chair.

CHAIRPERSON: Well I have got black and red, have you got the right bundle?

ADV PRETORIUS SC: There is no red ink in China.

CHAIRPERSON: Okay, alright but you are on the right
20 page. Okay, continue Mr Pretorius.

ADV PRETORIUS SC: On page 303 halfway down the page. The issue is raised by you Chair, about whether Minister Cwele clearly instructed the three to stop the investigation. The Chairperson says and I am going to go, just to the outcome of the discussion at the bottom of the

page says:

“So, you say he might not have put it in so many words but as far as you are concerned, that was the effect of what he was saying, Director Njenje on page 304, that is correct, Chair.”

So that is Njenje’s version. The outcome must be seen. Ambassador Cwele against the background of your raising, whether as an abuse of resources or otherwise, your opposition to the investigation continuing whilst the conflict
10 of interest, as you alleged continued. That matter was not resolved at the meeting, according to Mr Maqethuka and according to Mr Njenje, and according to Mr Moshaik, and that is why they went to see the President.

AMBASSADOR CWELE: I do not know why they went to see the President but I want to put it here because now, I was not given a chance to cross examine these gentlemen. If you said they record what happened when they met with the President they didn’t discuss the issue of the meeting in Cape Town, if you read what I think is Mr Moshaik they
20 discussed the issue of some ...[indistinct] report, that is the first thing.

So if he is not correct that they went there in my own view just because there was some concerns in the meeting in Cape Town. No one, I repeat no one told me that they were going to see the President and I want to say

Mr Chairperson you can always be evasive of this matter, the truth will come from those transcripts.

CHAIRPERSON: H'm, h'm.

AMBASSADOR CWELE: Yes, because they themselves they are clear that I never instructed most of them but when they come but Mr Moshaik say this, oh ja, the Minister is angry, oh ja, maybe he said it not in ways but by expression, I don't know what that means. Two of them agreed that I never gave such instruction.

10 **ADV PRETORIUS SC:** That's not entirely correct but Ambassador let's move on, I just want to put one proposition to you, when this investigation was initiated the top three were intent for reasons that they explained on pursuing the investigation where evidence, you agree with that at least?

AMBASSADOR CWELE: Yes I am listening.

ADV PRETORIUS SC: Do you agree with that proposition, they wanted this investigation to be pursued?

AMBASSADOR CWELE: Yes I am listening.

20 **ADV PRETORIUS SC:** No, do you agree with that?

AMBASSADOR CWELE: [laughing] I don't know, I was not in that meeting, I cannot comment on that.

ADV PRETORIUS SC: Well you sat in a meeting with them for several hours ambassador, you must have concluded that they wanted this investigation to continue,

it was you who raised objections to it continuing.

AMBASSADOR CWELE: No, I never raised Mr Pretorius any objection or a legitimate investigation to continue, I repeat I have said ...[indistinct – distorted]

ADV PRETORIUS SC: The point I am making [parties speaking simultaneously]

CHAIRPERSON: Hang on, hang on, hang on, don't speak at the same time, let the ambassador finish Mr Pretorius.

AMBASSADOR CWELE: Thank you sir. I am saying the
10 answer I give for Mr Pretorius at no stage did I never stop any legitimate investigation.

ADV PRETORIUS SC: You have stopped ...[intervenes]

AMBASSADOR CWELE: I never gave any instruction and I pointed out to you even in their statements where they clearly say I never gave such instruction.

ADV PRETORIUS SC: They left that meeting with the clear understanding that you opposed the investigation, that is their evidence, but I don't want to go there because the record is clear Ambassador and we can debate for
20 many days the nuances of the language, what I want to put to you, which you seem to be unwilling to concede is that the top three wanted this investigation to continue, and that was made clear to you in the meeting.

AMBASSADOR CWELE: Yes, but I never stopped any investigation, that is what I am saying.

ADV PRETORIUS SC: I am not dealing with that issue at the moment Ambassador, what I am putting to you is that they were intent on pursuing this investigation to finality.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: You concede that, good. After meeting with you and after meeting with the President the investigation was stopped, would you concede that?

AMBASSADOR CWELE: No. The investigation was not stopped after meeting with me. If you look Mr Pretorius, I
10 will tell you why, If you look [laughing] at their statements they were clear that even if - this is what they said, even if ...[indistinct] and Maqethuka even I was against they were going to continue.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: This is true.

ADV PRETORIUS SC: And then finally – not but ...[intervenes]

AMBASSADOR CWELE: I was answering you, I am still answering you.

20 **CHAIRPERSON:** Yes continue Ambassador.

AMBASSADOR CWELE: For whatever reason they went to the President because they have this belief if they read their documents that if the President says stop they will proceed with the investigation.

CHAIRPERSON: Yes okay, Mr Pretorius ...[intervenes]

AMBASSADOR CWELE: Their ...[indistinct] statements is there, you can go through it if you give me time I can go through those statements.

ADV PRETORIUS SC: Ambassador I made it very clear and their evidence is very clear that after the meeting with you and after the meeting with the President that investigation stopped.

AMBASSADOR CWELE: Do you want me to refer to the statement Mr Pretorius?

10 **ADV PRETORIUS SC:** I know the statement you are referring to ...[intervenens]

AMBASSADOR CWELE: ...[Indistinct] you are saying I am not speaking the truth.

CHAIRPERSON: Hang on one second Mr Pretorius and Mr Ambassador, let me ask this question before you refer to the statements ambassador, in terms of time if we talk about time do you know roundabout when after you had met them that investigation stopped, do you know about how long it took before you got to know that the
20 investigation was no longer being pursued because I assume you must have been told at some stage that it was no longer being pursued.

AMBASSADOR CWELE: I was never told that it is not being pursued Chair.

CHAIRPERSON: Yes. This – but I guess that wouldn't

you need to know from time to time what was going on in order for you to have to play your oversight role, would they not be needing to give you reports from time to time of certain investigations maybe at least, maybe not all of them.

AMBASSADOR CWELE: Mr Chair yes what normally happens, once they have concluded their report and they give me a report, I never received any report until they left.

CHAIRPERSON: But before they conclude an
10 investigation would they not generally speaking give you updates from time to time regularly, particularly maybe with regard to certain investigations, maybe not all of them, certain important ones.

AMBASSADOR CWELE: Yes if there is an important investigation they will give that if they produce a report.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Then I will ...[indistinct – distortion] there was never a report on this matter Chair.

CHAIRPERSON: Yes, and you – did you ever get to know
20 whether an investigation had stopped or until you left the position of Minister of State Security you didn't know whether that was still going on or not?

AMBASSADOR CWELE: I didn't know.

CHAIRPERSON: Oh, okay. Mr Pretorius.

ADV PRETORIUS SC: Well it seems that you are in no

position Ambassador from what you are saying now to comment on the proposition that the top three concluded after their meeting with you and – and I stress this – after their meeting with the President the investigation should stop and it was stopped.

AMBASSADOR CWELE: I have stated my position Mr Pretorius, I never stopped any investigation, I repeat that.

ADV PRETORIUS SC: That is a different point Ambassador. I put it to you again please, are you able to
10 dispute the evidence that the top three stopped the investigation after they had met with you and with the President?

AMBASSADOR CWELE: I don't know when they stopped the investigation.

ADV PRETORIUS SC: You don't know, alright.

AMBASSADOR CWELE: Yes, I have said that.

ADV PRETORIUS SC: What you do know and what you do say is that you enquired as to whether they had the designation from the judge and you never received that
20 designation?

AMBASSADOR CWELE: I did say, I still say that.

ADV PRETORIUS SC: Okay.

AMBASSADOR CWELE: Following my meeting with the Deputy Director of ...[indistinct].

ADV PRETORIUS SC: Let's move on then to another

issue and that is the principal agent network plan. We have been told in evidence and I don't think there will be any difference between us Ambassador that the establishment of a principal agent network is an accepted practice in Intelligence Agencies worldwide?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: It is properly done.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Right and what it is, is the
10 recruitment of Principal Agents outside the agency who in turn handles sources and agents in order to accumulate intelligence, more or less, I am again ...[intervenes]

AMBASSADOR CWELE: It depends, it would depend on the nature of the operation. If it is a deep cover operation it should not link to the agents at all, so if it is a deep cover.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: But if it is not a deep cover it should be part of the intelligence system.

20 **ADV PRETORIUS SC:** And whilst you were a Minister of the State Security Agency a plan was established, a principal agency network was established?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: Was it established before you?

AMBASSADOR CWELE: Before me.

ADV PRETORIUS SC: Alright. You had concerns about the implementation of the project whilst you were Minister, is that correct?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: And you state these concerns in your evidence? In fact you say that the work to clean up the PAN Programme was initiated by you soon after your appointment?

AMBASSADOR CWELE: ...[Indistinct – distorted]

10 **ADV PRETORIUS SC:** Do you want that reference?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Page 717 of Bundle SSA 05 at paragraph 26.

CHAIRPERSON: Page 717?

ADV PRETORIUS SC: 717 yes Chair.

CHAIRPERSON: Thank you.

AMBASSADOR CWELE: The ...[indistinct] page?

CHAIRPERSON: Ja, the black pages.

20 **AMBASSADOR CWELE:** Okay which paragraph specifically?

ADV PRETORIUS SC: Paragraph 26

AMBASSADOR CWELE: 26, yes. Yes I am there.

ADV PRETORIUS SC: You say there that the work to clean up the programme was initiated by yourself soon after your appointment?

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right. And your concern as appears at page 754 of the same bundle, paragraph 2.1 was that ...[intervenes]

AMBASSADOR CWELE: [distorted]

CHAIRPERSON: What page is that Mr Pretorius?

ADV PRETORIUS SC: 754.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: 754, yes which paragraph?

10 **ADV PRETORIUS SC:** One of the concerns as appears from the summary of the PAN investigation which we will come back to later was that there was an overspending of allocated budget and the subsequent use of rollover funds and budget savings, which was just one of the concerns.

AMBASSADOR CWELE: May I just get there, I think I am on the wrong page. Page?

CHAIRPERSON: 754.

AMBASSADOR CWELE: 754.

20 **ADV PRETORIUS SC:** Yes it is not your affidavit, it is merely a summary of the PAN investigation.

AMBASSADOR CWELE: Oh I thought I was going to my affidavit. Yes?

ADV PRETORIUS SC: You express your concerns differently and perhaps we should go straight there Ambassador can I take you to a different passage. If you

go to page 689 of your affidavit, at para 13.

CHAIRPERSON: That's 689 of Bundle 5 but that happens to be his affidavit. 689.

AMBASSADOR CWELE: Yes I am there Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: We see in paragraph 13 they did in fact task Njenje to investigate the activities of what was called the Principal Agent Network PAN programme, but did hold the view that the PAN Programme required closer
10 scrutiny, in particular one of the elements of my concern was that the PAN programme started with a relatively small budget which ballooned almost tenfold over a short space of time and with questionable acquisition of operational, moveable and fixed assets. The State Security Agency has since stopped the programme and recouped some of the assets.

AMBASSADOR CWELE: That's right.

ADV PRETORIUS SC: That is correct is it?

AMBASSADOR CWELE: That is correct Chair.

20 **ADV PRETORIUS SC:** You make several references in your affidavits Ambassador to the activities that required scrutiny in the PAN programme, would it be fair to say that there was a need to investigate criminal activity?

AMBASSADOR CWELE: Yes Chair, let me just answer, as I said the PAN programme investigation I asked it to be

instituted well before the three gentlemen were involved, for the reasons ...[indistinct] they found the investigation going and I asked them to continue and I briefed them on the investigation. There were different, but of course you are correct that my concern this was not supposed to be a deep cover operation it was supposed ...[indistinct] cover operation ...[indistinct]. I was concerned about the budget ballooning, I was concerned because the first person who raised the matter with me was the CFO, the then CFO even
10 before I was still ...[indistinct] just before I got appointed, but he was concerned, the CFO of MIA was concerned about the way of funds which were not accounted and the demand for budget and that this programme was taking the operational budget ...[indistinct] the provinces and other operations, so it was like siphoning the budgets of the Domestic Branch or ...[indistinct].

So that was my concern. We ...[indistinct] at this establishment, yes it was authorised by the Minister, the then Minister, then I then said because this thing is
20 ballooning and there is no accountability of money like the agency do it is all investigation, there were several investigations. Our first one was an audit, the second one was a counter-intelligence operation and the third one which completed in 2013 was what I tasked the Inspector General to do because at that time we were clear that

there was some disciplinary things which needed to be done and ...[indistinct] that there will be criminal charges that may need to be charged.

ADV PRETORIUS SC: Alright, there was an internal audit conducted which raised issues concerning mal-administration and non-compliance with directives, do you recall that?

AMBASSADOR CWELE: Alright.

ADV PRETORIUS SC: And the internal audit has in fact
10 recommended a full and independent forensic audit be conducted.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Right, and pursuant to that internal audit Director Njenje appointed an investigation team during 2010 to investigate maladministration and allegations of financial irregularities, is that correct?

AMBASSADOR CWELE: That was the certain investigation which was the counter-intelligence.

ADV PRETORIUS SC: Right, now we have a summary of
20 that investigation which has now been declassified and it appears at page 754 and following, do you see that?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Now we can go into the text of the summary if you wish but I could put it to you at a high level that this report has not one but many allegations of

criminal activity, you must be aware of this report, it was presented to you apparently.

AMBASSADOR CWELE: I am just trying to see what is the date of the report.

ADV PRETORIUS SC: Okay. I don't think it is there.

CHAIRPERSON: There is no date ...[intervenes]

AMBASSADOR CWELE: But I think there were many update report Mr Pretorius. I start getting all these reports I took a vision because it was clear that we may have to
10 pursue criminal investigation.

ADV PRETORIUS SC: Yes, but just for completeness if you look at page 754, para 1. It reads:

“The purpose of this report is to provide a summary of the findings as contained in the final report of the PAN programme investigation with reference SSA/6/4/5 dated May 2012, that was presented to the Minister of State Security and the Acting Director General on 19 June 2012.”

Do you see that?

20 **AMBASSADOR CWELE:** On page 64?\

CHAIRPERSON: Page 754.

ADV PRETORIUS SC: 754 paragraph 1.

CHAIRPERSON: Using the black numbers on the left hand corner. Have you found it?

AMBASSADOR CWELE: Ja.

CHAIRPERSON: Okay, he is reading from paragraph 1.

AMBASSADOR CWELE: H'm.

CHAIRPERSON: Mr Pretorius maybe it is convenient to take the lunch break now, it is one o'clock so if he wants to refresh his memory he can do that.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Ja, let's do that. Ambassador let's – and Mr Semenya let's take the lunch break, we will resume at two'clock.

10 We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Am I unmuted now?

UNKNOWN: Yes, you are DCJ.

CHAIRPERSON: Okay, alright. Mr Pretorius, Mr Semenya and Ambassador, I hope you were informed privately why I was delayed. Today it looks like a very abnormal day. First of all my Registrar is sick and she could not come here.

20 Then the technical glitches. Then other things that happened outside the Commission which affect the Commission never the less, so but it is okay. Now we can continue. Thank you.

ADV PRETORIUS SC: Ambassador, we were dealing with the summary of the PAN report which appears in bundle

SSA05 at page 754 and following. We dealt with paragraph 1. I would like to refer you to paragraph 2.3 please.

AMBASSADOR CWELE: [indistinct]

CHAIRPERSON: Bundle 5, remember where there was the summary of the PAN report of the findings.

AMBASSADOR CWELE: Page seven hundred and?

CHAIRPERSON: 754. Black numbers, left top corner.

AMBASSADOR CWELE: Ja, I have gone back to it now.

CHAIRPERSON: Okay.

10 **AMBASSADOR CWELE**: Yes. I am just trying, I do not know whether I missed my ...[intervenes]

CHAIRPERSON: That is the report that Mr Pretorius had started asking you questions on just before we adjourned.

AMBASSADOR CWELE: Okay, I think I am ... seven ...[intervenes]

CHAIRPERSON: 754.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Paragraph 2.3.

AMBASSADOR CWELE: Yes.

20 **CHAIRPERSON**: Okay, Mr Pretorius?

ADV PRETORIUS SC: It reads Ambassador as follows:

“During the course of the investigation, the investigators identified numerous incidents of breach of the state security agency’s regulatory framework as well as the irregular

authorisation and utilisation of funds. The result of the investigation indicates that there is sufficient indication to institute criminal investigations against the following persons, as well as against certain persons still unknown ...”

And then there is listed a number of 14 persons. We do not need to mention the names for the present. Do you see that?

10 **AMBASSADOR CWELE**: That is correct.

ADV PRETORIUS SC: The report goes into further detail including the illegal bugging of the work of the internal auditors in the board room at SSA, but if one goes to page, I am going to try and cut this down, but if one goes to page 760 under the head operational project, paragraph 5.3 on page 761 reads:

20 “All indications are that criminal offences in terms of the Prevention and Combating of Corrupt Activities Act 2004 as well as the Public Finance Management Act have been committed.”

Do you see that?

AMBASSADOR CWELE: That is paragraph?

ADV PRETORIUS SC: 5.3 on page 761.

AMBASSADOR CWELE: 761, yes.

ADV PRETORIUS SC: And then paragraph 5.4 refers to a series of incidents and concludes:

“There are strong indications that offences in terms of the Prevention and Combating of Corrupt Activities Act 2004 have been committed.”

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: You see that?

AMBASSADOR CWELE: Ja.

10 **ADV PRETORIUS SC:** And then under paragraph 6, the conclusion in paragraph 6.1 having referred to certain incidents is the following. It reads:

“It is clear that forgery and uttering, fraud and various offences in terms of the Prevention and Combating of Corrupt Activities Act 2004 as well as the Companies Act 2008 have been committed.”

You see that?

AMBASSADOR CWELE: That is correct.

20 **ADV PRETORIUS SC:** Similar comments are made in relation to other circumstances, in paragraph 6.2, 6.3, 6.4. You see that?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Then in paragraph 9.1 ...[intervenes]

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: I do not know whether the problem is on my side only, but you were frozen initially but now I think I have lost connection. Can you hear me or not?

ADV PRETORIUS SC: I can hear you perfectly Chair.

CHAIRPERSON: Oh, okay. [indistinct] will help me here.

ADV PRETORIUS SC: Now you have frozen Chair. Can you hear me Chair?

10 **CHAIRPERSON:** I can hear you yes, it is just that I do not see you. Oh ...[intervenes]

UNKNOWN: The technician is on the way to sort it out DCJ.

CHAIRPERSON: Ja, the technician seems to have sorted it out for now. Can you hear me Mr Pretorius?

ADV PRETORIUS SC: Yes, I can Chair.

CHAIRPERSON: Okay, alright. Let us continue. Maybe start two or three sentences back because you were frozen when you were still speaking.

20 **ADV PRETORIUS SC:** Right, in paragraph 6 there are at least four conclusions in relation to different circumstances along the lines of forgery and uttering, fraud and various offences in terms of the Prevention and Combating of Corrupt Activities Act and other acts having been committed.

I am summarising at a high level Ambassador.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Alright. If I can go then to paragraph 9.1 and I have just extracted by way of example some of the findings in the report. Just to illustrate what you have already clearly conceded Ambassador Cwele, that we had to do here with criminal conduct.

If one goes to paragraph 9.1 there is a section that deals with liaison with law enforcement agencies. 9.1
10 reads:

“During a meeting at OR Tambo airport with the Minister of State Security on 9 November 2010 it was resolved that the CSU matter ...”

That is the matter we are talking about:

“Will be referred to the national prosecuting authority forthwith for a criminal investigation into the alleged irregularities in the PAN program.”

Was that decision made as recorded there?

20 **AMBASSADOR CWELE:** Yes, the decision was preferred to law enforcement agencies.

ADV PRETORIUS SC: Right. Then in paragraph 9.6 after a series of procedural matters had occurred, the following appears:

“On 23 February 2011 the investigation team

met with representatives of the SIU and it was resolved that the SIU will conduct a pre-assessment investigation commencing on 28 February 2011.”

Do you recall that happening?

AMBASSADOR CWELE: Correct.

ADV PRETORIUS SC: A pre-assessment investigation is an investigation conducted to take place before the president to issue a proclamation directing the SIU to
10 continue with its investigations and other work in relation to particular matters, is that correct?

AMBASSADOR CWELE: Yes, I am listening.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: I do not know about the pre-assessment in that context. Let me say why I was pausing. The pre-assessment sir, was explained that after initial investigation, they estimated that there was some amount which was supposed to be paid.

That was my understanding. The primary
20 investigation.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: There were discussions about the amount to be paid. That amount was reduced significantly in the course of time.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Bear with me a moment Chair.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Would you please Ambassador, go to page 786 of Bundle 5. Now these documents are the fruits of investigation that took place over the weekend and this affidavit was only very recently obtained, and I hope it has reached you.

If not, I am going to have to read ...[intervenes]

10 **AMBASSADOR CWELE:** No, I do not have. Mine ends at 783.

ADV PRETORIUS SC: Alright. My apologies. Chair, do you have page 786 in your file? Chair ...[intervenes]

UNKNOWN: It seems the DCJ has been disconnected. Could we please have a moment to sort that out.

ADV PRETORIUS SC: Yes. Ambassador I am informed that it was sent to your attorney at 10H41 this morning. I do not know ...[intervenes]

AMBASSADOR CWELE: I have not received it Chair.

20 **ADV PRETORIUS SC:** I am sorry?

AMBASSADOR CWELE: I have not received it.

ADV PRETORIUS SC: Alright, well I will give you the just of it, because I do not think it is controversial.

AMBASSADOR CWELE: No, I do not have any mail.

ADV PRETORIUS SC: Right.

CHAIRPERSON: Can you hear me?

UNKNOWN: Yes, we can DCJ.

CHAIRPERSON: Okay, thank you. Okay Mr Pretorius, continue. These ...[intervenes]

ADV PRETORIUS SC: Do you have an affidavit of Peter Henry Bishop at page 786? It is Bundle 5.

CHAIRPERSON: That is the same bundle, have you got it ambassador?

AMBASSADOR CWELE: No, mine ends at 783.

10 **CHAIRPERSON:** Oh.

ADV PRETORIUS SC: It was sent this morning. This is a product of an investigation that took place over the weekend. It was sent this morning to the Ambassador's attorney, but I believe has not reached the Ambassador, so ...[intervenes]

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Be that as it may Chair, I can just place we should not be controversial and if there is controversy then we can deal with it but ...[intervenes]

20 **CHAIRPERSON:** Ja, ja.

ADV PRETORIUS SC: But if I could just place the facts attested to by Peter Bishop.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: During March 2011 he says Ambassador, he served as a member of the executive

committee of the Special Investigating Unit and was appointed as the acting project [indistinct] and head of operations.

Do you know that or are you able to comment?

AMBASSADOR CWELE: No, I cannot comment because I do not have anything which says that.

ADV PRETORIUS SC: No, I understand.

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Ja.

10 **ADV PRETORIUS SC:** Paragraph 4 reads:

“On 31 March 2011 I prepared and forwarded an overview to the then head of the national intelligence agency, Mr LG Njenje of the SIU’s business proposal to assist the NIA with a preliminary assessment of alleged irregularities in relation to the Covid support unit’s principle agent network program.”

He then continues to say:

20 “The business proposal came about after several meetings were held in March 2011 between members of NIA and my office. That the meetings NIA requested that the SIU appoint a dedicated capacity to firstly identify, investigate and redress improprieties, including fraud, corruption and

maladministration within NIA's Covid support unit principle agent network program. Two, facilitate the recovery of any losses incurred. Three, facilitate the laying of criminal charges where evidence collected support such improprieties / allegations."

He then continues to say:

10 "The purpose of conducting that pre-assessment once a government agency requests the SIU's assistance, is to establish whether grounds exist to apply for a presidential proclamation for purposes of investigating such alleged irregularities."

Then paragraph 7:

20 "After I had forwarded the overview of the SIU's assessment to Njenje, I received a call from one of the NIA members that had met with me and requested if I could amend the costing. I subsequently discussed this with the then head of the SIU, Mr Willie Hofmeyer who agreed that we reduce the project cost."

That issue you seem to have some knowledge of Ambassador?

AMBASSADOR CWELE: Yes, I did hear about that.

ADV PRETORIUS SC: Yes, then paragraph 8:

“Shortly after I had received ...”

I am going to start again, I am sorry:

“Shortly after I had advised NIA that the SIU would consider reducing the said project costs, I received another phone call from NIA who advised that NIA’s management had advised that the investigation should rather be dealt with by the inspector general of intelligence. The SIU had no further dealings thereafter with the NIA with regards to the PAN investigation.”

10

Does that record of the facts in so far as they are alluded to by Mr Bishop, accord with your own understanding of the situation?

AMBASSADOR CWELE: I think some of them, I know that there was ... I did receive ... like I said, there were many reports and updates I was receiving on this matter. Even this one which you have just read earlier on. That is why I was asking what was the date of it, because there were many reports.

20

Not only that one.

ADV PRETORIUS SC: Ja.

AMBASSADOR CWELE: I am aware that there was approach to NPA, there was approach to police, there was approach to SIU. I remember during one of the

discussions that the issue of the SIU initially was the cost and then I was informed that they were negotiating them down.

I cannot remember what was the finalisation of it. The rest of the statement I cannot comment on.

ADV PRETORIUS SC: Now the essence of what is said in the papers and in the summary to which I have just referred, is that the and in the affidavit of Mr Bishop is that the SIU was a law enforcement agency finally tasked to
10 conduct the investigation and to deal with criminal prosecutions.

That is the first point. That is clear from the documentation. The second point is that it was taken away from them on the instructions of the NIA. That is the SSA.

AMBASSADOR CWELE: I do not know about that.

ADV PRETORIUS SC: Well ...[intervenes]

AMBASSADOR CWELE: You say the instruction came from the top management. I was not in top management.

ADV PRETORIUS SC: No, I understand that.

20 **AMBASSADOR CWELE:** Yes.

ADV PRETORIUS SC: But here I need to put to you how that came about, according to the witnesses. The first issue is that the investigation was taken away from SIU and instead the matter was referred to the office of the inspector general of intelligence.

You know that because you made that referral.

AMBASSADOR CWELE: No, I am aware of the investigation. I directed the investigation that we should also approach the inspector general, not because there was investigation by law enforcement agencies.

ADV PRETORIUS SC: Well, what happened ...[intervenes]

AMBASSADOR CWELE: The issue, the reason ... yes sir. Yes sir. The reason why I asked the inspector general, as I was saying there were several issue. First the reports
10 somehow they were not clear. They were somehow contradicting while they were agreeing on many issues.

As you remember, the second thing was that there was also the issues what do we start with. Other reports were suggesting we start with disciplinary measures so that we can get some of them becoming state witnesses because we needed state witnesses in the case which we did not have.

So there were these type of contradictions. You must also remember that intelligence is not given as
20 evidence in courts. I asked an independent assessment by an independent board, which is inspector general which could assist us also on taking matters forward, while they were reporting to the law enforcement agencies.

I am aware because the inspector general did release the report, I think it was beginning of 2013.

ADV PRETORIUS SC: Ja, let us not confuse the issue with respect Ambassador. The fact is that there were serious allegations of criminality, in an internal report.

AMBASSADOR CWELE: I am saying ...[intervenes]

ADV PRETORIUS SC: We have agreed on that.

AMBASSADOR CWELE: The investigation by the inspector general was not because there was something done by law enforcement agencies. It was to assist ...[intervenes]

10 **ADV PRETORIUS SC:** No ...[intervenes]

AMBASSADOR CWELE: With our own reports which we had. That is all what I am saying.

ADV PRETORIUS SC: Let us take it step by step. The first proposition is that a number of allegations of serious criminality were tabled in an internal investigatory report of the SSA. Is that correct?

AMBASSADOR CWELE: Yes, Mr Bishop. If you remember this report ...[intervenes]

ADV PRETORIUS SC: Mr Pretorius.

20 **AMBASSADOR CWELE:** Started very early. It was started by me. I was [indistinct] of corruption here. I am the one who started this thing when I was appointed. I will come back when I am dealing with my statement on this matter so that you understand clearly.

ADV PRETORIUS SC: Right, okay.

AMBASSADOR CWELE: Even, let me finish. Even the top officials you are relying on, they said the report by the time it was implemented was almost 70% done. There were issues, I am telling you so that you understand what were the challenges.

We did recover a lot of assets even before the three gentlemen were appointed. Not that we were sitting down and just conducting investigation. We stopped funding this program and we tried to get, identify the assets they were
10 having so that we do not lose them.

These were things which were done internally by the SSA, mainly by NIA who were giving me progressive reports on a regular basis and we will have discussion after each and every report on the best way forward on what are the gaps and what needs to be closed.

ADV PRETORIUS SC: Ambassador, the point I was attempting to make was that an internal investigation report which we have just summarised, tabled allegations of serious criminality. Is that correct?

20 **AMBASSADOR CWELE:** That is correct. Many reports were pointing towards criminality.

ADV PRETORIUS SC: The second point that we have established is that the, in the law enforcement agencies were approached and these approaches culminated in a referral to the special investigation unit. Now I am not too

concerned with the sequence of events. You may differ, but the matter came before the special investigation unit.

We have agreed that, have we?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: According to Bishop, the matter was then taken away from them. In fact they had to return all the documentation to the NIA. Can you dispute that?

AMBASSADOR CWELE: I never had any interaction with Mr Bishop. I do not know how can I answer that.

10 **ADV PRETORIUS SC**: Can you dispute it is the question.

AMBASSADOR CWELE: I cannot dispute something I do not know.

ADV PRETORIUS SC: Alright, good.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: The matter was not again referred to any law enforcement agency after it had been removed from the SIU. Would not have gone to the inspector general of the intelligence, but it did not go back to a law enforcement agency.

20 **AMBASSADOR CWELE**: The inspector general issue was not related to the reporting to the law enforcement agencies. That is the duty of an accounting officer, not the minister.

ADV PRETORIUS SC: Alright, so but the proposition I am making to you is that the matter never returned to the law

enforcement agency network. That was the end of it, once it had been taken away from the SIU.

AMBASSADOR CWELE: I am not aware, because I have heard that they were engaging NGA, they were engaging the police, they were engaging the SIU. The last thing I heard about SIU was that the costs were high and they were negotiating to bring the prices down.

ADV PRETORIUS SC: Yes, but I, we have agreed that you cannot dispute that at the stage the matter was removed by
10 the NIA officials from the SIU, we know that. I cannot understand why that creates difficulty for you Ambassador?

AMBASSADOR CWELE: It was not removed by me. You can ask that to the people who removed it. It was not removed by me.

ADV PRETORIUS SC: Ja, well that is where I am coming to Ambassador. The further fact that appears from the evidence that we have obtained is that there have been no criminal prosecutions since then. In fact the PAN report 1 has given rise to no criminal prosecution whatsoever.

20 You do not know that?

AMBASSADOR CWELE: I do not ...[intervenes]

ADV PRETORIUS SC: Well Minister, you were the one keeping a close eye on these matters to the extent that you were instrumental in referring it to the IGI.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: You should have known
...[intervenes]

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: Let me finish please. You should have known that the law enforcement agencies were no longer involved. It had been removed from them and it was never returned to their jurisdiction. You should have known that.

AMBASSADOR CWELE: How would I have known?

10 **ADV PRETORIUS SC:** Because you are a minister.

AMBASSADOR CWELE: No Mr Bishop. I have told you the issue, sorry. No listen.

CHAIRPERSON: Let him finish Mr Pretorius.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Yes, Ambassador?

AMBASSADOR CWELE: I am saying the issue of reporting to law enforcement agencies was not done by me. It was the duty of the accounting officers. I was briefed and I heard that they were discussing with the police, they were
20 discussing with the NPA and they were discussing with the SIU so that they can close the case.

So that was the duty of the accounting officers. Yes, while they were there, I was getting brief on these things, even after the final report I got from the inspector general I did discuss with the management of the agency

which was existing.

That was now in 2013, long before the three gentlemen have left.

ADV PRETORIUS SC: Long after?

AMBASSADOR CWELE: In 2013. You remember I said the final report of inspector general came in 2013.

ADV PRETORIUS SC: 2014?

AMBASSADOR CWELE: 2013.

ADV PRETORIUS SC: Minister, sorry Ambassador Cwele.

10 **AMBASSADOR CWELE:** Yes sir.

ADV PRETORIUS SC: I am not sure that it is a reasonable answer that the decision to refer to a law enforcement agency was not yours. You had a supervisory duty ...[intervenes]

AMBASSADOR CWELE: I supported it.

ADV PRETORIUS SC: Let me finish.

AMBASSADOR CWELE: I supported it.

20 **ADV PRETORIUS SC:** Let me finish please. You had a supervisory duty. You kept a close eye on operations to the extent that you dealt very, very firmly with the failure earlier to obtain the directive of a judge. I simply find it difficult to accept with respect, that you would not have known two things.

One, that the PAN 1 investigatory issues were removed from the SIU and never returned to any law

enforcement agency and two, that no prosecutions were ever conducted, let alone successfully arising out of the PAN 1 investigations.

You must have known.

AMBASSADOR CWELE: Let me help you. I think it was Njenje's statement. Remember, no Makatuka's statement, I cannot remember exactly, but if you go through Makatuka's statement, it clearly said that you heard that it was stopped when he has left himself.

10 Remember, he was the DG. The accounting officer. So now you are blaming me that I did not know that it was stopped. I did not know that it was stopped.

ADV PRETORIUS SC: Well, I have confined ...[intervenes]

AMBASSADOR CWELE: Because some people decided to stop it.

ADV PRETORIUS SC: I find it extraordinary that the Minister of State Security who keeps a close eye on operation management issues, is very concerned about legality. Receives a report with the allegations, most
20 serious allegations contained in PAN 1, recommends himself that it goes to a law enforcement agency.

It is then removed, never returns to a law enforcement agency and there are no prosecutions. You must have known that.

AMBASSADOR CWELE: As I said, there were a lot of

outstanding issues when we took this thing to inspector general. One amongst them was the risk assessment. Risk assessment was just to say what is the likelihood, is there anything which will compromise the agents or national security by going to court so that we prepare ourselves for it, because you know why?

When things go to court, the judges in our experience they were not keen to say anything is going to be secret. We were not going to hide any corruption. All
10 what we wanted was to get a risk assessment so that we know that we have covered everything.

We are not shocked as we move forward. That was the only thing which was outstanding from the SSA. We ...[intervenues]

CHAIRPERSON: Ja, continue Ambassador.

AMBASSADOR CWELE: I said that was one of the things which was outstanding and that is what Mr Njenje was supposed to provide, and the issue of what we start with, we have explained whether we start with disciplinary
20 issues.

We try and get more witnesses from the people who were there, because at some stage some of the reports were saying people are willing to be witnesses, but other reports were saying they are not willing to be witnesses, and that is why we then said let them take it through the

law enforcement agencies and law enforcement agencies will do their own investigation and assist with the way forward.

ADV PRETORIUS SC: Is the purpose of a risk assessment to understand what the consequences of a criminal prosecution would be for state security?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: Alright.

AMBASSADOR CWELE: It was not an issue of criminal
10 prosecution. Remember, we were the one who were concerned that our resources were abused. The issue of risk assessment, when you take things to court even now you were showing me things of names of people who are blocked and so on.

Because in our experience, they were not prepared ... that is why I was saying you cannot take intelligence to court. You can share intelligence with law enforcement agencies. Like crime intelligence. The intelligence is accepted in courts.

20 But if you bring the type of strategic intelligence NIA brings, it always cause a problem, because you do not know what else you are going to compromise in your own operation. That was the risk assessment, not to say we want to prevent the corruption.

To say are there any risk, we should just be aware

of them and put, normally where there are risk, you put mitigation. How are you going to deal with it.

ADV PRETORIUS SC: So a risk assessment and the absence of a risk assessment would not prevent the matter being referred to a law enforcement agency for its investigation?

AMBASSADOR CWELE: I agreed with the matter being referred to law enforcement agencies, I said that.

ADV PRETORIUS SC: So having agreed that the matter
10 should go to a law enforcement agency, in particular this case the SIU, the matter is removed from their jurisdiction and never returns to a law enforcement agency and secondly no prosecutions result at all, despite the investigations and despite the content of the report.

Those I have asked that question several times. You have given what I do not hear as a clear answer.

AMBASSADOR CWELE: My recollection Mr Pretorius, is that after I received the report of the inspector general, I had a meeting with the top management then to say here is
20 the report, then we have to find a way of moving forward with the report.

ADV PRETORIUS SC: Ambassador, but that was in 2014 according to your evidence.

AMBASSADOR CWELE: 2013, it was not 2014. I do not know where you get ...[intervenues]

ADV PRETORIUS SC: I thought I heard that.

AMBASSADOR CWELE: No, I said 2013.

ADV PRETORIUS SC: Let me put to you the evidence of Mr Njenje of which you are now aware Ambassador.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Njenje said that once the matter was still in the hands of the law enforcement agencies, he received a call from you, asking to meet you at OR Tambo international airport.

10 **AMBASSADOR CWELE:** Okay, which document are you referring to?

ADV PRETORIUS SC: I am referring to Exhibit PP3, para 23, at page LN06.

AMBASSADOR CWELE: 23, page?

ADV PRETORIUS SC: LN06.

CHAIRPERSON: L for Lulu, N for Nellie Mr Pretorius?

ADV PRETORIUS SC: I am sure it is LM06.

AMBASSADOR CWELE: Mine says [indistinct].

20 **ADV PRETORIUS SC:** I may have the wrong reference, just bear with me please. I have a profuse apology from across the table Chair. PP2, my apology.

CHAIRPERSON: PP2?

ADV PRETORIUS SC: PP2. LN06.

AMBASSADOR CWELE: Njenje ...[intervenes]

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: LN?

ADV PRETORIUS SC: 06.

AMBASSADOR CWELE: 06, yes.

ADV PRETORIUS SC: The bottom of the page, paragraph 23.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: I am going to read it.

CHAIRPERSON: Before you read it, excuse me ... Mr Pretorius. PP, the bundle is PP and then it is Exhibit PP2.

10 Is that right?

ADV PRETORIUS SC: Yes Chair. It is behind a divider marked 2.

CHAIRPERSON: You know, these pagination arrangements that we had before can be quite, very confusing now that we are used to just a sequential pagination. Sequential ...[intervenes]

ADV PRETORIUS SC: [indistinct] Chair.

CHAIRPERSON: Okay. Did you say LN06?

ADV PRETORIUS SC: Yes Chair.

20 **CHAIRPERSON:** Okay, I am there.

ADV PRETORIUS SC: Right. Paragraph 23, may I put it on record?

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Mr Njenje says the following Ambassador:

“I got a call from Minister Cwele, asking that we meet at OR Tambo international airport. At the meeting, he told me about his meeting with President Zuma, where the latter expressed strong opposition in us taking Arthur Frazer to court. He said there were concerns of national security. I was gobsmacked and all my attempts to something sensible from Minister Cwele drew a blank.”

10 I am reading as it appears:

“He finally said it is the president’s decision. I had the misfortune of having to go to my team of dedicated investigators and convey this decision by the president.”

AMBASSADOR CWELE: That is what he says.

ADV PRETORIUS SC: Yes, and what do you say?

AMBASSADOR CWELE: I say this is not correct. If you check my statement, I am just trying to ...[intervenes]

ADV PRETORIUS SC: You do not mention in your reply,
20 you do not mention the airport meeting at all.

AMBASSADOR CWELE: Okay, just help me. I have got so many replies on this. I will try to find that, but they are all the same.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: I am just trying to get a response

to paragraph ...[intervenes]

ADV PRETORIUS SC: Look at SSA5. 05 page 692 to 693.

AMBASSADOR CWELE: 692, yes. Yes, I hope you have read my statement.

ADV PRETORIUS SC: Yes, yes.

AMBASSADOR CWELE: In paragraph 24. It says, can I read it for you?

CHAIRPERSON: Ja, read it.

AMBASSADOR CWELE: “There were various reports
10 about PAN program. The investigation
suggestion from investigators was that we
follow disciplinary and the court routes as
appropriate for alleged transgressors. The
sequencing of the proceeding was still to be
finalised. The risk assessment report on the
impact on national circulate in relation to
matters that were going to court was still
outstanding. The agency promised to furnish
me with the risk assessment. In my
20 recollection, the final report of the SSA
investigation team was submitted around
November 2012, about a year after Njenje has
left the agency.”

I hope you underlined that:

“There were several contradictions in various

reports of NIA investigation team. At about June 2013 I requested the inspector general to conduct an investigation into PAN program of NIA with specific terms of reference. The investigation was concluded in 2013.”

CHAIRPERSON: Well, Ambassador Mr Pretorius’s proposition or question is do you agree with this version that there was a meeting between you and Mr Njenje at OR Tambo international airport at which meeting according to
10 him, you told him that you had had a meeting with President Zuma where President Zuma had expressed strong opposition to taking Mr Arthur Frazer to court and that you said there were concerns of national security and that you said the president had made a decision which as I understand it, was that that route should not be pursued.

So his request is for your version on this issue.

AMBASSADOR CWELE: No, that is not correct Chair. As far as I could remember, yes we had several meetings at the airport on this matter. Some of the meetings were in
20 my office, others were at the airport. If I remember, in one of the meetings when they were talking and consulting with the law enforcement agency, I did raise the issue where is the risk assessment, because it was the concern because remember we were reporting even to the president.

The president never expressed any concern about

pursuing the matter. He was also saying but we must be careful and do the risk assessment like we have promised in our own report. So that would be my answer Chairperson.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: The timing of the referral to the SIU and its recall from the SIU was in and about March 2011. That is according to the affidavit of Peter Bishop.

AMBASSADOR CWELE: I hear that.

10 **ADV PRETORIUS SC:** You as a minister with supervisory responsibility, had already directed that the matter should go to law enforcement agencies.

AMBASSADOR CWELE: Yes, I agree that we should also involve law enforcement agencies.

ADV PRETORIUS SC: The matter was removed from law enforcement agencies.

AMBASSADOR CWELE: I did not remove any matter from law enforcement agency, I have said that.

20 **ADV PRETORIUS SC:** But it was removed by the head of the NIA or the senior officials with NIA. The question is why? The only rational explanation for that is that they received an instruction from above and that could only have been yourself and the president.

AMBASSADOR CWELE: That is totally incorrect. I will tell you why.

ADV PRETORIUS SC: Let me finish, let me finish.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Allow Mr Pretorius to finish.

AMBASSADOR CWELE: Okay.

ADV PRETORIUS SC: That is the only rational explanation for what we know occurred.

AMBASSADOR CWELE: Okay. That is totally incorrect. Mr Pretorius, I have told you I was not aware of a stoppage of investigation. As I have said, the final report even from
10 the SSA, came in 2012 well after Mr Njenje has left. So in my view there was no stopping of the work they were doing.

That is why I asked you this report they are telling me now, what is the date because I had so many reports. My recollection was that the final report was well after Mr Njenje left. So the notion that the things were stopped is not correct.

ADV PRETORIUS SC: Well, once again Minister Cwele or Ambassador Cwele, according to your evidence you had
20 several meetings with the leadership of the NIA or the SSA. You had a concern about the progress of the consequences of the PAN investigation.

You met at OR Tambo airport, you met at your offices. Having instructed the matter to be taken to the SIU or to law enforcement agencies, are you telling me you

never made a query as to the fate of that process and you never received an answer?

That is extraordinary.

AMBASSADOR CWELE: Ja, that will be extraordinary if I instructed. I agreed with the accounting officer reporting the matter to the law enforcement agencies. Not that I instructed, I supported that very strongly.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: And Minister Cwele, I would like to
10 put one more paragraph to you which appears on SSA05
page 766. This is, I am reverting to the summary once
more.

AMBASSADOR CWELE: Seven?

ADV PRETORIUS SC: 766. SSA05.

AMBASSADOR CWELE: Oh, this is the report with no
date?

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: Okay. 766?

ADV PRETORIUS SC: Yes.

20 **AMBASSADOR CWELE:** Yes.

ADV PRETORIUS SC: It reads:

“During 2011 the investigation team also made
a presentation in regard to the CSU matter ...”

That is the PAN investigation:

“To the Minister of Justice and Constitutional

Development, Minister J Radebe in Cape Town on instruction and in the presence of the Minister of State Security.”

Did you instruct that such a meeting take place and was it held in your presence?

AMBASSADOR CWELE: No, I do not recall instructing the minister, with the Minister of Justice to be honest.

ADV PRETORIUS SC: No, it is an instruction to the investigation team to make a presentation to the Minister
10 of Justice and Constitutional Development.

AMBASSADOR CWELE: No. I do not remember making any instruction.

ADV PRETORIUS SC: Alright, it continues:

“Minister Radebe indicated that he has heard and seen enough and that it is a *prima facie* case that must be dealt with by law enforcement. The minister also indicated that his department will render such assistance as may be required.”

20 Did that occur?

AMBASSADOR CWELE: It might be correct, but I do not recall this meeting from the head.

ADV PRETORIUS SC: If I may just summarise
...[intervenes]

AMBASSADOR CWELE: I cannot give you that.

ADV PRETORIUS SC: Yes, the major summarise then
Ambassador Cwele:

“PAN 1 produced the most serious allegations
of criminal conduct. The matter was referred
to law enforcement agencies, in particular the
SIU. The matter was retrieved from the SIU
and they heard nothing more of it, nor did any
other law enforcement agency. There were no
criminal prosecutions to date that have
emanated from PAN 1.”

And you must have known about that.

AMBASSADOR CWELE: Well, as I said Mr Pretorius, it
will be strange, even the DG said he was not aware that
the matter has been stopped. You were giving an
impression that I was aware. I was not aware. If you read
Makatuka’s statement, he say he was not aware, he only
read it when he, after he has left.

ADV PRETORIUS SC: We are talking about you as the
minister.

20 **AMBASSADOR CWELE:** My understanding, let me finish.
My understanding we were continuing with work. I was
continuing to get briefing until somewhere in 2012, even
after Mr Njenje has left. The team was still working. Did
not stop.

I was not made aware that there is anything which

is stopped by that side on the law enforcement agency. I was not. Even after receiving the final report from the SSA, and the final report from the inspector general, I called the management to continue with the work.

ADV PRETORIUS SC: Now we hear your response, I might just remark that Ambassador Makatuka had left the agency. He found out, it seems rather extraordinary that a hands on minister with great concern who directed the matter to go to the law enforcement agencies in the first place did not
10 know about it.

AMBASSADOR CWELE: Ja, but Mr Makatuka did you read how did he found out?

ADV PRETORIUS SC: My point is that you should have known.

AMBASSADOR CWELE: Yes, if you read that ...[intervenes]

ADV PRETORIUS SC: I do not want to belabour the point, yet again.

AMBASSADOR CWELE: Yes.

20 **ADV PRETORIUS SC:** Chair ...[intervenes]

CHAIRPERSON: Ambassador Cwele.

AMBASSADOR CWELE: Yes Chair.

CHAIRPERSON: Did you mention how Ambassador Makatuka finally find out? Do you want to mention that?

AMBASSADOR CWELE: I must go to my notes now,

because you see, okay. If you go to page 89 of Makatuka
...[intervenes]

ADV PRETORIUS SC: PP3.

AMBASSADOR CWELE: [indistinct]

CHAIRPERSON: Is it Exhibit PP3?

AMBASSADOR CWELE: I think it was, I am just trying to
find out now.

CHAIRPERSON: If you, maybe we might not need to go
and check. If you just read, if you have got the paragraph
10 ...[intervenes]

AMBASSADOR CWELE: I have just wrote summary. I say
in that P002 ...[intervenes]

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Makatuka confirmed that when
they came in the investigation was already well on its way.

CHAIRPERSON: Hm.

AMBASSADOR CWELE: Because I am the one who
started it. He then say on paragraph 9:

20 “Minister Cwele agreed with law enforcement
agencies.”

He then, after 9 it then say:

“He was not aware until Njenje gave evidence
that it was stopped.”

CHAIRPERSON: Okay. That ...[intervenes]

AMBASSADOR CWELE: So I just want to say this things

of strangeness that I did not know, even the accounting officer he was not aware. Until they gave evidence that it was stopped.

CHAIRPERSON: Okay, Mr Pretorius?

ADV PRETORIUS SC: Ambassador, do you dispute that the investigation was stopped?

AMBASSADOR CWELE: I did not stop the investigation. I do not dispute, from what I have read, Mr Njenje stopped the investigation. I was not aware that he stopped the
10 investigation.

ADV PRETORIUS SC: Is it not a matter of concern to you as a former minister that arising out of the PAN investigation, there has been no conclusion of a criminal investigation and no prosecution, is that a matter that concerns you?

AMBASSADOR CWELE: Yes, I left the state security agency early in 2014. I do not know what happened thereafter.

ADV PRETORIUS SC: Is it a matter that concerns you
20 Ambassador?

AMBASSADOR CWELE: It will concern me, but what will console me, Mr Pretorius, is that we stopped the funding of the agency, of that program under my supervision. Two, we recovered most of the assets, whether is it houses, whether is it cars.

We recovered those on behalf of the state, because that was a priority to us, to minimise the risk while we are still trying to deal with issues of evidence either for, for disciplinary case and for criminal cases.

ADV PRETORIUS SC: Ambassador Cwele, I assume you accept the proposition that where there is an allegation of serious criminal conduct involving the abuse of state resources, it should be fully investigated by law enforcement agencies and prosecuted.

10 **AMBASSADOR CWELE:** That is correct.

ADV PRETORIUS SC: Do you accept that proposition?

AMBASSADOR CWELE: I agree, thank you.

ADV PRETORIUS SC: Good. Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I know that the Commission is pressed for time.

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** I have, I would in the ordinary course have dealt with issues regarding the restructuring of SSA and the Ambassador's version in relation to that. I also would have dealt with the allegations made against Mr Shaik, and certain other issues, but those can be dealt with by reference to the evidence, given your own time constraints and given the fact that I have expired or my time has expired.

CHAIRPERSON: Well, how much time do you think that might need?

ADV PRETORIUS SC: Chair, it would need another half hour really but I will just place, I can cut it short by [indistinct] to the Ambassador.

CHAIRPERSON: No, half an hour might still be fine but I think we will just need to adjourn a bit. I need to talk to the evidence leaders who are going to come in later. I think it should be fine. So let us just take a short
10 adjournment, maybe ten minutes and then we will try and finalise properly.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Please bring my pens Letho. Hello is – can you hear me?

REGISTRAR: Yes DCJ.

CHAIRPERSON: Okay all right. We can continue. Mr
20 Pretorius, Mr Semenya, Ambassador I have spoken to the evidence leaders who must come in after we have finished with Mr Cwele – with Ambassador Cwele. Mr Pretorius we can continue – I can let – we can continue for another thirty minutes or so if that will be enough. I just want to make sure that even though we have time constraints the issues

are dealt with properly. So let us continue.

ADV PRETORIUS SC: The principle issues or the appearance of the Ambassador have been dealt with. These are collateral issues but nevertheless I would want to deal very briefly with two of them.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Ambassador we can deal with this very briefly if you care to or are comfortable to do. The amalgamation of the SSA and the various components of the
10 SSA in 2009 took place by way of proclamation, do you agree to that?

AMBASSADOR CWELE: No.

ADV PRETORIUS SC: I am sorry.

AMBASSADOR CWELE: No I do not agree with that.

ADV PRETORIUS SC: What happened in 2000 and – well would you go please to the proclamation of 11 September 2009.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: Which appears in Bundle PP3
20 MM159 right at the end of the bundle.

AMBASSADOR CWELE: Or maybe before I go there I will tell them – let me just say there were proclamations but there was a legislative process to establish the new agencies. That is the point I just wanted to make.

ADV PRETORIUS SC: No but – all right. I think we are

going to have to go the long route.

AMBASSADOR CWELE: Okay let me before you go to the long route may I just – in the last – previous session I referred to a session I want to so that you put it on record where I was speaking about the issue of statement of Maqethuka. I just want so that you have it on record. Remember I said I did not know where it is. It is in Exhibit PP3 just for the record.

CHAIRPERSON: Ja.

10 **AMBASSADOR CWELE**: And if you go to – is written PP3 MM022 and number 89 and 90.

CHAIRPERSON: That is PP?

AMBASSADOR CWELE: That is PP3

CHAIRPERSON: Ja.

AMBASSADOR CWELE: Mr Maqethuka MM022.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: It is among the first bundle. There is a statement by Maqethuka.

20 **ADV PRETORIUS SC**: Do you agree with those statements?

AMBASSADOR CWELE: Yes I just want to take you very quickly. But – in the first statement of Mr Maqethuka which is MM1 he never mentioned the issues of the Pan Program. I just want to put that for record. He was then called for this statement which he made which is the PP3 – his second

statement. And at the beginning he goes on issue where he was asked by the commission to sort of elaborate on issues. It was to canvass on his views on some of the matters. In point number 7 among those things is an issue and 8 is an issue of the Pan Program. That is page 002 for your reference. Now this is his second statement where he is canvassed for views. If you lack 5.7 it goes with the Pan Program and 5.8 the interference. But kindly know that in his first statement he never mentioned anything about this.

10 Let me come to the – the issues on this which I have raised.

ADV PRETORIUS SC: Well just before you go on Ambassador.

AMBASSADOR CWELE: On point 3.

ADV PRETORIUS SC: Are you suggesting that there was anything unsatisfactory or untoward in him making a further statement?

AMBASSADOR CWELE: No I am just saying in his original statement he never mentioned anything about – but he was asked. He say I was canvassed.

20 **ADV PRETORIUS SC:** (Inaudible).

AMBASSADOR CWELE: Yes but let me go to the point I am making. In page 222.

CHAIRPERSON: In the same bundle?

AMBASSADOR CWELE: Yes. It is table 89. .89 in the same – same document.

CHAIRPERSON: 1.

AMBASSADOR CWELE: It is PP3 – PP3 MM022.

CHAIRPERSON: Oh that is page 22.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: Oh I think ...

AMBASSADOR CWELE: If you look at point number 89.

CHAIRPERSON: Hang on, hang on Mr – Ambassador.
When you give the page just say 22. The MM we normally
do not mention it but now when you mentioned it – it
10 confuses me because we normally do not mention it. Just
22 will do.

AMBASSADOR CWELE: Oh my apologies.

CHAIRPERSON: No, no that is fine. Well it looks like for
some reason my bundle does not have pages 17 to 23 but
read

AMBASSADOR CWELE: I can read it.

CHAIRPERSON: Ja read it – ja read it.

AMBASSADOR CWELE: Ja. On the point number 89 he
say – that is Maqethuka.

20 “I wish to stress that by the time we are
brought into the amalgamation of
intelligence services the expenditure on all
Pan Projects had already been suspended.
The investigation has virtually been
complete and criminality has been

established.”

And then he said the matter was referred to Njenje by Njenje to Peter Bishop. It was referred by Njenje. In 00:07:38 he say

10 “In fact Minister Cwele had himself taken a view that the investigators and the legal team headed by Mr so and so has exhausted all avenues of investigation and it – it – that it is now up to the law enforcement agency to act against those implicated.”

“I was unaware 00:08:08 I was unaware until I heard Mr Njenje’s evidence before the commission that is the Director General now that after my departure from SSA he was instructed by Minister Cwele to withdraw the Pan Program.”

1. Remember Mr Njenje left first and Mr Maqethuka left after Mr Njenje. So that is the point I was trying to illustrate in my previous thing when he was – Mr Pretorius say, why
20 were you not aware? Even the accounting officer was not aware. So that is the point I was making. I was just making so that you can have a reference from it because I spoke to it. Then we can come to your questions Mr Pretorius. I hope – I hope I have made my point clear on that.

ADV PRETORIUS SC: Well not entirely Ambassador. Do

you agree with the sentences contained or the sentiments expressed or the views set out in paragraph 89 and 90? Are they correct?

AMBASSADOR CWELE: I will tell you what I agree with.

ADV PRETORIUS SC: Do you agree with them?

AMBASSADOR CWELE: I agree – no I said I agree that most of the investigation have started and they done by the time they arrive. I have said that before. That is what I agree with.

10 2. I agree that I supported the issue of criminal investigation. Yes.

ADV PRETORIUS SC: So what do you not agree with in paragraphs 89 and 90? What is wrong there?

AMBASSADOR CWELE: I (inaudible) agree with them I was pointing to you because you were saying as a Minister I was not aware that investigation was stopped.

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: The point I was raising – I can listen – can I finish?

20 **CHAIRPERSON**: Ja finish.

AMBASSADOR CWELE: Because 00:10:00.

CHAIRPERSON: Ja finish.

AMBASSADOR CWELE: The point I was raising that I was not aware even the accounting officer say he was not aware until Mr Njenje appeared before you. Remember Mr

Maqethuka was the accounting officer.

ADV PRETORIUS SC: Ambassador my proposition was not an argument it was a question. What in paragraphs 89 and 90 do you not agree with?

AMBASSADOR CWELE: I said I told the things I agree with.

ADV PRETORIUS SC: Is there anything you do not agree with.

AMBASSADOR CWELE: In 89 – I may not agree with the
10 language and all those type of things. That is why I am saying I agree that most of the investigation started before that. I put that – I can take you through my statements because I have made statements on these matters.

ADV PRETORIUS SC: I am referring to this statement to which you have drawn our attention Ambassador. Do you agree that criminality had been...

AMBASSADOR CWELE: Do you want me to go to my statement because I have responded to that statement.

CHAIRPERSON: Hang on – hang on. Okay. Mr Pretorius I
20 think to the extent that it is important to establish whether Ambassador is – or agrees with the contents of those paragraphs I think just take them one – sentence by sentence and let us hear if he agrees with each sentence. I think that will be easier. And Ambassador you listen to what he will be reading and indicate if you agree. If you do not

agree with how it is put but you agree with the substance
you can say you agree with the substance but you would
have put it in differently if you want to say that. Because I
think Mr Pretorius wants to be sure whether you are – you
have the same version as the version put in here in regard
to the paragraph. So going to your statement is not going
to help for now. It is not going to help. Later before we
finish if you need to put it to draw attention to how you put
it in your statement that – that will – can be done. But he
10 just wants to know which parts if any in these paragraphs
you take issue with. Mr Pretorius go ahead.

AMBASSADOR CWELE: Maybe before this Chair if you
may.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: As I said yes I can refer you I
have responded to these paragraphs.

CHAIRPERSON: No it is fine.

AMBASSADOR CWELE: In my – on my statement.

CHAIRPERSON: It is fine. Even if you have responded it
20 is oral evidence now.

AMBASSADOR CWELE: Okay.

CHAIRPERSON: So – ja you have got to deal with it orally
for now. Mr Pretorius just go ahead in regard to the
paragraphs in question.

ADV PRETORIUS SC: Thank you Chair. Ambassador

paragraph 89 it is said as follows:

“I wish to stress that by a time we were brought in to amalgamate the intelligence services the expenditure on all Pan Projects had already been suspended.”

Do you agree with that?

AMBASSADOR CWELE: Agree.

ADV PRETORIUS SC: All right. The sentence continues.

10 “The investigation had virtually been completed.”

Do you agree with that?

AMBASSADOR CWELE: Not 100%. That is why I say I will refer most of it has been done but there were still issues. Yes.

ADV PRETORIUS SC:

“Criminality had been established.”

AMBASSADOR CWELE: Criminality was established at some stage yes not in – not into 00:13:43.

ADV PRETORIUS SC:

20 “The matter was then referred by Mr Njenje to Peter Bishop at the special investigating unit.”

AMBASSADOR CWELE: I agree with that.

ADV PRETORIUS SC: Paragraph 90.

“In fact Minister Cwele had himself taken the

view that the investigators and the legal team headed by Advocate Willem Hanekom had exhausted all avenues of investigation and that it was now up to the law enforcement agencies to act against those implicated.”

AMBASSADOR CWELE: I do not fully agree with that. I agree – as I have told you. There were many reports – there were many outstanding issues and I supported the
10 issue of involving the law enforcement agencies.

ADV PRETORIUS SC: Okay.

AMBASSADOR CWELE: Not that everything – not that the investigation was virtually complete. The final report came in 2012.

ADV PRETORIUS SC: All right. And why is it relevant to whether you as a Minister with supervisory duties which you executed in detailed fashion – why is it relevant that Mr Njenje learnt after his departure that something happened after his departure? Why is that relevant?

20 **AMBASSADOR CWELE:** Not Mr Njenje Mr Maqethuka. That is what those statements of Mr Maqethuka.

ADV PRETORIUS SC: Yes. I am sorry let me put it again. Why is it relevant that Ambassador Maqethuka heard that Mr Njenje had received an instruction from you after his departure from the SSA? Why is that relevant?

AMBASSADOR CWELE: It is very relevant. I have said earlier

ADV PRETORIUS SC: Why though?

AMBASSADOR CWELE: It is the duty of the...

CHAIRPERSON: Hang on Mr Pretorius.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: No I was saying to Mr Pretorius he must give you a chance.

AMBASSADOR CWELE: Oh.

10 **CHAIRPERSON**: Yes go – go ahead Ambassador.

AMBASSADOR CWELE: I was saying it is very relevant because it is the duty of the accounting officer to report the criminal case where he is 00:15:56. It is not the duty of the Minister in terms of the PFMA.

ADV PRETORIUS SC: No. No. Ambassador.

AMBASSADOR CWELE: What – you do not allow me to speak – ask me questions.

CHAIRPERSON: Let him finish.

AMBASSADOR CWELE: And you do not even listen.

20 **CHAIRPERSON**: Ja he will let you – he will let you finish Mr – Ambassador. Continue Ambassador.

AMBASSADOR CWELE: The point is relevant then here is an accounting officer. You remember the so called Super GG was the main accounting officer. He say he was not aware that the investigation was stopped.

ADV PRETORIUS SC: No please Ambassador if you would hear my question. I know it is late in China but what is said here is that after his departure from the SSA Mr Njenje was instructed by you to withdraw the Pan 1 Report from the SIU.

AMBASSADOR CWELE: He could not. Mr Njenje left before – before Mr Maqethuka.

CHAIRPERSON: Oh.

AMBASSADOR CWELE: He was the first to leave. It is not
10 probable.

ADV PRETORIUS SC: Well let us – Ambassador let us go slowly because it is clear that we are in a semantic quagmire here. What he says

AMBASSADOR CWELE: Well.

ADV PRETORIUS SC: Let me finish Ambassador. He says

20 “I was unaware until I heard Mr Njenje’s evidence before the commission that after my departure from the SSA he was instructed by Minister Cwele to withdraw the Pan 1 Report from the SIU.”

Do you understand what is being said there? Where is that sheet now. You hear that Ambassador.

CHAIRPERSON: Ambassador can you still hear us? It looks like he is frozen. Ambassador. Ja it looks like he is frozen.

ADV PRETORIUS SC: Well I am going to move on Chair the point is clear.

CHAIRPERSON: Ambassador. Can you hear us now? Okay I think you must unmute yourself. Hello. Can you hear us?

AMBASSADOR CWELE: Ja I can hear you now Chair.

CHAIRPERSON: Oh okay all right. Mr Pretorius.

ADV PRETORIUS SC: Just give me the page. Ja I have moved on but I can go back if – if you like. Paragraph 90
10 second sentence reads Ambassador Cwele.

“I was unaware until I heard Mr Njenje’s evidence before the commission that after my departure from the SSA.”

In other words Ambassador Maqethuka had left.

“He was instructed by Minister Cwele to withdraw the report from the SIU.”

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: So I do not understand why the fact that someone who had left the SSA did not know what had
20 happened is indicative of an explanation why the Minister – the sitting Minister should not know what is going on when these matters were directly under his instruction and supervision. But anyway I have put the question. I do not understand your answers and I am happy to move on.

AMBASSADOR CWELE: No, the answer is clear,

Mr Pretorius. You are refusing to say Mr Njenje left before Mr Maquetuka. Well, he saw.

ADV PRETORIUS SC: Your point is?

AMBASSADOR CWELE: The point is. He, as an accounting officer, he says he was not aware until Mr Maquetuka appeared before your Commission that the investigation was stopped.

ADV PRETORIUS SC: I understand that point.

AMBASSADOR CWELE: Thank you.

10 **ADV PRETORIUS SC:** Nevertheless, it does not explain why – we do not know why he knew, why he did not know, but we do know that you were a Minister seized of those matters directly under your control. You gave instructions to the Law Enforcement Agencies, you gave instructions for the IGI to investigate, and you do not know that it was withdrawn. That is extraordinary, Ambassador.

AMBASSADOR CWELE: It is not. You keep on saying I gave instruction to sent to Law Enforcement Agency. I supported that the matter should be referred to. Because I
20 am not the one who refers the matter to the Law – I did not give instruction. I have dealt with that point.

ADV PRETORIUS SC: Right. I refer to your affidavit in due course. Let us move on, if we may, to ...[intervenes]

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: ...PP-3. Have you got that in front

of you, page 159?

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: This is the proclamation which effected an amendment to the Public Service Act which in effect amalgamated the National Intelligence Agency and the South African Secret Service into the State Security Agency. On your advice ...[indistinct]

AMBASSADOR CWELE: H'm?

ADV PRETORIUS SC: Now, in paragraph 12 of SSA-05,
10 712.

AMBASSADOR CWELE: Paragraph?

CHAIRPERSON: Paragraph 12 of...?

ADV PRETORIUS SC: SSA-05, 712.

CHAIRPERSON: Is that the same bundle?

ADV PRETORIUS SC: No, it is a different bundle, Chair.
We are not going to SSA-05.

CHAIRPERSON: Okay, that is Bundle 5.

ADV PRETORIUS SC: Ja

CHAIRPERSON: And what is the page on Bundle 5?

20 **ADV PRETORIUS SC**: 712.

CHAIRPERSON: Yes? Are you still looking for it, Ambassador?

AMBASSADOR CWELE: Ja, I am just trying. There are just so many files here.

CHAIRPERSON: Ja, well, that is alright. 712 is the page

and it is Bundle 5.

AMBASSADOR CWELE: Bundle 5... 712?

CHAIRPERSON: Ja. Black numbers, top left. Almost there.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: [speaker unclear – distortion in video link] 702 or 712?

CHAIRPERSON: 712.

AMBASSADOR CWELE: Yes, I am there.

10 **CHAIRPERSON**: Okay. Mr Pretorius.

ADV PRETORIUS SC: In paragraph 12 to which I am referring, Ambassador, refers to the very legislative process to which you referred earlier. It reads:

“Mr Maquetuka, having served as the Director General of the department, must know that there is a long and complex process involving many stakeholders which result, ultimately, in a bill that classed by both Houses of Parliament.

20 In summary, a process of amalgamating various structures of Intelligence would include a business case for the suggested change that must be approved by both Ministers of Finance and of Public Service and Administration, drafting of a bill by the

department, certification of the bill by state law advisors(?), consideration of the bill by Cabinet, submission of the bill by Parliament, consideration of the bill by Parliament, and if passed, is signed into law by the President...”

So, that is precisely the legislative process that should have taken place before the proclamation effected the amalgamation.

AMBASSADOR CWELE: Mr Pretorius, I fully agree with
10 the statement up to there. Unfortunately, I do not know who the Minister is who signed there. That is not my signature. But the first starting point you do is to develop a business case and that business case must be approved because we are changing the structure of a department. Must be approved by Minister of Public Service as well as the Minister of Finance.

After you have done that, you notify Parliament just for information. After you have done that, then you start the drafting process of the legislation. Clearly, this
20 proclamation probably followed. Remember, the President after election, he reorganises departments and these things are done by proclamation and not by legislation. The legislation follows because there are these processes which needs to be followed.

You prepare the legislation, you send it for

consultation, you send it to Cabinet, then you send it to Parliament. That is my understanding of the process.

ADV PRETORIUS SC: That is a democratic process as enjoined by the Constitution that must take place before the amalgamation.

AMBASSADOR CWELE: The proclamation is not amalgamation.

ADV PRETORIUS SC: Well ...[intervenes]

AMBASSADOR CWELE: The proclamation will in turn of
10 the organisation of the Department of State. It is done after each and every election.

ADV PRETORIUS SC: No, Ambassador. If you read the proclamation ...[intervenes]

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: ...it affects(?) the amalgamation. The schedule is actually amended by this proclamation not by any subsequent legislation after the democratic procedure that you outlined has been followed.

AMBASSADOR CWELE: It was. It was eventually
20 amended. I told you about the process in that paragraph. That was my understanding.

ADV PRETORIUS SC: No, Ambassador ...[intervenes]

CHAIRPERSON: Let us go to the proclamation. Mr Pretorius, can you find it easily or not?

ADV PRETORIUS SC: Yes, page 159, PP-3 ...[intervenes]

CHAIRPERSON: 159?

ADV PRETORIUS SC: Yes.

ADV PRETORIUS SC: That is dated 2009, Ambassador.

AMBASSADOR CWELE: That is correct.

CHAIRPERSON: I am sorry. That is 159 of... It cannot be of the same bundle because I have got something else at 159.

ADV PRETORIUS SC: Of PP-3, Chair.

CHAIRPERSON: Ja, we were at Bundle 5.

10 **ADV PRETORIUS SC:** No, no, no. Bundle PP-3, Chair.

CHAIRPERSON: Ja, you remember you said let us go to Bundle 5 for that passage that you are reading about the process.

ADV PRETORIUS SC: Yes, it is PP-3.

CHAIRPERSON: Ja, but you did not say so earlier. Sp, that is why I was looking ...[intervenes]

ADV PRETORIUS SC: Apologies, Chair.

CHAIRPERSON: I was looking at the wrong bundle. Okay, I am at PP-3 now. What page again?

20 **ADV PRETORIUS SC:** 159.

CHAIRPERSON: 159. Okay, alright. I am thee.

ADV PRETORIUS SC: That is the proclamation to which we are referring. It amends the Public Service Act, and it is dated 2009.

AMBASSADOR CWELE: My understanding of this

proclamation is that proclamation the President issues, is not issues by me.

ADV PRETORIUS SC: No, that is correct. It says it issued on your ...[intervenes]

AMBASSADOR CWELE: The President, after each and every election, issues a proclamation and asked the Minister of the Public Service to reorganise the department. It happens in each and every election, Mr Pretorius. After each and every election.

10 **ADV PRETORIUS SC:** It is a matter of law and Ambassador we can argue to late today and even later on your part as to its meaning, but that is a matter of law, and the Chair will decide. This proclamation says what it says, and it is dated 2009. That is all I am putting to you.

AMBASSADOR CWELE: What is the date?

ADV PRETORIUS SC: 59 of 2009. Do you see that?

AMBASSADOR CWELE: H'm.

ADV PRETORIUS SC: 4 September 2009 is the date of its signature by the President and the Minister who is the
20 Minister of Public Service and Administration. I must correct something I put to you. It was not on your advice. It was on the advice of the Minister of Public Service and Administration.

AMBASSADOR CWELE: Mr Pretorius, I was in government. I was in government in most of the

departments where I was serving. There were changes. I know that after each and every election, the President will announce which departments he wants, how he wants to reorganise the state. But anyway, it is not my proclamation. Maybe let me just put it like that, but I am aware of that.

And that is a long process which is done by the Minister of Public Service and consulting the relevant department as you change – make changes. Then that is followed after that by a process of legislation, as I have
10 put in my statement.

ADV PRETORIUS SC: Ambassador ...[intervenes]

AMBASSADOR CWELE: And if you say that is a matter of law, I am not a lawyer, but that is my understanding what has been happening in each – after each and every administration when there are changes.

ADV PRETORIUS SC: Ambassador, the Constitution makes it very clear that reorganisation of the State Security Agency can only take place through legislation. It
20 may be so that other departments can be reorganised, but not the SSA. Do you know of that?

AMBASSADOR CWELE: Mr Pretorius, I have said there was a legislative process which was followed. The proclamation was proclaiming which departments are going to be fault(?). That is the wish of the President. It is not a

wish of the minister. I am not involved with that.

ADV PRETORIUS SC: Alright.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: It seems that this is a matter of stamina, Ambassador Cwele. [laughs] I am going to see if I can last it out. In 2009, the proclamation was issued by the President. Under the hand of the President, amalgamating and reorganising the State Security Agency. Do you accept that?

10 **AMBASSADOR CWELE:** I see that.

ADV PRETORIUS SC: Right.

AMBASSADOR CWELE: Yes.

ADV PRETORIUS SC: In 2013, the General Intelligence Laws Amendment Act purported or regularised that change but only in 2013. Do you agree with that?

AMBASSADOR CWELE: It did not accord(?). It, actually, regularised that.

ADV PRETORIUS SC: Well, there is doubt about that.

20 **AMBASSADOR CWELE:** It went through Parliament. It was signed into legislation.

ADV PRETORIUS SC: Let us accept your view on the evidence for the moment. The matter was regularised by the General Intelligence Laws Amendment Act in 2013. Do you accept that?

AMBASSADOR CWELE: I accept it.

ADV PRETORIUS SC: Alright. I do not need to take that any further then. Then, finally, you were at pains to take to task Mr Shaik. Your evidence on affidavit was quite clear that there was an SSA Intelligence report adverse to him and that you invited him to respond to it. So far, I think, we are in agreement.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: You say in your affidavit he failed to do so.

10 **AMBASSADOR CWELE:** That is correct.

ADV PRETORIUS SC: Well, I – we have done some investigation on that, Ambassador. In fact, he did do so.

AMBASSADOR CWELE: Not to me.

ADV PRETORIUS SC: He was, on his version, instructed to make an explanation to Ambassador Maquetuka.

AMBASSADOR CWELE: That is not true.

ADV PRETORIUS SC: I am just looking for the relevant...
If you will just bear with me for a moment, Chair. These documents, again, where it is out of more recent
20 investigations.

CHAIRPERSON: Okay. Which bundle are you using now?
It is still PP-3, mister ...[intervenes]

ADV PRETORIUS SC: We are now back on Bundle SSA-5,
Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: You have Bundle 5, page 768?

AMBASSADOR CWELE: ...six, eight.

CHAIRPERSON: Ja, Bundle 5, page 768.

ADV PRETORIUS SC: Is that SSA-05, 768?

ADV PRETORIUS SC: No, SSA-768.

AMBASSADOR CWELE: Ja, let me open it. Yes, we...
768?

ADV PRETORIUS SC: Yes.

AMBASSADOR CWELE: Yes. Yes.

10 **ADV PRETORIUS SC:** You have that?

AMBASSADOR CWELE: Yes. Is on a matter?

ADV PRETORIUS SC: Yes, it is addressed to
Ambassador Maquetuka.

AMBASSADOR CWELE: Yes?

ADV PRETORIUS SC: It is not marked secret at all, but...

AMBASSADOR CWELE: Is it marked secret?

ADV PRETORIUS SC: No, it is not. I will come to the
secret ...[intervenes]

20 **AMBASSADOR CWELE:** [speaker unclear – distortion in
video link] At the bottom.

ADV PRETORIUS SC: Yes, it is been declassified though.
It reads:

“Report to of the Director of State Security
Agency Foreign Branch... [That is Mr Shaik]
...to the Minister of State Security on his

involvement with the J&J Groups purchase of the ICOP Mobile Satellite System...”

Do you see that?

AMBASSADOR CWELE: I see that.

ADV PRETORIUS SC: He says:

“The above-mentioned heading has reference. Attached, please find the report as requested by the Minister on 12 Jun 2011, and as further specified that this report be forwarded to him through your good office.

10

I trust that you find this in order...”

Do you accept that that letter was sent?

AMBASSADOR CWELE: I see the letter was sent. I do not know what this report of the J&J Group is purchasing. It is not a report that ...[intervenes]

ADV PRETORIUS SC: Well ...[intervenes]

AMBASSADOR CWELE: It is not the report I am referring to.

20

ADV PRETORIUS SC: No, but it is a report that you mentioned. It is a report of Ambassador Shaik, explaining the concerns raised in the SSA report and that report by Ambassador Shaik is at page SSA-05, 769 and following. In other words ...[intervenes]

AMBASSADOR CWELE: It is the first time I am seeing this report. It was never sent to me by Mr Shaik nor

Mr Maquetuka.

ADV PRETORIUS SC: Well, that is ...[intervenes]

AMBASSADOR CWELE: The report... Let me finish. The report I gave Mr Shaik, it was submitted to me by the Director of the Domestic Branch, Mr Njenje earlier that year of 2010. And the report had serious allegations. I do not see that report attached here. It had very serious allegations against Mr Shaik. I gave Mr Shaik the ...[indistinct] of the report. I said: Please respond to me
10 to this, because it is quite serious on you. He promised that he will respond, but there was never any report coming back except for verbal denial.

ADV PRETORIUS SC: Well, this is precisely what I am putting to you, Ambassador. And again, I understand, it is late in the day, especially for you.

AMBASSADOR CWELE: No, I am very fresh. I am very fresh.

CHAIRPERSON: [laughs]

ADV PRETORIUS SC: I put it to you at page 768 of SSA-
20 05 and what is annexed thereto is the very report of Mr Shaik. It was forwarded to Ambassador Maquetuka to be forwarded to you. He cannot help it if it was not done, or you did not receive it. He did it.

CHAIRPERSON: Okay, okay, okay. I think maybe you might be talking at cross purposes. So, as I understand

what Mr Pretorius is saying, Ambassador, and what you are saying. You are saying, you gave Mr Shaik a certain report ...[intervenes]

AMBASSADOR CWELE: Yes.

CHAIRPERSON: ...that contains serious allegations against him.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: And you are saying that this report that Mr Pretorius is referring to, is not that report. Mr Pretorius
10 is saying that this report that start at page 769 is Mr Shaik's response to the report that you gave him which you say contains serious allegation against him. Let me first check. Mr Pretorius, is my understanding of what you are saying correct?

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Yes. Ambassador, that ...[intervenes]

AMBASSADOR CWELE: That is not true. I am just reading this report now, Mr Chair.

CHAIRPERSON: Okay?

20 **AMBASSADOR CWELE**: It is was never sent to me, first of all. To get the seriousness. If you mention – remember, I asked that the report which was given to me by SSA be declassified. I did not speak about his response, that his response must be... Because I never received his response. That report is not here. I do not know which

report is this one.

CHAIRPERSON: Yes. No, but ...[intervenes]

AMBASSADOR CWELE: But I think that there is something about him in this report.

CHAIRPERSON: No, listen, Ambassador. I think you said you have not seen this report before.

AMBASSADOR CWELE: Yes.

CHAIRPERSON: So, you have not read it, I would imagine.

10 **AMBASSADOR CWELE:** Yes.

CHAIRPERSON: So, what Mr Pretorius is saying is that, in effect, Mr Shaik has said he did respond to the report you say you gave him, and he says he sent that report of his response to Mr Maquetuka to pass it on to you. So, I think at this stage, what is important is, that we know whether you ever received this report and maybe you might not be able to say without having read it, whether you received it or not.

AMBASSADOR CWELE: Okay. Mr Chairperson.

20 **CHAIRPERSON:** Ja?

AMBASSADOR CWELE: I have just glanced through this report.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Chair, Mr Shaik alleges in his statement that I asked him to report to the DG on the

report. I never asked that. I asked him to respond to me because it was me who was giving the report. I told him that the report was serious, and I have to report it even to the Head of State because of this nature, but I wanted to give him a chance because it was serious. It was not about the purchase.

CHAIRPERSON: Okay, I think ...[intervenes]

AMBASSADOR CWELE: It was nothing(?) deeper, Mr Chair.

10 **CHAIRPERSON**: I think to – the way to deal with this, Mr Pretorius, because Ambassador Cwele says he has not read it. Let us leave it and give him a chance after the hearing today to read it and then send an affidavit where he will say, one, whether he ever received this report. Two, whether he regards it as a response to the serious allegations that he says were contained in the report that he gave to Mr Shaik but let him read it first after today's hearing and then he can respond. I think that is the best way.

20 **ADV PRETORIUS SC**: If I could just place two matters on record, Chair?

CHAIRPERSON: Ja?

ADV PRETORIUS SC: The first is that there is a full explanation on oath by Mr Shaik. The second is that Mr Shaik's version is that this report of his, that is

Mr Shaik's, in response to the allegations raised against him is a full explanation of all the circumstances, and that he, in fact, did supply the report or intended to supply the report, his explanation, that is, to the then Minister, Ambassador Cwele. We have asked the State Security Agency to provide us with a declassified version of the first report not Mr Shaik's response which we have here of the first report.

AMBASSADOR CWELE: Yes. ...[indistinct]

10 **ADV PRETORIUS SC**: So, my suggestion, with respect Chair, is that we get that declassified.

AMBASSADOR CWELE: That is correct.

ADV PRETORIUS SC: We give that to the Ambassador, together with the response and it can be dealt with on paper.

CHAIRPERSON: Ja, that is fine. Is that fine, Ambassador.

AMBASSADOR CWELE: That is fine with me. We have been asking for that, Mr Chair ...[intervenes]

20 **CHAIRPERSON**: Yes.

AMBASSADOR CWELE: ...since 2019.

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

ADV SEMENYA SC: Chair ...[intervenes]

CHAIRPERSON: Oh, Mr Semenya?

ADV SEMENYA SC: May I ...[intervenes]

CHAIRPERSON: Yes.

ADV SEMENYA SC: [speaker unclear – distortion in video link]

CHAIRPERSON: We kind of forgot about you. [laughs]

ADV SEMENYA SC: I know. I am ...[indistinct] and listening to all of this, Chairperson.

CHAIRPERSON: Yes, yes.

ADV SEMENYA SC: To me, we have written several letters including with the application to cross-examine.

10 **CHAIRPERSON:** Ja.

ADV SEMENYA SC: There is a report implicating Mr Shaik ...[intervenes]

CHAIRPERSON: Ja.

ADV SEMENYA SC: ...which is classified in the possession of ministry. So that report, which is not in front of you, as we speak.

CHAIRPERSON: H'm.

ADV SEMENYA SC: So, to say there is a response to it. It is a non-answer, with respect.

20 **CHAIRPERSON:** Well, as I understand the position. What Mr Pretorius is saying, Mr Semenya, is that I think in one of his affidavits, mister, or Ambassador Cwele alluded to having become aware of certain serious allegations against Mr Shaik. And my understanding ...[intervenes]

ADV SEMENYA SC: Correct.

CHAIRPERSON: And my understanding would be that, ahead of today's hearing, Mr Pretorius would have raised those issues with Mr Shaik and that what Mr Shaik probably has done, is to say to Mr Pretorius: I did respond to those allegations. Here is a document in which I responded. But we do not have the other – the report to which he was responding.

So, the best way is, therefore, to try, as Mr Pretorius suggests, and see that report, a copy of which
10 Ambassador Cwele gave to Mr Shaik can be obtained. And then that report plus this response by Mr Shaik to that report or to the allegations in that document can then be studied by Ambassador Cwele.

And then he can put up an affidavit, where he says: I have read this response. Yes, I agree it is a response to the allegations. Or: No, I do not think it is. And I had not received it before. Or something along those lines. Then we look at what will be in the affidavits. So, that is the suggestion.

20 **ADV SEMENYA SC:** And I go along with the suggestion, Chairperson. The only point we are making.

CHAIRPERSON: Ja?

ADV SEMENYA SC: The contents of that report is that according to Mr Shaik the relationship deterioration between themselves and the Minister at the time was a

major problem.

CHAIRPERSON: Yes.

ADV SEMENYA SC: Then the ...[indistinct] in his affidavit. No, Mr Shaik, our difficult – my difficulties with you related to your conduct with Foreign Services – Intelligence Services. It is that document which you wanted classified, and it is still not at hand.

CHAIRPERSON: Ja.

ADV SEMENYA SC: That ...[indistinct] [speaker unclear –
10 distortion in video link]

CHAIRPERSON: Ja. No, no that is fine. Okay. Mr Pretorius?

ADV PRETORIUS SC: If I may just say? We have asked for that document to be declassified. The SSA have come back to us, saying that their offices are closed, and we have got other explanations, but we are pressing them.

CHAIRPERSON: Ja.

ADV SEMENYA SC: Thank you.

CHAIRPERSON: Okay. Mr Pretorius.

20 **ADV PRETORIUS SC:** I have no further questions, Chair.

CHAIRPERSON: Okay. Mr Semenya, do you have any re-examination?

ADV SEMENYA SC: Yes. Yes, Chair. Can I put some few questions to the witness?

CHAIRPERSON: Yes. Yes, you may do so. Ambassador,

your counsel will ...[intervenes]

ADV SEMENYA SC: Your line is breaking for me, Chair.

CHAIRPERSON: Oh, okay. Can you hear me now?

ADV SEMENYA SC: [No audible reply]

CHAIRPERSON: Can you hear me now, Mr Semenya?

ADV SEMENYA SC: Yes, Chair. Your line is breaking. I do not know if you can hear me?

CHAIRPERSON: I can hear you quite well. I think maybe my ...[intervenes]

10 **ADV SEMENYA SC:** Your line has frozen completely in...

CHAIRPERSON: Oh. The people helping me ...[intervenes]

ADV SEMENYA SC: I cannot hear you at all, Mr Chair.

CHAIRPERSON: Okay.

ADV SEMENYA SC: Yes.

CHAIRPERSON: Can you hear me now?

ADV SEMENYA SC: [No audible reply]

CHAIRPERSON: No? Let me get my staff to help me. They say I am frozen.

20 **ADV SEMENYA SC:** But ...[intervenes]

CHAIRPERSON: Can you hear me now?

ADV SEMENYA SC: Yes, you are frozen.

REGISTRAR: You are audible, DCJ. You are not frozen. We can hear you. I am not sure. The problem might be on Mr Semenya's side.

CHAIRPERSON: Oh. Can you see me, and can you both see me and hear me?

ADV SEMENYA SC: ...once you advice I do.

REGISTRAR: I can see you. I can hear you.

CHAIRPERSON: Mr Semenya?

ADV SEMENYA SC: [speaker unclear – distortion in video link]

CHAIRPERSON: I can hear you quite well. Can you hear me quite well?

10 **ADV SEMENYA SC:** [No audible reply]

CHAIRPERSON: Mr Semenya.

ADV SEMENYA SC: I can. I can. Can I perhaps move ...[indistinct] radio(?), but I will continue on the mic.

CHAIRPERSON: But I can see you well.

ADV SEMENYA SC: Okay. [Indistinct] as well ...[intervenes]

CHAIRPERSON: Yes, I can hear you. I can see you.

ADV SEMENYA SC: Okay, thank you, Chair. Let me proceed.

20 **CHAIRPERSON:** Okay, alright. Okay, Ambassador, your counsel is going to put some questions to you in re-examination. That is just intended to clarify issues where he thinks there is a need for clarification. Mr Semenya.

RE-EXAMINATION BY ADV SEMENYA SC: Yes, Ambassador. As you know ...[intervenes]

AMBASSADOR CWELE: Yes.

ADV SEMENYA SC: As you know, the characters of Messrs Shaik, Njenje and Maquetuka. Are they type of persons who would succumb to a blatant illegally [speaker unclear – distortion in video link] ...from the minister?

AMBASSADOR CWELE: No, not. No.

CHAIRPERSON: Mr Semenya.

ADV SEMENYA SC: Did you hear me?

AMBASSADOR CWELE: I said no, not at all.

10 **CHAIRPERSON:** Did you hear the answer, Mr Semenya?

ADV SEMENYA SC: Okay. If there was ...[indistinct]
[speaker unclear – distortion in video link]

AMBASSADOR CWELE: Yes, I did.

CHAIRPERSON: Okay. It looks like there are some technical glitches. Can you hear, Mr Semenya?

ADV SEMENYA SC: [No audible reply]

REV STEMELA: The problem is with Mr Semenya's line, DCJ. You are clear, but the connection of Mr Semenya is the one that has a problem.

20 **CHAIRPERSON:** Ja.

REV STEMELA: Maybe he should stop the video?

[Background discussions]

CHAIRPERSON: Oh, okay. The – my technician says the problem would be maybe on Mr Semenya's side or the Ambassador's side and not this side, but the Ambassador, I

think, we can hear him. Mr Semenya?

ADV SEMENYA SC: [No audible reply]

CHAIRPERSON: It looks like there is a problem on Mr Semenya's side. Maybe we should adjourn.

ADV PRETORIUS SC: [Indistinct] ...Chair.

CHAIRPERSON: Yes?

ADV PRETORIUS SC: It may not entirely be satisfactory, but Mr Semenya may put his questions to Ambassador Cwele, and we have no objection to them
10 being responded to in writing.

CHAIRPERSON: Yes, I was going to check with him whether he will be fine with that because we have done that sometimes and everybody agrees. But we need to hear him and hear what he has to say.

AMBASSADOR CWELE: May I suggest, Chair?

CHAIRPERSON: Yes?

AMBASSADOR CWELE: I think his video is consuming his data. Maybe if he switch off the video, maybe we can hear him.

20 **CHAIRPERSON:** Well, we do not ...[intervenes]

AMBASSADOR CWELE: Because I can hear everybody.

CHAIRPERSON: Including him?

AMBASSADOR CWELE: Sometimes he breaks. I think his video is one which is consuming the data.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Maybe you could allow him to switch on and speak. Maybe we can hear him better.

CHAIRPERSON: Ja, the only thing is just whether we do not know whether he can hear us now or he does not.

AMBASSADOR CWELE: He did request earlier on to switch off the video.

CHAIRPERSON: Ja, that is on his side. He can switch it off on his side, as long as we can hear him.

AMBASSADOR CWELE: Yes.

10 **ADV SEMENYA SC:** That is right, Chairperson. Now I can hear everyone. Can I proceed?

CHAIRPERSON: Oh, okay, alright. You may proceed, ja.

ADV SEMENYA SC: The next question, Ambassador, was this. If there were instructions of the nature alleged i.e. you stopped an investigation. Would there not be a report filed with the service?

AMBASSADOR CWELE: Maybe there will be a report, but like I said, there was no way, as I know them, that they could be stopped just because some minister said they
20 must stop illegal investigation if it was illegal.

ADV SEMENYA SC: And if there was such a report, it would even state the reasons why that instructions was given, would it not?

AMBASSADOR CWELE: It will. If you instruct people, then you must make it in writing, that report, that you are

making such instruction.

ADV SEMENYA SC: Well, are there such a recordal by any of the three that you were to – they were to stop investigating the Gupta family?

AMBASSADOR CWELE: No, I do not have any record of that.

ADV SEMENYA SC: Was there such a report written>?

AMBASSADOR CWELE: No.

ADV SEMENYA SC: Okay, okay. Now, let us go to the
10 Pen(?) report. Was there any recordal that you gave an instruction for it to be stopped?

AMBASSADOR CWELE: I only saw it now. There was never any report. As I said, the Pen thing continued i.e. after the – Mr Njenje left, the investigation continued.

ADV SEMENYA SC: Ja, you spent some time with Mr Pretorius on this. First, I am going to put it in leading's(?) way and if it is objectionable, Mr Pretorius will take me up. Firstly, it is Mr Njenje who leaves the service. Is that right?

20 **AMBASSADOR CWELE:** That is correct.

ADV SEMENYA SC: And it is Mr Maquetuka who leaves later, right?

AMBASSADOR CWELE: That is correct.

ADV SEMENYA SC: And it is Mr Maquetuka who is the accounting officer in that space. Is that right?

AMBASSADOR CWELE: That is correct.

ADV SEMENYA SC: And if you had instructed Mr Njenje at that time before he left, he would clearly have spoken to Mr Maquetuka about it? Is that correct?

AMBASSADOR CWELE: Definitely. And particularly because they were meeting every Monday.

ADV SEMENYA SC: Yes, and that is why you are surprised – not surprised, when Mr Maquetuka says he hears about this very stoppage(?) for the first time in 2019.

10 **AMBASSADOR CWELE:** That is correct.

ADV SEMENYA SC: Is that not what you are clarifying?

AMBASSADOR CWELE: That is correct.

ADV SEMENYA SC: Okay. Let us go to the next point. Would you be responsible as the Minister of Intelligence Services to stop a law enforcement operatives like those in SIU?

AMBASSADOR CWELE: No, I would not. First of all, I do not instruct them to do the investigation. It were under – I have got no power at all to stop any investigation because
20 those are independent institutions.

ADV SEMENYA SC: Would you have the power to call on the record to be brought back to you as Intelligence Services?

AMBASSADOR CWELE: Not at all.

ADV SEMENYA SC: Would you have any power to stop

criminal prosecutions of those who may have been implicated and subject to criminal prosecution?

AMBASSADOR CWELE: I do not have that power at all.

ADV SEMENYA SC: Okay. And lastly. Are you saying at the production of that intelligence, it got pointing finger at Mr Shaik would help? Even the Commission are judging where the truth lies in respect of these matters?

AMBASSADOR CWELE: That is correct. That is why I have been asking access to that report.

10 **ADV SEMENYA SC**: Yes. Those are the questions I have for the Ambassador, Chair.

CHAIRPERSON: Thank you very much, Mr Semenya. Ambassador?

AMBASSADOR CWELE: Yes, Mr Chair?

CHAIRPERSON: We have come to the end of your evidence. Before I thank you and excuse you and Mr Semenya. Is there anything that you feel you had not had a chance to deal with properly that you want to say before I excuse you?

20 **AMBASSADOR CWELE**: Thank you very much, Chair. Let me first say. I am very grateful to you that at last you gave me the chance to give my own version.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: This matter has been paining me since 2019 when it was first raised with the Commission.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: And since then, I have been writing statement and requesting to question these statements.

CHAIRPERSON: Yes.

AMBASSADOR CWELE: Instead, I was not. Instead, I suffered a lot, Chairperson ...[intervenes]

CHAIRPERSON: H'm.

AMBASSADOR CWELE: ...during that period. I had a
10 sense that whatever responding to, the gentlemen were given a chance, please respond to this. That is why I was raising the sequence of events. The first thing I responded was the statements.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: It was the three statements. And later on, as I said, Mr Maquetuka had three statements. Mr Goshe, two statements.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: So, but that as may be, I am
20 grateful that you have given me this chance because this matter, as much as it is painful, as I have said to you, in matters of Intelligence I can only respond to you at a high level ...[intervenes]

CHAIRPERSON: H'm.

AMBASSADOR CWELE: ...for the reason you know.

CHAIRPERSON: H'm.

AMBASSADOR CWELE: And I have been stating that in my – but I am grateful that you have given us this chance. I am grateful that you said that you are going to look at this document which were troubling me.

CHAIRPERSON: H'm, h'm.

AMBASSADOR CWELE: And the records which I said we should really look into.

CHAIRPERSON: Ja.

10 **AMBASSADOR CWELE:** Because they will speak for themselves.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: What were the... [speaker unclear – distortion in video link] I want to put it, lastly, that as much as they received that report, I still gave Mr Shaik the benefit of the doubt. That is why I took it to him. I asked him to respond to me directly not to anybody else. It was only when he was not giving me the report that I really became concerned. So, I thought I should just bring
20 those issues. I think I have clarified the issue of the meeting in Cape Town, and if you get the transcript of that recording, it will tell a different story.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: ...from what Mr Mo Shaik was saying. It is very important, lastly, Chair, that Mr Mo Shaik

talk about that investigation happened after 2011 events. I insist, that is incorrect. The investigation was happening in 2010. I know this for a fact because the first incident happened in 2010 at the end, you see, of the ruling party in Durban. That conference was in September in 2010. Immediate after that, that is when I called them, not in 2011 as Mr Mo Shaik in his statement is putting.

CHAIRPERSON: Okay.

AMBASSADOR CWELE: ...I really like. That is why we
10 were saying. If we are giving a chance to interact(?) with these people, they are going to expose some of the marginations(?) they were saying in respond to this. I thank you very much, Mr Chairperson.

CHAIRPERSON: Okay, no. Thank you very much, Ambassador. Thank you very much, Mr Semenya. I will now excuse both of you. I will also excuse you, Mr Pretorius because it has been a long day for you as well. And I will adjourn for about ten minutes. And then when we resume, the counsel for Mr Gigaba, Mr Solomon will
20 cross-examine Ms Mngoma. So I will take an adjournment of ten minutes.

AMBASSADOR CWELE: Thank you, Chair.

CHAIRPERSON: We adjourn.

ADV PRETORIUS SC: Thank you. Thank you, Ambassador.

AMBASSADOR CWELE: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Can everybody hear me?

ADV MYBURGH SC: Yes, DCJ.

CHAIRPERSON: Good evening, Mr Myburgh, good evening everybody.

ADV MYBURGH SC: Good evening, Chair.

CHAIRPERSON: Good evening, I think I have taken more
10 minutes than ten minutes. I have to try and get assistance. There are people assisting me who do not normally assist me because my normal registrar, my usual registrar is sick but I believe that I have got the files here. Mr Myburgh, we are going to use Transnet bundle 07A as well as the transcript of Ms Mngoma's evidence.

ADV MYBURGH SC: That is correct, DCJ. We may also be referring to SEQ18 of 2021 which contains Mr Gigaba's affidavit in response to Ms Mngoma's statement.

CHAIRPERSON: Ja, maybe you have your SEQ number
20 wrong because they put this file on my desk and said it is one of the files but when I looked at it, it is not a file relating to Mr Gigaba or Ms Mngoma, it is a file containing and application by Siyangena Technologies and TMM Holdings and Mr Ferreira for leave to cross-examine Mr Clint Oellermann, so there might be a mix-up with the SEQ

numbers.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So I do not have here that one but my registrar might well be able to – my acting registrar today. Registrar, Registrar...? Sonaka? She is supposed to be listening here so she can answer me, so now I think she – I do not know what has happened but maybe if you are – maybe let us adjourn, let me look for it myself because, as I say, both my acting registrar is not operating from the
10 same place as me and my registrar is sick, she is not around, they are the ones who normally know where to find the files so but I can just have a look. The ones that I have, as I say, the Transnet bundle 07A as well as the transcripts that I think I was told was not today, so but the one that is not here is important, I think.

REGISTRAR: Bundle 07A is at file BB24 and 26.

CHAIRPERSON: Okay, let me just – give me about a few seconds, let me try and get them, see if I can get it.

REGISTRAR: I just got back on line, I am trying to get the
20 DCJ's PA to assist to find the correct file.

ADV MYBURGH SC: Sorry, can I just make a suggestion, Sonaka?

REGISTRAR: Yes, counsel?

ADV MYBURGH SC: You remember when we led Ms Mngoma and also Mr Gigaba's evidence, we did so with

reference to a schedule where Ms Mngoma's affidavit is set out on one side and Mr Gigaba's affidavit is set out on another. If the DCJ does not have SEQ18, he may still have the schedule to hand, that might be another way of dealing with this.

CHAIRPERSON: Mr Myburgh, can you hear me?

ADV MYBURGH SC: Yes, I can, Chairperson.

CHAIRPERSON: Okay, it is a difficult day today, it is a different day. Well, I have found it, it transpires that there
10 are two files that share the same SEQ number.

ADV MYBURGH SC: Okay.

CHAIRPERSON: And the person looking for it just got this one and they would not have known more details because they have nothing to do with these files. Okay, alright, we have got it now. So is it three files I am supposed to have?

ADV MYBURGH SC: Yes, bundle 7A and you will be referred to the second part of that, BB26, being Ms Mngoma's exhibit.

20 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: And then SEQ18 of 2021, Mr Gigaba's affidavit and then the other file that you have would contain the transcript of Ms Mngoma's evidence, DCJ.

CHAIRPERSON: But is it three or four files I should have

including the transcript that came today, BB26?

ADV MYBURGH SC: Three.

CHAIRPERSON: Okay, so it is BB26, then it is bundle 7A and then ...[intervenes]

ADV MYBURGH SC: BB26, DCJ, is part of 7A.

CHAIRPERSON: Okay. And then - okay, so that means I have got two so far. SEQ18/2021.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Mr Gigaba's application in respect of –
10 for leave to cross-examine Ms N Gigaba and then Transnet bundle 07A. Which other one am I supposed to have?

ADV MYBURGH SC: As I understand it, what has been delivered to you is a file containing the transcript of Ms Mngoma's evidence.

CHAIRPERSON: Yes, that ...[intervenes]

ADV MYBURGH SC: I think you mentioned just now perhaps it has been marked 26, as long as it has got the transcript in it, DCJ and those were the ...[intervenes]

CHAIRPERSON: It says BB26 on the spine.

20 **ADV MYBURGH SC:** Alright.

CHAIRPERSON: And then it says transcript extracts days relate to 399, 400 and then ...[intervenes]

ADV MYBURGH SC: It seems that has been added to BB26. So you have everything that is needed, I think, Chairperson.

CHAIRPERSON: Okay, alright. Okay, ja, and I see that inside it is a transcript of Ms Mngoma's evidence. Okay, alright. Which one must I start with? Or Mr Solomon would be the one who will be able to tell me, I guess.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay, this evening then we have Ms Mngoma who will be cross-examined by Mr Solomon on behalf of Mr Gigaba. There is an email that I was told you asked that it be given to me, is it something that I could
10 look at later?

ADV MYBURGH SC: Yes, it is, DCJ, it is something we can deal with on another occasion, if necessary.

CHAIRPERSON: Okay, alright. What I do want to mention, while I remember, is that we need to have some finality on whether Mr Solomon wishes to pursue any cross-examination of Mr Craythorne. I am under the impression that there was no firm finality on that. I know he said he would not be pursuing cross-examination against Ms Coetzee but I do not know whether there is
20 something firm now?

ADV MYBURGH SC: Yes, there is, DCJ, in fact that email that I sent you deals with that.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: Mr Solomon is not going to pursue cross-examination in respect of Mr Craythorne or Mr

Bishop, as you know.

CHAIRPERSON: Okay.

ADV MYBURGH SC: The only – and nor Ms Coetzee.

CHAIRPERSON: Yes.

ADV MYBURGH SC: The only application for cross-examination, other than this one, that would be pursued, relates to Ms Msemela and Ms Msemela, you know is incapacitated, I can report back to you on that but that is the only (indistinct – recording distorted) in cross-examination.

CHAIRPERSON: Okay. No, that is alright. Okay, alright, then I guess Mr Solomon, are you ready? Ms Mngoma, are you there?

MS MNGOMA: Yes, Chairperson, I am here.

CHAIRPERSON: Good evening, Ms Mngoma.

MS MNGOMA: Good evening, Chairperson.

CHAIRPERSON: Okay. Good evening everybody.

ADV SOLOMON SC: Good evening, Chair.

CHAIRPERSON: Good evening, Mr Solomon. Ms Mngoma, Mr Solomon, will conduct his cross-examination this evening, the registrar is going to administer the oath or affirmation to you and thereafter Mr Solomon will start. Is that fine?

ADV SOLOMON SC: What is the screen, on the live feed?

CHAIRPERSON: Sorry/

ADV SOLOMON SC: Oh, sorry. Yes, thank you, Chair.

CHAIRPERSON: Ja, Ms Mngoma, are you ready for the oath or affirmation?

MS MNGOMA: Yes, I am ready, Chair.

CHAIRPERSON: Okay, thank you. Thank you for availing yourself once again, Ms Mngoma.

MS MNGOMA: You are welcome.

CHAIRPERSON: Registrar please administer the oath or affirmation then?

10 **REGISTRAR:** Alright. Ms Mngoma, please state your full names for the record?

MS MNGOMA: I am Nomachule Gigaba.

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

MS MNGOMA: No.

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

MS MNGOMA: Yes.

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

NOMACHULE GIGABA: So help me God.

CHAIRPERSON: Yes, thank you. Ms Solomon.

ADV SOLOMON SC: Thank you, Chair. Good evening, Ms

Mngoma.

MS MNGOMA: Good evening, Mr Solomon.

ADV SOLOMON SC: I just want to start off by plotting the history of your involvement with the Commission and the furnishing of your various affidavits. We understand from the affidavit of Mr Masuku that you were approached by the Commission on the 18 December following your eNCA interview the previous day. Do you confirm that?

MS MNGOMA: Yes.

10 **ADV SOLOMON SC**: That is 18 December last year.

MS MNGOMA: Yes.

ADV SOLOMON SC: Then again from the affidavit of Mr Masuku there were face to face-to-face interactions in the presence of your senior counsel, Adv Ngcukaitobi SC, commencing 21 January 2021, is that correct?

MS MNGOMA: Yes.

ADV SOLOMON SC: And that culminated in two affidavits being file on your behalf on the 6 March and we find those in bundle BB26. I think it is 999 to 1027. We will go there
20 in due course. Then just to put to you that Mr Gigaba's affidavit was submitted on the 29 March 2021 and that we find at bundle 18, 01 to 276. Do you accept that?

MS MNGOMA: Yes.

ADV SOLOMON SC: Now on the 26 April this year you were due to – well, before we get to the 26th, you were due

to give evidence on the 13 April and you appeared again on the 26 April. On the 13 April 2021, your legal representative presented a letter on your behalf to the Commission withdrawing your participation from the Commission. We can find that letter in the transcript of the 13 April 2021 at 206. Do you recall the letter that was read out on your behalf?

MS MNGOMA: Yes.

ADV SOLOMON SC: And following upon that letter you
10 were summoned to appear before the Commission on the
26 April 2021, is that correct?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then on that day you appeared
before the Commission and there was another letter which
was read into the record by counsel on your behalf and she
raised various concerns and placed certain facts on record.
What she placed on record is that your withdrawal on the
13 April was because of certain facts that were reflected in
the affidavit were not in your personal knowledge. Do you
20 recall that?

MS MNGOMA: Yes.

ADV SOLOMON SC: And on the 26th you yourself testified
– we can find your testimony at page 301 of your testimony
on the 26 April, you yourself testified that:

“Because I think some of the things when we wrote

them they did not get put in my words and now when Malusi lawyers and himself responded to them, now they are just questioning most of all those errors because they know it did not happen like because in...”

And then it got a bit indistinct. And then you say:

“But we have addressed those issues.”

And you went on to say at lines 18 to 23:

10 “And also, I will be comfortable to answer this question and hence I said I did not come to give my evidence ...[intervenes]

CHAIRPERSON: Sorry, Mr Solomon, there was some noise that came through. Will everybody where they are just make sure that there will not be any people coming in and disturbing the proceedings. Okay, alright, continue, Mr Solomon.

ADV SOLOMON SC: Thank you, Chair, I am just reading from your evidence, Ms Mngoma.

20 **CHAIRPERSON:** Oh, one second, Mr Solomon? Yes, counsel for Ms Mngoma?

ADV QOFA: Chairperson, I just want to request for Mr Solomon to please when he makes reference he should please be clear on the page number so that we can be able to make a proper note. Just so that we do not have to interrupt him, please.

CHAIRPERSON: Yes. No, that is fine but now I remember I did not let you place yourself on record. Do you want to just place yourself on record as representing Ms Mngoma so that the transcript will reflect that she was represented.

ADV QOFA: Indeed, Chairperson, I am representing Ms Gigaba as before, Mpati Qofa, I am sitting in Sandton.

CHAIRPERSON: Ja, okay, alright. Okay, Mr Solomon?

ADV SOLOMON SC: Yes, Chair?

10 **CHAIRPERSON:** Okay, counsel for Ms Mngoma was asking that when you make references, she was asking that you make it clear what pages you are referring to so that they can take notes properly. I am not sure whether it was just that or she was saying you were not audible enough so maybe you can speak up a bit and then when you make references, just make sure that everybody hears.

ADV SOLOMON SC: Thank you, Chair, I will bear that in mind. Chair, it is your evidence of the 26 April 2021 and it is page 301 of the transcripts and I was at line 18 to about
20 25 and you ...[intervenes]

CHAIRPERSON: I am sorry, where does that noise come from? Does anyone know where that noise comes from? There is some noise ...[intervenes]

ADV SOLOMON SC: No, Chair.

CHAIRPERSON: I think it is coming up for the second

time. Well, maybe everybody can just close the offices or rooms where they are so that maybe noise from outside will not interfere with us. Okay, Mr Solomon, continue, you said page 302?

ADV SOLOMON SC: 301, Chair, on the 26 April.

CHAIRPERSON: Okay, alright.

ADV SOLOMON SC: And you said that you did not want to say things because they are written and then one day someone will hold me accountable to say I have said this
10 and I did not say it. Do you recall that?

MS MNGOMA: Yes.

ADV SOLOMON SC: And your counsel also explained to the Commission on the same day, 26 April at page 254 of the transcript that:

20 “Ms Gigaba feels that the affidavit which she is being sought to be led on does not represent what she says so far as to say.... It ought to be placed on record that she effectively says that the majority of that affidavit does not represent that which she says.”

Do you confirm that was said on your instructions by your counsel?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then you complained further, if we go to page 340 of the transcript, of the same day, 26

...[intervenes]

CHAIRPERSON: Just hang on, Mr Solomon. I suspect that there is part of what I should have here which is not here. You have just referred to page 254 of the transcript, is that right?

ADV SOLOMON SC: Yes, Chair.

CHAIRPERSON: Now the file that has got only the transcript is the file that I have got marked BB26 and the transcript that I find there starts at page 257 and I think Mr
10 Myburgh suggested something like that transcript is supposed to be a continuation of bundle – Transnet bundle 07A but when I look at the end of 07A there is not transcript, so that makes me suspect that there is a transcript that I do not have.

ADV MYBURGH SC: If I might just come in here? I am not sure that Mr Solomon's page number is correct because Ms Mngoma's evidence on the 26 April in transcript commences at page 256 where she takes the oath at the foot of the page unless we have printed this out
20 differently and the page numbers are different. But if you have a transcript, DCJ, on 26 April that starts at 257, that is where Ms Mngoma's evidence in fact starts on the transcript that we have and that is on the website.

CHAIRPERSON: yes, I have got that. I do not have 256 but if it is just the oath, that is fine, but I have got from

257 and it reflects that it goes up to 416.

ADV MYBURGH SC: That is correct.

ADV SOLOMON SC: Yes. No, Chair, if I could come in here, it is correct that it goes up to 416. I think what the Commission – the secretariat, whoever guides the filing of these papers, they started at the oath, not where I am starting which is the address by her counsel.

CHAIRPERSON: Yes.

ADV SOLOMON SC: And that is why – and that is where
10 Counsel Qofa had started to speak, it starts quite a bit before – wherever the oath was administered.

CHAIRPERSON: Yes. Does this make you think that all I might not have is just the oath because if that is all that I do not have then it should not be a problem.

ADV MYBURGH SC: DCJ, if I may come in? It seems that what you do not have is the address by Ms Mngoma's counsel but we can get that to you.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Presumably we can – Mr Solomon
20 can perhaps read out the passage again.

CHAIRPERSON: That is fine, he can read out, let us hope it will be fine. Okay, continue, Mr Solomon.

ADV SOLOMON SC: Just for your benefit, Chair, I will just read the passage. It is at the top of page 254, that:

“Ms Gigaba feels that the affidavit which she is

being sought to be led on does not represent what she says so far as to say – and I know that it is not going to be a step-by-step paragraph-by-paragraph evidence here, you know, but it is sought to be placed on record that he effectively says...”

And it says he, I suppose that should be she.

“...that the majority of that affidavit does not represent that which she says and even though she is the ...”

10 The Chair says:

“It is okay, she must be left on that...”

I suppose it should be led.

“...on that affidavit. It should be brought to the attention of the Commission that it is primary what she feels is not heard.”

CHAIRPERSON: Yes.

ADV SOLOMON SC: That was the passage, she has confirmed that that was said by her counsel and she confirms the correctness of this. Then I wanted to take
20 her, Chair, to page 340 of the same bundle. To assist you, Chair, what should I add before the page number?

CHAIRPERSON: Well, let us – I have – my first page is 257 of 416, that is what is written at the bottom of the page.

ADV SOLOMON SC: Yes.

CHAIRPERSON: And it is the transcript of 26 April 2021. That is my first page that has got what was said. It starts with Mr Myburgh saying:

“Yes thank you.”

ADV SOLOMON SC: Yes, no then that is fine, I will describe it as I have been before, it is the evidence of the 26 April and then just go to the page. So I was going to page 340 to 341.

CHAIRPERSON: Oh, I think that is fine, you can continue
10 to describe it like that.

ADV SOLOMON SC: Thank you.

CHAIRPERSON: I have got 341, 342, I think, ja.

ADV SOLOMON SC: 340 to 341. So at the foot of page 340 and then following on to page 341.

CHAIRPERSON: Okay, I have got that.

ADV SOLOMON SC: So this is line 21. Ms Gigaba says or Ms Mngoma says:

20 “But you are making my life so difficult because I so wish you did not mix my words because now I have to select what is my words out of that whole paragraph because all of this is what you know of him. It is the investigation team that you have done.”

And then she says over the page at 341 line 18:

“Because I do not want to agree with the statement

that has nothing to do with me.”

Do you see that, Ms Mngoma? Do you agree with that, that that was said by you on the 26 April?

CHAIRPERSON: Can you hear us, Ms Mngoma? Can you hear us, Ms Mngoma? Her picture has gone out.

ADV SOLOMON SC: Yes on my side as well, Chair.

CHAIRPERSON: Yes. Her picture has gone out so I do not know whether the problem is on our side.

REGISTRAR: (indistinct – recording distorted) says she is
10 there, she is just (indistinct – recording distorted)

CHAIRPERSON: Registrar?

REGISTRAR: She just needs to unmute herself. Yes, Judge?

CHAIRPERSON: Ms Mngoma, I am told you need to unmute yourself. Her picture has gone as well.

ADV QOFA: Chair, I think I have to go and sort out Ms Mngoma’s laptop. I actually think I must swap her to come here.

CHAIRPERSON: Okay, okay, alright.

20 **ADV QOFA**: So that she can – I hope you are hearing me, Chair?

CHAIRPERSON: I can hear you.

ADV QOFA: Yes, I am going to have to swap her to try and bring her here and then I can use her space.

CHAIRPERSON: Her laptop.

ADV QOFA: Yes, yes, yes, Chairperson.

CHAIRPERSON: Okay. Mr Solomon and Mr Myburgh, no objection to that?

ADV SOLOMON SC: No objection, Chair.

CHAIRPERSON: Okay. Okay, can you hear us now, Ms Mngoma?

MS MNGOMA: Yes, I can, Chair.

CHAIRPERSON: Okay, alright. Tell me once you are ready.

10 **MS MNGOMA:** Yes, I am ready but if he can go back to the question he was asking so that I can answer.

CHAIRPERSON: Yes, okay. Mr Solomon, she is ready but if you could back to the question you were asking when she disappeared?

ADV SOLOMON SC: Certainly, Chair. So, Ms Mngoma, what I was saying to you is, I was just putting to you your testimony at page 340 to 341 on the 26 April where you had said you did not want to mix your words because now you have to select what is my words out of that whole
20 paragraph because all of this is what I know of him. It is the investigation that you have done. Do you confirm that was your evidence on that occasion?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then over the page you say:

“Because I do not want to agree with the statement

that has nothing to do with me.”

Confirm that was your testimony?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then at page 409, Chair, line 1 to 4.

CHAIRPERSON: Yes.

ADV SOLOMON SC: Ms Mngoma, you said:

10 “Hence I did not even have time to read and read my affidavit a lot because we were not allowed to be. They said they cannot said this electronically, my affidavit because everything needs to be treated confidential.”

Do you confirm that part of your testimony?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then just going back to what your counsel had argued on your behalf at page 234 Chair which you won't have she says at line 15:

“More importantly you are not a compellable witness.”

20 Do you confirm that that was argued on your behalf by your counsel on that day?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then further your counsel at page 243, line 4 to 13 said as follows about you.

“She expresses her reluctance in this letter not only

on the basis that she feels she is an uncompellable witness but she raises a plethora of issues that she feels have caused her even further discomfort or participating further in the Commission.”

Do you confirm that that was argued on your behalf by your counsel?

MS MNGOMA: Yes.

ADV SOLOMON SC: And furthermore at line – at page 244 line 15 to 18 on the same day, 26th of April your
10 counsel placed on record on your behalf:

“If I have a choice I would rather not be here.”

She said you were not there by choice, do you confirm that?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then in the transcript at page 346 on the 26th of April you stated at line 3:

“I feel like my life was so threatened.”

Do you recall that?

MS MNGOMA: Yes.

20 **ADV SOLOMON SC**: And then at page 347 line 9 to 10 you said I sign it – this is in reference to your affidavit:

“I sign it under pressure, we did not go through it.”

Do you confirm that evidence of yours?

MS MNGOMA: Yes.

ADV SOLOMON SC: Now if we look at your affidavit,

which you signed, which we find exhibit 26, page 1, paragraphs 2 and 3 ...[intervenes]

CHAIRPERSON: I am sorry Mr Solomon what bundle is that?

ADV SOLOMON SC: It is Bundle 26, NGO1.

CHAIRPERSON: That doesn't sound like our references.

ADV SOLOMON SC: Sorry, 07999.

CHAIRPERSON: 999 is the page?

ADV SOLOMON SC: Yes.

10 **ADV MYBURGH SC:** Mr Chairman if I could perhaps help, it is Bundle 7A you will find Exhibit BB26 at the end and Mr Solomon is referring to page 999 which is right at the end of Bundle 7A.

CHAIRPERSON: Okay, alright, Mr Solomon?

ADV SOLOMON SC: Yes Chair.

CHAIRPERSON: The pagination on the top left hand of each page is supposed to be sequential so that if you just tell me what the page is even if you don't tell me what annexure, what exhibit I will find so that it tends to confuse
20 me when there is a reference to something else but you say this one is 999?

ADV SOLOMON SC: 999, thank you Chair then I will just confine myself to the numbers.

CHAIRPERSON: Yes to the numbers.

ADV SOLOMON SC: To the paginated numbers yes.

CHAIRPERSON: Yes, yes.

ADV SOLOMON SC: So now Ms Mngoma can we accepted that the statement in paragraph 2 of that affidavit is – was incorrect. It reads:

“All the facts stated in this affidavit are unless the context indicates otherwise within my personal knowledge they are to the best of my knowledge and belief both true and correct.

MS MNGOMA: Yes.

10 **ADV SOLOMON SC:** Can we assume that statement is incorrect?

MS MNGOMA: Which statement, number 2?

ADV SOLOMON SC: Yes.

MS MNGOMA: It is incorrect.

ADV SOLOMON SC: And then can we also assume the first part of paragraph 3 was incorrect:

20 “I freely and voluntarily give this affidavit to the Judicial Commission of Inquiry into allegations of State Capture, Corruption and Fraud in the public sector including organs of State, the Commission regarding my knowledge about Mr Gigaba’s involvement and activities on matters that fall within the Commission’s terms of reference and areas of investigation.”

Can we also assume that statement is incorrect, based on

what I have just read out to you?

MS MNGOMA: It is correct.

ADV SOLOMON SC: Now ...[intervenes]

CHAIRPERSON: I am sorry Mr Solomon.

ADV SOLOMON SC: Yes Chair.

CHAIRPERSON: She says that is correct. Is it the statement that Mr Solomon makes that he puts to you that is correct or is it what is in the affidavit that is correct, I just want to make sure I understand.

10 **MS MNGOMA:** I thought he was reading number 3 on the affidavit.

CHAIRPERSON: Ja, he was asking you whether what he read which is in the beginning of paragraph 3 of your affidavit, he was asking you whether it is correct that what you say there is not true.

MS MNGOMA: Yes it is not.

CHAIRPERSON: It is not, okay, alright. I just wanted to make sure I understand.

ADV SOLOMON SC: Thank you Chair that is
20 ...[intervenes]

CHAIRPERSON: How far did you read Mr Solomon just so that I know whether it is the whole paragraph that is not true?

ADV SOLOMON: No just the first sentence.

CHAIRPERSON: Oh, just the first sentence, okay.

ADV SOLOMON: Yes.

CHAIRPERSON: Okay, alright, thank you.

ADV SOLOMON: Now if I understand your evidence your version is that this affidavit is not really your statement but is to a large extent one that the Commission wrote on your behalf, which you distance yourself from, is that fair? Comment?

MS MNGOMA: Not ...[indistinct – distortion] some parts of it, then parts of it I agree with.

10 **ADV SOLOMON SC:** Sorry you broke up, I couldn't hear.

MS MNGOMA: Not all of it, some parts of the affidavit.

ADV SOLOMON SC: Okay, and in your clarification affidavit of the 18th May and I will try and give you Chair the correct pagination.

CHAIRPERSON: Ja.

ADV SOLOMON SC: It is 1027.8, if that makes any sense to you Chair.

CHAIRPERSON: It does, I am there.

20 **ADV SOLOMON SC:** Now – and in particular point 10 Chair paragraph 2.5 and you say in that affidavit and you confirmed this statement Ms Mngoma, more specifically the very fact that the affidavit contained information that I had no independent knowledge of and as a result created the discomfort that I had addressed with Pretorius SC, the situation added to the failure to make the necessary

corrections to my affidavit, some of which were material.

Do you confirm that?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then you go on to say in paragraph 4, Chair at point 11:

10 “In submitting this affidavit I should not be understood to have waived any of my legal rights which are expressly reserved. I confirm that some of the concerns expressed therein were also raised by me during my oral testimony and partly addressed by the Chairperson.”

You confirm that?

MS MNGOMA: Yes.

ADV SOLOMON SC: Now you say in your ...[intervenes]

CHAIRPERSON: Ms Mngoma, just speak up Ms Mngoma.

MS MNGOMA: Okay, sorry Chair.

CHAIRPERSON: Yes the last two answers were quite soft so if you can just speak up when you respond.

MS MNGOMA: Okay sir I will do that.

20 **CHAIRPERSON**: Okay, right, Mr Solomon?

ADV SOLOMON SC: And you are saying in that affidavit that you wanted to provide context to distinguish between information allegedly being common cause or public knowledge, which is not in your personal knowledge but was instead provided by the Commission through its

investigators, and that we see at paragraph 2.3 at 1027.9, is that correct?

CHAIRPERSON: I am sorry, where, what page?

ADV SOLOMON SC: Point 9 Chair, 2.3 of the supplementary affidavit or clarifying affidavit.

CHAIRPERSON: 2.9 you say?

ADV SOLOMON SC: 1027.9 at 2.3 yes.

CHAIRPERSON: Oh okay, I see it okay, alright, thank you.

10 **ADV SOLOMON SC:** Do you confirm that Ms Mngoma?

MS MNGOMA: Yes I do.

ADV SOLOMON SC: And you furthermore say in the transcript of 20th of May, which we find at 162 the line about 20 Chair, so it's the 20th of May transcript ...[intervenes]

CHAIRPERSON: What – 20th May?

ADV SOLOMON SC: 20 May page 162 of 269.

CHAIRPERSON: 162 okay I've got it.

20 **ADV SOLOMON SC:** Thank you Chair. You say Ms Mngoma that the result of this is that concerns I originally raised with Pretorius SC were not known to Myburgh SC to my detriment. Even when similar concerns were raised with Myburgh SC they were not dealt with, hence my continued concern with some parts of the affidavit. Is that – do you confirm that evidence?

MS MNGOMA: Mr Solomon can you please give us a second we are trying to find that file, because I have so many files in front of me and I am trying to page where you are going, so if you can give me a second.

ADV SOLOMON SC: Certainly. Do you want the reference again?

MS MNGOMA: Yes please.

ADV SOLOMON SC: It is the 20th of May transcript page 162 line 20 and over the page, page 163 up to line 3.

10 **MS MNGOMA:** I've got it.

ADV SOLOMON SC: Do you confirm that evidence that I just read out.

MS MNGOMA: Yes sir.

ADV SOLOMON SC: Now if we could just look at your affidavit again, I just wanted to enquire the headings this is 999 again Chair, do you have it Ms Mngoma?

CHAIRPERSON: Okay, you need to say Bundle, to mention the bundles to make it easier Mr Solomon.

20 **ADV SOLOMON SC:** I think it is Bundle 7A, BB
...[intervenes]

CHAIRPERSON: Yes and then page 229?

ADV SOLOMON SC: Yes.

CHAIRPERSON: Ja, if you just say Bundle 7A and then you give a page that will do.

ADV SOLOMON SC: Thank you Chair.

CHAIRPERSON: 2.9, yes that's where her affidavit starts, is that right?

ADV SOLOMON SC: Yes, I just wanted to ask you there if you go to, Ms Mngoma you go to page – for example 1006, these headings and the other headings that we find who – where did these headings come from, for example prime knowledge of appointments in State Owned Enterprises and then tensions rising, all these various headings that we find, did you put up those headings, where did those
10 headings come from?

MS MNGOMA: They didn't come from me.

ADV SOLOMON SC: I beg your pardon?

MS MNGOMA: They didn't come from me.

ADV SOLOMON SC: They didn't come from you. Now if I could just take you to Mr Masuku's affidavit which you find Chair Bundle 7, 1027.23.

CHAIRPERSON: Okay Bundle 7A and page?

ADV SOLOMON SC: 1027.23.

CHAIRPERSON: 27 – okay just start again for me.

20 **ADV SOLOMON SC:** 1027.23.

CHAIRPERSON: 1027.23?

ADV SOLOMON SC: Yes.

CHAIRPERSON: Okay ja, that does make sense. Yes I am there.

ADV SOLOMON SC: Are you there Ms Mngoma?

MS MNGOMA: Yes.

ADV SOLOMON SC: Now if we look at the affidavit he – I put to you earlier on what he'd said about interactions, this we find at point 24.

CHAIRPERSON: That is 1027.24?

ADV SOLOMON SC: Yes, I will just say point 24 or point 25 because this affidavit is not a lengthy affidavit, it goes up to point 27.

CHAIRPERSON: It might confuse because it is part of the
10 bundle, it is better to call the whole number.

ADV SOLOMON SC: Okay, I will get the whole number, so it is 1027.24 and I just wanted to direct your attention Ms Mngoma to paragraph 7 where the deponent, Mr Masuku, says that since 21 January – part of this I put to you just at the beginning:

20 “Since January 2021 the Commission has had several meetings with Ms Mngoma which took place at all times in the presence of Advocate Ncutobi until about mid-March 20201 following which Ms Duwale Makatini, Ms Mngoma’s new legal representative was introduced to the Commission in whose presence further consultations took place.”

Do you confirm the correctness of that statement?

MS MNGOMA: Yes.

ADV SOLOMON SC: And then paragraph 8:

“The process of drafting Ms Mngoma’s main affidavit emanated from her meetings with the Commission, the development of her main affidavit to final draft was through a process engaged with her through her counsel, Advocate Ncutobi.”

Do you agree with that statement?

MS MNGOMA: No.

ADV SOLOMON SC: You don’t, okay. Then”

10 :the final drafts of Ms Mngoma’s main affidavit were provided to Advocate Ncutobi in an electronic copy form for finalising with his client, Ms Mngoma.”

Do you agree with that?

MS MNGOMA: No, for my ...[indistinct] it was not in electronic form, Mr Sakhile brought the USB to the chambers.

ADV SOLOMON SC: You are breaking up very badly, I can’t hear – I couldn’t hear that response, I don’t know if you could Chair.

CHAIRPERSON: I heard bits, just repeat it Ms Mngoma.

20 **MS MNGOMA:** Can you hear me now?

CHAIRPERSON: Yes. Mr Solomon can you hear her?

ADV SOLOMON SC: I can Chair.

CHAIRPERSON: Okay, just give that answer again.

MS MNGOMA: According to ...[indistinct] what I remember Mr Sakhile Masuku brought the USB and it was in an

envelope clipped and he gave it to ...[indistinct] of his office. When that happened then he said I must ask the PA to print it out, and the PA refused to print it out for the same of confidentiality. So then I told Mr Masuku then he must come and collect the USB so that he can print it and give me the hard copy, because to me he said he was allowed to send the affidavit electronic, electronical.

ADV SOLOMON SC: He goes on to say his role was to deliver the electronic copies of the affidavit to your
10 counsel, the last version of which he delivered to his residence on 25 February 2021.

MS MNGOMA: So I was not at his residence.

ADV SOLOMON SC: Then paragraph 12 he says:

“Since the Commission’s receipt of Ms Mngoma’s main affidavit on 6 March one consultation was held on 20 March 2021 with Ms Mngoma in the presence of Advocate Ncutobi specifically to address her concerns about the leak of her one main affidavit which deals with her evidence to the media and to
20 address any security concerns which is dealt with below.”

And he goes on to say:

“At no stage during the meeting did Ms Mngoma raise issue with the veracity of the contents of her main affidavit that was leaked which she now takes

issue with. She first raised issue about the contents of such affidavit at ...[indistinct] consultation held on 8 April 2021 after Advocate Ncutobi's brief was terminated. Her meeting was held in the presence of her legal representative Ms Duwale Makatini."

MS MNGOMA: That is not true.

ADV SOLOMON SC: What do you disagree with?

MS MNGOMA: In the meeting so when I received the call
10 from the media I called Advocate Thembeke, I told him that I received a call from the media and I told him that I was very impressed by that because the Commission assured me that my affidavits would be kept confidential and then Thembeke said to me call Advocate Pretorius and then he came back to me and he said we need to have a meeting, I think it was on a Saturday, but I might be mistaken, so they said we have to meet on a date to discuss that. So we met in the afternoon on the day we were discussing the leak of my affidavit which when we were discussing that they
20 assured me that it was not leaked by the Commission and also even Advocate Thembeke was not impressed by how my affidavit was leaked to the media and then he told me Advocate Pretorius he told us that he then called I think it was the Sunday Times to drop the story, so that they mustn't publish the story because I need to adhere to the

Commission ...[indistinct] which the story was dropped, that's why it was not written but we had a discussion about it, and also the others issues that were raised in that meeting which was the security and they said they will talk to the head of their security to address on those and I was waiting for their call and they didn't call.

ADV SOLOMON SC: What were those issues?

MS MNGOMA: The issue it was about my security concerns because I told Sakhile then he said when I called
10 him I told him that I am receiving threats so many private numbers, someone just told me that I mustn't go to the Commission and this someone kept on calling me every day then he said he spoke to the Commission, the Commission said I must make a screenshot as the proof of those calls, which I did, then he said I must send them to him via telegram, which I did send the screenshots via telegram.

ADV SOLOMON SC: I want you to focus on the statement that he makes the second sentence that you did not at any
20 stage during that meeting, and you are correct the 20th of March 2021 was a Saturday, you didn't at any stage during that meeting raise any difficulties with the veracity of the – or the contents of your affidavit in the respects that you now take issue with.

So what he is saying is that you had the opportunity

there to raise concerns with the affidavit, you didn't raise any concerns, you raised concerns about the leaks, you say you also raised some security concerns, which I am not sure if he deals with here, but it doesn't matter, I am focusing on his averment that you didn't raise any concerns or take issue with the veracity of the contents of your affidavit that you now – or when I say now, that you started to take issue with as we have described in your previous evidence and in your supplementary and clarifying
10 affidavit. Do you agree with that statement of his, you don't raise any difficulties with your affidavit and the veracity of the contents?

MS MNGOMA: I don't agree with that ...[indistinct – distortion] this thing was not about ...[indistinct – distortion] it was a short meeting that was arranged for us to deal with the leak because it was on a Saturday, the story was going to be published on Sunday, so it has got nothing to do with the affidavit.

Before that meeting we already raised concerns
20 about the affidavits.

ADV SOLOMON SC: So is he not telling the truth when he says this?

MS MNGOMA: He is not.

ADV SOLOMON SC: And when he says that the first time that issues were raised was on the 8th of April 2021, after

Thembeke Ncutobi's brief was terminated?

MS MNGOMA: No, there were times where myself and Thembeke we were there, and I remember Thembeke was asking about certain things because especially about the dates Thembeke asked them to correct the dates and they said they will correct the dates. I even said to them I want – because I don't have the list of the travels, when was it, so can I just get maybe someone from Home Affairs who will tell me it is either Malusi's PA when did you travel
10 because I don't know remember the dates, so we didn't finalise when the dates were because I told him that I was not talking about those things and I also I raised on the meeting that I don't want to take that Malusi's sister, the position, because I knew that ...[indistinct] was working at Transnet but I didn't know her position and I raised that in the meeting.

So when we finalised the meeting they said all those would be corrected, so every time when we meet those things were not corrected but they were aware about
20 those things.

ADV SOLOMON SC: Why would Sekele Masuku lie about this ...[intervenens]

CHAIRPERSON: I am sorry, I am sorry Mr Solomon. Ms Mngoma can I take you back to your answer to the question immediately before this one that you have just answered, I

just want to make sure I understand your evidence correctly. Mr Solomon asked you whether you agree with what Mr Masuku says, namely that at that meeting, which I think you say was for discussing the leak of your affidavit he says that you had the opportunity of raising your concerns about the affidavit on that occasion in that meeting but you did not, but as I understand you is the position that you say you did raise concerns relating to the affidavit in that meeting and therefore if he says you did
10 not raise them that is not true or are you saying he is right to say you did not raise them at that meeting but there is a reason why you did not raise them, and that reason is that the meeting had been called for to discuss leaks, not to discuss corrections to the affidavit. Are you saying any of the things that I mentioned?

MS MNGOMA: What I am saying I didn't raise the concerns about the affidavits because the meeting it was not about the affidavit. The meeting, it was a meeting that came randomly that we had to rush and to deal with the
20 leak because the story was going to be published. So what we were talking about we were talking about the leak and I was telling them how –I think I told them how I disappointed I was and I thought it was the Commission who leaked and they wanted to know why I thought it is the Commission who leaked it, then I made an ...[indistinct –

distortion] why I thought it was the Commission that leaked my affidavit.

So we were not talking about the concerns of the affidavit, we were talking about the affidavit, how it was leaked so that's what we were talking about.

CHAIRPERSON: Okay, alright, Mr Solomon continue.

ADV SOLOMON SC: Thank you Chair but then why you say the content of his affidavit is incorrect in that paragraph, why did you say it is not true?

10 **MS MNGOMA:** Because if he said I had opportunity to talk about the affidavit because they have already raised that on the previous meetings the meeting was not about the whole affidavit because we were not talking about the whole affidavit. So we were talking about why the affidavit was leaked, that is what we were talking about.

ADV SOLOMON SC: When was it raised which previous meeting?

MS MNGOMA: The previous meetings we had.

20 **ADV SOLOMON SC:** Well he says there was – there were meetings between the 21st right up until the 6th of March and thereafter but I am focusing on the 6th of March because that's when the affidavits were deposed to, so were these raised with them prior to the 6th of March?

MS MNGOMA: Yes, you know what was happening every time we were meeting then they will discuss the affidavit

would just ...[indistinct] develop, we were developing the affidavit, meaning we go back to what we talked about at the time and what is happening and then I will raise something because they were coming with the affidavit already written and they will say some of the things and I will say no I don't want it this way and then they would say we will take a note, we will correct that, so when the next meeting when that comes we will correct, and that was my problem with it.

10 So he was there, they will keep on saying they will correct it, that was my problem with it, so it was then we keep on saying they will correct it and they didn't correct it.

ADV SOLOMON SC: And why do you think they wanted to do that, did they want to just present a distorted picture of your evidence to the Commission.

MS MNGOMA: I won't say that happened.

ADV SOLOMON SC: Why did you sign the affidavit if you knew it didn't contain what you considered to be truthful
20 and correct?

MS MNGOMA: Well I didn't know what exactly ...[indistinct] because the way it came, so when the affidavit came it came with Thembeke, then Thembeke said to me because on the day Thembeke called me he said there was another witness, I don't know ...[indistinct] or he

was maybe short or something and then he doesn't want to take the affidavit, can you send the affidavit quickly and he is going to go and drop it off quickly, he doesn't want to keep it, then I said I don't want to keep it either because there were people who ...[indistinct] the media wanted it, so when we were signing it we signed it quickly then he took it and he dropped it off so all of us we didn't read it.

ADV SOLOMON SC: So when you signed it you knew, and you took the oath you knew that it was not true and
10 correct, but you signed it nonetheless.

MS MNGOMA: I was not ...[indistinct – distortion] maybe he read it.

ADV SOLOMON SC: Sorry you are breaking up, I didn't get that.

MS MNGOMA: I was not sure but I trusted him that he read it.

ADV SOLOMON: That who had read it?

MS MNGOMA: I thought Thembeke did.

ADV SOLOMON: So you relied on him reading it, you
20 didn't read what you signed?

MS MNGOMA: No.

ADV SOLOMON: So then it can't be your affidavit because normally when one deposes to an affidavit and takes an oath that the content is true and correct to the best of your knowledge and belief that oath was a false oath because

you hadn't read it, someone else had read it, is that correct?

MS MNGOMA: Yes on the day I didn't read it.

ADV SOLOMON: Okay ...[intervenes]

CHAIRPERSON: Sorry Mr Solomon, you didn't read it at all?

ADV SOLOMON: There were times where during meetings and then myself and Thembeke will go through what it was done at the Commission ...[indistinct] but when the final
10 affidavit was done the whole thing was just drafted together when Thembeke came with it on that day we signed it and because Thembeke was scaring myself I was scared because there were threats on the day on myself and also we heard that someone was shot, so Thembeke said he doesn't want to keep the affidavit, let's sign it quickly, he wanted to drop it, because he didn't even want to sit down, and also myself I said because a lot of people wants this affidavit because I was getting threats and then we decided to sign it and then Thembeke went to drop it
20 off.

ADV SOLOMON SC: And if you go to page – I think it is – Chair just bear with me, I think it is 7A, Bundle 7A 1016, is it 7A to you because mine just says 7.

CHAIRPERSON: 7A.

ADV SOLOMON SC: 7A?

CHAIRPERSON: 7A ja, and the page?

ADV SOLOMON SC: 1016.

CHAIRPERSON: 1016.

ADV SOLOMON SC: And do you have that Ms Mngoma, it is your affidavit, the last page.

MS MNGOMA: Just give me a second. Can you please repeat the page number again?

ADV SOLOMON SC: 1016, bundle 7A.

MS MNGOMA: Yes, I've got it.

10 **CHAIRPERSON:** Can I just ask everybody please to hang on, my heater here is not warming up and I am feeling cold, I just want to get a jersey, so everybody could just wait for two minutes.

ADV SOLOMON SC: We don't want anything to happen to you Chair, I think the whole nation has got a vested interest in your wellbeing.

CHAIRPERSON: [laughing] just two seconds.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON:** Okay I cannot see you. Okay all right. Okay I am back.

ADV SOLOMON SC: Thank you Chair.

CHAIRPERSON: Can everyone – okay thank you.

ADV SOLOMON SC: So Ms Mngoma I was taking you to page 1016 and

MS MNGOMA: I am there.

ADV SOLOMON SC: And you see there is a declaration that the deponent who is you acknowledge that you knew and understood the contents of the affidavit that it is true to the best of your knowledge and belief and you had no objection to taking a prescribed oath. Did you do all those things and say those things?

MS MNGOMA: No I did not – we are – they asked me to sign the page.

10 **ADV SOLOMON SC:** I beg your pardon.

MS MNGOMA: We did not – I just signed at the end.

ADV SOLOMON SC: Was no oath administered to you?

MS MNGOMA: No.

ADV SOLOMON SC: And this Mr Mablanga – Maglanga attorney of Madlanga Partners and Attorneys he did not – whose stamp appears there and whose signature appears there he did not administer any oath to you? Is that right?

MS MNGOMA: No.

ADV SOLOMON SC: Okay.

20 **CHAIRPERSON:** Are you – are you sure about that Ms Mngoma because it is quite something serious. An attorney or any Commissioner of Oaths before he signs an affidavit below that Commissioner of Oaths certificate is supposed to administer an oath and make sure that what he or she writes there which – part of which Mr Solomon has read is

what you are saying namely that you acknowledge that you know and understand the contents of the affidavit and it says here and that it is the truth to the best of your knowledge and belief and that you have no objection to taking the prescribed oath. So it would be quite something serious if a Commissioner of Oaths particularly an attorney did not administer an oath but signed a certificate that said you took an oath before him or her. Are you sure that he did not administer an oath to you?

10 **MS MNGOMA**: The only oath I took that I remember is the first one I took at the commission.

CHAIRPERSON: Hm. Okay all right. Mr Solomon.

ADV SOLOMON SC: Thank you. Thank you. Thank you Chair. Now I want to just put to you that according to the affidavit I have read you the passage of Mr Masuku the only time you started to raise any concerns about your affidavit is after Mr Gigaba had filed his affidavit on the 29th of March 2021. So that the first time you raised any concerns according to Mr Masuku was on the 8th of April. Do you
20 disagree with that statement?

MS MNGOMA: I disagree with that.

ADV SOLOMON SC: Now will you agree with me that a considerable amount of time both in your evidence as led by Mr Myburgh and even now with my cross-examination has been spent on trying to understand what is your version and

what is not your version before the commission. Would you – let us leave my cross-examination out of account now. But you have given evidence over I think three days well over ten hours of evidence and many hours have been spent in fact I think the last day that was – that was the 21st of May I do not quite recall if that was the last day. My junior is telling me it was I mean almost the entire session on the 21st was devoted to trying to understand what your version was and what your version was not. Would you agree with me that a lot of time has been spent on the part of the commission trying to distil what you say is your version and what you say is not your version. Would you agree with that statement of mine?

MS MNGOMA: Yes.

ADV SOLOMON SC: Did you say yes I could not hear.

MS MNGOMA: I said yes.

ADV SOLOMON SC: Okay. Now we – we know that in your transcript on the 20th May page 156 to 157 – 20 May Chair 156 to 157 it is of 269.

20 **CHAIRPERSON:** Yes I have got it.

ADV SOLOMON SC: The Chair – the Chair put to you it is line 18 – ja but those corrections are not catered for in the supplementary affidavit. No, no we missed them for something stated here. I think we printed the final version. Somebody just did not – I think that should be pick that up.

Okay you can point them out and so on. So now even your supplementary affidavit I want to put to you we can explore it a bit later but even your supplementary affidavit – even that did not get your version right. Is that correct Ms Mngoma?

CHAIRPERSON: Ms Mngoma did you hear?

MS MNGOMA: I just want to find it quickly. I want to get the question properly. Can you please repeat.

CHAIRPERSON: Okay. Please repeat the question Mr
10 Solomon.

ADV SOLOMON SC: What I am saying to you Ms Mngoma is I – did you – did you manage to follow the passage I just read to you from the – your testimony on the 20th of

MS MNGOMA: Yes I did.

ADV SOLOMON SC: Of May.

MS MNGOMA: Yes I did.

ADV SOLOMON SC: And I am saying to you – and we can explore it a bit – in a bit more detail later on but I am just putting a general proposition to you that even that clarifying
20 supplementary affidavit – even that attempt did not get it completely right. Do you agree with that? Even that affidavit of itself did not completely to – to your way of thinking encapsulate the version you wanted to present to the commission.

MS MNGOMA: I will not say yes or no. But I feel that if I

was given a chance to write the whole affidavit in my own words it was going to be better than the whole affidavit written and then I had agree with the certain parts.

ADV SOLOMON SC: I heard some of that not all of it. But you – can I – can I just put this proposition. It may not be what you have said you can disagree or agree – you agree or disagree with me but if you had written the affidavit in your own words it would look different to what was presented to the commission as your affidavit on the 6th of
10 March, is that what you are saying?

MS MNGOMA: Yes

CHAIRPERSON: Ms Mngoma. Was that answer yes?

MS MNGOMA: Yes Sir.

CHAIRPERSON: Okay.

ADV SOLOMON SC: Okay thank you Ms Mngoma. Now I am going to – to leave that aside. We will get into just some – some detail perhaps a bit later on but for the sake of moving on I will leave that. You – in your – you have a Curriculum Vitae that you put out when you looked for
20 employment. Is that correct? A printed Curriculum Vitae.

MS MNGOMA: Yes.

ADV SOLOMON SC: Is that correct?

MS MNGOMA: Say that question again.

ADV SOLOMON SC: Do you have..

CHAIRPERSON: He is asking whether you have a CV that

you sent whenever you apply for a job.

MS MNGOMA: Yes.

CHAIRPERSON: Okay.

ADV SOLOMON SC: And you describe various qualifications that you have from institutions like Damlin, Vega School, Varsity College, Henley Business School etcetera. Is that correct?

MS MNGOMA: I do not want to talk about that.

ADV SOLOMON SC: I did not hear your answer.

10 **MS MNGOMA**: (inaudible) I did not submit that in my affidavit and we are here about my affidavit. So I am not going to talk about that.

CHAIRPERSON: Well he is entitled to ask you about something that is outside of your affidavit Ms Mngoma if he wants to test your credibility as a witness.

MS MNGOMA: And so do I have a – ...[indistinct] .

CHAIRPERSON: Ja you have to respond. I will ask him to repeat the question. Mr Solomon do you want to repeat the question.

20 **ADV SOLOMON SC**: Thank – thank you Chair. In your CV you have stated that you have diplomas and certificates from various institutions for example Damlin, Vega School of Branding, Varsity College and Henley Business School. Is that correct?

MS MNGOMA: So which affidavit you are reading from that

CV.

ADV SOLOMON SC: Your CV – I am just talking about your CV.

MS MNGOMA: Okay I have not submitted.

ADV SOLOMON SC: (inaudible) I beg your pardon.

MS MNGOMA: At this affidavit that we are talking about so I have not submitted any CV.

ADV SOLOMON SC: We are not talking about an affidavit. I am just asking

10 **MS MNGOMA:** If I can ask a question – which CV you are talking about.

CHAIRPERSON: Mr Solomon – Mr Solomon.

ADV SOLOMON SC: Yes Chair.

CHAIRPERSON: Maybe if you have a document where the CV or not that you are looking at maybe you should ask her direct question. If she says she obtained a certain qualification from a certain institution just take them one by one.

20 **ADV SOLOMON SC:** Yes. Have you in your CV held out that you have completed the MAP Plus Program at – from Henley Business School?

MS MNGOMA: So which CV you are talking about so that I can look at it as well.

ADV SOLOMON SC: Well I can – I can show you the CV –

MS MNGOMA: So but I have not given any CV and I have

not submitted any CV.

ADV SOLOMON SC: Have you ever held out in a CV that you have graduated from Henley Business School?

MS MNGOMA: I did not submit on this affidavit any CV.

CHAIRPERSON: No Ms Mngoma the question is, is there any CV where you have written that you obtained such a qualification from Henley Business School? Have you ever said in an affidavit – in a CV?

MS MNGOMA: I do not recall.

10 **CHAIRPERSON:** Okay.

MS MNGOMA: But also I do not – I do not want Mr Solomon to take me out on this because I prepared for this affidavit.

CHAIRPERSON: Mr Solomon.

ADV SOLOMON SC: Chair I am not – Chair I am going to leave that at this – we can come back to it. She says she does not want to deal with it.

CHAIRPERSON: Okay.

20 **ADV SOLOMON SC:** I want to just to put to you – I will just put to you that I have seen a CV of yours where you hold yourself out as having graduated from Henley Business School and enquiries have been made and that is untrue. You registered for the course but did not complete it. You registered in 2016 but never completed it.

MS MNGOMA: I would be very happy if you can – if you

shared that information with me.

ADV SOLOMON SC: Okay. We will do so – we will do so in due course.

MS MNGOMA: Okay.

ADV SOLOMON SC: Do you accept that you have not graduated from Henley – you did not complete – there is an outstanding assignment which has not been submitted and you have not graduated from Henley Business School.

MS MNGOMA: So if I may ask what business is that of yours and the state commission and my studies?

CHAIRPERSON: Well Ms Mngoma it does not work like that. You will recall that Mr Gigaba a very important theme of his response to your evidence is that you are – you are a liar and that a lot of what you have told the commission about him is not true. He has said you – you came to the commission because you were not able to secure a divorce settlement from him. So Mr Solomon is entitled to test this because he obviously is under instructions from his client that you are not telling the truth. You are somebody who is untruthful. I think Mr Gigaba used the term pathological liar at some stage. So if his counsel wants to argue at the end that I should not believe the things you have said about Mr Gigaba he needs to establish in cross-examination whether you can be shown to be a truthful witness or not. And he is not obliged to confine himself for that purpose to what is in

the affidavit. You understand.

MS MNGOMA: So – so what I want to put it clear to Mr Solomon I will not discuss my personal life in the commission. Malusi can discuss my personal life or his personal life if he wants to and I do not recall discussing my education and as a deal with – and also the deal with the settlement. I have never done that. So if he does not want to deal what is on the affidavit because everything I put on the affidavit it is only about the state capture. So there is
10 no way I ever put his personal life because I have his personal life as well. But I did not put his personal life because it has got nothing to do with the state commission. So what I put here is what – it is something to do with the commission and the state capture. So I do not know how my education is capturing the commission or maybe the state.

CHAIRPERSON: You see Ms Mngoma.

MS MNGOMA: Yes and also with Malusi is the way of them or him – maybe let me – him dodging answering his
20 questions about his deals with the state capture. And then he just goes attack my personal life. So – and I am not willing to go attack his personal life because I have never done so and since I have never attacked his personal life I do not want my personal life to be attacked as well because I have a right to my personal life. Because the state

commission has got nothing to do with my personal life. And I will never allow Malusi to do that with my personal life.

CHAIRPERSON: Well you see Ms Mngoma what Mr Gigaba's counsel is doing is probing the issue that he is probing because I think they want to say your – Mr Gigaba wants to say at the end through his counsel to me that you see Chairperson you cannot believe a word that comes from this witness because she lies so easily. She lied about her
10 – she lied about her educational or academic qualifications. I think that is what they – Mr Gigaba wants to show. That is why these questions. You understand that.

MS MNGOMA: But I have never said that to the commission.

CHAIRPERSON: Mr Solomon.

MS MNGOMA: So – I want to put that at the commission and protect what is about the state capture. This is what I am here about and this is what I volunteered to talk about. So if any of them – the two of them they just decide to – I
20 am not going to be part of that. Malusi has attacked my personal life in public and Mr Solomon was there he never say a word. I – I can do the same but I do not want to do the same. It is not like I do not know anything. I have a lot but I do not want to attack Malusi's personal life because I thought the state commission is about the state and I want

to keep it to that.

CHAIRPERSON: I think your counsel wants to say something.

ADV QOFA: Thank you very much Chairperson.

CHAIRPERSON: Yes.

ADV QOFA: I think the critical issue that which Ms Gigaba is trying to raise which she is not able to properly illustrate properly is the question of relevance. Chair accepting what the Chairperson is saying to say Ms Gigaba has come to the
10 commission to say 123 because we are in a process of divorce she is therefore an embattled spouse. The question becomes the relevance to the question. And if maybe Mr Solomon can address the question insofar as the relevance it has to the matter here because I think that is the question that Ms Gigaba keeps asking. What is the relevance of my personal education to the commission? What has that got to do with the evidence I have brought to the commission? We know as a matter of fact that Mr Gigaba has pretty much denied every single thing that has been brought before the
20 commission. He has lay – he has cast a net wide to specifically say anything that was said not just by Ms Gigaba but by everybody else who came before the commission making allegations against him is a blatant liar. And having said to the Chairperson I think we need to agree that when a question is asked it will either throw us into

disarray if we allow Mr Gigaba to throw a net so wide without having to provide relevance and context onto the matter.

CHAIRPERSON: No, no. hang on – hang on. I do not want to spend too much time on this. Counsel you should know what I said. You should know why this is relevant. I can understand if Ms Mngoma does not understand but you know exactly why. Precisely because Mr Gigaba has denied your client’s version and you client says he is not being
10 truthful and he says she is not being truthful. The credibility can be tested. I do not want to spend too much time. This is something quite simple and Ms Mngoma I decide whether a witness can answer a question or not. So Mr Solomon please continue.

ADV SOLOMON SC: Thank you. Thank you Chair. Now Ms Mngoma in your evidence I am going to talk about the BMW vehicle of – that you say that one of the Gupta’s gave to you or gave to – to your husband for your use – we will get there. But I just want to ask you to look at the – the May
20 transcript Chair 21st of May page 31.

CHAIRPERSON: 21st of May what page?

ADV SOLOMON SC: Page 31 of 281.

CHAIRPERSON: Okay. Yes.

ADV SOLOMON SC: Now you will see Ms Mngoma – there was Ms – Mr Myburgh was asking you questions and he was

asking you putting to you what Mr Gigaba had said about a scheme having come forward to testify against me in the commission and then he quotes it is line 14

“As we speak she is currently driving a car brought – bought for her as part of that scheme.”

And then you answer.

10 “So this is a lie no-one has ever bought me a car and gave it to and Malusi I never want to – I never went to any media to drag his name. The only media people that I went it was in a CA and I was clarifying my arrest.
2. When it comes to the car it is not the first time I drive cars by myself. He is the only person who never had a car in the ten years we had been together. So for me it is not a new thing that I have a car that has got nothing to do with him.”

Then Mr Myburgh asked you.

20 “What car you currently driving?”

You say.

“Is it relevant for you to talk about that?”

Mr Myburgh says

“Well I mean like where did it come from – did you buy it?”

And you say.

“Yes.”

Is that correct – you see that?

MS MNGOMA: Yes.

ADV SOLOMON SC: Now the vehicle that you were talking of is – it is a Mercedes Benz hatchback coupe, is that correct?

MS MNGOMA: Yes it is.

ADV SOLOMON SC: And it has got registration number
10 FY65JP

CHAIRPERSON: Maybe you should not mention the registration number Mr Solomon.

ADV SOLOMON SC: Certainly I will just

CHAIRPERSON: For security reasons.

ADV SOLOMON SC: I understand Chair. But it has got – it has got an F – FY registration is that correct?

ADV QOFA: But Chairperson this cannot be fair. We know very well it has been raised numerous the security concerns of Ms Mngoma. You make a ruling that the number plates of
20 Ms Mngoma’s car should not be pronounced in public.

CHAIRPERSON: I think – I think you will have to try something else Mr Solomon that will not

ADV SOLOMON SC: Infringe.

CHAIRPERSON: Ja.

ADV SOLOMON SC: Certainly Chair. I will ask –

CHAIRPERSON: If – if

ADV SOLOMON SC: I will ask the next question. This motor vehicle you purchased it yourself, is that correct?

MS MNGOMA: How is it relevant if I may ask you?

CHAIRPERSON: Please answer the question Ms Mngoma. It is relevant.

MS MNGOMA: I put the deposit myself. I sold my other car which Malusi knew about it earlier this year then I put a deposit on that car.

10 **ADV SOLOMON SC:** So you purchased the vehicle. Is it registered in your name?

MS MNGOMA: No sir. Because I bought the car from (inaudible)

ADV SOLOMON SC: I beg your pardon.

MS MNGOMA: I bought the car from someone else.

ADV SOLOMON SC: Well if you bought the car why is it not registered in your name?

MS MNGOMA: Because that time we were still – while I am still paying for it then I will do the transferring when I am
20 done paying for it – of ownership. It does not bother me that it is like that so it only bothers him but it does not bother me. So I will do the change ownership when it is the right time for me to do so when I am done paying for it.

ADV SOLOMON SC: So you have not paid for the motor vehicle?

MS MNGOMA: I did.

ADV SOLOMON SC: And when you told

CHAIRPERSON: Is the position that you have not paid in full? You have paid some part of it.

MS MNGOMA: Yes. Yes.

CHAIRPERSON: Okay. Okay. Mr Solomon.

ADV SOLOMON SC: And who did you purchase it from?

MS MNGOMA: I would not be able to say that in public. My life has so much threats in public so I do not want to – I do
10 not want to talk about my personal life in public especially with what I am facing right now because my life is facing a lot of threats. So I have to protect myself. And I know it is not your client's concern but for me it is my concern because I have the kids to take care of so I have to protect myself. So I will not expose everything about my personal life in public.

ADV SOLOMON SC: But what are you protecting yourself from?

MS MNGOMA: From the threats that I am receiving on a
20 daily basis.

ADV SOLOMON SC: And have you reported those threats to the authorities?

MS MNGOMA: I told the commission and also because I had the security at home so and time to time I go to there by the gates I tell them and also I told the commission. So

they are aware. That is why I have the security.

ADV QOFA: Chairperson.

ADV SOLOMON SC: But why have you not gone to the police services.

CHAIRPERSON: I am sorry.

ADV SOLOMON SC: Sorry – sorry Chair.

CHAIRPERSON: Sorry Mr Solomon. Yes counsel for Ms Mngoma.

ADV QOFA: Chairperson unless Mr Solomon does not
10 believe the content of the affidavit he has been reading here which demonstrate and explain including the affidavit of Sakele which he was referring to which shows the threats that were meted against Ms Gigaba. I do not think the issue of threats before Mr – against Ms Gigaba is not common between everybody appearing in this commission at least in this particular matter. And I do not think it would be fair for Mr Solomon to say why have you not reported such threats. Naturally if we knew and if Ms Mngoma knew exactly who is after her life she would have done so. And
20 therefore Chairperson I wish through you and maybe Chair if it is such a big...

CHAIRPERSON: I think – I think Mr Solomon was almost done with matters relating to threats let me hear him. Mr Solomon.

ADV SOLOMON SC: Yes, no that is – we are Chair.

CHAIRPERSON: Yes okay.

ADV SOLOMON SC: But let us just come back

CHAIRPERSON: Okay you – you.

ADV SOLOMON SC: Let us just come back to the part in whose name the vehicle is registered. Is that the person you bought the vehicle from?

MS MNGOMA: It was bought by someone else from that person so I bought the car from someone else.

ADV SOLOMON SC: So – so just let me understand it
10 because you do break up when you give your evidence so it quite hard to follow. Are you saying you – you bought the car from someone who had bought it from someone in turn?

MS MNGOMA: So maybe can I just say because I feel you are just more into invading my privacy and with the car that I am driving and because the nature of everything that is around me I think it is so unfair for you to keep on asking about the car that I am driving – where does it come from because Malusi told you so. Because Malusi does not know where the car comes from and that is his position. So
20 Malusi has so many cars that I do not know where they come from and I have never asked him. So I do not know why he is so much interested in this car.

ADV SOLOMON SC: Well the commission asked you...

MS MNGOMA: Because when he – where the car that I was Driving where is it – he never even asked me. He only went

and asked the driver at home where the – where did I drop the car – the other one that I was driving. So he does not even know where I sold the car, how much it was paid – he does not know all those things because I do not discuss my private life with him as well. So I do not want to talk to him. I do not want to tell him about my personal life because Malusi is not part of my life.

ADV SOLOMON SC: Well all I am asking you is this. You were asked by Mr Myburgh about the car that you drive and
10 you told him..

MS MNGOMA: Sorry – sorry.

ADV SOLOMON SC: Let me just finish please. And you told him that you had purchased the vehicle yourself. So now I am just trying to understand if you purchased the vehicle yourself why is it not registered in your name and now you have said it is not registered.

MS MNGOMA: I said I will –when I am done paying for it.

ADV SOLOMON SC: You will register it when you done paying for it. Now the party that you purchased the car
20 from is it registered in his or her name?

MS MNGOMA: That is not ...[indistinct] ...not... I do not understand what is the relevance to the Commission, because that is between me – that is a private dealing. That is between me, and that person and it is not – I am not going to discussing that with you or Malusi either. I do

not want Malusi to know anything about me, my personal life because his part of those threats of my life. So, I do not want him to know anything. So, I am not going to answer that question.

ADV SOLOMON: Well, I am going to in due course argue to the Commission if we – if Mr Gigaba gets permission to make submissions that you are an evasive witness and you on more than one occasion have refused to ask questions – answer questions.

10 **MS MNGOMA:** He do so as well.

ADV SOLOMON: I beg your pardon?

CHAIRPERSON: Wait, Ms Mngoma. Let Mr Solomon finish first.

MS MNGOMA: Okay, Chair.

ADV SOLOMON: And that you have on more than one occasion refused to answer questions that you are obliged to answer and which the Chair had in fact directed you to answer. Do you want to comment?

20 **MS MNGOMA:** Anything that has got to do with my personal life and with also with my privacy around it – that maybe if there were no – so much of my life is not so much under threat, I will be very comfortable to answer everything, but because Malusi is part of those threats, that is why I do not want to share anything in public and with him because I have to protect myself.

ADV SOLOMON: Now this BMW motor vehicle.

CHAIRPERSON: Mr Solomon.

ADV SOLOMON: Sorry, Chair.

CHAIRPERSON: Mr Solomon, let me just mention that of the two hours that we both estimated, you are left with 30-minutes. So I just mention that so that you can see how you handle the 30-minutes.

ADV SOLOMON: Chair, I – yes, I must say, what – I did not factor into account is the challenges that we are faced
10 with technology, but I will bear it in mind.

CHAIRPERSON: Ja.

ADV SOLOMON: And perhaps the Chair will indulge me.

CHAIRPERSON: Ja.

ADV SOLOMON: Again ...[intervenes]

CHAIRPERSON: Ja, I think just do your best. Just do your best.

ADV SOLOMON: I will do my best.

CHAIRPERSON: Ja.

ADV SOLOMON: Let me just ask you about the BMW.
20 You say Mr AJ Gupta gave the car and you used the motor vehicle. Is that correct?

MS MNGOMA: Yes, sir.

ADV SOLOMON: And if we look at your evidence on the 20th of May. Chair, page 250 at line 19.

MS MNGOMA: Sorry, can you please repeat the number?

250?

ADV SOLOMON: Page 250. It is your evidence of the 20th of May. The Chair – line 19. The Chair says ja. Do you have it?

MS MNGOMA: Yes. Yes, I do.

ADV SOLOMON: Yes.

“You say you kept the car. You drove the car for about a year and a half. This is this BMW motor vehicle...”

10 And yes. And you say – and then you go on:

“And then when I dropped it off, I dropped it off at my – at his friend’s place, but I do not know why I took pictures of it when I was standing there at this place in Stanton.

And then when the Hawks took my gadget.

So, those are the kind of pictures also that were deleted.

20 All the pictures of that car are deleted on my phone and with it be, I guess it would be friends, et cetera...”

And then you say:

“Ja, there are people who are now driving car...”

“And did you say it was registered in your name or was it not last time?”

And you say:

“It was in my name, but very short.

It was changed out of my name.

Then it was registered on his friend’s name.

So, when I was looking for it now.

I contacted the license department and they told me that the – soon the change of ownership of the...”

I suppose:

10 “...as soon as the change of ownership of the car moves from the – from this owner to another owner, then everything just change automatically to another person.

So, because it was his friend, I do not know why Malusi changed the car from me to his friend.”

“And when did you get to know that part?

Sorry, when did you get to know the car was registered in his friend’s name at such stage?”

20 “Oh, no. He did not. I think a few months I was driving the car, Malusi told me he wants the car to be registered under his friend.”

“Oh. So, he – that was done while you were still using it?”

And then over the page:

“Yes, and I asked him why. So, he said because this time – because the time – because his divorce dragging for too long. So, he said he does not want the car to be there because he was married in community of property.

So, he wants – he does not want the car to be taken away from...

So, let us just put it on his friend.

10 So, then he did...”

Now, I put to you that first of all that version does not make sense. Are you saying, the vehicle was in your name and then it was transferred to a friend’s name because of Mr Gigaba’s divorce which was taking too long? Is that what you are saying?

MS MNGOMA: Yes.

ADV SOLOMON: And I want just to put to you that that does not make sense. Why could he not simply have left it in your name?

20 **MS MNGOMA**: Because there were lot of times when Malusi was going for his divorce and my name was mentioned in the divorce process which his ex-wife will mention because I was in his life. So, I was part of the – maybe the – he thought I was the reason for them to divorce. I think. So, that is the reason maybe. Well, that

is what he said to me.

ADV SOLOMON: But the vehicle was never registered in his name. So, it was – it was not under any threat.

MS MNGOMA: But my name always kept come up most of the time and my child because the time we had a child and also my child also was coming up in that divorce.

ADV SOLOMON: I also want to put to you that your testimony that I have just read is in conflict with your affidavit that you gave at 1010. That is 7(a), Chair,
10 paragraph 49. That is 1010.

CHAIRPERSON: H'm.

ADV SOLOMON: One, o, one, o. Here you say that ...[intervenes]

CHAIRPERSON: Yes.

ADV SOLOMON: Does Chair have it?

CHAIRPERSON: Yes, I have got it. Ja.

ADV SOLOMON: You – I am just – to save time, I am just going to read the last two sentences or the last sentence:

20 “The registration of the BMW was eventually transferred into my name from a name unfamiliar to me...”

Here you are saying that the vehicle was transferred into your name, not from your name into someone else's name as you said in your testimony that I just read.

MS MNGOMA: Can you read that again?

ADV SOLOMON: You say in paragraph 49:

“The registration of the BMW was eventually transferred into my name from a name unfamiliar to me...”

What I am putting to you is. That is in conflict with your evidence where you were saying the vehicle was in your name and then was transferred out of your name into the name of Mr Gigaba’s friends because of his pending divorce or his divorce that was dragging on. Do you want
10 to comment on that contradiction?

MS MNGOMA: Yes.

CHAIRPERSON: Yes, please do.

MS MNGOMA: Because when the car was – when we fetched the car, I do not know what name it was ...[indistinct] And then Malusi – they put the name because when we did that, we did that at the Sahara. They brought everyone to do this whole car thing when we were there. And then at a later stage then Malusi changed the car.

20 Then he said to me his friend is going to change the car and he has someone who will change the car to his name. So, every time when the car used to go to service. So, his friend will take it to service and also he will call me and give me the disc all the time. So, I never do the renewal of the disc.

ADV SOLOMON: And you say that the vehicle – the next sentence of paragraph 49 and he informed you that he had given the car to one of his friends to repair to one of the lights and the vehicle was never returned. So, when he ...[intervenes]

MS MNGOMA: Yes, I ...[intervenes]

ADV SOLOMON: ...minor repair to the lights and then just disappeared?

MS MNGOMA: It did disappear. I dropped it at Sandton
10 to his friend, to his Zimbabwean friend and then they said they were fixing the light. And then I keep on asking Malusi when is the car coming back. So, the car never came back. So, then I decided to buy the...

CHAIRPERSON: You had dropped it with her(?) friend. Why did not you go to her friend? Did you go to her friend and say I am fetching the car?

MS MNGOMA: I called and keep on asking. Because his friend is part of our – he is the one who does most of everything in our home in Pretoria and also in his home
20 who does the fence, the lighting. So, he is the person who always do everything for Malusi and most of our stuff at home. So... And then he said, Malusi said I must drop the car in Sandton at his place, which I dropped it here, down the road.

And then after that, I kept on asking him when is

the car coming back because that time when I dropped off the car, Malusi just gave me his ML that I must drive, and I did not want to drive it because it was an old car. So, I kept on asking why the fixing of the light was taking so long. So, then he kept on saying: No, the car is coming back. The car is coming back.

But that friend is not like it is someone ...[indistinct]. It is someone who – most of the time, he does most of his things, even when he ...[indistinct]
 10 something at Eskom, he will be there. He is still in a meeting with someone there and he does everything. Even now, with my name, it is someone who did a whole security. It is someone who always does everything for him and who does our licence. To drop off everything. It someone like that. His friend from Zimbabwe.

ADV SOLOMON: And this was an asset of yours, registered in your name. You did not ...[intervenens]

MS MNGOMA: It was not in my name(?) [speaker unclear – distortion present]

20 **ADV SOLOMON:** It was not in your name?

MS MNGOMA: When I dropped it off, it was not in my name long time ago. It was his – it was on Joseph's(?) name. His friend(?).

ADV SOLOMON: So, why did you say what you said in paragraph 49 of your affidavit, that the vehicle was

eventually transferred into your name?

MS MNGOMA: Then, after that was ...[intervenes]

ADV SOLOMON: And then you say it went in for repair and it was never returned to you. So, the impression your affidavit gives is that this was an asset of yours that went in for a minor repair to one of the lights and then was never given back to you.

MS MNGOMA: So, it was the car that I was using, but by that time it was not under my name anymore.

10 **ADV SOLOMON**: So, when was this vehicle given to you to use? Which year?

MS MNGOMA: I think it was early... I think it was – maybe – I think in 2013/2014, there. But I am not sure exactly, but it was not in 2015/2016.

ADV SOLOMON: You say it was 2014/2015?

MS MNGOMA: Ja, it was later. It was earlier(?) that time. But I am not sure exactly. It was 2014 or it was 2013. I do not remember properly.

ADV SOLOMON: And was that when the vehicle was...
20 [speaker unclear – distortion present] ...given to Mr Gigaba by Mr Gupta?

MS MNGOMA: No, because I have already driven it for that time.

ADV SOLOMON: So, what is the 2014/2015? What happened in those – in one of those two years?

MS MNGOMA: You mean when the car was still there or when the car was ...[intervenes]

ADV SOLOMON: I thought that was when the car was given to you, but now you are saying you had it a year before that?

MS MNGOMA: No, I did not say that.

ADV SOLOMON: I thought that is what you said, but the record will ...[intervenes]

CHAIRPERSON: Which year did you get the car? Which
10 year did you start using the car?

MS MNGOMA: So, I drove the car, I think it was like – it was in 2013 if I remember correctly.

CHAIRPERSON: Is it 2013 or is it 2013 or 2014, one of the two?

MS MNGOMA: I think it was not 2014. I think it was 2013. Just like I am not sure properly.

CHAIRPERSON: Okay, alright. And then you drove ...[intervenes]

MS MNGOMA: I ...[intervenes]

20 **CHAIRPERSON**: ...drove for about year.

MS MNGOMA: But what I know. I have driven that car for a year. And I am not the only one who knows about it. Like, his bodyguards know about the car. Even my friends know the car. So, when Malusi is acting like I was driving that car in the space. All his bodyguards, they know about

it because there were certain times when maybe I will ...[indistinct] with this car and when we are going back, Malusi will take me with his bodyguards, and he will ask one of his bodyguards to drive this car.

And there was a time where this car had a lot of tickets and then I will try to explain to the police why I so much tickets because they will drive at a same(?) speed with the blue lights. So, all his bodyguards they know about the car. It is not like it is only me who knows about
10 it.

ADV SOLOMON: And ...[intervenes]

CHAIRPERSON: In which year was it when you dropped it at Mr Gigaba's friend's place to fix the lights? Was it 2014?

MS MNGOMA: I think it was 2014, early.

CHAIRPERSON: Okay, alright. Mr Solomon.

ADV SOLOMON: Thank you, Chair. And the time when you started to use the vehicle, was that at the same time that it had been given to Mr Gigaba by Mr AJ Gupta?

20 **MS MNGOMA**: Repeat the question.

ADV SOLOMON: Can I assume that when you started using the car was the time when the vehicle had been given by Mr AJ Gupta to Mr Gigaba?

MS MNGOMA: Yes.

ADV SOLOMON: But then, why did you say in your

statement, in your affidavit, that – that is paragraph 49 – this is the first part that I did not read to you. That:

“Mr Gupta handed over the BMW to Mr Gigaba in my presence at the offices at Sahara...”

And the first sentence is:

“...a few months before he took office as Minister of DPE...”

And we know, repeatedly - the Chair knows this better than me. I know he has got a good handle on all the
10 chronology. That would have been 2010, December 2010 when he was made Minister of DPE. So, how does this work now?

CHAIRPERSON: He became Minister of DPE on the 1st of November 2010.

ADV SOLOMON: Thank you, Chair. I know you have got a good handle on all the dates.

CHAIRPERSON: [laughs]

ADV SOLOMON: So, that does not ...[intervenes]

CHAIRPERSON: [Indistinct]

20 **ADV SOLOMON:** ...that does not accord with your evidence now, Mr Mngoma.

MS MNGOMA: So, you just said – I do not remember when was – but I know that there was a car. I had driven that car.

ADV SOLOMON: Alright. I am going to argue that your

evidence on this motor vehicle is so improbable that it can
- false to be rejected. Do you want to comment?

MS MNGOMA: [No audible reply]

ADV SOLOMON: You do not have to. It is if you choose
to.

MS MNGOMA: But there are people who knows about this
...[indistinct]

ADV SOLOMON: Alright. Now, can I just ask you? You
are not the type of person who would be willing to spend
10 money that you knew was stolen. Is that correct?

MS MNGOMA: Yes.

ADV SOLOMON: And you would also, I suppose, not
willingly spend money that you knew was unlawfully or
illegitimately obtained? Is that correct?

MS MNGOMA: Yes.

ADV SOLOMON: And you say in your affidavit, your
clarifying affidavit... Chair, 1027, Bundle 26.17.

CHAIRPERSON: Is that Bundle BB-26?

ADV SOLOMON: Yes, Chair. 1027.17.

20 **CHAIRPERSON**: For me, Bundle BB-26 is the bundle that
has got only the transcripts.

ADV SOLOMON: Oh. Perhaps Mr Myburgh can come in?
It is – it is Ms Mngoma's clarifying affidavit.

CHAIRPERSON: No, that should be in, like, Bundle 7(a).

ADV SOLOMON: Oh, is that 7(a)? I am sorry, Chair.

CHAIRPERSON: Ja.

ADV SOLOMON: I am sorry.

CHAIRPERSON: What is the page number?

ADV SOLOMON: 1027.

CHAIRPERSON: Okay. I have got 1027. It has got point 1, point 2, up to ...[intervenes]

ADV SOLOMON: Yes, up to 17.

CHAIRPERSON: Hang on.

ADV SOLOMON: I want to go to the end, Chair, with your
10 leave.

CHAIRPERSON: Oh, okay. Up to 17. 1027.17.

ADV SOLOMON: Yes.

CHAIRPERSON: I am there.

ADV SOLOMON: Paragraph ...[intervenes]

CHAIRPERSON: And what did ...[intervenes]

ADV SOLOMON: It is paragraph 13.

CHAIRPERSON: Have you got Ms Mngoma?

MS MNGOMA: Yes, I am there, Chair.

CHAIRPERSON: Okay, thank you. Mr Solomon.

20 **ADV SOLOMON:** Now, you say in paragraph 13:

“As repeatedly explained in the media and in my testimony. My sole reason for assisting the Commission is the performance of my civic duties as a citizen of South Africa who is willing to provide any information to which I

may be privy, and which can rid our society of the cancer of corruption – would like my children to grow up...”

I suppose it should be and.

“...like my children to grown up in a corrupt free society.

I bear no grudges against anyone and I have long forgiven those who wronged me.

They will be judged, not by me but by God...”

10 You confirm that statement?

MS MNGOMA: Yes.

ADV SOLOMON: Now you state that the Guptas, in your testimony, gave money towards your wedding which cost between four and five million rand. Is that correct?

MS MNGOMA: Yes.

ADV SOLOMON: And on – you further testified that you were told that in lieu of the Guptas attending the wedding, they were giving money towards the wedding. Is that correct?

20 **MS MNGOMA**: Yes, there is – they did not talk to me. Malusi said that to me.

ADV SOLOMON: Yes. And you had a motor vehicle that was transferred into your name, this BMW, which you say was given by the Guptas.

MS MNGOMA: Yes?

ADV SOLOMON: And you have indicated that at least on one occasion, you saw money in the boot of Mr Gigaba's motor vehicle at Sandton City. Is that correct

MS MNGOMA: Yes.

ADV SOLOMON: Cash money.

MS MNGOMA: Yes ...[indistinct]

ADV SOLOMON: And you have also testified ...[intervenenes]

CHAIRPERSON: I am sorry, Mr Solomon. What was the
10 answer, Ms Mngoma? I did not hear it.

MS MNGOMA: Which question, Chair?

CHAIRPERSON: Please repeat your previous, Mr Solomon?

ADV SOLOMON: Okay. You also indicated that on one occasion, you saw cash monies in a bag in the boot of Mr Gigaba's motor vehicle at Sandton City.

MS MNGOMA: Yes.

ADV SOLOMON: And you have testified that on at least
20 occasions you were at the Gupta residence. And if I have your evidence correctly. You will correct me if my statement is incorrect. On these occasions, you saw Mr Gigaba retrieve his cell phone, call the CPO Offices to bring his bag and then go back into the room where he was and then return with the bag and that seems to be the same bag that had the money in that you saw in the boot of

the car. Is that correct?

MS MNGOMA: Yes.

ADV SOLOMON: And you also saw money that Mr Gigaba was placing in a safe when you surprised him in his study in your home?

MS MNGOMA: Yes.

ADV SOLOMON: Now, when did it strike you that you were a beneficiary of Gupta money that would be involved in corruption and the cancer of corruption which you talk
10 about?

MS MNGOMA: I only knew when Malusi said I must not mention that to the Commission. Because what he said to me, he never said it was a corruption money. He said it was for elections. And I asked him why he need to raise it himself. So, he explained that he was the head of elections. So, he needs to pay(?) for the elections.

ADV SOLOMON: So, did you ...[indistinct]

MS MNGOMA: So, because I have never been... Sorry?

ADV SOLOMON: Yes, continue. I interrupted you.

20 **MS MNGOMA**: So, I have never been part of ANC things. I have never been part of any branch. So, I do not know how money is raised. So, I took what he was saying. And during the time, I did not know that it was wrong for him to do that because he explained what the money was for. And when he used it, I asked him: But why do you use the

money? Because he said it is for the elections.

Sometimes when he was paying, then he said he would refund it. Then when he have time, he will take it to Luthuli because he needs to take it to the DG. But I never kept on asking because it was not for – it was not my money and everything. But the only time when I was so shocked about it. It was when he was saying to me I must not – if anyone is asking me about that, that was closer to my ...[indistinct] which is was last year.

10 **ADV SOLOMON**: I did not hear that last part ...[intervenes]

MS MNGOMA: And then asked ...[intervenes]

ADV SOLOMON: You faded away but let me just put this to you. Did you – you were the beneficiary of this money that you say came from the Guptas, for your wedding, for your lifestyle. Is that correct?

MS MNGOMA: No, I did not know ...[indistinct] ...who gave it to me, but it is not like – it was not the right(?) ...[indistinct] ...not the Guptas gave the money to me. So,
20 it is him who gave it to me. So, if you said to me it was a corrupt money, then you can say that I knew. Then I can say yes to that. So, he never said this money was for corruption or he got it in a wrong way. He never said that. He only mentioned this ...[indistinct]

ADV SOLOMON: On your explanation ...[intervenes]

MS MNGOMA: [Indistinct]

ADV SOLOMON: Sorry?

MS MNGOMA: I am done.

ADV SOLOMON: Ja. On your version, you observed over a considerable period of time a number of years Mr Gigaba calling for his CPO's to bring a bag and then going back into the room where he was, returning with the bag and you – at least on one occasion, realised that this bag had money. So, when did you – when did this revelation
10 suddenly hit you that there was somehow some connection between these advisors who were advising Mr Gigaba and monies that they were receiving and that these would, on your version, be ill-gotten gains that you were benefitting from. When did you suddenly realise this?

MS MNGOMA: When Malusi was telling me about it.

ADV SOLOMON: And when did he tell you about it? Did he confess to you that he was... Can I finish my question? Did he confess to you that he was a participant in a corrupt ...[indistinct] ...[intervenes]

20 **MS MNGOMA:** No, he did not put ...[indistinct] He did not ...[intervenes]

ADV SOLOMON: So, what did he tell you?

MS MNGOMA: So, he said to me ...[intervenes]

ADV SOLOMON: Did he tell you that he is a recipient of corrupt monies from the Guptas?

MS MNGOMA: He did say – he did not put it in that way.

ADV SOLOMON: What way did he put it in?

MS MNGOMA: So, he said if anyone is asking me, it is either someone – because when I was saying to him why can we not divorce while he is dealing with the state capture. Because I did not understand he put this thing together. Even now I am so, like, surprised. Why or divorce must stand still just because Malusi is going through the state capture. I do not understand why
10 ...[indistinct] separated too. So, that is where he explains that to me.

ADV SOLOMON: I did not hear all of your answer, but you are saying when he was going to the state capture. What did he explain to you?

MS MNGOMA: Because I asked him why he said we cannot divorce while he is going through the state capture. Because for me it does not make sense why our divorce must stand, or we cannot have a divorce while you are going through this – Malusi is going through the state
20 capture because I do not connect the two. Why is the two...

Because Malusi can go through the state capture, the whole process and the divorce can go through. Because for me those are two separate things. So, when he said we need to – he needs to finish the state capture

before so that he does not lose the spousal privilege with the divorce. To me, it did not make sense why the two must be together. So, why can I not divorce him while he is going through the state capture?

ADV SOLOMON: And is that what led the penny drop that all along this was corrupt money?

MS MNGOMA: Not really, but I only knew when he did this whole plots(?) of everything, trying to take away everything, trying to deny everything and trying to plot
10 ...[indistinct] and also we have to ...[indistinct] things. That is where everything just come into place for me. That all this was happening ...[intervenes]

ADV SOLOMON: Did it all make ...[intervenes]

MS MNGOMA: ...because ...[indistinct] Also, when he says I must not mention because that time he said it was for elections. So, when he say I must not mention. Why I must not say it because it was for elections. So, everything – it just come into place with me.

ADV SOLOMON: Well, it was be used for the first
20 election. Why was it used for your wedding to your knowledge?

MS MNGOMA: I do not know that it was the same money. So it can be different money because it is not like every time he will come with that money and give it to me. So, when he was raising money, to me, he never said like this

money – here is the money for the elections, it is for the wedding. He did not do that.

ADV SOLOMON: And did it suddenly dawn upon you that this was corrupt money after you had been arrested in July and following upon the ...[intervenes]

MS MNGOMA: [Indistinct]

ADV SOLOMON: ...institution of divorce... Can I finish? And following upon the institution of divorce proceedings in August of 2020. Is that when it dawned upon you that this
10 must be corrupt money?

MS MNGOMA: Not at the time. It was ...[indistinct] ...he wanted to delete(?) and when he was telling me that I must not talk about it. So, that was – that is where I thought why must we hide it.

ADV SOLOMON: Did he tell you; you must not tell the truth? You must not talk about it?

MS MNGOMA: He said ...[intervenes]

ADV SOLOMON: You must not come and tell...?

MS MNGOMA: Yes, he said ...[intervenes]

20 **ADV SOLOMON**: When did he say that?

MS MNGOMA: That was the week he asked for my budgets.

ADV SOLOMON: Why have you never said that in your affidavit and in your evidence?

MS MNGOMA: I also ...[indistinct] ...because when I was

asking for the divorce.

ADV SOLOMON: [Indistinct]

MS MNGOMA: Also when I was asking for the
...[intervenes]

ADV SOLOMON: Yes, but I am asking you ...[intervenes]

MS MNGOMA: Sorry?

ADV SOLOMON: ...a different question. Why did you not
put in your affidavit that he had asked you to conceal the
truth?

10 **MS MNGOMA:** I do not know. It did not cross my mind.
But there is a way I put it in my own version in my own
words.

ADV SOLOMON: Now, when you ...[intervenes]

MS MNGOMA: In my own words, there is somewhere I
said that.

ADV SOLOMON: In your ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry, Mr Solomon.
Just repeat your answer, Ms Mngoma? In your own way,
what happened?

20 **MS MNGOMA:** In my own way, I mentioned that he said I
must not say anything.

ADV SOLOMON: ...half the time. It is very
unsatisfactory.

CHAIRPERSON: Hang on. Hang on, Ms Mngoma.

MS MNGOMA: Yes.

ADV SOLOMON: Sorry, I thought I had muted myself. I am sorry.

CHAIRPERSON: [laughs] Ja-no. You did not. Okay, Ms Mngoma, please start your answer afresh.

MS MNGOMA: I am saying. I put that in my own way, not in Mr Solomon's words. Like, Malusi said I must not talk to anyone about everything I know about the Guptas.

CHAIRPERSON: Okay, Mr Solomon.

ADV SOLOMON: Thank you, Chair.

10 **CHAIRPERSON:** Ja.

ADV SOLOMON: Now, in paragraph 54. It is one of the errors you sought to correct ...[intervenes]

MS MNGOMA: I am sorry. Can you ...[indistinct]

ADV SOLOMON: ...of your statement ...[intervenes]

CHAIRPERSON: I am sorry ...[indistinct]

ADV SOLOMON: ...of your statement at ...[intervenes]

MS MNGOMA: Sorry ...[indistinct] [speaker unclear – distortion present]

20 **ADV SOLOMON:** 7(a), 1011 of your statement, paragraph 54.

CHAIRPERSON: That is Bundle 7(a), page 1011. I have got 1011. Have you got it Ms Mngoma?

MS MNGOMA: Not yet. [Indistinct]

CHAIRPERSON: Okay. It is Bundle 7(a).

MS MNGOMA: Okay, the paragraph?

ADV SOLOMON: It was before. Before I go there. I just want to put to you, and I am going to argue that your version that you have just given now, makes no sense at all and is, again, as improbable, as to be rejected. Because why would Mr Gigaba ask for a divorce and file a summons in August 2020 before he came to the Commission if your version have truth or validity to it?

MS MNGOMA: Because he did that so that he can ...[indistinct] So that when I decide to speak why I was
10 arrested, so that he can say I am bitter about the divorce. If he really meant to divorce me, it is almost like eight months right now, or six months, I am not sure. He only filed that divorce – since Malusi filed for the summons, he never done anything.

It is only me and my lawyers who keep on chasing him. If he really meant for the divorce, he was supposed to continue with the divorce. Right now, we will be divorced because I responded to his divorce the first day I received. My lawyers, they sent an email to me that I do
20 not want to contest the divorce, because that is what I wanted as well.

But what shocked me, it was him went to the signing(?) ...[indistinct] first because before he sent the summons. And when he filed that divorce, he did that just because I was already – I was arrested. And also, I said,

like I will speak the truth. So, he knew, like, I will explain why I was arrested.

So, when he did the divorce, the reason he only filed it and he never done anything until today, so that it can drive the narrative of me being a bitter woman and which is not true. Because if he really meant the divorce, why are we not divorced now or why he never responded to my lawyer's emails? Or why we are not divorced?

10 Because even if we did not agree with the settlement, he can ask for the dates and the matter goes to court. The matter is not in court. We are never settling anything. Even in that meeting, it was – when we do the settlement, it was me. So, Malusi never meant for this divorce.

And also, he went to sign the will(?) first before he come to me. And when I said I am going to challenge – sign the will, then I received a call from the sheriff. So, all this is just his calculated moves. It is better(?) thing(?) to do with the divorce, because if you really meant the
20 divorce, we will be divorced right now, because I said I am not contesting the divorce. I do not have a problem with the divorce.

So, why it stopped? Why he filed the summons in August? Until today he never done anything. If he really meant it.

ADV SOLOMON: Well, that is ...[intervenes]

MS MNGOMA: So, it was not ...[indistinct]

ADV SOLOMON: Are you not done yet?

MS MNGOMA: I am saying. All that this filing for summons and then you just keep quiet for too long. It was the narrative of him trying to support all the schemes that he did with this plot with the – trying to cover up these things. So that when I speak, people, they will say, no, he is doing this because she is bitter. If he really meant for
10 the divorce, we will be divorced right now because I said from the first go, I said I am not contesting the divorce. And Malusi never said anything until today.

ADV SOLOMON: Are you sure ...[intervenes]

CHAIRPERSON: Mr Solomon, I think she has finished with the answer. We are at twenty-five to eight. That means there has been a five minutes' overtime. Is it fine if I give you ten minutes more?

ADV SOLOMON: Chair, can I bargain and ask until eight o'clock?

20 **CHAIRPERSON:** Okay, alright. [laughs]

ADV SOLOMON: Thank you.

CHAIRPERSON: Alright. Okay.

ADV SOLOMON: Alright. I am going to try – I am not even going to go back to your answer there, but I am just going to put to you, it makes no sense, and we will make

submission in due course why it makes no sense. If you want to comment, you can comment, Mr Mngoma. You are not obliged to.

CHAIRPERSON: Just before you proceed, Mr Solomon. Actually, I forgot that the curfew is now nine o'clock. Let me check with everybody. And I must check with the people who help me here whether if we stop at eight that will give them enough time to get home before the curfew. Is everybody... Ms Mngoma, if we stop at eight, would you

10 be able to get home before the curfew?

MS MNGOMA: So, I would like maybe if we can finalise in five minutes.

CHAIRPERSON: By?

MS MNGOMA: By five minutes because I still need to do the arrangements for people to come and fetch me and all the way. So, it takes a bit of time to do that.

CHAIRPERSON: Anyone else who has got challenges on curfew?

REGISTRAR: Chair ...[intervenes]

20 **CHAIRPERSON:** Nobody else?

REGISTRAR: Chair, I – it takes me an hour to get home.

CHAIRPERSON: Oh, is that so?

REGISTRAR: A full hour, to be precise. And that is – if there is no traffic, which of course, I believe there will not be, but I ...[intervenes]

CHAIRPERSON: Ja.

REGISTRAR: ...need to get home from chambers.

CHAIRPERSON: Oh.

ADV SOLOMON: Chair, is there any way we can adjourn now and find another opportunity? We have forgotten totally about the curfew. I must be honest.

CHAIRPERSON: Yes.

ADV SOLOMON: I myself have to get – would have to get somewhere.

10 **CHAIRPERSON:** Ja. Look, there may be a possibility for some time tomorrow at some stage, from morning to end of the – close of business, but exactly when it would be, I cannot say now. But for purposes of cross-examination, you would be needing just another 20-minutes I think Mr Solomon ...[intervenes]

ADV SOLOMON: Yes.

CHAIRPERSON: ...based on what our discussion... Counsel for Ms Mngoma, could that be tried? Namely, you would help me to be – everybody would need to be told in
20 the morning how the situation looks like.

ADV QOFA: Chair, if we are given time to move around for ...[intervenes]

CHAIRPERSON: Ja.

ADV QOFA: ...not more than 20-minutes or 30-minutes, Chair, we will definitely make the time.

CHAIRPERSON: Yes, okay. And Ms Mngoma, same with you?

MS MNGOMA: Yes. Yes, Chair.

CHAIRPERSON: Okay. Mr Myburgh, you are with – you are in the same position as me or is there something that might give you problems about tomorrow?

ADV MYBURGH SC: I am at your disposal, Chairperson.

CHAIRPERSON: Yes. Okay, alright. I think, let us adjourn then now. And then in the morning, everybody – I
10 will speak to Mr Myburgh, and he will tell everybody. Then at that stage I will have a clearer picture and then we will try and find time tomorrow.

ADV QOFA: Thank you very much, Chairperson.

ADV MYBURGH SC: Thank you, Chair.

CHAIRPERSON: Alright.

ADV SOLOMON: Thank you, Chair.

CHAIRPERSON: Thank you very much. We adjourn.

MS MNGOMA: ...Chair.

CHAIRPERSON: Good night. Good night.

20 **INQUIRY ADJOURNS TO 30 JUNE 2021**