

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

**30 JUNE 2021**

**DAY 420**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 30 JUNE 2021**

**CHAIRPERSON:** Yes I can see you – now I can. Now I can see you. Why is this thing saying now – okay all right. I am sorry about the slight delay. Yes Mr Chaskalson.

**ADV CHASKALSON:** Chair we are here today to very briefly hear evidence from Mr Litha Nyhonyha in – in relation to a conversation he is reported to have had with or conversations with Geoff Makhubo who was then the MMEC – the MEC – the MMEC for Finance in the City of  
10 Johannesburg.

**CHAIRPERSON:** Ja.

**ADV CHASKALSON:** And the City Manager (no sound) Finance Managers Contract.

**CHAIRPERSON:** Okay.

**ADV CHASKALSON:** But I understand that Mr – Mr Nyhonyha seeks a postponement of the hearing and possibly I should ask Mr Dorfling to place himself on record and to explain Mr Nyhonyha's position.

**CHAIRPERSON:** Yes is it Mr Dorfling?

20 **ADV DORFLING:** Indeed so Chair.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** For the record Danie Dorfling, I appear on instruction of Moroka Attorneys from Bloemfontein who is also virtually in attendance.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** I am assisted in this matter by my junior Mr Thubani Ngangesa.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** He is not in attendance this morning he is attending to some funeral matter of a family – or not a family member a close friend. He is not in attendance.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** I do not know Mr Chair whether you have been made possessed of a communication that we  
10 addressed to the secretary Professor Masilo on the 28<sup>th</sup> of June which we have attached a sick note of one Doctor Moghatle in respect of the medical condition of Mr Nyhonyha. I do not know whether you have been placed in possession of that.

**CHAIRPERSON:** I have seen a letter to which a Doctor's note has been attached – was attached but just tell me more about the position. I must say that I was a little concerned about the medical note. I am not looking at it now. Do you want just to talk to me about the position.

20 **ADV DORFLING:** Yes. Perhaps it is very brief. Perhaps I just read it into the record just to refresh everybody's memories Chair.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** It says:

In respect of Mr Litha Nyhonyha it reports the following.

“Kindly allow the abovementioned at least 21 days of isolation due to his symptoms suggestive of COVID 19. He is on daily medication for – it says 21 days of isolation and rest due to his symptoms suggestive of COVID 19. He is on daily medication for his symptoms.”

This letter is dated the 24<sup>th</sup> of June which makes the sick note operative on my calculation up until the 15<sup>th</sup> of July Mr  
10 Chair. That is what the sick note records.

**CHAIRPERSON:** Well I will – I will tell you what my concern was about this medical note that the reference in it to isolation and symptoms suggestive of COVID 19 made me think that before Mr Nyhonyha could seek a postponement he should have gone for a test because if he tested positive then that would be quite clear.

This simply says due to symptoms suggestive of COVID 19 and it says he must be in isolation for 21 days which as I understand it is almost double – probably double  
20 or more than the period of isolation that I understand to be applicable when you have been in contact with somebody who has tested positive and when you have tested positive.

So he has not – he has not tested positive but this doctor says he must have double or more time for isolation than the time that all of us know to be applicable when you

have tested positive.

**ADV DORFLING:** Yes Chair. Chair if I may I cannot – I cannot – I am not a medical expert I cannot express an opinion on this but what I – what I can say and what I can place on record is that Mr Nyhonyha was probably exposed to a COVID interaction during a funeral and his wife started showing symptoms early in the week thereafter after which Mr Nyhonyha sought the medical advice.

At the time he was in Knysna and the advice was for  
10 him to self-medicate, to monitor the signs and Mr Nyhonyha made the election not to go for a COVID test to limit his further exposure and the doctor's advice was that he would ride out the symptoms and see whether it gets worse or not and then take medical advice on that score.

So the medical advice for him to have the conservative treatment which the doctor prescribed and to have the 21 days of bed rest. I cannot go beyond that – that is what the medical certificate says.

**CHAIRPERSON:** Mr Chaskalson have you got something to  
20 say?

**ADV CHASKALSON SC:** Chair not much more than the concerns that you have raised already. We do not know whether Mr Nyhonyha does or does not have COVID.

He does not know whether he does or does not have COVID and all we – all we have is a letter from a doctor

who may or may not have examined Mr Nyhonyha six days ago at which point the doctor was led to believe that Mr Nyhonyha had symptoms at that – at that stage suggestive of COVID19.

We do not know what Mr Nyhonyha's condition today is whether he is or is not able to testify. And it is an extremely narrow issue. It is not as though Mr Nyhonyha is going to be asked a range of testing questions over a day's testimony. It is a very narrow question relating to an entry  
10 in a set of minutes from 2014 concerning conversations he had with the City Manager and the MEC for Finance relating to the renewal of a – a Regiments Fund Manager's contract.

We simply do not know what Mr Nyhonyha's condition today is like and whether he is in a position to – to testify today or not. He has been advised apparently to take a conservative approach. That advice was given six days ago presumably on the basis that the doctor at the time did or did not – did not know whether he was or was not going to get COVID. We do not know what his position  
20 is like today.

**CHAIRPERSON:** Yes. Mr Dorfling when last did you speak to him – to your client?

**ADV DORFLING:** I have been in touch with Ms Nyhonyha this morning Chair.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** He is not – although it is a narrow issue he is not in a position to attend to the hearing today. It will obviously require him to give his focussed attention on the issues to be canvassed albeit in a narrow ambit. For the moment that is the position. I cannot take it beyond that. Mr Nyhonyha I can confirm is not in need for hospitalisation so his position is simply not – has not deteriorated to an extent that he needs to attend to a hospital or to critical care. So he is not – he is not ill at a level that requires his  
10 hospitalisation.

**CHAIRPERSON:** Ja.

**ADV DORFLING:** All indications – all indications are that he will certainly – he will certainly be fit to proceed with his evidence beyond the time frame of the sick note.

**CHAIRPERSON:** Yes. Do you know whether he knew that I could allow him to testify virtually he would not need to necessarily to come to the venue.

**ADV DORFLING:** We will – we were informed of that and I had knowledge of that prior to today because of my  
20 interactions with you Chair last week in the other matter.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** So I know – I know that this facility is available.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** And we have certainly canvassed – we



have certainly canvassed that with Mr Nyhonyha.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** So it is not – it is not an issue of potential risk of him exposing other people it is more an issue of his own incapacity to deal with the matter as this juncture.

**CHAIRPERSON:** Yes. Well I – I am going to postpone. I have expressed my concerns about the medical note but I will postpone. Can I ask you to continue to be in touch with  
10 – with Mr Chaskalson so that if even before that the date – the expiry of this period prescribed by the doctor if he feels that he – he is fine arrangements could be made. Because as Mr Chaskalson indicates we should not take too long with him. So I would appreciate if that can be done.

As you know we – we do not have a lot of time as the commission so I would like you to do that so that if at all possible and if his situation allows we could consider having his evidence as soon as possible.

20 **ADV DORFLING:** Mr Chair I will – I will contact Mr Chaskalson and be in touch with him on this score so that we can see how quickly we can accommodate the position.

**CHAIRPERSON:** Okay no that is fine then. Okay I will therefore postpone the hearing of Mr Nyhonyha's evidence to a date to be determined in due course.

**ADV DORFLING:** We are indebted to you thank you Mr Chair.

**CHAIRPERSON:** Okay all right. Thank you very much then. Thank you Mr Chaskalson.

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

**CHAIRPERSON:** Thank you Mr Dorfling. We – we therefore adjourn. Thank you.

**ADV DORFLING:** Thank you Chair.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon everybody. Good afternoon Mr Myburgh.

**ADV MYBURGH SC:** Good afternoon Chairperson.

**CHAIRPERSON:** Yes. Thank you. Good afternoon everybody. Is everybody there who should be there?

**ADV SOLOMON SC:** Good afternoon Chair.

**CHAIRPERSON:** Good afternoon Mr Solomon.

**ADV QOFA:** Good afternoon – I am moving to the next room. I just wanted to make sure everything is in order.

20 **CHAIRPERSON:** Okay that is all right. Good afternoon.

**ADV QOFA:** Afternoon.

**CHAIRPERSON:** Good afternoon Ms Mngoma.

**MS MNGOMA:** Good afternoon Chair I nearly said good morning.

**CHAIRPERSON:** Well – well if you nearly said good

morning maybe you wake up – you woke up late. Okay all right. Ms Mngoma are you ready.

**MS MNGOMA**: Yes Chair I am ready.

**CHAIRPERSON**: Okay the oath you took yesterday will continue to apply today, is that all right?

**MS MNGOMA**: Yes Chair.

**CHAIRPERSON**: Okay all right. Mr Solomon you may proceed.

**ADV SOLOMON SC**: Thank you Chair. Ms Mngoma before  
10 we adjourned I was – last night I was referring you to paragraph 54 of your statement Bundle 7(a) at 1011.

**MS MNGOMA**: Oh sorry Mr Solomon can I get someone who can help me with the 00:01:42 with the file?

**CHAIRPERSON**: Okay that – that would be Bundle 7(a) page 1011. Your counsel can assist you – is she assisting you?

**ADV SOLOMON SC**: Chair I have no objection if counsel assists her with the (inaudible)

**CHAIRPERSON**: Yes.

20 **MS MNGOMA**: Yes. I would...

**ADV SOLOMON SC**: In order to ...

**CHAIRPERSON**: Yes to expedite.

**ADV SOLOMON SC**: Expedite matters.

**CHAIRPERSON**: Yes. I – have you found it Ms Mngoma?

**MS MNGOMA**: Yes Sir I do.

**CHAIRPERSON:** Okay all right.

**ADV SOLOMON SC:** Right. Now you will see that in paragraph 54 and paragraph 55.1 and 55.2 the phrase “several occasions” is used and if I can borrow from the phrase it is used on three occasions. Do you see that?

**MS MNGOMA:** Yes.

**ADV SOLOMON SC:** And that is under this heading which you see before paragraph 53 Cash Collected from the Gupta Residence. Now you have in your oral testimony and in  
10 your affidavit your clarifying affidavit which we looked at yesterday that was to save time you do not have to go there unless you want to because I am going to just come back to – to page 1011. But just in that affidavit which we looked at as – it was under – it was paragraph 5.1 at page .13 1027.13. You were referring to paragraph 55.2 and you have said:

20 “That it is clear the information I provided was not adequately or properly captured to the effect that I had indeed seen the bag being carried out of the Gupta residence several times but I had only seen Mr Gigaba transfer cash from the big bag to his carry bag only once.”

Have you any idea where the notion of several occasions came from that found its way into your affidavit?

**MS MNGOMA:** Yes.

**ADV SOLOMON SC:** Have you any idea who inserted the phrase there on those three occasions at page 1011 and 1012 in your affidavit if it was not yourself?

**CHAIRPERSON:** Ms Mngoma.

**MS MNGOMA:** Yes I am reading Chair.

**CHAIRPERSON:** Oh okay.

**MS MNGOMA:** Mr Solomon I just want to know what is your question again so I am on that?

10 **ADV SOLOMON SC:** My question is in your oral testimony you have said there was only one occasion that you saw money in the boot of Mr Gigaba's motor vehicle that was in a bag – cash money and then in another occasion which we spoke about yesterday when you surprised him in the study and the safe. You recall?

**MS MNGOMA:** Yes.

**ADV SOLOMON SC:** That has been your oral testimony. What I am putting to you is we see the phrase "on three occasions" which I have just pointed out to you the phrase  
20 "on several occasions" that is in three places in your affidavit. I am trying to ascertain from you where did the notion of several occasions come from in contrast to your evidence – oral testimony?

**MS MNGOMA:** So what is put together the several it was the several of me seeing the bag at the Gupta house, to the

money – I saw it at Sandton Inn, I saw it at home. But it was not the first time I saw the bag coming in and out at the Gupta's house. But when I was at the Gupta's house I did not see the money I saw the bag. Then at Sandton I saw when he was transferring the money from the – from the bag in the boot to his bag and also I saw it at home. So several means that different times seeing the bag at the Gupta's house.

**ADV SOLOMON SC:** Would it be true to say that although  
10 you were not there when the Gupta's allegedly gave  
Minister – money to the Minister but you would see him  
leave and every time he would go there he would carry a  
bag and they will give him money. Would that statement be  
correct?

**MS MNGOMA:** I will not say all the time. I was not there  
all the time when he was there.

**ADV SOLOMON SC:** So where did the notion of several  
occasions come from?

**MS MNGOMA:** Several occasions comes – house and  
20 sometimes when we were there then the bag will come in  
and out. That is several. They were the several come in.

**ADV SOLOMON SC:** But you would not – you would not  
use the phrase every time?

**MS MNGOMA:** So I did not use the – I will not use every  
time.

**ADV SOLOMON SC:** But now I have a transcript of your interview – your ENCA interview which we find – and Mr Myburgh can assist me Chair mine is – is 18/2021070. I think – I think it is part of Mr Gigaba’s bundle.

**CHAIRPERSON:** Mr Myburgh are you able to assist?

**ADV MYBURGH SC:** Yes DCJ. You will remember that yesterday we agreed that there were three documents that you would have before you. It is Bundle 7(b).

**CHAIRPERSON:** Yes.

10 Then the transcript and the third document is SEQ18 of 2021 it is Mr Gigaba’s application to cross-examine Ms Mngoma.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** The transcript that Mr Solomon is referring to appears at page 68 and following of that – that bundle.

**CHAIRPERSON:** Okay I have got that file. Let me look for page 68. Yes I have got it. I have got it thank you. Have you got it Ms Mngoma?

20 **MS MNGOMA:** We are just paging – we are – we have the file by me – (Inaudible)

**CHAIRPERSON:** You are looking for it okay. Okay.

**ADV QOFA:** Chair I do not know if it is going to help.

**CHAIRPERSON:** Yes.

**ADV QOFA:** I am in a different room down the hall.

**CHAIRPERSON:** Yes.

**ADV QOFA:** Now I have people whose been helping me Ms Mngoma navigate the papers.

**CHAIRPERSON:** Yes.

**ADV QOFA:** And he was somewhat now quite comfortable with where – what is that is why it was easier.

**CHAIRPERSON:** Yes.

**ADV QOFA:** Now unfortunately he is attending class.

**CHAIRPERSON:** Yes.

10 **ADV QOFA:** And I know that given the nature of where we are now which may not be helpful for me to be in the room.

**CHAIRPERSON:** Ja.

**ADV QOFA:** But I worry that it is going to be a bit difficult to navigate the papers unless I am there but I – I am not making any ...

**CHAIRPERSON:** Mr Solomon has – has already said he – he has no objection is you are in the same room for purposes.

**ADV QOFA:** Oh.

20 **CHAIRPERSON:** For purposes of helping with the file. He has said he has no objection.

**ADV QOFA:** Oh thank you, thank you Chair.

**CHAIRPERSON:** If you (inaudible) ja.

**ADV QOFA:** I was not aware so I will try and pack up and then I will go so that we can be able to get a smooth flow of



the documents (inaudible)

**CHAIRPERSON:** Yes. Okay all right. Okay.

**ADV QOFA:** Thank you so much Chair.

**CHAIRPERSON:** Okay. Do that. Ms Mngoma have you been able to find it?

**MS MNGOMA:** Yes Chair.

**CHAIRPERSON:** Okay all right. Mr Solomon.

**ADV SOLOMON SC:** Thank you. Now you will see what you said the last paragraph on page 68 you say: It is a -  
10 you say

“Although I was not there when they give him money but I will see him when we leave because every time when we go there he used to carry a bag and they will give him money.”

Is that statement not correct?

**ADV MYBURGH SC:** Sorry that is at page 70 not 68.

**ADV SOLOMON SC:** I apologise.

**CHAIRPERSON:** Oh I was still trying to look for it. Oh is  
20 that the last few sentences of page 68 – of page 70:

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

**CHAIRPERSON:** Yes okay all right. Have you found the relevant portion Ms Mngoma?

**MS MNGOMA:** Yes Sir.

**CHAIRPERSON:** Okay.

**ADV SOLOMON SC:** Were those your words?

“Because every time when we go there he used to carry a bag and they will give him money”.

**MS MNGOMA:** So that was my observation.

**ADV SOLOMON SC:** That was your observation but now you have corrected your – your statement in your clarifying affidavit to say

10 “That it was not several occasions and it was not adequately or properly captured by the party who crafted your affidavit.”

So what did you tell them and how did the notion of several occasions find its way in three different places in the affidavit?

**MS MNGOMA:** It was –

**CHAIRPERSON:** I am sorry – I am sorry Ms Mngoma before you respond.

**MS MNGOMA:** Yes.

20 **CHAIRPERSON:** Mr Solomon I understood Ms Mngoma to say with regard to the reference to several occasions in her affidavit and she can just tell me if I understood her. I understood her to be saying that she intended to say she had seen the bag being asked for or being carried by Mr Gigaba at the Gupta residence on several occasions but he – she did not see money at the Gupta residence. But she

only saw money I think once at Sandton searching in the car in Sandton in the car being transferred and then at home. So I just want to say that is how I understood her – that is what I understood her to say. But based on your question you seem to have understood her differently. Can I check

**ADV SOLOMON SC:** No, No Chair no I understand it the same way.

**CHAIRPERSON:** Oh.

**ADV SOLOMON SC:** I do understand it the same way.

10 **CHAIRPERSON:** Okay.

**ADV SOLOMON SC:** But I – but if the next question will perhaps in answer.

**CHAIRPERSON:** Clarify.

**ADV SOLOMON SC:** If just looking back at page 70 of the transcript in that last paragraph the third line you say:

“So then they will give him money. It was a lot of cash all the time.”

Did you say that?

**MS MNGOMA:** Yes I did.

20 **ADV SOLOMON SC:** But you never saw as the Chair has said and as I have it you never saw the Gupta’s giving Mr Gigaba any money. So why did you say this in the interview?

**MS MNGOMA:** Because it was a summary of what he has told me when there was money of him doing different things

in terms of fixing the house. So that was the different money. So he will say no I will go to them to raise the money or I will do this money from him. So I will know that the money was coming there. And he was never – Malusi never made that as a secret that they were helping him financially. So it was the summary. So I did not want to go into detail how and how because the interview was short. So it was a summary of everything.

**ADV SOLOMON SC:** Well I do not know about a summary.

10 What I am putting to you is in this interview you have used the phrase “all the time” once and “every time”. Now what I want to put to you is that is a far cry from never seeing him receive cash from the Gupta’s and only seeing it once in the car and once in the safe at home. That is not all the time.

**MS MNGOMA:** That is your version Mr Solomon of understanding it. It is my version of understanding it is not that.

**ADV SOLOMON SC:** And you saying that this is all put down to when you gave your interview it was just a  
20 summary. What do you mean by that? Summarising what?  
A summary...

**MS MNGOMA:** This – I was summarising that Gupta’s helped him to pay for the wedding. They helped him to assist the sister to get off credit bureau. They assisted him to do the renovations at home. They assisted him to do a

lot of things. So it was the summary of all those things because in the interview I could not say each and every detail that - so it was the summary of everything that helping him financially.

**ADV SOLOMON SC:** And is this – is this sentence a summary

“Because every time when we go there he used to carry a bag and they will give him money”.

10 But that is not true. You never saw them give him money.

**MS MNGOMA:** I saw that I never asked him. I said (inaudible)

**ADV SOLOMON SC:** So why do you say so – okay let me finish. Why do you say so in the interview? I mean it is – it is – I am going to argue in due course that I am going to – and I am putting to you that what you said in the interview is very clear. You are saying that the Gupta’s used to give your husband money. It was a lot of cash all the time and you said further because every time when we go there he  
20 used to carry a bag and they will give him money. But now we know you never saw any of that so why do you say so in your interview? And I am going to argue that you deliberately trying to implicate Mr Gigaba

**MS MNGOMA:** Because he is the one –

**ADV SOLOMON SC:** I beg your pardon.

**CHAIRPERSON:** Let – let him finish Ms Mngoma. Let Mr Solomon finish what he is putting to you.

**MS MNGOMA:** Okay.

**ADV SOLOMON SC:** You trying to falsely implicate Mr Gigaba in wrongdoing when you did not observe any of this.

**MS MNGOMA:** I did observe – the difference between me and you – you were not there and I was there. And also when everything happened in the house you were not there I was there. And when I was asking questions to him he –  
10 the answers he would give to me you were not there I was there. So right now you are trying to 00:18:28 something that you were not part of and I was part of. I was there with him.

**ADV SOLOMON SC:** Yes. No I know I was not there and nor was the Chair and that is why we are trying to understand your evidence. But the CPO officers were there. They were the ones who would bring the bag to him. Is that right?

**MS MNGOMA:** Because he used to come and take his  
20 phone because we used to leave the phones so he will type – he would come and take his phone and call say Jakes please bring my bag. So the bag would go in and the bag will go out. So I did not know in the beginning when this used to happen. So also there were a lot of things that he used to do and I will ask like where did you get the money

from – he will tell me. So...

**ADV SOLOMON SC:** Yes but sorry I have got to interrupt you because I have got limited time Ms Mngoma. You are not answering my question. The CPO officers were there when this would happen. They would bring him the phone, he would call them, they would bring the bag, he would...

**MS MNGOMA:** (inaudible) They will not bring him the phone.

**CHAIRPERSON:** Hang on Ms Mngoma. Wait until Mr  
10 Solomon has finished. Mr Solomon.

**ADV SOLOMON SC:** Thank you. The CPO officers were there. They would bring the bag to him that he would put the money in. Is that correct?

**MS MNGOMA:** I never see him putting the money so it is you putting the words in my mouth.

**ADV SOLOMON SC:** You saw them bring the bag to him.

**MS MNGOMA:** Yes.

**ADV SOLOMON SC:** Now Witness 3 gave evidence and we  
his transcript in – in order to save time I am just going to  
20 read to you because I do not think the Chair has it. But the  
record is – will speak for itself. But he was asked I think by  
me or by Mr Pretorius and just to put it on record where it is  
Chair at Witness 3 transcript 8 May 2021 page 78 line 6 to  
79 to 79 line 17. Now there he says he did not see where  
the bag had come from and he did not know where the bag

had come from and his evidence – none of his evidence indicated that he had ever seen a bag being brought to Mr Gigaba and then the bag being taken back to the car at the Gupta residence. Do you want to comment on his evidence in that regard?

**MS MNGOMA:** So the bag – so in terms of that Malusi had like four protectors. So it is not like everything was done by one protector. If Witness 3 said that that was Witness 3 there were other protectors because Malusi had four  
10 protectors. And also when we leaving it was him carrying the bag. So he never said to them come and take the bag back.

**ADV SOLOMON SC:** No your evidence is, the bag would be brought to him by this – the close protection officers, is that right on each occasion?

**MS MNGOMA:** Because he will leave the bag in the boot. Every time when we got there was a certain (inaudible).

**ADV SOLOMON SC:** No but just answer yes or no. Was the bag brought to him?

20 **MS MNGOMA:** Yes.

**ADV SOLOMON SC:** Because that is your evidence.

**MS MNGOMA:** Yes.

**ADV SOLOMON SC:** Yes. And now Witness 3 who says he was there on I think it was sixteen occasions in 2013 never once witnessed the bag – the request for the bag to be



brought to him or the bag being brought to him. So your evidence is in conflict with what his evidence is in that regard and in fact he goes further in saying that he never saw where the bag came from. So he never saw the bag being returned to the boot of the motor vehicle.

**MS MNGOMA**: Then I saw it.

**ADV SOLOMON SC**: And furthermore, Witness 3 never talks about you being at the Gupta residence. There is no reference to you being at the Gupta residence with Mr  
10 Gigaba.

**MS MNGOMA**: We used to go there. Every time we used to go there by (inaudible) there are times he will go there without me and sometimes we will go together without them. So we were there in different times. And not all the time he will go with his four protectors. Sometimes we will go with one protector – sometimes we will go with all of them and sometimes we will go all of us – so you cannot just put everything in one protector.

**ADV SOLOMON SC**: Do you know

20 **MS MNGOMA**: So (talking over one another).

**ADV SOLOMON SC**: Sorry carry on.

**MS MNGOMA**: So which means now you only believe Witness 3 like it was the – Malusi was only with one person. Because we were there at different times all of us.

**ADV SOLOMON SC**: Was Witness 3 there when –

**MS MNGOMA:** So (inaudible).

**ADV SOLOMON SC:** Sorry are you not finished? Continue.

**MS MNGOMA:** So Witness 3 saw what he saw – I saw what I saw. But what I am telling you most of the time I was there with him and there were a lot of times Malusi will be there without me. He will tell me that he is going there. So what happens when I am not there I do not know but what I am talking about it is when I was present.

**ADV SOLOMON SC:** Was Witness 3 present on any of the  
10 occasions when you were there?

**MS MNGOMA:** I do not know who is Witness 3. You can tell me who is it.

**ADV SOLOMON SC:** Okay. Now this – this bag that would be brought to – to Mr Gigaba and then he would return with it and put it in the boot of the car – you – in your statement – we go back to paragraph 54 – you – are you still there at 1011?

**MS MNGOMA:** 1011.

**CHAIRPERSON:** That is Bundle...

20 **ADV SOLOMON SC:** It is where we were – it is where we were.

**CHAIRPERSON:** 7(a) that is Bundle 7(a).

**MS MNGOMA:** (Inaudible).

**CHAIRPERSON:** Page 1011. Have you found it Ms Mngoma?

**MS MNGOMA**: I am still paging Chair.

**CHAIRPERSON**: Okay.

**MS MNGOMA**: I found it. So what line is it?

**ADV SOLOMON SC**: Paragraph 54 you refer to annexures A and B. In paragraph 55.2 over the page you refer to annexure C and D and paragraph 56 you refer to annexure A. Do you see that?

**MS MNGOMA**: Yes Mr Solomon.

**ADV SOLOMON SC**: Now the bag that would be brought to  
10 Mr Gigaba you described that as a sports bag, is that right?

**MS MNGOMA**: Not a sport bag.

**ADV SOLOMON SC**: Is it not a sport bag?

**MS MNGOMA**: It is like a – like a leather bag.

**CHAIRPERSON**: Mr Solomon you have exhausted twenty minutes. I will give you the last five minutes.

**ADV SOLOMON SC**: Thank you Chair.

**CHAIRPERSON**: Okay.

**ADV SOLOMON SC**: You say it was not a sports bag?

**MS MNGOMA**: It was a leather bag.

20 **ADV SOLOMON SC**: Is it not a sports bag?

**MS MNGOMA**: What is a sports bag?

**ADV SOLOMON SC**: I beg your pardon.

**MS MNGOMA**: What is a sports bag?

**ADV SOLOMON SC**: No well ...

**MS MNGOMA**: What kind of bag?

**ADV SOLOMON SC:** We will not debate the phrase all I asking you is in – to your way of thinking it was not a sports bag it is a leather bag?

**MS MNGOMA:** It is a leather bag.

**ADV QOFA:** Chair I hope there will not be feedback. I just wanted to remind the Chair and Mr Solomon that in relation to the annexures Mr Myburgh had corrected the order of annexures to identify properly with the bags that are being referred to. I hope that Mr Solomon would be able to  
10 remember that so that it does not confuse the witness.  
Thank you Chair.

**CHAIRPERSON:** Ja okay. Mr Solomon continue.

**ADV SOLOMON SC:** Yes, we are aware of that. Would you not describe that bag as a sports bag whether leather or canvass that is all I want to know?

**MS MNGOMA:** Just so – I am not sure what...

**ADV SOLOMON SC:** Ms Mngoma.

**MS MNGOMA:** What I know Malusi had two leather bags – big ones and he had a small bag that he put cash on it and  
20 he take the cash from the big bag. So those are the bags  
I...

**ADV SOLOMON SC:** But in your statement at paragraph 56 you spoke about a sports bag.

**MS MNGOMA:** We corrected that.

**ADV SOLOMON SC:** Page 1012. So you do know what a

sports bag is?

**CHAIRPERSON:** Ms Mngoma.

**ADV SOLOMON SC:** You used the phrase in your – in your affidavit.

**MS MNGOMA:** Mr Solomon I think in every pictures that we saw Malusi you saw him carrying bags everywhere.

**ADV SOLOMON SC:** Okay. All right.

**MS MNGOMA:** Or – he forever carry bags with him and those bags were there.

10 **ADV SOLOMON SC:** I am going to – yes. Ms – Witness 3 described – told the commission it was the bag that he saw in the boot of Mr Gigaba’s car was not a sports bag it was a travel bag and I will give you the – the reference Chair we do not need to

**CHAIRPERSON:** To go there.

**ADV SOLOMON SC:** To go there.

**CHAIRPERSON:** Okay.

**ADV SOLOMON SC:** Just bear with me – that would be at – it is Witness 3 transcript 8 March 2021 page 62 line 20 to  
20 65 – line 20 where he describes the bag. So what I want to put to you is his description of the bag that you saw is totally different to the description that you have said in various places both in your statement and in your oral testimony. Do you want to comment?

**MS MNGOMA:** I am not going to be commenting on it

because I do not know what he spoke about and I have not received the affidavit of Witness 3 and also we corrected the bags because when I wanted to take the pictures of the bag and send it to the commission Malusi's study is always locked and he does not want anyone to come in. So then I had to download bags that are similar to the bag. So that is a different thing. If he allowed me to take the pictures of the bag I was going to show you exactly what kind of bag it is.

10 **ADV SOLOMON SC:** Okay. There is just two things more Chair. One is Ms Mngoma I am going to argue with reference to your evidence that your counsel has referred to your oral testimony that as read with this statement that there are numerous contradictions in the description of the bag whether it was A and B or C and D or A, C and D and I just want to in fairness put to you that I am going to argue that your evidence in that regard is riddled with contradictions and if we are given permission to make submissions we are going to make submissions in regard to  
20 that. You can comment if you choose to you do not have to.

**MS MNGOMA:** Your – I think your client can just give you those bags to make it easier so that you do not have to ask me a lot of questions about them because I am not allowed to go to that room because I can go there and take them or unless he allows me to take them – to take them.

**ADV SOLOMON SC:** Okay then just one last thing. In your evidence and – and in order to save time I will just give Chair the reference.

**CHAIRPERSON:** Ja.

**ADV SOLOMON SC:** It is Ms Mngoma's evidence of 20 May 2021 at page 215. You told the Chair that

**MS MNGOMA:** Sorry can you please wait I am paging there.

**ADV SOLOMON SC:** I beg your pardon.

10 **MS MNGOMA:** Can you please give me a second I am just paging there. It is 2020 –

**ADV SOLOMON SC:** 20 May 2021 page 215.

**MS MNGOMA:** 215. Okay I have got that.

**ADV SOLOMON SC:** You say – I am just reading from the sentence starting

“Because most of the time when something would be on the paper Malusi would never tell me.”

Do you see that?

20 **MS MNGOMA:** I see the last – the last line?

**ADV SOLOMON SC:** Do you have the sentence

“Because most of the time”.

It is line 18 page 215.

**MS MNGOMA:** Yes.

**ADV SOLOMON SC:**

“Because most of the time when something would be on the paper Malusi would never tell me so I will hear maybe when people are sending me messages – oh sorry about what happened.”

Do you recall that evidence?

**MS MNGOMA**: Yes.

**ADV SOLOMON SC**: Then on the previous page – page 214 you also said that you were not even allowed to watch the news most of the time or read newspapers as well. The sentence starts with:

“I do not even understand why he will talk about the media”

Do you have that?

**MS MNGOMA**: Yes I see that.

**ADV SOLOMON SC**: Now you also said that Mr Gigaba was upset when you surprised him in his study and said why did you not knock on the door? Is that right?

**MS MNGOMA**: Yes.

**ADV SOLOMON SC**: Is that because he did not want you to see what he was doing with – with the cash that you allegedly saw? Is that what you inferred from him being startled and...

**MS MNGOMA**: I am not sure.

**ADV SOLOMON SC**: You are not sure?



**MS MNGOMA:** I am not sure.

**ADV SOLOMON SC:** And anyway I want to put to you that the evidence that I have referred you to now at page 214 and 215 and your evidence about him reprimanding you about not knocking when you surprised him in his study is inconsistent with someone who would have willingly and openly taking you to the Gupta home where you would be privy to what was going to be discussed in the meetings because your evidence is you heard this beforehand and  
10 being privy to all the information that you say Mr Gigaba told you in your statement and I am going to argue that your evidence in that regard is so improbable that it should be rejected. You can comment if you want you do not have to.

**MS MNGOMA:** I think the reason he was shocked because to me when you say the money is for the – the money is for elections and then – because lots of time he will say you will declare things it is either the gift he will declare them to Parliament. So now when you packing the money in the safe if the money is for elections why you packing it at  
20 home because you are supposed to take it to the – I do not know if it is supposed to go to Parliament or Luthili because he said he was the head of elections raising money. So why you packing it at home. Maybe that was his shock on it.

**CHAIRPERSON:** Mr Solomon was that your last question?

**ADV SOLOMON SC:** That is my last question Chair.

**CHAIRPERSON:** Okay all right.

**ADV SOLOMON SC:** Thank you Chair.

**CHAIRPERSON:** Okay thank you. Counsel for Ms Mngoma do you – do you intend to re-examine?

**ADV QOFA:** Indeed Chair I had requested.

**CHAIRPERSON:** Yes.

**ADV QOFA:** Looking at the feedback it looks like I will just need five minutes to relocate back to my boardroom.

10 **CHAIRPERSON:** Okay and how long do you estimate you might need? Obviously I will decide in the end but do you have an idea how much time you need?

**ADV QOFA:** Indeed Chair no more than thirty minutes.

**CHAIRPERSON:** Ja. Okay all right. Let us take the five minutes so that you can relocate and then we will continue.

**ADV QOFA:** (Inaudible) Thank you very much.

**CHAIRPERSON:** Okay all right. We adjourn.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

20 **CHAIRPERSON:** Okay. Can you hear me?

**ADV QOFA MPHATI:** I can hear you, Chairperson

**CHAIRPERSON:** Okay. Ms Mngoma, your counsel will ask you some questions aimed at clarifying aspects of your evidence that might not have been clear. She will now then start and put questions to you. Okay, let us go ahead.

**MS MNGOMA:** Thank you, Chair.

**CROSS-EXAMINATION BY ADV QOFA MPHATI:** Thank you very much, Chair. I think it would be important, Chair, where Mr Solomon ended.

**CHAIRPERSON:** Ja.

**ADV QOFA MPHATI:** [Distortion present in video transmission – speaker unclear] ...I will start at page 215 of the ...[indistinct] transcript, which is where Mr Solomon last referred Ms Mngoma.

10 **CHAIRPERSON:** Yes.

**ADV QOFA MPHATI:** [Distortion present in video transmission – speaker unclear] ...because I would rather not waste time. I am going to read ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV QOFA MPHATI:** ...what the paragraph says and it starts at 915 and I will start with the Chair's question ...[intervenes]

**CHAIRPERSON:** Okay.

20 **ADV QOFA MPHATI:** [Distortion present in video transmission – speaker unclear]

“You say you he did not want you to watch the news on television or read the newspapers at home?”

And the response is the following:

“Ja, most of the time ...[indistinct]

Our marriage were exposed to a lot of scandals which sometimes if I come I will tell him that: Malusi, I saw this maybe in the papers. What is happening?

Because most of the time when one something would be on the ...[indistinct] Malusi will never tell me...”

Now this is the part that Mr Solomon referred to and I am reading this as such, typically, first for the Chair because I  
10 would like Ms Mngoma to clarify this particular aspect. Now, Ms Mngoma, the question you were asked by Mr Solomon was for you ...[indistinct] to say you were simple not allowed to watch TV. Can you clarify properly with me having taken you to this paragraph, exactly what you mean by that?

**MS MNGOMA:** So, when I meant that. Most of the times on Sundays I will see papers. It is either maybe we are driving together or I will see messages from people. They say: Sorry, mamma. But what happened? And I did not  
20 even know what happened because we are not buying papers at home. Malusi did not want papers at home.

And then when sometimes I will ask the person who says so ...[indistinct] a lot of messages. People will send me the story. And then I will ask him what is this story about. Then she(?) will start, maybe saying: Oh, no.

Maybe I was ...[indistinct] nudes(?). This girl was used. There was a big scandal after we got married.

And then it was all over in papers and Malusi made a statement that he never met that woman. And I only saw it – it was all over. We were on front page. Even on the magazines, we were on front page and I did not know about it and he knew. And what was shocking. So, when I will go – see maybe on his Instagram, Malusi already made a statement.

10 All the time when there were those scandals, Malusi see to it - his PR person, they will write together. And then he will say: My wife and I are saying this to the story. So, I would ask him: Why would you write stories and make a statement without coming to me? Because, firstly, I did not even know about that story. I do not even know about the affair that Malusi had.

So, there were a lot of affairs that were coming. Every time we were on paper. And then Malusi says: No, they called(?) you on Thursday. I did not want to bother  
20 you. But I was like: But when you are making the statement... He used to make statement and says my wife and I.

So, which means I am part of that. And I did not agree to it. And I did not like those things. And he did not want to me to see the papers. That is part of it. And when

Malusi was – when he was reshuffled to go back to Home Affairs from Finance, he did not want me to watch TV most of those times because he said the top six, Mr Cyril Ramaphosa, they removed him. They – he was removed unfairly.

So, then I must not watch TV because these people they sold me out. Then I did not understand because the time Malusi used to have TNA Breakfast meetings, if I did not go with him, he will tell me I need to  
10 wake up and watch when the time it was still right. It was 2014 when everything was right with the Guptas and himself and I would watch.

Like all of a sudden, I was not allowed to watch TV because he had a problem with the current administration. Two. With all papers – I had a problem even when there was the pornography that came out. And when that came out, I heard it from people. And Malusi already – I was at church when that thing was leaked and the video or the sex video while I was at church.

20 And then I came back. Malusi already made a statement at seven o'clock and we went to church together. He did not tell me all the way. And I was shocked why he was coming with me to church because we never went to church together. And he already made a state that: My wife and I – the video was meant for my wife. And he

never talked to me about that video.

So, when I asked him about it but why are you including me in things that has got nothing to do with me and also, why when you talk to papers – because I know papers. They will call me about the story and they will tell him. So he knew everything but he was not honest – entire – our marriage.

So, then he said: No, the video, it was leaked. One of the top six members, which I do not want to give(?)  
10 the name. So... And those people they were used to destroy his political career. So, every time when there is something on the paper, he will say: No, it is a political agenda. The one is to remove me because I am going to be a President. I am going to be a President.

So, this president thing, it was all over and he ...[indistinct] all the time. But I had a problem, like, I have to put in the cage where I cannot be anywhere because Malusi does not want me to hear things. And also, to prove it to that. There was a time when Malusi was the  
20 Minister of Finance and it was announced that the budget must be tightened.

So, with the spouses, most of the time, they must not travel to save money. But Malusi travelled with me, most of all those trips because he did not want me to stay in South Africa while he was travelling. He wanted to

travel with me on all those trips so that he can keep me not to see what is happening about him. And when we came back on those trips, then there was a big noise. I think it was from EFF.

They were asking why we are spending taxpayers' money, why he was travelling with me. And Malusi said: No, you must not worry about them ...[indistinct] because I remember even when we went to Washington, I posted a picture when we arrived and it was such a big scandal that  
10 I was with him.

They were like why he was travelling with me. Because what he was doing. Wherever he goes, he did not want to leave me. He wanted me to be here so that I must not hear this. And also, the lies he kept on feeding me. And my problem was trusting him, every information that he was giving me.

And the day I realised that Malusi was lying especially when it comes to the video, on the pornographic video, there was no one who was pointing a gun in his  
20 face(?) because he said to me someone from the top six stole the video from iPhone. I know how iPhone works. There is no one someone stole that video. Even someone stole the video, he did the video by himself.

But for him to say the video, send it to me. Then I asked him: Why did you then lie to me then? And also,



why every time when we have like major problems you always bring – what is it – you always bring political things? People and this girl – I know this girl threw herself to me or she was bought by people.

All those things were always coming up and Malusi will come and just say different things why everything happened. So, for me, when Malusi say I never said I wanted to go... After that video, like, our marriage was just apart. Therefore, we started to sleep in different  
10 bedrooms and because Malusi never wanted to be hold accountable.

Like, even today. All these things he is busy saying this thing because he wants me to be hold accountable by his kind of ...[indistinct] ...[intervenes]

**ADV QOFA MPHATI:** Ms Mngoma, I do need to just stop here a bit, Chair.

**CHAIRPERSON:** [laughs]

**ADV QOFA MPHATI:** I do not mean to...

**CHAIRPERSON:** Ja, you see, Ms ...[intervenes]

20 **ADV QOFA MPHATI:** I do not mean to tell the witness ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV QOFA MPHATI:** But I have a time. So, I want to leave it to my witness accordingly.

**CHAIRPERSON:** I wanted to tell her – tell you, Ms

Mngoma that the more time you use, the fewer the questions are going to be that your counsel will be able to ask you. So ...[intervenes]

**ADV QOFA MPHATI:** Thank you very much, Chair.

**CHAIRPERSON:** Alright.

**ADV QOFA MPHATI:** Thank you very much. I will move to the second question. I would want us to move to the second issue that was canvassed yesterday ...[indistinct] with you. It was the issue about the car. The issue that  
10 you are currently driving. An impression was created that because you do not give the information about your car you are a liar and you are trying to portray something that you are otherwise lying about.

I would you want to clarify, based on the discussion that you had with Mr Solomon yesterday. The issues about your car and why it is critical that you do not want to give such information before the Commission today.

**MS MNGOMA:** Firstly, I got the car myself. And I do not  
20 want to say how I got the car, but I have not full(?) paid the car. I put the deposit. I sold my other car and Malusi knows that the other car that I had. And also, the registration about my car, it is private, which I did not understand why Mr Solomon, he wanted to put my registration out there in public, which I do not think he can

do that to himself, but maybe he was doing that for his client.

And also, the information about the car. For me it is my safety, my car. Because there is a lot of – and I request Mr Solomon, even the Commission to respect that part that the car that I am driving wherever and it must be kept private because of all the security concerns around my life. And also, on Malusi's affidavit, he said the car, it was given me by the Intelligence.

10           So, I would want them to prove that, like how the Intelligence would benefit to give me already(?) a ...[indistinct] because he counted all those people. How Malusi involved me with all those people, the Intelligence and everyone, which is not true.

**ADV QOFA MPHATI:**       [Distortion present in video transmission – speaker unclear] You have said further to the issue of the white BMW. The question that was raised or put by you – the statement that was made was that you benefited from what you say is corrupt proceeds. You  
20 benefited from a corrupt relationship that you say your husband had with the Guptas. Can you please clarify properly the issue of the white BMW and the benefit that you are said to have derived from the use of the vehicle?

**MS MNGOMA:**       I knew that – about the car. I have benefited from the corrupt money, which is not true. So,

when Malusi gave me that car – and also, the whole – I will try to sum up everything because of time. When the whole plotted(?), the arrest with the Hawks and Malusi which I have explained, when everything happened, Malusi knew that everything happened a long time ago with the car. I have been with him, like, almost ten years.

I will not remember each and everything because I was not spying on his life. The reason there was the plot of those police to come and take my information and there  
10 was a judge – there was a ruling – the judgment by Judge ...[indistinct] that they must keep that – my information. Until today, my information is not there.

Malusi did that on purpose because he knew that if I go to the Commission and if I talk to the Commission, he know that my information is not returned back and it will be hard for me to say the dates when exactly this happened, when I did I receive the car, when the car went – we travelled to this place and this place.

So, he did that deliberately. And that is the reason  
20 he wanted to go fetch the police from Mpumalanga so that my information is not returned back. If I have my information, I would just show the pictures of that car. And also, I will have even – everything that is approved in my emails, the exchange of messages between those guy who is his friend. So, he deleted all those things. That is the

reason my information is not there right now.

So that when I speak, I will look like a liar. So, all this, it just distracted(?) from him to run away from – for his doing with those Gupta people.

**ADV QOFA MPHATI:** Now that almost reminds me of an issue I would have missed and that take me to the issue of your CV. Mr Solomon made the statement. He said you are holding yourself out to be a ...[indistinct] weight(?) of Henley School. I know, you raised the question to say:  
10 Where is the CV where I have done so? But I would like you to assist the Chair to understand and if necessary demonstrate to the Chair what this issue is all about.

**MS MNGOMA:** So, when it comes to this CV that Malusi is talking about. It is unfortunate that my personal life is now the issue in this whole Malusi's doing and everything by his – Mr Solomon and himself. And also, yesterday I took, like, liberty to go to look at this CV that he was talking about because I have never applied anywhere with that CV. That CV is at home.

20 And also, I went exactly to that Henley because Mr Solomon when he said: I studied at Henley and also there is an assignment that is left(?) but I preferred like I ...[indistinct] to Henley which I did not. So, on my CV when it comes to that Henley thing, it says to date, currently to date because I did not finish.

I studied the whole year at Henley Business School and Malusi and I, we travelled to – because there was a mid-break – we travelled to Russia. When we got back – I got a cold in Russia. There was one test that I needed to write and I was sick. So, I could not write it. And then the school said I have to arrange with my lecturer which was in Cape Town and I did not arrange that with him. But I finished the whole course.

I did not ...[indistinct] There is not anywhere I  
10 have said I have graduated at Henley but I studied at Henley. So Mr Solomon, he will say where I sent(?) – I have got written at Henley because for me in my CV it says Henley to date which means I have not graduated at Henley but I studied at Henley full time.

**ADV QOFA MPHATI:** And Ms Mngoma has made available her CV should it be requested and we will make it available. And she has requested that if necessary she would love to be furnished with the CV that is referred to because she says that ...[indistinct] processes. And will  
20 happily make available the copy to the Commission.

**CHAIRPERSON:** Okay.

**ADV QOFA MPHATI:** And I must indicate, Chair, that I have personally looked at the CV and it indicates under Henley Business School, current to date, Henley Business School.

**CHAIRPERSON:** Ja.

**ADV QOFA MPHATI:** And therefore, I think that is as far as I can take it, Chair.

**CHAIRPERSON:** Okay, alright.

**ADV QOFA MPHATI:** Now, Ms Mngoma, coming back to you. So, Chair, I think it will probably be prudent to highlight what was – what became critical.

**CHAIRPERSON:** H'm?

**ADV QOFA MPHATI:** So, this morning Ms Mngoma says to  
10 me. When somebody says: Lift your hand. What does that mean, and pronounce your name and indicate one, two, three? I said that is taking an oath. And I think it is important that you explain this part importantly to the Commission as the Chair raised an issue specifically.

**CHAIRPERSON:** H'm.

**ADV QOFA MPHATI:** So, what – and I think maybe it would be important to say this, that when questions are asked, which is what I observed with Mr Solomon. I think it would be really important to break down the questions for  
20 easier understanding so that when somebody answers they know exactly what the question means. I am saying this to say this, Chair, that the question that Ms Ngoma asked me this morning gave me one impression and one impression only.

**CHAIRPERSON:** H'm?

**ADV QOFA MPHATI:** And that – and I will ask Ms Mngoma to tell the Chair on this one. And that she would have been asked to take an oath on the affidavit that was commissioned before the Commission. And I said to Ms Mngoma ...[intervenes]

**CHAIRPERSON:** I think you just have to put questions to her which are aimed at her clarifying what happened.

**ADV QOFA MPHATI:** Indeed, Chair. Thank you very much. I just thought. Ms Mngoma, I think let us go back  
10 to the questions that you were referring to this morning. Specifically when you were talking about the gentleman asking you to raise your hand. Can you please explain that process to the Chair as this was an issue that was of great concern yesterday?

**MS MNGOMA:** So, because Mr Solomon was asking me to take the oath, so for me, when I thought of the oath, I thought of the formal way how the Commission did the oath to say this and this. So, when we did – when was the ...[indistinct], the attorney, it was only, like, raise your  
20 hands.

So, then for me it was like a joke. I was, like, left or right? No and we all laughed and they like: No, raise your right hand. And I do not even remember what he asked but it was like he was asking it do I understand this part. So, I then I said because he was reading where he



was – he read to me. Then I did that.

So, I did not know that doing that was like taking like an oath in a formal way because for me, I thought, like, taking an oath is such a formal way it was done. Because the way it was done, we did like it ...[indistinct] because we are in the office. And so, I think it was it – I did not understand it. Maybe I can put it that way.

**CHAIRPERSON:** Well, did he ask you – did he say to you, you are going to need to take an oath or anything along  
10 those lines? Did he say anything like that?

**MS MNGOMA:** He said: Ms Mngoma, raise your hand. So, I said: Left or right? And then we just laughed about it, which hand I must raise and then you did – then he said your right hand and then I did. And he was like: I want to read the last part before you sign. So ...[indistinct] so that you understand it. So we read that and then I signed.

So, I do not remember exactly what happened when we were all doing it because it was not formal like the way it is done at the Commission. Because at the  
20 Commission it is so – because when I ...[indistinct] for the first time, I asked him: What does it mean when you ask me this? What does this mean? And he explained.

So, we did not go like that with the attorney ...[indistinct] So, in the Commission, they explained it properly to me. So, everything what I was saying that is

what they mean. If I am saying yes, I am saying yes to ...[indistinct] I am saying ...[indistinct] So, it was no(?) for mine and no understanding for me.

**CHAIRPERSON:** Did he ask you whether you would take an oath or affirmation?

**MS MNGOMA:** He said an oath.

**CHAIRPERSON:** So, he did ask you whether you are going to take an oath?

**MS MNGOMA:** Yes. He was just like – I do not remember  
10 everything he asked because it was not in a formal way.

**CHAIRPERSON:** Did he ask you whether you consider the oath binding on your conscience?

**MS MNGOMA:** I think he did.

**CHAIRPERSON:** Did he ask you whether you had read the affidavit?

**MS MNGOMA:** I said the part of it because that time we did not read the whole affidavit.

**CHAIRPERSON:** But did he ask whether you had read it?

**MS MNGOMA:** I do not remember it.

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

**MS MNGOMA:** Yes, Chair.

**CHAIRPERSON:** And did he ask you whether you understood the contents of the affidavit and whether you believe that it is to be true and correct to your knowledge?

**MS MNGOMA:** So, he read the last part where I signed it

on the last paragraph, I signed it. So he read it

**CHAIRPERSON:** When you say he read the last part. You see, in the affidavit – in affidavit there would be a part where you, the deponent to the affidavit sign and below that ...[intervenes]

**MS MNGOMA:** Yes.

**CHAIRPERSON:** ...there would be what we call the Commissioner of Oaths Certificate.

**MS MNGOMA:** Yes.

10 **CHAIRPERSON:** That is where the Commissioner is certifying that you acknowledge that you knew – you know and understand the contents of the affidavit and that you have said that you have no objection to taking the prescribed oath and that you consider the oath binding on your conscience and that you have said the contents of the affidavit are both true and correct.

And thereafter there is a space for him to sign as Commissioner of Oaths. So the certificate, Commissioner of Oaths Certificate is where, as the Commissioner of  
20 Oaths, he is basically saying, before signing this is what you confirmed. So, are you in a position to say you confirmed these things before him?

**MS MNGOMA:** I think I did but it was in the way informal and explaining(?) through him. If I can say it like that.

**CHAIRPERSON:** You say formal or informal?

**MS MNGOMA**: It was not formal. It was informal.

**CHAIRPERSON**: It was not formal. Was it casual?

**MS MNGOMA**: It was casual because ...[indistinct]

**CHAIRPERSON**: Ja.

**MS MNGOMA**: [Distortion present in video transmission – speaker unclear]

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

**ADV QOFA MPHATI**: [Distortion present in video transmission – speaker unclear] I just wanted to refer  
10 Ms Mngoma to page 1017 of her – it is Annexure A of her affidavit.

**MS MNGOMA**: I am there.

**ADV QOFA MPHATI**: I wanted you to look at this picture and want also to see the picture at 1019. It is just the next page.

**MS MNGOMA**: Yes?

**ADV QOFA MPHATI**: It is 1019. That is written C. The first one is A, the second one is C.

**MS MNGOMA**: Yes.

20 **CHAIRPERSON**: And then there is a B in between.

**ADV QOFA MPHATI**: Indeed, Chair. I am just ...[indistinct]

**CHAIRPERSON**: Ja.

**ADV QOFA MPHATI**: They almost look the same. I can only see the ...[indistinct]

**CHAIRPERSON:** Okay.

**ADV QOFA MPHATI:** I can just put(?) the question differently.

**CHAIRPERSON:** Okay.

**ADV QOFA MPHATI:** So, that is why I thought I might just as well consider them as one bag.

**CHAIRPERSON:** Okay.

**ADV QOFA MPHATI:** Okay. Ms Mngoma, when you talk about the bags that Mr Gigaba used to carry out of the  
10 Gupta residence. When you were there, even if it was whatever time that you saw him carrying out the bag, which bag are you referring to, between A and C?

**MS MNGOMA:** C. He used to carry out the big one. So ...[intervenes]

**ADV QOFA MPHATI:** And the bag.

**MS MNGOMA:** ...the A... Sorry, you can go on.

**ADV QOFA MPHATI:** And the bag that he used to put money why he was saying you are going to a mall or when he was going to shopping complexes, which bag was that?

20 **MS MNGOMA:** It is the bag A that has got ...[indistinct] now.

**ADV QOFA MPHATI:** It is the bag A.

**MS MNGOMA:** Chair, I do not think I have any other questions. I think those will be all the clarification questions that we wanted for this witness.

**CHAIRPERSON:** Yes. Okay. No, that is fine. Thank you very much. You kept within your time.

**ADV QOFA MPHATI:** Chair, I had a time stopper.

**CHAIRPERSON:** [laughs] Okay, alright. Mr Myburgh, do you have some questions.

**ADV MYBURGH SC:** Yes, I do, DCJ. If I may? I will not take more than five minutes.

**CHAIRPERSON:** Okay, alright. You can go ahead.

**RE-EXAMINATION BY MR MYBURGH SC:** Good

10 afternoon, Ms Mngoma.

**MS MNGOMA:** Good afternoon, Mr Myburgh.

**ADV MYBURGH SC:** I just want to ask you one of two questions about the production of your affidavit.

**MS MNGOMA:** Yes.

**ADV MYBURGH SC:** And I would like to focus in on a particular period and that is the period between the 25<sup>th</sup> of February when Mr Masuku delivered a USB to Advocate Nguckaitobi's chambers.

**MS MNGOMA:** Yes.

20 **ADV MYBURGH SC:** And the 6<sup>th</sup> of March when you signed the two affidavits. So, it is that period. 25 February to the 6<sup>th</sup> of March. In your evidence, as I have it, you spoke in relation to this period about you having met with Thembeke, according to my notes, and gone through it, which I assume was the affidavit with

Thembeke. Did you do that during the period 25 February to 6 March?

**MS MNGOMA**: There is one time – I think after the couple of meetings that we had, they did the whole draft – the first draft and then sent it to Thembeke. The myself and Thembeke said let us meet at his chambers and we sat there. We went in his office and then Thembeke said he was going to make notes where I did not agree because there were certain parts of it that I did not agree with.

10 Then Thembeke said he will talk to them.

**ADV MYBURGH SC**: Okay. So, that is – well, I just wanted ...[intervenes]

**MS MNGOMA**: I ...[intervenes]

**ADV MYBURGH SC**: When you went through it with Advocate Nguckaitobi, you obviously raised with him the concerns that you may have had?

**MS MNGOMA**: Yes.

**ADV MYBURGH SC**: Correct?

**MS MNGOMA**: Yes.

20 **ADV MYBURGH SC**: If we get to the 6<sup>th</sup> of March. You gave some evidence yesterday to the effect that on that day both you and Advocate Nguckaitobi were scared because, according to my notes, you said that you received some report or somebody being shot on that day. Is my note – does my note capture it correctly?

**MS MNGOMA:** Advocate Nguckaitobi told me that.

**ADV MYBURGH SC:** So, perhaps if I can explain this?

**MS MNGOMA:** [Distortion present in video transmission – speaker unclear] ...is like [Distortion present in video transmission – speaker unclear] ...of a witness. There was something happening with the witness ...[indistinct]

**ADV MYBURGH SC:** Okay. So, Chair, if I could just place this on record?

**CHAIRPERSON:** Yes.

10 **ADV MYBURGH SC:** On Monday, the 8<sup>th</sup> of March 2021, you may recall that Mr Solomon cross-examined Witness 3.

**CHAIRPERSON:** H'm.

**ADV MYBURGH SC:** At the outset of the proceedings on that day, Advocate Pretorius placed on record that reports have been received of an alleged to attempt to assassination of Witness 1 on Saturday, the 6<sup>th</sup> of March.

**CHAIRPERSON:** H'm?

**ADV MYBURGH SC:** He placed on record that it had been widely reported and it was being investigated by the  
20 Commission.

**CHAIRPERSON:** H'm?

**ADV MYBURGH SC:** So, Ms Mngoma, I just wanted to go back then. The 6<sup>th</sup> of March was the same day upon which you signed your affidavit. Is that correct?

**MS MNGOMA:** [No audible reply]



**ADV MYBURGH SC:** Ms Mngoma?

**MS MNGOMA:** I think so.

**ADV MYBURGH SC:** Alright. Now, you say – what we know is that, Advocate Nguckaitobi represented you throughout your interactions with the Commission, and in fact, he even – you have told the Chair this afternoon, went with you to the Commissioner of Oaths on the 6<sup>th</sup> of March. Correct?

**MS MNGOMA:** Yes.

10 **ADV MYBURGH SC:** Now, you say that, in answer to Mr Solomons' questions, you say that he did not read the affidavit on that day and I think in response to your own advocate's questions just now, you may have mentioned that you did not read the whole affidavit that day. What exactly did transpire? So, you have told that you were scared and you then signed the affidavit ...[intervenes]

**MS MNGOMA:** So what... Okay. So, what happened. Thembeke wanted me – I think before we have heard about someone who was assassinated, like that – that attempt.  
20 So, we wanted to have the affidavit. We wanted to sit down with it which we used(?) at the Commission and the Commission, they said: No, we will give that affidavit to you. So, when Thembeke received – or before that, I told Thembeke that: Thembeke, I am receiving threats. There are people calling me every day. They want my affidavit.

So, Thembeke was like: What are they saying? They say – then I told him – I still even handed him my Whatsapp. I said they say I must not go to the state capture. And also, I called him as well. I said, like, I am still receiving the death threats. People, they are saying, if I go to the Commission, they are going to kill me because they ...[indistinct] for Malusi for years to be president and they will never allow me to ...[indistinct] ...Malusi becoming the president.

10 So, then when those calls were happening, then I stopped taking the calls and then the calls were coming. In a day, I would receive 150 calls and then I called Sekele(?). I told Sekele about that. And I said, like: Sekele I am receiving a lot of calls every day. People want my affidavit. They even say they can meet up with me somewhere. I give them my affidavit.

And I told them: I do not have my affidavit. Even when the media called, they wanted my affidavit. Then I said: I do not have my affidavit with me. So, then what  
20 happened. Thembeke said: I need to tell the Commission. So, I told Sekele and Sekele said I spoke to the Head of the Security of the Commission and they are saying, like: Can you please give us the truth(?) ...[indistinct] ...which I did.

They will see someone who will just call maybe

each and every second if I am dropping the call or if I do not take the call, they would call me almost the whole day. And if I had a choice, I was going to switch off my phone just because of my kids. I could not switch off my phone because I had to know what is happening with them. So, then when that happens, when people, they were saying me, like, if go to the Commission they are going to kill me and they want my affidavit. [Indistinct]

And when we heard about this call [Distortion  
10 present in video transmission – speaker unclear] So, Thembeke was scared. He was, like: No, these people now they are going to come for me because I am representing you. And also, myself, I said I am so scared to keep the affidavit.

So, I think on the meeting, we told them that we prefer the Commission to keep the copies for us for our safety because we felt, like myself and Thembeke we are not safe So, on that day when Thembeke came he was a bit scared and I was scared as well, myself. And I even  
20 said to him: I do not know.

Maybe I must not sleep at home or must I go somewhere because I do not know. Because they even told me and told Sekele that they said they are following me everywhere. They know where I am going. So, if I still go to the Commission then they will kill me. And that is

where the affidavit – when Thembeke came, he was, like: Let us just go through this – let us sign quickly. I want to go through it quickly to maybe – to call Mr Pretorius so that I do not have this affidavit. I do not want it with us.

So, it was like – both of us – I do not think he did not want me to go through my affidavit but I think he was scared and also myself, I was scared. It was more(?) of that.

**ADV MYBURGH SC:** I just want then to ask you this last  
10 question in relation to this. You would previously raised concerns about the contents of the affidavit with Advocate Nguckaitobi. At the time that you signed it, did you think that those concerns had been attended to or not?

**MS MNGOMA:** With the last meeting we had with them, they were going to correct the mistakes.

**ADV MYBURGH SC:** Ja?

**MS MNGOMA:** So, I thought they corrected ...[indistinct]  
[Distortion present in video transmission – speaker unclear] ...so which means, we assumed that they  
20 corrected them.

**ADV MYBURGH SC:** So, you assumed that the mistakes, as you put it, had been corrected?

**MS MNGOMA:** I thought so.

**ADV MYBURGH SC:** Alright. And then in relation to those mistakes. Can I just take you, please, to your clarification

affidavit? That you will find in Bundle 7(b) at page 1027.8.

**CHAIRPERSON:** You said 7(b), mister ...[intervenes]

**ADV MYBURGH SC:** 7(b). Yes, Chairperson.

**CHAIRPERSON:** Oh.

**UNIDENTIFIED SPEAKER:** 7(a).

**ADV MYBURGH SC:** 7(a).

**CHAIRPERSON:** 7(a). Ja. Okay, I have got 7(a). And you said the page number is?

**ADV MYBURGH SC:** 127.8.

10 **CHAIRPERSON:** 127...?

**ADV MYBURGH SC:** Sorry, 1027.8. Right at the back.

**CHAIRPERSON:** Okay. Okay, I have got it.

**MS MNGOMA:** I got it as well.

**ADV MYBURGH SC:** And then if we go, please, to 1027.11. You previously testified about this, but the corrections that you made to the affidavit, they are set out in paragraph 5. Is that correct? So, you will see that ...[intervenes]

**MS MNGOMA:** Yes.

20 **ADV MYBURGH SC:** ...they are dealt within 7 subparagraphs, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6 and then over the page incorrectly numbered 5.1. In those seven subparagraphs. Is that right?

**MS MNGOMA:** Yes.

**ADV MYBURGH SC:** And you will see that in three of

those subparagraphs you make corrections. You correct something in relation to the Waterkloof visit, you correct the date of the India trip, and you correct the number of times that you saw Mr Gigaba transferring money into a bag. And in the other four paragraphs, you make the statement that you had no personal knowledge of various things. The Cabinet position and date ...[intervenes]

**MS MNGOMA**: Yes.

**ADV MYBURGH SC**: ...that Mr Gigaba occupied. The  
10 position that Gugu Gigaba occupied at Transnet, and also, you say that no personal knowledge of Mr Gigaba having approved the early naturalisation of the – certain members of the Gupta family. That is what you deal within those seven paragraphs. Is that correct?

**MS MNGOMA**: Yes.

**ADV MYBURGH SC**: Alright. And then I just want to go  
back in time. Before the 25<sup>th</sup> of February, what we know is that your face-to-face interaction with the Commission started on the 21<sup>st</sup> of January. We know that your affidavit  
20 was signed on the 3<sup>rd</sup> of March. I just want to ask you to confirm that in all the meetings that you had with the Commission from the 21<sup>st</sup> of January, I beg your pardon, to the 3<sup>rd</sup> of march when you signed the affidavit, Advocate Nguckaitobi was present. Is that correct?

**MS MNGOMA**: Yes.

**ADV MYBURGH SC:** And insofar as you during the course of those meetings raised concerns about the content of your affidavit, those concerns were then raised in the presence of your legal representative. Correct?

**MS MNGOMA:** [No audible reply]

**ADV MYBURGH SC:** Correct, Ms Mngoma?

**MS MNGOMA:** Yes.

**ADV MYBURGH SC:** And then just one last thing. When you testified previously about what happened on the  
10 25<sup>th</sup> of February. Remember on that day Mr Masato(?) delivers the USB to Mr Nguckaitobi's chambers. You have explained all this. You have explained to the Commissioner that the Secretary did not want to print your out a copy because it was marked confidential. You went on in your evidence to say that:

“What happened, as far as I remember after that, is that they had dropped off a hard copy...”

Do I understand you to have said that you then received  
20 after the 25<sup>th</sup> of February a hard copy of the affidavit?

**MS MNGOMA:** So, Stemele(?) told me about that. They did not drop it to me.

**ADV MYBURGH SC:** Okay. Thank you, Chairperson. We have no further questions.

**CHAIRPERSON:** Okay. Thank you, Mr Myburgh. Thank

you, Ms Mngoma.

**MS MNGOMA:** Thank you.

**CHAIRPERSON:** And thank you to your counsel. Thank you, Mr Solomon. Thank you, Mr Myburgh. We have come to the end of Ms Mngoma's evidence. And again, thank you for availing yourself, Ms Mngoma. I will then adjourn to allow you to go out of the screening. I must just check whether Mr Seleka has joined. Mr Seleka, are you around?

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

10 **CHAIRPERSON:** Okay, I am going to adjourn and then we will – the Registrar will connect with him. That is for either our next witness or a witness that we might – is not in, before the next witness. So, we will adjourn for now for ten minutes, but otherwise, Mr Myburgh and counsel for Ms Mngoma and Mr Solomon, you are excused.

**ADV QOFA MPHATI:** Thank you, Chair.

**ADV SOLOMON:** Thank you.

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

**CHAIRPERSON:** We adjourn.

20 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, Mr Seleka and good afternoon everybody.

**ADV SELEKA SC:** Good afternoon, DCJ.

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



**MR GOVENDER:** Good afternoon, Chair.

**CHAIRPERSON:** Okay, alright, Mr Seleka.

**ADV DORFLING SC:** Chair, may I perhaps just before Mr Seleka gets the floor, may I just enquire at the level of housekeeping.

**CHAIRPERSON:** Ja.

**ADV DORFLING SC:** I am preparing for Magistrate Nair, who has been lined up for three o'clock. We have been queuing. I do not know, could we perhaps have some  
10 indication from you, Mr Chair, as to the state of play on that score? I believe that after Mr Govender there is yet another witness that is also queuing to be heard. I do not know what your inclination would be, I have spoke to Ma'am Molefe about the evidence and we were going to propose that perhaps if you could accommodate us, we can hear Mr Nair's evidence tomorrow.

**CHAIRPERSON:** No, no, not tomorrow. If he is to be heard it should be today. The information that I had asked  
20 should be conveyed to you was that with the previous witness that we had that we might finish at three and if we finish at three there might be an opportunity to slot you – to slot Mr Nair there or we could go – it could be that after the last witness for the day I would make a decision at that stage whether we could slot him in. As things stand, I want to hear Mr Govender, I do not know how long Mr

Seleka will take with him but I do not think it should be more than an hour and a half and thereafter, what would be left is another one of Mr Seleka's witnesses, Ms Pule, who should, I think, probably not more than 30 minutes, I think at the most 45 and I would be inclined if we go according to those times to accommodate Mr Nair. After that, the witness that – or Ms Pule might not be available when we finished with Mr Govender. If she is not yet available we can slot in Mr Nair and then when Mr Nair finishes then I  
10 would imagine by then certainly Ms Pule would be available then I hear her.

So the position is, when we finish with Mr Govender, which might be in an hour and a half's time or thereabout, I will check. If Ms Pule is available we can slot her in quickly. If she is not available I can slot in Mr Nair.

**ADV DORFLING SC:** Can I seek your indulgence for Mr Nair and my attorney-of-record to be excused for a comfort break for an hour? I do not see us starting within the  
20 timeframe.

**CHAIRPERSON:** No, that is fine, ja. No, that is fine, that is fine, ja, ja. Okay, alright.

**ADV DORFLING SC:** Thank you, Mr Chair.

**CHAIRPERSON:** Okay, thank you. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. I think due to the

lapse of time, Chairperson, Mr Govender might have to be sworn in or affirmed.

**CHAIRPERSON:** Yes. Ja, the registrar will administer the oath.

**REGISTRAR:** Mr Govender will you be taking the oath or the affirmation?

**MR GOVENDER:** The oath, Ma'am.

**REGISTRAR:** State your full names for the record?

**MR GOVENDER:** Prishotham Govender.

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

**MR GOVENDER:** I do not.

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

**MR GOVENDER:** I do.

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

20 **MR PRISHOTHAM GOVENDER:** So help me God.

**CHAIRPERSON:** Thank you. Thank you, Mr Govender.

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

**CHAIRPERSON:** Okay, Mr Seleka?

**ADV SELEKA SC:** Thank you, Chairperson. Mr Govender, last time when we were leading your evidence I touched on

one of the reasons for the termination of the Master Services Agreement.

**MR GOVENDER**: Yes, Chair.

**ADV SELEKA SC**: May I just summarise, Chairperson, sorry, we traversed the issue of the Master Services Agreement, the issue arising in relation thereto leading Mr Govender's evidence and we will finalise on that before we go into the corporate plan which is much shorter than the Master Services Agreement issues.

10           And Mr Govender, that reason which I thought was in the submission to the BTC and the reasons for seeking a termination of the Master Services Agreement was in fact found in Mr Mabelane's affidavit as I also articulated and Mr Mabelane deals with that in his affidavit in Eskom bundle 14. I could simply read it out to you. It is Eskom bundle 14(c) page 702.64. On the electronic version it is page 2267. So let us ...[intervenes]

**MR GOVENDER**: Advocate, if you forgive me, I am not even going to go there, I would trust your reading out of it.

20   Given our technical challenges, maybe we just go there. Ja?

**ADV SELEKA SC**: And Mr Dorfling will double-check me.

**ADV DORFLING SC**: If I have the page number like I have now, I will indeed.

**ADV SELEKA SC**: Ja. 2267, paragraph 12.17.

**ADV DORFLING SC:** I am there, Mr Chair.

**ADV SELEKA SC:** And that reason – I am not going to read all of them but the reason is at the bottom which I am focusing on and he writes – let me for context purposes read the paragraph from the middle, says:

10 “Termination was insufficient progress made on the issues raised during the first steering committee meeting, the increase in pressure by other service providers to be included in other aspects of the corporate plan on a similar basis as McKinsey particularly after implementation of the panel contracts for management consultants and...”

And there is the reason he is giving:

“The increasing dominant view driven by Eskom compliance department that the contract offends National Treasury instructions note 2013/2014.”

Which is that instruction that you refer to. So were you aware of this, Mr Govender?

20 **MR GOVENDER:** Chair, I think we traversed – in fact I am sure we traversed the reasons for termination as was decided by the steering committee and as presented in the board submission of the 6 June 2016. I honestly was not aware that Mr Mabelane was concerned about this added reason and I suppose that would have to be asked from Mr Mabelane because he certainly did not convey that to me.

As you would recall, Chair, Mr Mabelane, approved the submission that went to the BTC and I suppose one could argue when it actually eventually ended up at the BTC but - as we did the last time but my recollection was, coming out of the steering committee, this was the reasons that we decided why we would terminate an Mr Mabelane supported that. So I honestly cannot help you there, Chair, in the sense of what he has written as the final remark.

**CHAIRPERSON:** Yes.

10 **ADV SELEKA SC:** Yes. But he seems to attribute that not to himself but to Eskom's compliance department.

**MR GOVENDER:** Yes, Chair.

**ADV SELEKA SC:** Are you able to [inaudible – speaking simultaneously]

**MR GOVENDER:** No, Chair. No, Chair, because I was not aware of any ongoing pressure myself from the compliance team.

**ADV SELEKA SC:** Yes. When Mr Koko testified he mentioned that one of the reasons that compounded the  
20 situation – he used the word compounding the situation – was the fact that McKinsey had made a decision not to engage Trillian and so a BEE partner would not be contracted by the main supplier and that was one of the reasons compounding the situation and therefore putting impetus on the termination of the agreement. Do you have

anything to say on that?

**MR GOVENDER:** Chair, my recollection is that as you would know we received a letter from McKinsey on the 30<sup>th</sup> – you will correct me if I do not get the dates hundred percent correct, on the 30 March. Yes, on 30 March 2016. And my recollection of the events thereafter was that in the steering committee discussions there was an agreement that – and as I alluded the last time I was at the Commission, that there would be – work would continue  
10 with McKinsey and Trillian. I do not know or I never picked up in the steering committee that one of the key reasons why we would terminate is because they would not be moving forward with Trillian. I do recall that there was still a requirement from McKinsey to come forward with an alternative BEE partner.

**ADV SELEKA SC:** Okay. But you know that Dr Weiss says the MSA was terminated prior to McKinsey could secure another BEE partner.

**MR GOVENDER:** Yes, Chair, I am aware of that.

20 **ADV SELEKA SC:** We also understand from the evidence of Ms Mothepu that Mr Singh was unhappy with McKinsey not to ...[intervenes]

**MR GOVENDER:** Sorry, Advocate, I missed that last part. If you could repeat?’

**ADV SELEKA SC:** Yes, we understand also from the

evidence of Ms Mothepu that Mr Singh was unhappy with McKinsey's decision not to engage Trillian.

**MR GOVENDER**: Chair, I cannot comment on that because that was not one of the discussion topics at the standing committee, as far as I can recollect. Hello, Chair?

**CHAIRPERSON**: Mr Seleka?

**ADV SELEKA SC**: Mr Chair, I can hear you, I think the connection – oh, Mr Prish has gone – Mr Govender has come back.

10 **CHAIRPERSON**: Well, I could hear him.

**ADV SELEKA SC**: Oh, was it on my side?

**CHAIRPERSON**: If he finished his answer to you.

**ADV SELEKA SC**: I would like him to repeat, I did not hear it, Chair.

**CHAIRPERSON**: Oh, okay. Mr Govender, do you want to repeat that?

**MR GOVENDER**: Yes, Chair, I was posed the question as to whether there was – that Mr Singh was unhappy about Trillian not going forward as McKinsey's BEE partner and  
20 my answer to Advocate was that that was not indicated in the steering committee discussions insofar as the reasons why we would terminate the contract.

**ADV SELEKA SC**: Mr Govender, do you know Mr Aziz Laher?

**MR GOVENDER**: I know him, yes, Chair, I do.



**ADV SELEKA SC:** I have drawn your attention to his affidavit in which he makes reference to a meeting during or about October 2015 where he was called, he says, to Mr Koko's office and present in the office was, amongst others, Mr Mabelane and himself and some officials from McKinsey and in that meeting he says he was asked by Mr Koko to explain why is he holding up Mr Koko's business with his view, Mr Laher, that a deviation application was required. Do you recall that meeting?

10 **MR GOVENDER:** Yes, Chair, I do recall the meeting and I do recall that we were called up to Mr Koko's office.

**ADV SELEKA SC:** And can you recall what was discussed in that meeting?

**MR GOVENDER:** Chair, to be honest with you it has been a while ago, I do not recall every bit of the detail that - and I read through Mr Laher's affidavit, so I do not recall all the details that he vividly remembers but I do acknowledge that when we left the meeting the conclusion was that we would seek National Treasury – sorry, we  
20 would seek external legal advice insofar as the National Treasury issue was concerned.

**ADV SELEKA SC:** Yes. And that advice was ultimately sought from Adv Kennedy, is that correct?

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

**ADV SELEKA SC:** Do you know what advice he gave?

**MR GOVENDER**: Chair, I do. I read the advice. I do not recall all the details but I do remember reading the advice.

**ADV SELEKA SC**: So the advice or the opinion advised that National Treasury approval was necessary for Eskom to conclude the MSA. You remember that?

**MR GOVENDER**: Yes, Chair, I do remember that, that was his advice in the sense that the practice note, he had doubts as to whether that practice note was superseded or not as explained in the last session, so I do recall it in that  
10 vein.

**ADV SELEKA SC**: Yes. And he was – I do not know whether you know this but that he was given the opinion that you mentioned last time of Mazwai - Ledwaba and Mazwai Attorneys in order to comment because that opinion was different to his. Were you aware of that?

**MR GOVENDER**: Chair, I cannot recall that, whether he was actually given the – because that – Advocate, correct me if I am wrong, and I am speaking through, Chair, was that the one that came from McKinsey?

20 **ADV SELEKA SC**: Yes, correct.

**MR GOVENDER**: Yes, I do not recall that but I am sure that if you say that was the case then that was the case.

**ADV SELEKA SC**: Okay. Well, the reason I was going there is because when you look at the sequence of events, after he was given the opinion of Ledwaba Mazwai

Attorneys to review in order to give his second opinion, Eskom proceeded to provide McKinsey of a letter of acceptance without waiting for his opinion.

**MR GOVENDER**: Chair, I was not aware of that.

**ADV SELEKA SC**: Not aware of that, okay.

**MR GOVENDER**: I did not recall that – I do not recall that we – or Eskom did not wait for his opinion or second opinion.

**ADV SELEKA SC**: Okay, let us – well, we have traversed  
10 the issue of this ...[intervenes]

**MR GOVENDER**: Yes, Chair.

**ADV SELEKA SC**: ...National Treasury approval extensively on the last occasion. Can we go to the payments to McKinsey and to – particularly to Trillian because by the time these payments are made, this is after termination of the contract, the contract was terminated on the 16 June 2015 or, as I said, the purported termination, and the payments would then be made after your submission to the BTC that an amount of 1.8 billion had  
20 been negotiated. So by this time Eskom knew that Trillian was never a BEE partner to McKinsey. So I would like you to explain to the Chairperson how did Eskom make payments directly to McKinsey under a Master Services Agreement when – I should add that Eskom did not have a contract directly with McKinsey – with Trillian.

**MR GOVENDER**: Trillian. Chair, as I alluded the last time was at the Commission. The payments process followed firstly an approval process by the steering committee.

Secondly, that process then led to an approval process by the board. Mr Mabelane subsequently requested the necessary invoices from both Trillian and McKinsey and those invoices, Mr Mabelane requested me to support them in light of the steering committee approvals based on the waive tool and its approvals or its  
10 subsequent documentation of the various payment trigger points insofar as the project management side was concerned. Mr Mabelane then approved those invoices and it was submitted to the procurement department for processing.

I did raise the issue of direct payment to Trillian and I raised the issue back at the time when we were dealing with the corporate plan. Mr Mabelane at that time assured me that this was not uncommon in Eskom insofar as a subcontractor without a direct contract with Eskom  
20 being paid. The invoices then were – started to be processed within the commercial or the procurement department and then obviously ended up into the finance space for eventual payments and I must say, Chair, there was no issue raised with me at the time to say that Trillian cannot be paid and I do not know whether the procurement

raised it with Mr Mabelane but certainly with me there was no issue raised with me regarding the direct payment to Trillian.

**ADV SELEKA SC:** So you were saying – are you saying that the first approval for these invoices directly to Trillian was made by the steering committee?

**MR GOVENDER:** Yes, correct, Chair.

**ADV SELEKA SC:** The steering committee that was headed by Mr Anoj Singh?

10 **MR GOVENDER:** Correct, Chair.

**ADV SELEKA SC:** The steering committee which Mr Koko also served?

**MR GOVENDER:** Correct, Chair.

**ADV SELEKA SC:** And yourself and Mr Mabelane and the others.

**MR GOVENDER:** Yes and the various stream leads and it was probably more than 20 to 30 people at the steering committee and I am sure you have seen Advocate – sorry, through you Chair, the membership and the composition  
20 but everybody that was vexed in the programme and led the various streams was seated at those steering committee meetings.

**ADV SELEKA SC:** Well, Mr Koko has testified strenuously before the Commission that he did not believe in payments directly to Trillian because Trillian did not have a contract

with Eskom. So what would be your comment on that?

**MR GOVENDER**: Chair, I cannot comment on that unless Advocate is asking me a direct question but I do not know why Mr Koko would say that, I cannot answer for him.

**ADV SELEKA SC**: Well, what – I guess what I am trying to say to you is this, that if the steering committee of which he was part approved pay of which he was part approved payments directly to Trillian what do you say about his version that he could not authorise payments to Trillian  
10 because Trillian did not have a contract with Eskom because there seems to be a conflict in the two versions.

**MR GOVENDER**: unfortunately, Chair, I cannot assist with that because I do not know why he would say that. In my view if Mr Koko felt that it was not prudent at the time to pay Trillian then I suppose today I am asking myself with hindsight being 20/20 vision why was that not raised at the time?

**ADV SELEKA SC**: You mean did he not raised it at the time that Eskom cannot pay Trillian directly because Eskom  
20 does not have a contract with Trillian?

**MR GOVENDER**: Certainly not with me, Chair.

**ADV SELEKA SC**: Well, he has asked us to ask you why you authorised payments to Trillian. Did you authorise payments directly to Trillian?

**MR GOVENDER**: No, Chair, as I said, there was a flow of

approvals and my only role in the payments was to support what was approved at the steering committees and then Mr Mabelane approved the document because he – or sorry, the invoices because he had in terms of the contract the necessary delegation of authority.

**ADV SELEKA SC:** Well, talking of that authority, Mr Koko referred us to a document and I would like us – I would like to refer you to that document in Eskom bundle 15 on page 15 ...[intervenes]

10 **CHAIRPERSON:** 15(b) or (c) or (a)?

**ADV SELEKA SC:** Yes, thank you, Chair, 15(c) page 1547, electronic pagination is 1550.

**CHAIRPERSON:** I am trusting you on that one, Advocate, through you, Chair.

**ADV DORFLING SC:** Mr Chair, I also have to go with what Mr Seleka says, I do not have the electronic bundle 15, I have got 8, 14 and I have got a number of others, I do not have 15 in my bundle.

**CHAIRPERSON:** Oh.

20 **ADV DORFLING SC:** I think we can proceed, I am not going to interrupt the process.

**CHAIRPERSON:** Okay, alright. What page did you say, Mr Seleka?

**ADV SELEKA SC:** That will be 1547, Chair.

**CHAIRPERSON:** 1547.

**ADV SELEKA SC:** 1547. Mr [indistinct] the bundle 15 was sent to you. Mr...

**MR GOVENDER:** Advocate I think I know what you are talking about so let us proceed without delaying.

**CHAIRPERSON:** Yes, okay. Mr Seleka?

**ADV SELEKA SC:** Thank you, Chair. So that – on that page, Mr Govender, we see a document, it is a covering note Mr Koko produced and it has his name at the beginning, Mr Matshela Koko, Interim Group Chief  
10 Executive, the subject line is final settlement risk-based contract. So you confirm that relates to the MSA?

**MR GOVENDER:** Yes, that is the risk-based contract we were dealing with. What date is that, Advocate, please remind me?

**ADV SELEKA SC:** Okay, this – the document has a stamp, the date on the stamp is 23 February 2017.

**MR GOVENDER:** Okay, so it has to be more or less in around the time that we were dealing with the Master Services Agreement so I do acknowledge that.

20 **ADV SELEKA SC:** Yes, then at the – there is a space for comments and after that it reads:

“From Prish Govender general manager Capital Assurance Corporate Finance.”

But then there is handwritten inscription on it and it is written:



“Who is delegated by BTC to implement the MSA?”

Then there is another handwriting at the bottom of that, it says:

“Prish, please let us discuss”

**CHAIRPERSON:** Mr Seleka, you said another handwriting?

**ADV SELEKA SC:** Maybe I should...

**CHAIRPERSON:** Okay, it sounds like somebody – a different, somebody else’s handwriting, another written  
10 note?

**ADV SELEKA SC:** That is correct, thank you, Chair.

**CHAIRPERSON:** Yes and maybe just to tell you, Mr Govender...

**MR GOVENDER:** Yes, Chair?

**CHAIRPERSON:** The part of the document which is headed comments.

**MR GOVENDER:** Yes, Chair.

**CHAIRPERSON:** In the middle, does not appear to have anything written.

20 **MR GOVENDER:** Okay, Chair, but I have seen it, Chair, so I know what Adv Seleka is talking about, I just wanted to confirm the date and he has confirmed it to me, Chair.

**CHAIRPERSON:** Ja, the date on the stamp of the Chief Executive is the one that he told you, 23 February 2017, and then in regard to the handwritten notes on the

document there are two signatures and dates. These – both these handwritten notes appear to be written by the same person but on different dates because the signature appears to be the same. There is the date of 25/02/2017 just under the one first signature and then the other date under the second signature is 1 March 2017. Oh, there it is.

**ADV SELEKA SC:** Yes.

**MR GOVENDER:** Oh, yes, that is good, Chair, I can see it  
10 now, yes.

**CHAIRPERSON:** Okay, I want to put it – I did not put it up on the screen but Mr Seleka put it up on the screen there. That is the document, ja.

**MR GOVENDER:** I do appreciate that, thanks, Advocate.

**ADV SELEKA SC:** Yes. So this is the document Mr Koko testified on this document. He says the handwriting is his and the signatures there are his and he was specifically going to speak with you about who is authorised to conclude the settlement agreement with McKinsey and you  
20 can see the first one is who is delegated by the BTC to implement the MSA and there the date appears to be 25/02/2017, and then the next note is Prish please let's discuss and there's a signature and the date is 1 March 2017. And he said this was his handwriting. I don't think he said he managed to speak to you, do you have any

recollection of you speaking with him about this settlement agreement.

**MR GOVENDER:** Well I think advocate the document that comes after this is the memo, am I right?

**ADV SELEKA SC:** Correct.

**MR GOVENDER:** So Chair let's go back to this cover page, because I think it is very important that we do so. Firstly Chair I do not at all recall seeing this covering note.

**CHAIRPERSON:** This document at page 1547 hard copy,  
10 on the screen?

**MR GOVENDER:** Yes Chair that first page that you said to me there were two signatures and before the covering note, what is called the covering note.

**CHAIRPERSON:** Now I see, it is written covering note.

**MR GOVENDER:** Yes, I do not recall this at all Chair and you know when I look at this there's a couple of things that concern me, the one thing that concerns me is that my name is John Prish Govender, that is right and my PA works – because we would send these covering notes as  
20 general managers to Exco members on a regular basis if we – if they asked us our opinion on something or we needed to get something through the governance process or we needed to brief them on something.

Now it says there General Manager Capital Assurance but the full title as I would have expected my PA

to do was to say General Manager Group Capital Integration and Assurance because that was my full title as per the appointment at that time.

**CHAIRPERSON:** H'm.

**MR GOVENDER:** The third part that concerns me it says Corporate Finance but corporate finance was a function within my portfolio when the GCIA function was created by Mr Singh to report to him, so what this document should say, and I would have expected it to be so, is from Prish  
10 Govender, General Manager, Group Capital Integration and Assurance, Finance Division. And that is why Chair I am struggling to see – I am struggling to recall this document because in my recollection Chair I had not seen it.

Furthermore I want to iterate that I have not had a discussion with Mr Koko about the memo that subsequently follows on from this document.

**CHAIRPERSON:** Yes, now tell me would that be – would the office have kept covering notes like this already addressed to somebody, like this one is addressed to Mr  
20 Matshela Koko, and already having your name to say from Prish Govender and the position without anything being written on the comment section and then you would only – you would only put in comments whenever you needed to send comments or would the position be that such notes would only be addressed to whoever they were addressed

to as and when occasion arose and then your name as the author would be put in, in each case.

In other words were there covering notes that were always there so that whenever you needed to send comments then you just put in the comments but where it is who it was from and who it was to that would long have been put in? Mr Govender?

**MR GOVENDER:** Chair that is a long ...[indistinct] sorry  
Chair, can you hear me?

10 **CHAIRPERSON:** Ja, I can hear you.

**MR GOVENDER:** Okay sorry, I apologise for the stability of the network here, we have a storm which is most days where I am and it occasionally breaks up so I apologise for that Chair. Please let me know if you cannot hear me and I will come back.

**CHAIRPERSON:** I can hear you.

**MR GOVENDER:** Okay, so Chair my practice – firstly let me talk about my position at the time was reporting to Mr Singh and as a general manager, so I would have been a  
20 little below the Exco. I would have not – if I had written this note it would have not been fair on Mr Singh to bypass it, number one, so if I had written a note to Ms – or relating to something that I was reporting to Mr Singh on, which I was very much so reporting to Mr Singh at the time from the beginning of September, as you would recall my

affidavit, I would definitely have worked through Mr Singh because he was the boss, or my boss at the time, plainly put.

Secondly it was not my practice not to put in some comments because I would immediately when – if I was sending this to you Chair and you just read the cover note you would have said Mr Govender you know what is the gist of what you want me to do here, and I would have definitely added in some comments which was my practice  
10 when writing to my superior which was Mr Singh at the time.

**CHAIRPERSON:** And are there any circumstances under which you can imagine that Mr Koko would have been in possession of a covering note like this purportedly from you but without notes, without comments in the comments section.

**MR GOVENDER:** No, no Chair I am sorry I cannot assist you with that.

**CHAIRPERSON:** No, no I am saying go back to the time  
20 when you were working at Eskom holding the position that you are talking about.

**MR GOVENDER:** Yes Chair.

**CHAIRPERSON:** And I am asking you whether there are circumstances that you can remember as having happened in the past where you would have obtained a covering note

like this, purporting to be from you, but which did not have comments on the comment section, is there a way in which that would happen as far as you knew?

**MR GOVENDER:** No Chair, no, I cannot recall or remember whether such a note was sent to him, or he would have it in his possession.

**CHAIRPERSON:** When you held the position of General Manager Capital Integration and Assurance you said you reported to Mr Anoj Singh?

10 **MR GOVENDER:** Correct Chair.

**CHAIRPERSON:** Was there a time when you held that position but you reported to Mr Koko?

**MR GOVENDER:** No Chair.

**CHAIRPERSON:** When he was Chief Executive Officer you would have occasion to write any memo or covering note to him directly?

**MR GOVENDER:** No Chair I cannot recall that I have ever written a note directly to him ...[intervenes]

20 **CHAIRPERSON:** When he held that position of ...[intervenes]

**MR GOVENDER:** Yes, yes Chair. And Chair the important part of this is the document that is attached to that note.

**CHAIRPERSON:** Ja.

**MR GOVENDER:** The important part of that is the

document that is attached to the note. My recollection of this document Chair, and maybe I am superseding what ...[intervenes]

**CHAIRPERSON:** Ja, he will come back, but let me go back to one of ...[intervenes]

**MR GOVENDER:** Advocate Seleka is probably going to ask me next, so maybe – yes.

**CHAIRPERSON:** Ja, hang on, let me go back to a question I asked earlier because I can't remember what  
10 your answer was.

**MR GOVENDER:** Yes Chair.

**CHAIRPERSON:** Would there have been a stack of covering notes such as this one which you or your secretary would keep already with the name of the addressee and with your name as the author but without the comments that you would keep and use as and when you needed to use one.

**MR GOVENDER:** Chair there would be a template that would probably be within my PA's computer system.

20 **CHAIRPERSON:** Computer.

**MR GOVENDER:** Ja, and I mean you know the addressing would change from time to time in the sense of you know whoever we are addressing it to, so you know by and large – let's go one step back before I joined the Finance Division, is that we never did this covering note set up in



Eskom before Mr Molefe and Mr Singh arrived. Mr Molefe and Mr Singh were very formal in their approach to if you had to send us a document guys please make sure that you do submit a covering note from – to either us or – sorry – to either the CEO or sorry – the GCEO or the GCFO with whatever document you are sending us attached to the covering note leaving comments as to what are the key things that you are looking for, and that is a protocol that was put into place by Mr Singh and Mr Molefe at Eskom, so  
10 whenever I – or from the time I started reporting to Mr Singh that was the protocol.

**CHAIRPERSON:** Yes okay but the template that you spoke about for covering notes would it have names that could be changed if necessary, would names be put in only when there were comments to be put into the comments section?

**MR GOVENDER:** Chair the template to my understanding was designed by the PA's of Mr Singh and Mr Molefe, so the template itself was something that came down from  
20 them, went to the other Exco members and then went to the General Managers and said guys when you write us something use this template.

**CHAIRPERSON:** Ja.

**MR GOVENDER:** Yes, so it wouldn't have been something that my PA would have designed *per se*, it would have

come down the hierarchy.

**CHAIRPERSON:** Okay, alright. Mr Seleka?

**ADV SELEKA SC:** Thank you Chair. Mr Govender during this time was Mr Koko the interim Group Chief Executive in February ...[intervenes]

**MR GOVENDER:** Yes Chair, to my recollection that is correct.

**ADV SELEKA SC:** So insofar as your designation is concerned are you saying this designation is incorrect?

10 **MR GOVENDER:** Well it doesn't fully describe my designation at Eskom, my appointment and I mean I would have – knowing my PA she would have been very meticulous about this particular topic, and would have described it in full.

**CHAIRPERSON:** H'm.

**ADV SELEKA SC:** Is this document ...[intervenes] you can go ahead.

**MR GOVENDER:** No, no, I am fine, I am fine Advocate, you can proceed, thank you Chair, thank you, no sorry  
20 Chair I am fine, I rest Advocate can continue.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** To the extent that you said Mr Mabelane was authorised to approve the invoices Mr Popo seems to differ with that version, because in his testimony he said the BTC had authorised him and I think it included

the Chief – ja he was now the interim CEO, to do the settlement of the agreement.

**MR GOVENDER:** Chair if we – and maybe let's not waste time with the affidavit, but it is captured in the affidavit, in the sense that there was an approval, Advocate you will correct me on the dates again please, because there was an approval by the BTC on the 12<sup>th</sup> of December, if memory serves me correct.

**ADV SELEKA SC:** 13 December.

10 **MR GOVENDER:** Sorry 13 September, and I think the delegated individuals insofar as the finalisation of the negotiation process was at the time the GCFO, it was the interim CEO and it was the CPO.

**ADV SELEKA SC:** Yes.

**MR GOVENDER:** So those were the people that were delegated authority to finalise the negotiation process with McKinsey by the Board in December and I don't know whether I am answering advocate's question Chair.

**ADV SELEKA SC:** Well really ...[intervenes]

20 **MR GOVENDER:** Sorry Chair.

**CHAIRPERSON:** I am sure he will say if you didn't answer it, Mr Seleka was your question answered?

**ADV SELEKA SC:** Yes, not completely but I am doing a follow up, Mr Govender where do you place Mr Mabelane in those three designations?

**MR GOVENDER:** The CPO Chair, the Chief Procurement Officer.

**CHAIRPERSON:** Well Mr Seleka do you still need this document on the screen?

**ADV SELEKA SC:** No Chair.

**CHAIRPERSON:** You can remove it and then if and when there is a need to put up another one, but if Mr Govender has it that's fine. Okay, let's continue.

**ADV SELEKA SC:** We will continue, thank you  
10 Chairperson. Mr Govender well you say that Mr – you raise concerns about direct payments to Trillian and Mr Mabelane explained to you that it was not uncommon for Eskom to pay sub-contractors directly.

**MR GOVENDER:** Correct Chair.

**ADV SELEKA SC:** Did he refer you to any particular practice or policy for that purpose?

**MR GOVENDER:** No Chair he did not but he at the time told me there was a number of companies that this were – this was implemented within the past.

20 **ADV SELEKA SC:** I see, because we understand that Eskom doesn't have a policy for direct payment to sub-contractors. You are not in a position to deny that are you? That it does not have.

**MR GOVENDER:** Sorry Chair there is a double-negative there, so are you asking ...[intervenes] yes.

**ADV SELEKA SC:** Are you able to deny that Eskom doesn't have ...[intervenes]

**MR GOVENDER:** No, it is no, I got you now advocate, sorry, apologies, thank you Chair.

**ADV SELEKA SC:** In your affidavit you have explained that document attached to Mr Koko's nut, or covering note, as a document or memorandum required for you to summarise the activities that were undertaken to conclude the MSA.

10 **MR GOVENDER:** Correct Chair.

**ADV SELEKA SC:** Which is paragraph 42 of your affidavit. But when you read that memorandum it requires payment to be made to McKinsey.

**MR GOVENDER:** That is correct Chair.

**ADV SELEKA SC:** So should we understand the memo as it is stated on the face of it, as opposed to how you explain it in your affidavit in paragraph 42?

**MR GOVENDER:** Sorry Chair, maybe I could refer to – let me just remind myself about paragraph 42 of the affidavit.

20 **ADV SELEKA SC:** Chairperson it is Bundle 14[d] on page 1346.

**CHAIRPERSON:** Page?

**ADV SELEKA SC:** Page 1346, paragraph 42.

**MR GOVENDER:** Yes Chair that is absolutely correct, I mean this ...[intervenes]

**ADV SELEKA SC:** Can I finish my question.

**MR GOVENDER:** Ja, ja, please go ahead advocate, I am sorry.

**ADV SELEKA SC:** So that when you say it is absolutely correct you understand what I asked, I am asking you should we understand the document as it is set out on the face of the document as opposed to how you described it in your affidavit?

**CHAIRPERSON:** Hang on Mr Seleka.

10 **ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** You referred to Bundle D, 14[d], is that right?

**ADV SELEKA SC:** That is correct Chair.

**CHAIRPERSON:** ...[Indistinct] I think we must take them and bring them as and when they are mentioned otherwise they take up space here, this is 15.

**ADV SELEKA SC:** Chair can put aside 15, we will not refer to it again. Page 31 ...[indistinct – distortion]

**CHAIRPERSON:** 1346.

20 **ADV SELEKA SC:** Paragraph 42.

**CHAIRPERSON:** I have got 1346.

**ADV SELEKA SC:** Paragraph 42.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Yes and Chair just to expedite we must read this with page 1505.

**CHAIRPERSON:** Yes, okay do you want to read the relevant portions?

**ADV SELEKA SC:** Please, Mr Govender you see the paragraph?

**MR GOVENDER:** I do, I do, I have my affidavit paragraph 42 in front of me, if you can help me with the 1505 part.

**ADV SELEKA SC:** Should I help Mr Dorfling the electronic pagination is 4078, 1505 is Annexure E and 34.

**ADV DORFLING:** Thank you Mr Seleka.

10 **ADV SELEKA SC:** On 15 ...[indistinct] 34 electronic pagination is 4237.

**ADV DORFLING:** 4237?

**MR GOVENDER:** Got it.

**ADV SELEKA SC:** So Mr ...[intervenes]

**CHAIRPERSON:** We are on page 1346 on my – okay you said 37.

**ADV SELEKA SC:** I beg your pardon Chair, I beg your pardon. 1346. So Mr Govender you heard my question, because in your paragraph 42 you say this memo, you had  
20 been asked to draft it or put it together in order to summarise all activities ...[intervenes]

**CHAIRPERSON:** This memo, which one? The one on 1505?

**ADV SELEKA SC:** Correct Chair.

**CHAIRPERSON:** Ja, it is just important to mention

because somebody reading the transcript will wonder which memo.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Ja, the memorandum on 1505, EN34, that you were being asked to draft it in order to summarise all the activities that were undertaken to conclude the MSA with McKinsey, the memorandum was also forwarded to Ms Daniels for her review, please see attached hereto  
10 electronic mail to Ms Daniels together with the  
aforementioned memorandum requesting her review for  
ease of reference you then attached the two documents to  
the email and the memo was EN33 and EN34.

But is that a correct description of the memo Mr Govender?

**MR GOVENDER:** Chair at the time I don't know whether I captured the exact heading of the memo in the affidavit, that could have been an error by myself but there is only one memo that I am talking about and that is the memo  
20 that I was asked to prepare. Now maybe the heading is  
slightly different but definitely Chair the one on 1505 is the  
one that is referenced in paragraph 42 of my affidavit.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** And that is – are you – do you need to go there or can I just read it to you Mr Govender?



**MR GOVENDER:** No Chair please, Advocate please go ahead yes.

**ADV SELEKA SC:** Okay, it is that memorandum on page 1505, it is dated 17 February 2017, it is addressed to Mr Matshela Koko, Interim Group Chief Executive, it is from Mr Edward Mabelane ,Chief Procurement Officer and the subject line is final settlement, risk based contract McKinsey & Company, so that is again the ...[indistinct].

**MR GOVENDER:** Yes, that is absolutely correct Advocate.

10 Yes Chair.

**ADV SELEKA SC:** And the purpose reads as follows:

“Request to pay the final amount for the termination of the McKinsey ...[indistinct] in line with the approval from Board Tender Committee, and the provision for the amount payable in October 2016.”

So it specifically requested a final payment to McKinsey following the termination of the MSA.

**MR GOVENDER:** Correct Chair.

**ADV SELEKA SC:** That is all I wanted to confirm, that is  
20 just – it is not just a mere summation of activities but is a request for a payment. Did this memo sit before the BTC?

**MR GOVENDER:** No Chair it did not, it was a memo that was requested from me to – or for me to draft up by Mr Mabelane and the reason why he wanted this memo to be drafted, well it was two reasons, the one reason related to

the fact that there were other people delegated by the Board in December to conclude the negotiation process as you would recall from my previous statements, so one of those persons were the interim GCEO and he wanted to appraise the GCEO my understanding at the time of the – all of the activities that were followed to conclude the MSA and also Chair at the same time he wanted to make sure that that document then flows over to the finance area in terms of Mr Singh to also have a level of comfort in terms  
10 of paying for the outstanding amounts as agreed by the BTC in February or the settlement amount.

**ADV SELEKA SC:** Now this memorandum is the one Mr Koko has said he refused to sign.

**MR GOVENDER:** Yes Chair.

**ADV SELEKA SC:** Because he wouldn't sign a payment to Mr McKinsey when McKinsey didn't have a contract with Eskom.

**MR GOVENDER:** Yes Chair.

**ADV SELEKA SC:** Are you aware of him having refused to  
20 sign this memo?

**MR GOVENDER:** Chair I am aware of him refusing to sign that memo but not for that reasons.

**ADV SELEKA SC:** For which reason?

**MR GOVENDER:** This memo was signed by Ms Daniels on the 22<sup>nd</sup> of February and that memo was then taken on to

Mr Koko by Mr Mabelane. Mr Mabelane's feedback to both myself and to Mr Singh was that insofar as it relates to the memo is that Mr Koko did not want to sign it because his view was that the Board had already approved the settlement agreement and the ensuing amounts. I did not at the time hear from Mr Mabelane that he – that Mr Koko didn't want to sign it because there was not a proper contract or whatever that I heard directly from Mr Mabelane.

10 **ADV SELEKA SC:** I see. Now we did ask Mr Koko insofar as payment was made to McKinsey under the MSA, particularly in February 2017 when he was the interim Chief Executive, whether he took any steps to discipline those who were involved in ensuring that payment was made, were you disciplined for support these payments to Trillian?

**MR GOVENDER:** No Chair and that is the confusing part of me because for me is that having heard Mr Koko's strong views around the legality or the illegality of the  
20 payments. I suppose Mr Mabelane would have had to get disciplined first and then shortly after him I would and maybe somewhere in between Mr Singh as well.

**ADV SELEKA SC:** Yes, but were you, was disciplinary action taken against you?

**MR GOVENDER:** No Chair.

**ADV SELEKA SC:** Did you know Mr Eric Wood Mr Govender?

**MR GOVENDER:** I did Chair.

**ADV SELEKA SC:** Now when did you know him?

**MR GOVENDER:** Chair it suffice as I mentioned the last, at our last sitting I was introduced to Mr Wood by McKinsey, and we engaged on issues relating to the project and the scope of work as delivered by Trillian.

**ADV SELEKA SC:** You didn't know him before that?

10 **MR GOVENDER:** No Chair, not at all.

**ADV SELEKA SC:** Did you know Mr Salim Essa?

**MR GOVENDER:** No Chair.

**ADV SELEKA SC:** Did you know that he was a shareholder in Trillian, the majority shareholder?

**MR GOVENDER:** Yes Chair. I didn't know about his majority shareholding but I knew that he was one of the directors at Trillian.

**ADV SELEKA SC:** You never met him?

20 **MR GOVENDER:** I did in passing at a project update meeting at Trillian's offices in Melrose Arch, Mr Wood and Mr Essa they shared offices next to each other and there was a glass partition, we walked out and Mr Wood introduced me to him as one of the directors and that was basically it Chair.

**ADV SELEKA SC:** You were aware that ...[Indistinct]

Wyman in their review of the contract had recommended that Eskom should get a legal review before it made payments to Trillian?

**MR GOVENDER:** Absolutely correct Chair.

**ADV SELEKA SC:** And you are aware that that legal review was not obtained until the payments were made?

**MR GOVENDER:** No Chair, I was not aware of that.

**ADV SELEKA SC:** You were not aware of that?

**MR GOVENDER:** Could I explain further?

10 **ADV SELEKA SC:** Yes, yes you can.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** As you do the explanation let me also add to this because I understand from your affidavit and the affidavit of Mr Moodley, Rishava Moodley that it was you and Ms Daniels who were engaging with them in regard to providing them with documentation for the purposes of them rendering the legal review. Maybe your explanation, while you say you were not aware that the legal review was not obtained until after the payments were made you could  
20 explain that.

**MR GOVENDER:** I now know where Advocate Seleka is, what he is referring to. Chair, if you recall and the date is the 13<sup>th</sup> of December, that the board granted the mandate to negotiate the remaining portion of the contract. As per my affidavit I was asked to put together the submission to

the board and as part of that submission was to appraise the board of where we were with the legal review process, because that was one of the items that Mr Singh requested be done before we could you know, move forward with the negotiations and final negotiations and the conclusion of the MSA process.

I submitted that document and that draft of the submission to the board, I submitted to Ms Daniels ...[intervenes]

10 **CHAIRPERSON:** Yes.

**MR GOVENDER:** On the 9<sup>th</sup> of December. So on the 9<sup>th</sup> of December as per paragraph 33 of my affidavit Chair, if you have it on hand, you would see on the 9<sup>th</sup> of December I sent Ms Daniels the draft BTC submission for legal entry. I also attached the preliminary Oliver [indistinct] report and I show you the annexure EN19 as the reference.

Following on Chair, on paragraph 34 of my affidavit, I state:

20 “On 12 December I received back the board’s submission document that was edited by Ms Daniels in relation to the legal input and please see attached hereto emails as well as the executive summary submission to the board.”

So, and I am sorry I do not have the attachments in

front of me, but the attachments Advocate is very important. EN20 which I suppose was the email and EN21 was the attachment itself.

**CHAIRPERSON:** Yes.

**MR GOVENDER:** If memory serves me correct and maybe Chair, Advocate can help us with that.

**CHAIRPERSON:** Ja.

**MR GOVENDER:** But Ms Daniels edited the document and basically said that and I am just putting it in layman's  
10 terms. If I do not get it a hundred percent correct because I do not have it in front of me, I apologise. The legal review was completed and the recommendation from CDH is that a termination agreement is concluded with McKinsey and I do not know if I covered everything in that particular paragraph Advocate.

**ADV SELEKA SC:** Yes, I am trying to get you ...[intervenes]

**MR GOVENDER:** So the view at that time, certainly my view and that of Mr Mabelane, yes Chair.

20 **ADV SELEKA SC:** You want first the emails?

**MR GOVENDER:** No, no the email is fine. I think it is clear you know, where is it coming from. If you can go to that section that references the legal review.

**ADV SELEKA SC:** Oh ja, paragraph 8.

**MR GOVENDER:** Yes, yes that is right. So yes Advocate.

So basically what Ms Daniels added onto the document and send it back to me was Cliff Decker Hofmeyer was retained to conduct the review and the conclusion is that Eskom needs to enter into a termination agreement with the parties to bring the matter to finality.

This will absolve Eskom from any further liability once the termination agreement is in place.

**ADV SELEKA SC:** Ja.

**MR GOVENDER:** And this is significant Chair, because  
10 certainly in my mind and Mr Madalane's mind, because it is something that we discussed was that the legal review was completed and that we were all working towards the finalisation of a termination agreement.

**ADV SELEKA SC:** Yes. Okay, so you ...[intervenes]

**MR GOVENDER:** Yes.

**ADV SELEKA SC:** Your answer to my question is that based on this paragraph in this submission you understood that the legal review had been obtained?

**MR GOVENDER:** Correct Chair.

20 **ADV SELEKA SC:** But it is correct that you were to learn later that that legal review had not been obtained, is that right?

**MR GOVENDER:** When you say later, through you Chair again. When you say later Advocate, how later are you talking about?



**ADV SELEKA SC:** Let us see, in Mr Moodley's affidavit he said he had a meeting with you on the 7<sup>th</sup> of February 2017.

**MR GOVENDER:** Correct Chair.

**ADV SELEKA SC:** And in that meeting he indicated that he requires more documentation, well he does not go into the details of the meeting, but they required this documentation for the purposes of them reviewing the documentation and the contract in providing this legal  
10 opinion or review to Eskom.

I do not know whether it was clear in that meeting.

**MR GOVENDER:** No Chair, absolutely not. I mean when Mr Moodley came to see me on the 7<sup>th</sup> of February, he said to me that Ms Daniels had asked him to assist in completing the termination agreement. He also said to me for the purposes of that exercise, he requires some documentation.

I did not get the sense that there was still a legal review outstanding.

20 **ADV SELEKA SC:** Was, were you or Steerco, as a member of Steerco, were you individually provided with the legal review as at the 13<sup>th</sup> of December 2016?

**MR GOVENDER:** No Chair.

**ADV SELEKA SC:** Did you ask to see it?

**MR GOVENDER:** No Chair, I did not. Simply because Ms

Daniels was dealing with Mr Singh and Mr Singh basically said that this thing was, the legal review was done.

**ADV SELEKA SC:** Are you saying to the Chairperson when Steerco approve payments directly to Trillian, Steerco had not had sight of the legal review alleged to have been undertaken in that paragraph 8 of the submission?

**MR GOVENDER:** Chair, the last Steerco took place in August and my understanding from Mr Singh and I put it in my affidavit is that he requested Ms Daniels to conduct the  
10 legal review. I cannot comment Chair as to when he made that request and when it was completed or not.

**ADV SELEKA SC:** Well, I do not know whether you have followed her testimony, but she has had to apologise when testifying about that note and what she said to the BTC, Ms Daniels. That in fact the legal review was not done. Even ...[intervenes]

**MR GOVENDER:** I did follow that.

**ADV SELEKA SC:** You did follow that?

**MR GOVENDER:** I did hear that.

20 **ADV SELEKA SC:** So that paragraph in the submission was incorrect?

**MR GOVENDER:** Yes Chair, it was incorrect and I must admit had I known that it was not done at that stage, I would have understood a lot of things had then happened thereafter.

**ADV SELEKA SC:** I see. Lastly on this, Ms Motepo has testified that the services that were to be rendered under the MSA were initiatives that Eskom employees were already working on them and some of them even Trillian could, did not have the necessary expertise to offer those services.

She specifically referred to the Diva Insurance, that they were not clued up in insurance matters. So the money incurred by Eskom was absolutely on her version  
10 unnecessary. Do you have a comment on that?

**MR GOVENDER:** No Chair. Those activities under the finance area, would have been addressed by Trillian through the request of the finance manager. So I cannot comment on that. Chair, we seem to have a ...[intervenes]

**CHAIRPERSON:** Yes.

**MR GOVENDER:** Interruption.

**CHAIRPERSON:** Will everybody just check where they are, whether there might be people outside of the office or room who might make noise and disturb us?

20 **ADV SELEKA SC:** Yes Chair, I saw it was from I think Mr Matume. Who is Mr Matume?

**MR MAMETJA:** Yes.

**ADV DORFLING SC:** I confirm. I also saw activity on the Matume microphone.

**CHAIRPERSON:** Ja.

**MR MAMETJA**: Apologies Chairperson. I am Mr Matume.

**CHAIRPERSON**: Yes.

**MR MAMETJA**: Apologies.

**CHAIRPERSON**: Yes, okay. Are you involved in any matter that is to be heard?

**MR MAMETJA**: Yes, that is correct Mr Chairperson. I am involved. I am an attorney for Mr Makwetla.

**CHAIRPERSON**: Okay. Just make sure that we are not disturbed in the meantime.

10 **MR MAMETJA**: Yes, apologies. Apologies Chairperson.

**CHAIRPERSON**: Okay, Mr Seleka.

**ADV SELEKA SC**: Thank you Chair.

**CHAIRPERSON**: You, I think you have done an hour and a half, an hour and 15 minutes or 20 minutes or so, probably an hour and 15 minutes.

**ADV SELEKA SC**: Yes, I should finish now Chair.

**CHAIRPERSON**: Okay.

**ADV SELEKA SC**: Yes. Mr Govender, that leads me to the corporate plan.

20 **MR GOVENDER**: Yes Chair.

**ADV SELEKA SC**: And similarly in respect of the corporate plan, Ms Motepo was saying that this is a matter that could have been done by Eskom employees, and before you answer, let me add what McKinsey says. McKinsey says Eskom had internal skills and resources to

do or funding plan for the corporate plan.

McKinsey was historically not involved until asked by the new management of Mr Brian Molefe and Arnold Singh to get involved in regard to the corporate plan. Well, that you find in Mr Mankua's affidavit.

**MR GOVENDER**: That is fine, is he from McKinsey Chair?

**ADV SELEKA SC**: He is from McKinsey.

**MR GOVENDER**: Okay.

**ADV SELEKA SC**: I will give the, Mr Dorfling can ... well,  
10 the reference is Eskom Bundle 14(C), page ... the hard  
copy is from page 702.174, electronic copy is page 2377.

**CHAIRPERSON**: You said that will be 14C?

**ADV SELEKA SC**: 14(C) Chair, yes.

**CHAIRPERSON**: What page did you say?

**ADV SELEKA SC**: The affidavit starts on page 702.174.  
That is the hard copy. 2377 electronic copy. And Mr  
Dorfling you can go to 2388.

**ADV DORFLING SC**: I have got 2377. Must I go to 2388  
as well?

20 **ADV SELEKA SC**: That is correct, ja.

**ADV DORFLING SC**: Thank you.

**ADV SELEKA SC**: Paragraph 5.2. Chairperson, the hard  
copy paragraph is on page 702.185.

**CHAIRPERSON**: Okay.

**ADV SELEKA SC**: There he says:

“Historically McKinsey had been less involved in drafting Eskom’s corporate plan an annually compiled document that Eskom is required to submit to national treasury in compliance with its legislative duties, because Eskom had internal resources and personnel who were experienced in such matters.”

Ms Motepo said something to [indistinct] – 00:15:14]. In fact Mr Govender, Mr Singh ultimately  
10 agreed or conceded that Eskom treasury was involved in the preparation of the funding plan for the corporate plan. So the question I am putting to you I suppose is this.

That on the evidence of these witnesses, it would seem that it was not necessary for Eskom to involve Regiments or even McKinsey in the preparation of the funding plan. Do you have a view on that or a comment on that?

**MR GOVENDER:** Unfortunately Chair, when it comes to the funding side of the business of the treasury space, I  
20 would not be clued up you know, to make a comment either way. I apologise Chair.

**ADV SELEKA SC:** Do you, well let me ask you this question. Do you know whether the gap analysis as required by the national treasury instruction adopted into Eskom’s policy was undertaken? The gap analysis.

**MR GOVENDER:** For the corporate plan contract?

**ADV SELEKA SC:** Yes. The gap analysis ...[intervenes]

**MR GOVENDER:** I cannot recall at ...[intervenes]

**ADV SELEKA SC:** You cannot recall.

**MR GOVENDER:** I cannot recall if that was done at that stage Chair, because as I mentioned in my affidavit the documentation was prepared by a procurement practitioner that was allocated by Mr Kalima and I on the technical side allocated one of the top engineers having received the  
10 instruction to put this, or put the documentation together for the preparation of the board approval.

So I cannot recall Chair offhand if a gap analysis was done. What I do recall is that the documentation was signed off and then it went I think to a full board somewhere in September for approval.

**CHAIRPERSON:** You will just have to repeat the last two sentences Mr Govender. You were frozen for a few seconds.

**MR GOVENDER:** Lost in the airwaves, Chair.

20 **CHAIRPERSON:** Ja.

**MR GOVENDER:** No, I was just saying that the documentation was compiled and the compilation of the document was led by a procurement practitioner. I think I mentioned the lady's name in, that was allocated by Mr Kalima to prepare the document, and I allocated a top

engineer to assist her with the technical components of what needed to be in the documentation based on the McKinsey proposal.

That documentation in terms of moving forward towards an approval process was taken forward by Mr Kalima and my understanding somewhere in September the board approved a mandate to negotiate and conclude the contract for the corporate plan.

**ADV SELEKA SC:** Yes. Okay. But all that is unrelated to  
10 the gap analysis.

**MR GOVENDER:** I accept that Chair.

**ADV SELEKA SC:** Yes. So just for the benefit of the Chairperson, so the gap analysis, and confirm with me means that Eskom ... before Eskom appoints a consultant, Eskom must do an assessment to determine whether it does not have the skills and expertise it requires for the job to be done, and if it does not have them then it can decide to go out and outsource the work.

Is that correct?

20 **MR GOVENDER:** Yes Chair, that is correct. That is my understanding.

**ADV SELEKA SC:** So, thank you. So let us deal with the payment, because we do not deal with the payment of 30.6 million to Trillian.

**MR GOVENDER:** Yes Chair.



**ADV SELEKA SC:** And that marks the end of the corporate plan issue. This payment was made directly to Trillian. Did you understand Trillian to have been the one that rendered that services under the corporate plan?

**MR GOVENDER:** Correct Chair.

**ADV SELEKA SC:** On what was that understanding based?

**MR GOVENDER:** Chair, let me refer to my affidavit, because there is a sequence of events that I do not want to get incorrect and maybe we must go to paragraph, it is  
10 basically paragraph 44 onwards, but I will take you to the specific paragraphs that I want to refer to.

So Chair, the ... like I, where I stopped a few minutes ago, was sometime in September the board approved the mandate to negotiate to, and conclude with McKinsey and it was done at a board meeting and I was not at the board meeting.

Negotiations was arranged by Ms Makolane, Tsiamo Makolane and these ... and were held with McKinsey and a letter of acceptance signed by Mr Koko and Dr Wise took  
20 place or signed that ... or signing took place on the 29<sup>th</sup> of September.

Then I attached the letter of acceptance for as proof. So the letter of acceptance was signed and the contract was being finalised with McKinsey. On the 27<sup>th</sup> of November 2015 I received an email from Mr Vika Sagar of

McKinsey in which Dr Wise, Dr Eric Wood and Mr Koko were also copied, providing the details of the BEE partner, Trillian and that is after I requested them to do so because one of the requirements of the corporate plan contract, was then to indicate who their BEE partner was.

On the 9<sup>th</sup> of February 2016 I received another email from Mr Sagar, in which Dr Wise and Dr Wood were also copied, with the following content. The email and there was an email and an attachment Chair. The email  
10 read:

“In line with the contractual arrangement agreed in our MSA and per Trillian’s request, we attach the authorisation to pay Trillian directly.”

The attachment related to direct payment to Trillian for this contract, which is what Advocate Seleka is questioning me on, which is the corporate plan. So when you read that Chair, you see that they have had an arrangement which related to the MSA, because remember  
20 the MSA was being negotiated at that point, or sorry, was being in the final stages of negotiations in September.

So it seems like they had an arrangement then which translated into them also issuing a letter to Eskom, stating that Trillian would be their subcontractor for the corporate plan.

**ADV SELEKA SC:** So your understanding of Trillian being a BEE partner to McKinsey was based on that?

**MR GOVENDER:** Yes Chair.

**ADV SELEKA SC:** Do you know that either then or now, maybe let us start with now. We know now that Trillian was not McKinsey's BBE partner. In February 2016.

**MR GOVENDER:** I do not fully understand your question Advocate, because I am going upon what letter I received from McKinsey on the 9<sup>th</sup> of February and what it told me.

10 **ADV SELEKA SC:** Okay.

**MR GOVENDER:** But I know there has been some developments, but at that time it was you know, the indication from McKinsey to myself, was that this was my BEE partner.

**ADV SELEKA SC:** Yes.

**MR GOVENDER:** Or this is my BEE partner.

**ADV SELEKA SC:** Yes. Yes, okay. But what I am asking you now is now, as you testified now, do you know that in fact McKinsey was not a BEE partner at the time. I mean  
20 Trillian was not McKinsey's BEE partner at the time.

**MR GOVENDER:** Chair, there must be a reason why Advocate is asking me this question and maybe I must ask the reason ...[intervenes]

**CHAIRPERSON:** Well, lots of things have been revealed.

**MR GOVENDER:** Yes Chair.

**CHAIRPERSON:** Since the Commission started. Now have you heard anything either in terms of evidence in the Commission or from somewhere, have you read any document that from which you have concluded that contrary to what you may have thought, Trillian was not the BEE partner of McKinsey in February 2016.

**MR GOVENDER:** Chair, what I am aware of and I apologise if I never kept up with everything that has come out of the Commission, but what I am aware of is that  
10 McKinsey was going through a review process  
...[intervenes]

**ADV SELEKA SC:** Yes.

**MR GOVENDER:** Of Trillian.

**ADV SELEKA SC:** Yes.

**MR GOVENDER:** And that led to a letter being sent to Eskom at the end of March, where they said that Trillian has not passed the review process.

**ADV SELEKA SC:** Yes, that is what we are talking about Mr Govender.

20 **MR GOVENDER:** Oh, thank you Chair. Thank you. Sorry, apologies for ...[intervenes]

**ADV SELEKA SC:** Ja.

**CHAIRPERSON:** Do you – did you ever know it as a fact that Trillian was a BEE partner for McKinsey at that time, or is the position that you looked at the correspondence

that you have referred to, and based on that you said okay, McKinsey says the Trillian is their partner or, so they are their partner?

**MR GOVENDER:** Chair, at the time when I received this correspondence, I had no reason to doubt the correspondence that came from McKinsey.

**CHAIRPERSON:** Okay, alright and as you speak now your information has not changed much to what it was then in this regard?

10 **MR GOVENDER:** Chair because and I am sorry if I seem a little bit confused. There are two contracts we are referring to here.

**CHAIRPERSON:** Ja.

**MR GOVENDER:** We are referring, so we got the letter from McKinsey regarding the MSA on the 30<sup>th</sup> of March.

**CHAIRPERSON:** Ja.

**MR GOVENDER:** This contract was the smaller one, was the corporate plan contract.

**CHAIRPERSON:** Yes.

20 **MR GOVENDER:** And up until, I still go by the fact that that was the letter that was sent to me at the time and it was stipulated very clearly in that letter that Trillian was McKinsey's subcontractor.

**CHAIRPERSON:** Okay. Mr Seleka?

**ADV SELEKA SC:** Yes, but Mr Govender, the officials of

McKinsey have led evidence, one to the effect that that letter from Mr [indistinct] did not reflect the correct position, and particularly because of the review process you were referring to, prior to Trillian becoming a BEE of McKinsey, they needed to go through that review process in order to qualify to be a BEE partner, and they failed the test as it were.

They never became a BEE partner and it is for this reason that I mean we are asking this question, that you  
10 know now that in fact at that time Trillian was not a BEE partner. Steerco was also informed on the 30<sup>th</sup> of March 2016 that McKinsey is not contracting with Trillian.

You are aware of that?

**MR GOVENDER:** For the corporate plan, yes. Sorry, sorry Chair. For the MSA, yes.

**ADV SELEKA SC:** Yes, but McKinsey says Trillian has never been its partner, even under the corporate plan.

**MR GOVENDER:** Sorry Chair, if I am answering a question with a question. Why did they send us the letter that they  
20 did then?

**ADV SELEKA SC:** Yes, let me answer that question with a version from Mr Mabelane.

**MR GOVENDER:** Yes.

**ADV SELEKA SC:** Mr Mabelane says when the invoice was received of 30.6 million, it was forwarded to you and

he requested you to put together documentation that were required by the commercial department in order to approve that payment.

This is paragraph 10.5 in his affidavit and he says one of the documentations required, was for the supplier to provide a document that would direct Eskom in respect of two things. One, confirm that Trillian is the subcontractor and two, that Eskom can pay the subcontractor directly.

You provided him with all that documentation. Can  
10 you still hear me? The screen seems to be frozen.

**CHAIRPERSON:** Govender? Mr Govender?

**ADV SELEKA SC:** I think we ...[intervenes]

**CHAIRPERSON:** Oh, ja. Mr Govender?

**ADV SELEKA SC:** He is back. Unmute Mr Govender. Yes.

**CHAIRPERSON:** Unmute.

**MR GOVENDER:** I am back.

**CHAIRPERSON:** You are back. Repeat your question, did you hear Mr ...[intervenes]

**MR GOVENDER:** Yes Chair.

20 **CHAIRPERSON:** The last question. Did you hear it?

**MR GOVENDER:** The last part got broken in the airwaves Chair.

**CHAIRPERSON:** Let him repeat it. I take it you are wrapping up now Mr Seleka?

**ADV SELEKA SC:** That is correct Chair, that is correct.

**CHAIRPERSON:** Ja, let us ... if there are still any issues left, written questions can be sent to Mr Govender for him to respond to.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Yes, alright.

**ADV SELEKA SC:** So Mr Govender, what Mr Mabelane is saying is that he says I engaged my team who in terms spelt out the documentation required. I arranged with Mr Prish Govender, the then project manager, to furnish all  
10 required documentation to the team, as per their stated requirements.

One of the key documents required to accept the invoice from Trillian was a confirmation from the contract holder, McKinsey that Trillian was the subcontractor, was their subcontractor and that they desired for Eskom to pay the subcontractor directly.

This confirmation was received via a letter addressed to Mr Prish Govender who was working in the office of the CFO, Mr Arnold Singh. Then he got the  
20 documentation from you Mr Govender. So it seems from his version that you would have been the one who collated the documentation including obtaining this letter directly from McKinsey to the effect that it stated.

What do you say to that?

**MR GOVENDER:** Okay Chair, that is very interesting. The



first thing I want to correct is that at the time I was not reporting to Mr Singh. So I was not working in his office. I was still working for Mr Abram Masango in the group capital space.

So that is the one thing I want to correct and I think my affidavit speaks to that. The second thing that I and the inference is made that I asked for this document, but I did not ask for this document. This document arrived to me, arrived on the 9<sup>th</sup> of February as I mentioned to the  
10 Commission.

The third thing that I want to comment on is there is only one thing that Mr Mabelane wanted me to do as the part of the payment process of the 30.66 and I do not know how many 6's there, million. He wanted me Chair and I think it is captured in the correspondence somewhere.

He wanted me to provide the motivation to the vendor management team for the registration of Trillian as a vendor and that motivation had to be drawn up in line with this letter that we received on the 9<sup>th</sup> of February. So  
20 I am struggling to see what is all of the documents, but what I know is that that is what he asked me to do.

**ADV SELEKA SC:** Okay. So you are partly denying what he says in that paragraph, 10.5 of his affidavit.

**MR GOVENDER:** Yes Chair, because I do not know what all the documents is that he is referring to. I am saying to

you that in no uncertain terms I knew that he told me to put the motivation together for the registration of Trillian based on the letter that I had received on the 9<sup>th</sup> of February.

**ADV SELEKA SC:** Yes, not ...[intervenes]

**MR GOVENDER:** And that was [indistinct] for the process. Advocate, you have frozen.

**CHAIRPERSON:** Mr Seleka?

**MR GOVENDER:** We are struggling today Chair.

**CHAIRPERSON:** Ja.

10 **ADV DORFLING SC:** It is winter Chair, it is cold.

**CHAIRPERSON:** Ja, no it is cold. Mr Seleka, are you back now?

**ADV SELEKA SC:** Yes, was it my screen Chair which was frozen?

**CHAIRPERSON:** Ja, you were frozen.

**ADV SELEKA SC:** Oh, I am sorry Chair. I saw all of us frozen here. Mr Govender, the last question.

**MR GOVENDER:** Yes Chair.

20 **ADV SELEKA SC:** And really, I am asking you for an explanation to the Chairperson. Can you please explain paragraph 54 of the affidavit to the Chairperson?

**MR GOVENDER:** Can I read it out?

**CHAIRPERSON:** Ja, read it out first, then ...[intervenes]

**MR GOVENDER:** I think it is clear. It says, for me it is clear. Maybe not for everybody.

**CHAIRPERSON:** Is that 54 or 5.4?

**ADV SELEKA SC:** 54 Chair, on page 1349 on Bundle 14(D). I think that is not the right bundle.

**CHAIRPERSON:** You did not say you were moving over to that one.

**ADV SELEKA SC:** Sorry Chair. I thought he could explain it instead of reading it out, but ...[intervenes]

**CHAIRPERSON:** Well ...[intervenes]

**MR GOVENDER:** It is good that I read it out Chair. If  
10 Advocate does not mind, because it is you know  
...[intervenes]

**CHAIRPERSON:** What is the page again?

**ADV SELEKA SC:** Page 1349. Electronic page is 4081.

**ADV DORFLING SC:** 1481.

**ADV SELEKA SC:** Four zero eight one.

**ADV DORFLING SC:** Thank you.

**ADV SELEKA SC:** 4081, paragraph 54.

**CHAIRPERSON:** Okay. You may read it first Mr Govender.

**MR GOVENDER:** So Chair, it reads as follows:

20                    “At the beginning of April 2016 Mr Mabelane  
after discussions with Mr Koko and Mr Singh  
followed up with me as to whether the invoice  
for Trillian had been paired. I explained to him  
that McKinsey had still not given written  
approval and hence I could not forward the

invoice for payment. Mr Mabelane advised that he would approve the invoice as per his discussions with Mr Koko and Mr Singh. I also raised the issues of direct payment to a subcontractor without a contract, after which Mr Mabelane assured me that it was allowed and had been done in the past at Eskom. He asked me to support the invoice as the project manager. Mr Mabelane also asked me to send a letter which was PG4 that the Commission had sent to me, which was a letter basically from myself to Mr Kamila, Eskom vendor management in line with the letter that I received from McKinsey on the 9<sup>th</sup> of February for the registration of Trillian as a vendor. The payment of the invoice was then processed by the procurement team.”

**ADV SELEKA SC:** So this is the payment of the 30.6 million invoice?

20 **MR GOVENDER:** Correct Chair.

**ADV SELEKA SC:** And Mr Mabelane was saying he had discussed that payment of the invoice, the payment for that invoice with Mr Koko and Mr Singh.

**MR GOVENDER:** Correct, that is what he said to me Chair.

**ADV SELEKA SC:** And that he would authorise or approve

the payment as he discussed with Mr Koko and Mr Singh?

**MR GOVENDER:** Yes, because if you recall one of the conditions was McKinsey approving this and I had not received that approval from McKinsey.

**ADV SELEKA SC:** Yes. You had not received McKinsey's confirmation that work had been done by Trillian which was one of the conditions in the letter.

**MR GOVENDER:** Yes. All I received was on the, if we can go Chair to paragraph 53 of my affidavit.

10 **CHAIRPERSON:** Yes.

**MR GOVENDER:** "On the 18<sup>th</sup> of March I received an email from Lourens [indistinct] who was one of the partners from McKinsey with the attached Trillian invoice, the 30.6 saying he will review the invoice the next date. Please see attached electronic mail from Mr [indistinct]."

Now Mr [indistinct] did speak to me about the fact that Trillian had done work for Mr Singh on the funding plan. But as far as I was concerned, I need to see that in  
20 writing, and I never received that Chair.

**CHAIRPERSON:** Okay.

**ADV SELEKA SC:** Are you aware of Mr Koko's evidence that he refused to have a payment made directly to Trillian or to approve this invoice of a direct payment to Trillian?

**MR GOVENDER:** I am aware Chair.

**ADV SELEKA SC:** What do you say to that or do you have any ...[intervenes]

**MR GOVENDER:** I was not aware at the time Advocate that he was against this payment.

**ADV SELEKA SC:** I see. Chairperson, that covers my questions to Mr Prish Govender.

**CHAIRPERSON:** Okay. Mr Dorfling?

**ADV DORFLING SC:** Mr Chair, I think I will be very brief. I have got just one aspect that I may want to ... Mr  
10 Govender to assist us on.

**CHAIRPERSON:** Okay.

**ADV DORFLING SC:** And perhaps I can try and introduce the topic very quickly and see if we can wrap this up within a minute or two.

**CHAIRPERSON:** Ja, okay. Alright.

**ADV DORFLING SC:** Mr Govender, you were referred to the external opinion that was obtained from Advocate Kennedy at a time when there was a discussion concerning whether the practice note was still applicable and or  
20 whether you could engage a subcontractor on a risk basis.

You had sight of Advocate Kennedy's opinion, is that correct?

**MR GOVENDER:** Correct Chair.

**ADV DORFLING SC:** It is my understanding having read the opinion that Advocate Kennedy had certain

reservations about that and engaging a subcontractor on a risk basis in the face of the fact that the practice note may no longer be operative.

**MR GOVENDER:** That is correct Chair.

**ADV DORFLING SC:** Could you just guide us and assist us with whether Eskom then set about or did anything to assist in obtaining information whether or not the practice note was still operative? I think you alluded to it very briefly on the last occasion.

10 **MR GOVENDER:** Yes Chair, and that is covered in my affidavit where the two procurement, the general manager for Commodity Sourcing and the senior manager for Commodity Sourcing, Mr Charles Kalima and Mr Dave [indistinct] respectively got that confirmation from national treasury in so far as whether that practice note was valid,

I think we went into that quite lengthily at the last session but that is what they went and verified with national treasury.

20 **ADV DORFLING SC:** In your mind, did that overcome the reservation in the Kennedy opinion?

**MR GOVENDER:** Well Chair, in my mind I was always going to revert to what the procurement practitioners believed about the national treasury, how can I say? Adherence in terms of the contract, and that is why I mentioned at the last meeting, is that the comfort needed

to come ... the comfort would have had to come from the procurement individuals including Mr Mabelane as to whether they were satisfied with what they had gotten from national treasury actually overcame the hurdle, and to my understanding they were satisfied and as I mentioned the last time, they ... this is, this procurement team believed that we had the necessary go ahead in terms of that contract.

**ADV DORFLING SC:** I have got no further questions,  
10 thank you Mr Chair.

**CHAIRPERSON:** Thank you Mr Dorfling. Thank you very much Mr Govender for availing yourself once again and thank you to your, to Mr Dorfling and your instructing attorney for cooperation. We, I will now excuse you. I think Mr Dorfling still remains because he is involved in another matter.

Is that correct Mr Dorfling?

**ADV DORFLING SC:** I am indeed Mr Chair, we need to obviously just establish whether the other matter that  
20 needs to go in between is now ready to proceed or whether we can revert to my other matter.

**CHAIRPERSON:** Yes, okay. Mr Govender, you are now excused.

**MR GOVENDER:** Thank you Chair.

**CHAIRPERSON:** Thank you very much.



**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** Mr Seleka?

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** Do you know what Ms Pule's position is at the moment?

**ADV SELEKA SC:** I will have to check with her Chair.

**CHAIRPERSON:** You will have to check. I was thinking has anybody challenged her evidence on her affidavits?

**ADV SELEKA SC:** No Chair.

10 **CHAIRPERSON:** And they have been served with 3(3) notices?

**ADV SELEKA SC:** No, not the 3(3) notices, because ...[intervenes]

**CHAIRPERSON:** Oh, but they have been given copies?

**ADV SELEKA SC:** Yes, yes.

**CHAIRPERSON:** How long ago, do you remember?

**ADV SELEKA SC:** We would have given them last week.

**CHAIRPERSON:** Ja.

20 **ADV SELEKA SC:** As we were trying to get hold of her to arrange the date.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And the person, well if you consider the implication and in a very light sense, it is then Mr Thazitembe Khoza.

**CHAIRPERSON:** Ja, he is the only person.

**ADV SELEKA SC:** Ja, he is the only person.

**CHAIRPERSON:** Ja, and he was served. He has not said anything so far?

**ADV SELEKA SC:** I have been in contact with his attorneys. He has indicated that he will not be able to provide the affidavit within that time requested.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** I wanted to have re-assured a time with him.

10 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And I know that he said that we should discuss further, so he is still waiting for me to go back to him, but they have not filed an affidavit yet.

**CHAIRPERSON:** Okay. I am going to take a 15 minutes adjournment. It is six o'clock now.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** If Ms Pule is not available, we will start with, I have been informed that there is a re-examination of Mr Makweta, the deputy minister that I seem to have  
20 forgotten that I understand I had approved to be included. I do not expect it to take long.

Mr Dorfling, Mr Nair should not take long. What is your ... what is your assessment of how much time we need for him?

**ADV DORFLING SC:** Mr Chair, I have approached Molefe

prior to today, some day or two ago with a possible solution that we may want to place before you before we proceed, and it may very well have the result that it shortens the proceedings substantially.

You will know that there is an outstanding application to cross-examine Mr le Roux which can only be entertained once Mr Nair's evidence have been heard.

**CHAIRPERSON:** Yes.

**ADV DORFLING SC:** We were going to propose that we  
10 reconsider our position on that application on the understanding that Mr Nair's affidavit that he deposed to on the 26<sup>th</sup> of August 2019, be read and admitted into the record.

**CHAIRPERSON:** Ja.

**ADV DORFLING SC:** The moment that gets admitted into the record and if you were amenable to accepting that, we may then well abandon the application to cross-examine Mr le Roux which may save a substantial amount of time.

**CHAIRPERSON:** Yes.

20 **ADV DORFLING SC:** So but we would like to place that in front of you for consideration. I do not know whether it is opportune now perhaps we do it after the adjournment.

**CHAIRPERSON:** Well, yes no that is fine. Let us take the adjournment. My recollection of Mr Nair's version was that one, there was an admission that certain security

installations were effected in his house, private house and the one issue was or he said he had entered into a private arrangement if I am not mistaken with I think it is either BOSASA or one of their associates or with somebody working for BOSASA.

And ...[intervenes]

**ADV DORFLING SC:** [indistinct]

**CHAIRPERSON:** Ja, and there was a just a dispute about the price of the ... it was just one or two issues that  
10 seemed to be in issue. So let me take the 15 minutes adjournment. When I come back one, I will hear what the position is with Ms Pule and then I can either start with Ms Pule or Mr Nair, but both of them should be quite short.

Okay. Let us take a 15 minute adjournment.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Mr Seleka

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** What is the position?

20 **ADV SELEKA SC:** Ms Pule is available Chairperson is ready she has joined the zoom.

**CHAIRPERSON:** Okay. Good evening Ms Pule.

**MS PULE:** Good evening Chair.

**CHAIRPERSON:** Thank you for availing yourself to assist the commission. Sorry that yesterday you waited for a long

time and we could not get to you.

**MS PULE**: No problem thank you.

**CHAIRPERSON**: Okay all right. Registrar please administer the oath or affirmation.

**REGISTRAR**: Ms Pule will you be taking the oath or the affirmation?

**MS PULE**: Yes.

**REGISTRAR**: Which one?

**MS PULE**: Oh the oath.

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

**MS PULE**: I am Elsie Nomaletelo Pule

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

**MS PULE**: No.

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

**MS PULE**: Yes.

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

**MS PULE**: So help me God.

**CHAIRPERSON**: Thank you. Thank you Ms Pule. Mr Seleka

**ADV SELEKA SC**: Yes Chair.

**CHAIRPERSON:** The real issue that I think I am interested in.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Or relates to that part of Ms Pule's affidavit.

**ADV SELEKA SC:** Yes Chair.

**CHAIRPERSON:** That seems to suggest that either she or somebody else who communicated with her knew about the suspensions of the executives before the board made the  
10 decision to suspend.

**ADV SELEKA SC:** Correct.

**CHAIRPERSON:** You will tell me my recollection is that that is really the part that I am interested in. You can alert me something else that I may have missed but I think that is what I am interested in.

**ADV SELEKA SC:** Yes. Chair that is correct. That is the issues.

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** And I have in my discussion with Mr EI –  
20 Mr Pule made aware of the fact.

**CHAIRPERSON:** Ja. Ja, no she can confirm the correctness of her entire affidavit that is fine.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** But we can focus on what I am really interested in.

**ADV SELEKA SC:** Correct then thank you very much.

**CHAIRPERSON:** Okay all right. Go ahead.

**ADV SELEKA SC:** Yes thank you Chair. The bundle we are using is Eskom Bundle 19 Chairperson.

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Ms Elsie – for the sake of Ms Elsie I will have to refer to the electronic pagination as well because that is all she has.

**CHAIRPERSON:** Ja that is fine.

10 **ADV SELEKA SC:** Ms Elsie the affidavit is on page 956 of the electronic pagination which is 488 of the hard copy. Are you there Ms Pule?

**MS PULE:** I am – I am here where the affidavit starts.

**ADV SELEKA SC:** Yes. You are there.

**CHAIRPERSON:** She is asking where – where – oh have you found where it starts Ms Pule?

**MS PULE:** Yes I found it but it is page 956 that is where the affidavit starts Chair.

**CHAIRPERSON:** Okay all right.

20 **ADV SELEKA SC:** Yes. Yes that is fine – that is the – that is the electronic pagination. And the affidavit goes up to page – on your pagination 972 which is page 544 Chairperson.

**MS PULE:** Yes I agree.

**ADV SELEKA SC:** There is a signature there above

signature of Deponent above the line there. Do you see that?

**MS PULE**: Yes I do.

**ADV SELEKA SC**: Do you confirm that to be your signature?

**MS PULE**: Yes that is my signature.

**ADV SELEKA SC**: And you signed the affidavit on the 10<sup>th</sup> of November 2020 you confirm that?

**MS PULE**: Yes I do.

10 **ADV SELEKA SC**: You confirm then this to be your affidavit?

**MS PULE**: Yes I do.

**ADV SELEKA SC**: And you confirm that the contents are true and correct?

**MS PULE**: Yes I do.

**ADV SELEKA SC**: Thank you. Now Chairperson I will beg leave to have this affidavit of Ms Elsie Nomaletelo Pule dated 10 November 2020 be admitted as Exhibit U45.1 together with the annexures thereto.

20 **CHAIRPERSON**: The affidavit of Ms Elsie Nomaletelo Pule that starts at page 488 will together with its annexures be admitted as Exhibit U45.1 – U45.1. Okay.

**ADV SELEKA SC**: Thank you. Ms Pule you have – you are employed by Eskom, is that correct?

**MS PULE**: Yes I am.



**ADV SELEKA SC:** What is your position currently?

**MS PULE:** I am the Group Executive Human Resources.

**ADV SELEKA SC:** Group Executive Human Resources.

Were you also an employee of Eskom in March 2015?

**MS PULE:** Yes I was.

**ADV SELEKA SC:** And what was your position then?

**MS PULE:** I was the acting Group Executive Human Resources.

**ADV SELEKA SC:** Action Group Executive Human  
10 Resources. And when – when were you first employed by  
Eskom?

**MS PULE:** I was first employed by Eskom 1 December 1995  
and then I was employed for the second time in 2012.

**ADV SELEKA SC:** In 2012. So please go to page 9 of your  
pagination 957 – Chairperson page 489.

**MS PULE:** 957?

**ADV SELEKA SC:** Yes 957 on your pagination. You are  
there?

**MS PULE:** I am there.

20 **ADV SELEKA SC:** Yes. Now the commission – when we  
first approached you we gave you a list of points you  
addressed in your affidavit and those points you have  
repeated them on this page under paragraph 4. You see  
that?

**MS PULE:** Yes.

**ADV SELEKA SC:** By we will be focussing mainly on point 4.7 of this list.

**MS PULE:** I am there.

**ADV SELEKA SC:** You see that 4.7.

**MS PULE:** Yes.

**ADV SELEKA SC:** It reads:

10                   “How my email of 11 March 2015 at 9:27  
                      came about what was discussed with me by  
                      whom – by who that made me write the  
                      email and what I did with the documentation  
                      received from Mr Phillip Mashego.”

You see that?

**MS PULE:** Yes I do.

**ADV SELEKA SC:** It is kind of related to 4.5 which I will simply read it says:

20                   “My attendance in involvement at the board  
                      meeting of 11 March 2015 at 9H00 how was I  
                      invited – why did I attend and what was  
                      discussed with me and by whom?”

Now the issue arising here – the issue arising here relates to those two – it is an incident relating to those two points and I would like you to tell the Chairperson because on the 11<sup>th</sup> just to set the background and you will explain to the Chairperson.

On the 11<sup>th</sup> of March 2015 at nine o'clock the Eskom

board has a meeting in which a number of executives are invited. You were also invited. You confirm that?

**MS PULE**: Yes I was.

**ADV SELEKA SC**: Yes. And the senior executives were also invited which is the Group Chief Executive, the Financial Director and the others from other divisions of Eskom. You confirm that?

**MS PULE**: Yes I do confirm.

**ADV SELEKA SC**: Yes. You do say that in your affidavit  
10 that meeting started at nine o'clock. You deal with that on  
your page is 963 on the hard copy is page 495 paragraph  
14. So you say there:

“On the 11 March 2015 there was a  
scheduled board meeting from 9H00 to  
12H00. I was at the scheduled board  
meeting of 11 March 2015 that started at  
9H00 by invitation with the rest of the Eskom  
managers.”

You see that?

20 **MS PULE**: Yes I do.

**ADV SELEKA SC**: Yes. Now the point we then sought you  
to explain to us is the one of regarding the email that you  
sent to Mr Mashego at 9:27 on that morning requesting him  
to provide you with a step to compile a step by step process  
for the suspension of their (indistinct). You remember that

email?

**MS PULE:** Yes I – I do remember.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Well do you want Mr Seleka do you just want her to read the email and then how and explain how it came about that might be quicker. Let us go to the email.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Let her read the email what it said to whom it was addressed, what date it was, what the subject  
10 matter was and then explain how it came about.

**ADV SELEKA SC:** Yes. Thank you Chair. Ms Pule that email you have attached it and it is found on your page is 1007 – on the hard copy it is page 539 – 539.

**MS PULE:** I found it.

**ADV SELEKA SC:** You found it. Yes. Just identify then these emails because there is two of them of this page – identify them? Which one comes first and which one is second?

**MS PULE:** The one at the bottom comes first that is the  
20 email from me to Phillip Mashego.

**ADV SELEKA SC:** Yes. So that is from you sent to him 11 March 2015 at 9:27 am to Phillip Mashego. There is no subject identified in that subject line and you wrote:

“Please urgently compile a step by step process to follow when suspending an F

Band.”

Now can you explain to the Chairperson who is an F Band.

**MS PULE:** So F band employees are your EXCO members that is the last year of your employees at Eskom.

**CHAIRPERSON:** That would be the Chief Executive – Group Chief Executive, the Financial – Finance Director and who else?

**MS PULE:** And the rest of EXCO including the HR Director,  
10 the legal head and so on.

**CHAIRPERSON:** Okay. All right.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** And okay do you want to tell me how it came about that you were asking Mr Mashego to compile a step by step process to be followed when suspending an F Band but before you do that just explain who Phillip Mashego was at the time?

**MS PULE:** Phillip Mashego was responsible for Industrial Relations. He was reporting to me.

20 **CHAIRPERSON:** Oh okay. What was his formal position?

**MS PULE:** He was a senior manager Employee Relations.

**CHAIRPERSON:** Okay. How did it come about that you sent him this email?

**MS PULE:** Chair this is one of the subjects I have discussed with Advocate and the investigators several

times. I honestly do not remember the trigger of what happened but subsequently when I went through my Outlook for 2015 on that day I noticed that the information I received from Phillip Mashego responding to this name I had forwarded it to Mr Zethembe Khoza. So I can only assume that the request came from him.

**CHAIRPERSON:** So – so you do not remember how it came it about that you – you sent this email to Phillip Mashego?

**MS PULE:** Yes I do not remember and Chair I have checked  
10 my Inbox – my Outlook Inbox and I have checked my sms's and Whatsapp's.

**CHAIRPERSON:** Yes.

**MS PULE:** So I obviously have not received it in that manner so I could only have received it through a verbal communication but I do not remember the exact engagement with Mr Zethembe.

**CHAIRPERSON:** Hm. Okay Mr Seleka take it from there.

**ADV SELEKA SC:** Thank you Chair. So Ms Pule you say  
20 the only way you have been able to determine that it is connected to Mr Zethembe Khoza is by the email that you sent to him.

**MS PULE:** Yes.

**ADV SELEKA SC:** So – so we looked at the – your email to Mr Mashego and then Mr Mashego responded at 11:36 and he attached the suspension process covered by the safety

rules violation, confirmation, suspension, draft letter of suspension. That is on page 539 Chairperson. Ms Pule you are still on ...

**CHAIRPERSON:** Yes.

**ADV SELEKA SC:** Oh okay.

**CHAIRPERSON:** I can see it here.

**ADV SELEKA SC:** Ms Pule you are still on that page.

**MS PULE:** Okay. So I am still on the email – what page is mine?

10 **ADV SELEKA SC:** Yours is 1007.

**MS PULE:** Okay.

**ADV SELEKA SC:** Yes. So it says..

**MS PULE:** I am there.

**ADV SELEKA SC:** Thank you. So he writes?

“Elsie, attached please find the disciplinary process as requested. Pro-forma letters have also been included for your information. The process has been agreed with our legal colleagues as well. Hope you find it in order.”

20

Now can you – you received this from him. You confirm that.

**MS PULE:** Yes I can confirm that I did receive it from him at 11:36.

**ADV SELEKA SC:** Yes. Now let us look for your email to

Mr Zethembe Khoza and I think it is (inaudible).

**CHAIRPERSON:** Well before that Mr Seleka where is the attachment? Let us go to the attachment to Mr Mashego's email if it is there

**ADV SELEKA SC:** Yes they are ultimately attached to Mr – to Ms Elsie's email forwarded to Mr Zethembe Khoza Chair.

**CHAIRPERSON:** Yes but let us just start there because ..

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** Ms Pule asked Mr Mashego to – him the  
10 step by step - a step by step process.

**ADV SELEKA SC:** That is right Chair.

**CHAIRPERSON:** So let us see that process that he gave her before we go to her email to Mr Khoza.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** Is it the one at hard copy 542?

**ADV SELEKA SC:** 542 correct Chair.

**CHAIRPERSON:** And going up to 543 or does it goes beyond that? Oh that 504 are the Pro-forma letters of suspension.

20 **ADV SELEKA SC:** Correct Chair, correct.

**CHAIRPERSON:** And 545 – 546 do they go up to 546?

**ADV SELEKA SC:** 546 correct Chair.

**CHAIRPERSON:** Oh okay all right.

**ADV SELEKA SC:** Yes.

**CHAIRPERSON:** That is fine then you can go to Ms Pule's



email to Mr Khoza.

**ADV SELEKA SC:** Okay thank you Chair. So Ms Pule let us – let us look at the emails then you would have forwarded to Mr Khoza on that day. And then I will ask you certain questions from there. So that is the next page on your electronic is 1008 on the hard copy is 540.

**MS PULE:** I am there. I am there.

**ADV SELEKA SC:** You are there.

**MS PULE:** Yes I am here.

10 **ADV SELEKA SC:** Yes. So the – just to identify on this page is an email from yourself sent on Wednesday 11 March 2015 at 14:30 and it is addressed to – it is sent to Zethembe Khoza. The subject is: As discussed. Then attachment is copy of F Band list Assets January 2015 XLS and then another document is Disciplinary Process.XLSX. You see that?

**MS PULE:** Yes I do.

**ADV SELEKA SC:** Yes. Now you confirm that you sent this email to Mr Khoza.

20 **MS PULE:** Yes I do confirm.

**ADV SELEKA SC:** And you see the subject reads As discussed.

**MS PULE:** Yes I do.

**ADV SELEKA SC:** Am I correct that this means you would have written that because there was a discussion between

you and him?

**MS PULE:** Yes I agree.

**ADV SELEKA SC:** Hm.

**CHAIRPERSON:** You sounded doubtful earlier on but seeing that you wrote here as discussed why were you doubtful because I assume you would not have written to him and said, as discussed unless there had been a discussion.

**MS PULE:** Having gone through the emails Chair  
10 afterwards – after I had engaged with your office and the investigators and going through the emails for me the subject, as discussed clearly states to me he had discussed with me. The only issue I had was that I did not remember the discussion.

**CHAIRPERSON:** Yes. Okay but you – you would not have written, as discussed if there had been no discussion between the two of you

**MS PULE:** I agree Chair.

**CHAIRPERSON:** Yes. Okay all right. And from this it  
20 seems that you sent him a copy of F band list Did you send him exactly what Mr Mashego had sent to you?

**MS PULE:** No this – this was something else Chair.

**CHAIRPERSON:** Oh.

**MS PULE:** So on the first email I only sent him the F band list as – as requested as well as a disciplinary process for

one of our other employees who had left by then a Mr Salahe.

**CHAIRPERSON:** Oh I am sorry. Oh okay this was in regard a particular individual.

**MS PULE:** Yes.

**CHAIRPERSON:** Okay. The one that related to what Mr Mashego had sent you is it the one that is at page 541 on my hard copy? I do not know on your one. It is an email of 11 March 2015 at six minutes past four addressed by you to  
10 Zethembe Khoza – subject Suspension Process Attachment Suspension Process 2408113 covering safety rules, violations, confirmations, suspensions, draft letter of suspensions.doc. Mr Khoza additional information. Is that what you sent to him after Mr Mashego had sent you these doc – these documents?

**MS PULE:** Yes Chair that is what I had sent to him at 16:06.

**CHAIRPERSON:** Oh okay. Oh okay. The one that says as discussed does not relate to the suspension of the  
20 executives of the F band.

**MS PULE:** I do not think so Chair.

**CHAIRPERSON:** Yes. But I see that that one also says copy of F band list. So it might relate to somebody who was on the F band list – on the F band grade?

**MS PULE:** It is everybody who at the time was on a F band

level.

**CHAIRPERSON:** Oh. Okay all right. So this one where you were sending him that is Mr Khoza the documents that Mr Mashego had sent to you there is nothing suggesting that there had been a discussion between you and Mr Khoza – is that right?

**MS PULE:** Looking at the emails Chair clearly I have had a discussion with him.

**CHAIRPERSON:** Yes.

10 **MS PULE:** Because I do not see the request on – on the electronic system or on the phone so I must have had a discussion with him – so I was responding to that discussion. I would not have sent this unsolicited.

**CHAIRPERSON:** Yes. Do you – this was at six past four in the afternoon. At that time do you know whether the – the board had suspended – had made the decision to suspend the four executives or not?

**MS PULE:** So at that time we did not know that they were suspended until the next day. But going through the board  
20 minutes which I have submitted in my affidavit as well.

**CHAIRPERSON:** Ja.

**MS PULE:** It appears that at that point one of the executives they had already called them in to discuss the suspension.

**CHAIRPERSON:** Oh.

**MS PULE:** I want to find – I think it is the people in governance and minutes.

**CHAIRPERSON:** Yes okay. Do not worry. But – so as you understand it at least one had been called in.

**MS PULE:** Yes from the minutes Chair.

**CHAIRPERSON:** Yes. Okay because the meeting of that day went into the evening, is that right until quite late?

**MS PULE:** Yes I have seen from the minutes Chair, yes.

**CHAIRPERSON:** Ja. Mr Seleka.

10 **ADV SELEKA SC:** Thank you Chair. Ms Pule well let us see. The first email says, as discussed and you send a copy of F band lists assets, January 2015 and then you also send a disciplinary process. And this disciplinary process you say is of – it related to a person who had already left Eskom Mr Salahe. Correct.

**MS PULE:** Yes so it was not I think it is also like sort of the naming convention the subject says, disciplinary process but if you look at the attachment it is actually a project plan that was used in the process of a disciplining Mr Salahe.

20 **ADV SELEKA SC:** Yes. So that is kind of a – a guide on the process to discipline a person.

**MS PULE:** Not – not necessarily. So it was basically a timeline for that disciplinary process for Mr Laher.

**ADV SELEKA SC:** Mr Laher and it was being provided now to Mr Zethembe Khoza for what reason – do you recall?

**MS PULE:** The only reason I can think of at the time I do know that at that point his settlement was being discussed. So I suspect that I might have been requested the project time lines to see where the project is. Because Mr Zethembe was relatively new at the time.

**ADV SELEKA SC:** Yes. Now let us look at the second email. Because you messaged Mr Zethembe Khoza in the second email says Mr Khoza additional information. That is on page 1009 of your pagination 541 of the hard copy. It  
10 reads, additional information which presupposes that there was first information given and now I am giving you additional information. Do you see that?

**MS PULE:** Yes I do.

**ADV SELEKA SC:** So which information came before this one, this additional one?

**MS PULE:** So on that day if you look at my email trails and I have confirmed going through my Outlook trays on that day I sent him two emails. One was at 14:30 and the other one was at 16:06 so this can only mean that it is a follow up  
20 of the first email.

**ADV SELEKA SC:** So the – the two emails are related.

**MS PULE:** I can only assume that Chair.

**CHAIRPERSON:** Let me tell you how I read your email to Mr Phillip Mashego at 9:27 on 11<sup>th</sup> March in the context of the evidence that I have been hearing.

It – you were asking to compile a step by step process that should be followed when suspending an F band. You have explained to me which officials at Eskom fall within the F band.

Now four of those as I understand it – four of – four people – executives who would have fallen under the F bands were suspended on that day but much, much later this seems to suggest that somebody spoke to you but either you knew at 9:27 either that there were to be  
10 suspensions of people who were in the F band or somebody may have spoken to you who knew or suspected that there would be suspension of somebody or people in the F band.

What do you say about this reading of your email to Mr Mashego in the context of the evidence I have been hearing?

**MS PULE:** I can only say Chair that at that point when I sent the email so I remember the – like sort of overall incidents of the day but not necessarily the details. At nine we had gone to the board meeting so having sent them the  
20 email to Mr Phillip Mashego can only mean that I have sent it whilst I am in the – I was in the board meeting.

What I was trying to avoid Chair was to then speculate whether a Mr Khoza asked me once I was in the meeting because the board had already started at the time and I was in that board meeting. So – so that is one part.

The second part is that on the day until the very next day I was once of those who did not even know that people were suspended. I was only formally informed the next day.

**CHAIRPERSON:** Okay. At the meeting of the board which you were attending from nine – nine o'clock had there been any discussion at that stage of the possibility that some senior executives could be suspended?

**MS PULE:** Not at all Chair. It was a normal board meeting. If you look at the attached agenda and the minutes.

10 **CHAIRPERSON:** Ja.

**MS PULE:** So it was – it was not focussing on suspensions at all. It was a scheduled board meeting.

**CHAIRPERSON:** Would it be fair therefore to say if you did gain information about any suspensions that may have been planned it would not have been information you obtained at the board meeting?

**MS PULE:** Yes – yes Chair.

20 **CHAIRPERSON:** Yes. But as you speak you do not know whether you had gained any information about suspensions at that stage or you are able to say other than what maybe you may have discussed with Mr Khoza you – you do not think you knew anything at that time about possible suspensions of executives.

**MS PULE:** I can confirm Chair that at the time I did not know about the possible suspension of executives.



**CHAIRPERSON:** Yes. And you – you are – you cannot remember your discussion with Mr Khoza but you - you think you did have a discussion with him.

**MS PULE:** Yes if I look at the email trails that can be the only explanation of why I would have sent him the information that I sent him.

**CHAIRPERSON:** Yes. Okay all right. And at that stage Mr Khoza had not been appointed as acting Group Chief Executive is it not?

10 **MS PULE:** Yes he was not the Group Executive at the time the Group Chief Executive was Mr Tsediso Matona.

**CHAIRPERSON:** He was – at that time he was simply one of the board members.

**MS PULE:** Yes Chair.

**CHAIRPERSON:** And actually one of the new board members is it not?

**MS PULE:** Yes Chair.

**CHAIRPERSON:** Did you – had you known him before he became a board member at Eskom?

20 **MS PULE:** No I did not know him.

**CHAIRPERSON:** So there would have had to be a reason why you would send him these emails.

**MS PULE:** Yes.

**CHAIRPERSON:** And do you think there – you might have initiated the reason – you might have approached him for

whatever reason or do you think either he or somebody must have asked you to send them to him.

**MS PULE:** There is no way that I would have approached him for that. At the time the board members that I interacted with it would be Mr Zethembe Khoza as well as Ms Veneta Klein because they were in a board sub-committee that I support. The People In Governance sub-committee of the board.

**CHAIRPERSON:** So prior to the 11<sup>th</sup> of March had you had  
10 much interaction with him in that context?

**MS PULE:** Yes not much but we have had some interaction.

**CHAIRPERSON:** Oh okay. Mr Seleka.

**ADV SELEKA SC:** Chairperson.

**CHAIRPERSON:** I do not -

**ADV SELEKA SC:** That covers everything.

**CHAIRPERSON:** That covers everything.

**ADV SELEKA SC:** That was the issue

**CHAIRPERSON:** Okay all right.

**ADV SELEKA SC:** Ms Pule save – save to say

20 **CHAIRPERSON:** Ja.

**ADV SELEKA SC:** Save to say Ms Pule that we see other emails that you have attached after the – after the executives are suspended where you correspond directly with Mr Khoza and Ms Veneta Klein. Oh the theme is in regard to the suspensions. Did this scheme not start

already with those emails of 11 March 2015?

**MS PULE:** Chair if you look at the minutes of the board the next day on the 12<sup>th</sup> when I was called in to advice on special leave I did raise on the day I did raise the concern that the morale has been impacted with all the noises and given my role I encouraged the board at the time that they needed to start engaging employees and explain to them what had transpired. So there is incidents after the meeting of the 12<sup>th</sup> in terms of engaging executives employees and  
10 trade unions. You would notice that I took a lead in that process given the fact that it is my role.

**ADV SELEKA SC:** Would you...

**CHAIRPERSON:** Okay all right.

**ADV SELEKA SC:** Would you – lastly Chair

**CHAIRPERSON:** Ja.

**ADV SELEKA SC:** To the extent that you say you cannot recall your conversation on the 11<sup>th</sup> of March 2015 and you send this information could you then make the connection on the 12<sup>th</sup> of March that the information they were request  
20 – Mr Zethembe Khoza was requiring me to send to him was then connected with what is happening now – the decision made to suspend the executives.

**MS PULE:** Yes.

**ADV SELEKA SC:** Could you make the connection?

**MS PULE:** Yes I made the connection but I can also

confirm that I do not think that information was used because by the time I sent it to him they had already prepared the draft letters that they were engaging the employees with. So if you look at the minutes I noticed that my colleague would then say then the meeting – in terms of what the secretariat captured was that for example so and so then signed the letter. So it appears that when the meetings of suspension happened that afternoon they had not received the information I have sent to Mr Khoza yet.

10 **ADV SELEKA SC:** Okay so maybe we should ask Mr Zethembe Khoza what were – what did he discuss with you.

**MS PULE:** Yes.

**ADV SELEKA SC:** And I -...

**MS PULE:** That would help.

**CHAIRPERSON:** I – I

**ADV SELEKA SC:** And why he requested this information from you.

**MS PULE:** I hopefully that would help.

**CHAIRPERSON:** Ja.

20 **MS PULE:** I have been tempted to do that but I could not.

**ADV SELEKA SC:** Okay.

**CHAIRPERSON:** No that is fine. I think Mr Seleka if he has not been asked he should be asked and he can give us an affidavit which responds to those questions.

**ADV SELEKA SC:** Yes Chairperson.

**CHAIRPERSON:** Thank you very much Ms Pule we really appreciate you availing yourself to assist us. You are now excused.

**MS PULE:** Thank you Chair.

**ADV SELEKA SC:** Thank you Chair.

**CHAIRPERSON:** Thank you. Mr Seleka do you need me to excuse you as well now?

**ADV SELEKA SC:** Yes to go on holiday Chair.

10 **CHAIRPERSON:** There is no holiday for you. You are also excused.

**ADV SELEKA SC:** Okay. Thank you.

**CHAIRPERSON:** Ja. Okay Ms Molefe

**ADV MOLEFE:** Good evening Chair.

**CHAIRPERSON:** Good evening how are you?

**ADV MOLEFE:** I am well thank you.

**CHAIRPERSON:** All right. Ms Dorfling I think...

**ADV DORFLING:** (Inaudible)

20 **CHAIRPERSON:** I think – I think you are going to be quite short – let us deal with Mr Nair and thereafter I will hear the re-examination of Mr Makwetla.

**ADV MOLEFE:** Thank you Chair.

**CHAIRPERSON:** Okay. Yes Ms Molefe.

**ADV MOLEFE:** Thank you Chair.

**CHAIRPERSON:** Is – is – good evening – good evening Mr Nair.

**MR NAIR:** Good evening – good evening Chair.

**CHAIRPERSON:** Thank you for availing yourself.

**MR NAIR:** You are most welcome Chair.

**CHAIRPERSON:** Thank you. Okay Ms Molefe do you want to say something just to quickly remind the public what the context of Mr Nair's appearance today.

**ADV MOLEFE:** Thank you Chair. Chair as was earlier indicated Mr Desmond Nair is appearing relevant to the BOSASA work stream in particular the so called special  
10 projects that Mr Le Roux has alleged. To this end Mr Le Roux had intimated that BOSASA installed security equipment at the residence of Mr Nair to the total cost of approximately R252 000.00 and that such costs were incurred at the expense of BOSASA.

Then Chair as labelling the so called special projects by a particular name Mr Le Roux testified that this project was not given any particular name as he took over the project from a certain Mr Bejoo who is another (indistinct) of Sondolo IT a subsidiary of BOSASA and he  
20 says that this was done at the instruction of Mr Trevor Matenjwa and Mr Angelo Agrizzi.

The reason he took over the project Chair was as a result of Mr Bejoo having been at Mr Nair's residence with the Sondola branded t-shirt. Now according to Mr Le Roux this was an issue as there was always an approach followed

in special projects that the employees who worked under the so called special projects never wore any branded clothing.

In response to these allegations Chair in brief Mr Nair concedes that he did in fact have security equipment installed at his residence but that this was done pursuant to a private contractual agreement between himself and Mr Bejoo in his private capacity.

Mr Nair further states that the agreement was for the  
10 installation of a basic camera system or the repair if necessary of the existing electric fence that he had as well as the existing alarm beams.

He further says Chair that the agreement was also to the maximum contract amount of R50 000.00. Mr Nair – pardon me – then further states that Mr Bejoo failed to meet the terms of the agreement in that the installation included equipment that was not agreed to. That some of the equipment was not functional and further that it was in excess of the amount of R50 000.00.

20 As a result Mr Nair then (indistinct) from the agreement and had to call on a third party contractor to remedy the issues that he had.

One of the issues that are introduced by this particular Mr Bejoo Chair is a contract that was awarded to Sondolo IT and according to Mr Bejoo Mr Nair was involved

to some extent in this contract.

So Chair basically broadly put these are the issues that we will be dealing with this evening. I do not anticipate that I should take more than an hour.

**CHAIRPERSON:** Well an hour seems long to me. I think an hour is long. Because there is agreement that the security – security installations were effected in the house.

As I understand it really it is a question of the nature of their arrangement and the circumstances under which it  
10 happened.

There seemed to be an issue that seemed to be lingering when one read the affidavit that it might be implied that Mr Nair may have taken advantage of the fact that BOSASA or whatever subsidiary of BOSASA was involved in doing some work at the court at his court. I think there was something along those lines that seemed to – to be implied or insinuated and I do not recall whether Mr Bejoo denies the terms of the agreement between himself and Mr Nair.

I do not think that you should take an hour. As far  
20 as I am concerned this should go quickly but do apply your mind to – to the real issues and we take it from there.

But Mr Dorfling had some suggestion that he wanted to put forward. Mr Dorfling do you want to come in at this stage?

**ADV DORFLING:** Yes Mr Chair I think you correctly



summed up the fact that the issues in our mind is also very, very crisp and should not take long.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** To canvass and resolve.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** You recall that there was an application lodged in front of you for authority to cross-examine Mr Le Roux.

**CHAIRPERSON:** Yes.

10 **ADV DORFLING:** But all that is dependent on how tonight pans out and what the upshot is of what we deal with tonight.

**CHAIRPERSON:** Ja.

**ADV DORFLING:** My suggestion earlier and I do not know it would appear that this request has not received – has not been received by you but I put forward a proposal to Me Molefe.

**CHAIRPERSON:** Ja.

20 **ADV DORFLING:** To consider whether the affidavit of Mr Nair that was deposed to and supplied to the commission on the 26<sup>th</sup> of August 2019 does not sufficiently deal with the issue and whether we cannot perhaps resolve the matter by simply having that admitted into the record as evidence and in those circumstances I think that the need to further cross-examine Mr Le Roux will fall away.

But we more than – more than ready to deal with the crisp issues that remains. Mr Nair is ready to address it so to the extent that that could not resolve the situation and it would still need or leave outstanding issues we are in your hands Mr Chair.

**CHAIRPERSON:** Thank you. I – I have no recollection of whether I have made any decision about an application by Mr Nair for leave to cross-examine Mr Le Roux but if you tell me that you are not aware that I have I probably have  
10 not but I might...

**ADV DORFLING:** Well I can assist you – I can assist you on that score Mr Chair.

**CHAIRPERSON:** Yes. Yes.

**ADV DORFLING:** Some – approximately a week just over a week ago you on one evening enrolled a number of those applications that were in front of you.

**CHAIRPERSON:** Yes.

**ADV DORFLING:** And one of the applications what was stood down on that evening for purposes of your  
20 consideration at a later stage was this very application.

**CHAIRPERSON:** Oh.

**ADV DORFLING:** So you have not ruled mine – you specifically reserved your right to deal with it after – after the evidence of tonight.

**CHAIRPERSON:** Okay. Oh okay no, no that is fine then.

Okay all right let us deal with this and then let us see. Ms – Ms Molefe just bear in mind our Terms of Reference and what we are about. If there is something that we need to look at we look at it but if there is not there is not.

Let us – let me ask the Registrar to please administer the oath or affirmation to Mr Nair.

**ADV MOLEFE**: Thank you Chair.

**CHAIRPERSON**: Yes.

**REGISTRAR**: Will you be taking the oath or the  
10 affirmation?

**CHAIRPERSON**: Mr Nair.

**ADV DORFLING**: Mr Nair you are on mute.

**MR NAIR**: I will take the oath thank you.

**CHAIRPERSON**: Okay.

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

**MR NAIR**: Desmond Nair.

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

**MR NAIR**: No.

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

**MR NAIR**: Yes I do.

**REGISTRAR**: Do you solemnly swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so

help me God.

**MR NAIR:** So help me God.

**CHAIRPERSON:** Okay thank you. Ms Molefe.

**ADV MOLEFE:** Thank you Chair. Good evening Mr Nair.

**MR NAIR:** Good evening Ms Molefe.

**ADV MOLEFE:** Can you please place before you the bundle that is marked T23. Do you have it?

**MR NAIR:** I have it thanks.

**ADV MOLEFE:** Thank you. Can you please turn with me to  
10 page 214 just we will be referring to (indistinct).

**CHAIRPERSON:** You referred to a bundle marked T23. I have got a bundle marked BOSASA Bundle 5 in front of me.

**ADV MOLEFE:** I apologise Chair I should have been more specific. Exhibit T23 is contained under Bundle BOSASA Bundle marked number 5.

**CHAIRPERSON:** Ja okay. We start with the bundle and then we go to the particular exhibit. Okay so it is the same bundle that I have. Okay.

**ADV DORFLING:** Chair could I please request Me Molefe to  
20 just indicate what number she is on in the electronic bundle so that I could follow.

**CHAIRPERSON:** Do you have the electronic pagination Ms Molefe?

**ADV MOLEFE:** I do Chair.

**CHAIRPERSON:** Okay. Ja you can tell Mr Dorfling please.

**ADV MOLEFE:** Thank you. Chair I do intend to refer to the pagination as I move along.

**CHAIRPERSON:** Ja okay all right. When you – when you – but as to where he finds the page – the affidavit or T23?

**ADV MOLEFE:** Yes.

**CHAIRPERSON:** Do you want to.

**ADV DORFLING:** I have that – I have that in front of me Mr Chair we can proceed with the specific page numbers.

**CHAIRPERSON:** Okay. All right – okay. Go ahead Ms  
10 Molefe.

**ADV MOLEFE:** Thank you Chair. In terms of numbering I will be referring to the black numbering on the top left corner of each page which is proceeded by BOSASA05 and then the page number. So I will just be referring to the last number there. Are you with me Mr Nair?

**MR NAIR:** I am Ms Molefe.

**ADV MOLEFE:** Thank you. Please keep your mic on. Okay. Can you please turn with me to Exhibit T23 in that bundle and particular can you go to page 214. You are  
20 muted Mr Nair. You are on mute.

**CHAIRPERSON:** That is 214 on the hard copy.

**ADV MOLEFE:** You are muted Mr Nair.

**MR NAIR:** That fine now?

**ADV MOLEFE:** Yes please do not unmute your mic.

**MR NAIR:** Thank you.

**ADV MOLEFE:** Thank you very much. Are you at page 214?

**MR NAIR:** Yes I am.

**ADV MOLEFE:** Right through to page 224.

**MR NAIR:** Yes.

**ADV MOLEFE:** Is that your affidavit to the commission?

**CHAIRPERSON:** Just repeat that question Ms Molefe.

**ADV MOLEFE:** Chair I am asking Mr Nair to (indistinct) whether the document that appears from page 214 all the way through to page 224 is his affidavit to the commission.

**CHAIRPERSON:** Okay.

**MR NAIR:** Yes it is mine.

**ADV DORFLING:** Mr Chair if I may would that be page 8 of the electronic bundle?

**CHAIRPERSON:** Okay. Ms Molefe do you want to confirm the electronic page?

**ADV MOLEFE:** Well I printed the electronic bundle and it is paginated with the black numbering as well as the red numbering so I am afraid I am a bit lost when Mr Dorfling refers to page 8. Are you – are you...

**ADV DORFLING:** My electronic bundle is comprised of 95 pages. The affidavit of Mr Nair dated the 26<sup>th</sup> of August 2019 it starts in my electronic bundle at page 8 of 95. It is marked at the top BOSASA 05 214.

**ADV MOLEFE:** Thank you. So when I refer to numbering

that – that last number on your top left corner 214 is the page number and that is the pagination I will be referring to.

**ADV DORFLING**: Yes I – the difficulty I have is I cannot page to that page number because my electronic pagination does not have that number. It has only got 95. But I will try and follow. If I have got challenges I will alert you Mr Chair.

**CHAIRPERSON**: Okay all right. And if need be she can mention paragraph numbers as well if that will help.

10 **ADV DORFLING**: Indeed so.

**CHAIRPERSON**: Okay.

**ADV MOLEFE**: Thank you Chair. Mr Nair can you then turn to page 224. Please confirm when you are there?

**MR NAIR**: I am.

**ADV MOLEFE**: Is that your signature appearing on that page?

**MR NAIR**: Correct Ma'am.

**ADV MOLEFE**: And the date of that saying 6<sup>th</sup> of August 2019 is that the date on which you signed the statement.

20 **MR NAIR**: Correct Ma'am.

**ADV MOLEFE**: Do you confirm the correctness of the contents of the statement?

**MR NAIR**: I do.

**ADV MOLEFE**: All right I am now turning you to your second statement to the commission.

**MR NAIR:** Yes Ms Molefe.

**ADV MOLEFE:** Can you please turn with me to page 251. I am sorry can you – I beg your pardon. Can you please go to page 235.

**MR NAIR:** Yes Ma'am.

**ADV MOLEFE:** All the way through to page 245.

**CHAIRPERSON:** Well there is 232 as well there which is one of his affidavits, did you see that Ms Molefe?

**ADV MOLEFE:** I did Chair. What happened here is some of  
10 the annexures that had already been submitted to the  
commission by Mr Nair were contained his annexures to his  
affidavit.

**CHAIRPERSON:** Oh.

**ADV MOLEFE:** So I (indistinct) to deal with each and every  
one of them even though they are contained as annexures.

**CHAIRPERSON:** Ja okay all right.

**ADV MOLEFE:** Thank you Chair. Mr Nair from page 235 to  
245 that appears to be the same affidavit that you have just  
confirmed to have been your first statement to the  
20 commission, is that correct?

**MR NAIR:** That is correct.

**ADV MOLEFE:** All right. Then can you turn with me to –  
can you turn with me to page 251.

**ADV DORFLING:** Mr Chair if I may I think it is important  
that we just place that in context. You were quite correct to



refer to page 232. Page 232 and the following pages is a founding affidavit by Mr Nair in support of the application to cross-examine Mr Le Roux. He attached and incorporated into that affidavit as his founding affidavit – his first statement to the commission which is the one that we have referred to and which is attached to this statement as annexure A.

**CHAIRPERSON:** Okay. Thank you.

**ADV MOLEFE:** Thank you.

10 **CHAIRPERSON:** Yes.

**ADV MOLEFE:** Mr Nair .

**MR NAIR:** Yes Ma'am.

**ADV MOLEFE:** Are you at page 251 and we will go back to the pages your counsel has referred to.

**MR NAIR:** Yes.

**ADV MOLEFE:** All the way.

**MR NAIR:** I am.

**ADV MOLEFE:** All the way through to page 253. Is that also your statement to the commission?

20 **MR NAIR:** Correct Ma'am.

**ADV MOLEFE:** And the signature that appears on page 253 is that your signature?

**MR NAIR:** That is correct.

**ADV MOLEFE:** The date 14 July 2020 is that the date on which you signed it?

**MR NAIR:** Yes.

**ADV MOLEFE:** Do you confirm the correctness of the contents of the statement?

**MR NAIR:** I do.

**ADV MOLEFE:** Thank you. Then I would like to take you back to your founding affidavit in support of your application to cross-examine Mr Le Roux. That appears at page 232 all the way through to page 234. Are you there?

**MR NAIR:** I am here thank you.

10 **ADV MOLEFE:** Is that your founding affidavit in support of your application to cross-examine Mr Le Roux?

**MR NAIR:** It is Ma'am.

**ADV MOLEFE:** At page 234 is that your signature – the first signature that appears from the top of the page is that your signature?

**MR NAIR:** Correct Ma'am.

**ADV MOLEFE:** And did you sign this statement on the 14<sup>th</sup> of July 2020?

**MR NAIR:** That is correct.

20 **ADV MOLEFE:** Do you confirm that – the correctness of the contents of the statement?

**MR NAIR:** I do.

**ADV MOLEFE:** Thank you. Chair with your leave I propose to have these three statements tendered into evidence as Exhibit T231 – T23

**CHAIRPERSON:** Well let us take one at a time.

**ADV MOLEFE:** Thank you Chair.

**CHAIRPERSON:** Let us take one at a time.

**ADV MOLEFE:** The first one appears at page 214 to 224.

**CHAIRPERSON:** You would like me to admit that one as Exhibit what?

**ADV MOLEFE:** T23.1 please Chair.

**CHAIRPERSON:** T23.1?

**ADV MOLEFE:** Yes Chair.

10 **CHAIRPERSON:** The affidavit of Mr Desmond Nair which starts at page 214 will together with its annexures be admitted as an exhibit and will be marked as Exhibit T23.1. Yes.

**ADV MOLEFE:** Thank you Chair. Then the founding affidavit as appears at page 232 all the way through to 234 I beg leave to have that tendered into evidence as T23.2.

**CHAIRPERSON:** The affidavit of Mr Desmond Nair, it starts at page 235 and will be admitted as – together with these annexures as an exhibit and will be marked as  
20 Exhibit T-23.2.

**AFFIDAVIT OF DESMOND NAIR STARTING AT PAGE 235 IS ADMITTED AND MARKED AS EXHIBIT T-23.2**

**ADV DORFLING:** Mr Chair, just a point of correction. That affidavit starts at page 232, as I understand it, not 235.

**CHAIRPERSON:** No, the actual affidavit starts at 235. What you have before... Oh, are there two affidavits? I am sorry.

**ADV DORFLING:** Yes.

**CHAIRPERSON:** There is an affidavit that starts at 233 which is the one I have marked. There is another one. I think it is the right at 232. Ms Molefe, were you dealing with the one starting at 232?

**ADV MOLEFE:** Yes.

10 **CHAIRPERSON:** Or the one starting at 235?

**ADV MOLEFE:** The second affidavit. I am thinking, Chair. It starts at 232.

**CHAIRPERSON:** Oh, okay.

**ADV MOLEFE:** Yes.

**CHAIRPERSON:** Okay, no, then I am sorry. Okay, I am going to correct that. I am going to correct. The affidavit that will be marked as Exhibit T-23.2 of Mr Desmond Nair, is the one that starts at 232 up to 234. And it does not have... Ja, okay. Yes, now you are going to the one  
20 starting at 235?

**AFFIDAVIT OF DEMOND NAIR STARTING AT PAGE 232 IS ADMITTED AND MARKED AS EXHIBIT T-23.2**

**ADV MOLEFE:** That is a duplication, Chair. That one also appears from page 21...[intervenes]

**CHAIRPERSON:** Okay. Then we will not ...[intervenes]

**ADV DORFLING:** That is the same as Exhibit T-23.1, Chair.

**CHAIRPERSON:** Okay, alright.

**ADV MOLEFE:** May I then refer you then to the third affidavit?

**CHAIRPERSON:** Ja?

**ADV MOLEFE:** That is at page 251 all the way through to page 253. I really need to have that handed into evidence as T-23.3.

10 **CHAIRPERSON:** The affidavit of Mr Desmond Nair that starts at page 251 will be admitted as an exhibit. Does it have annexures?

**ADV MOLEFE:** [No audible reply]

**CHAIRPERSON:** Ms Molefe?

**ADV MOLEFE:** [Indistinct]

**CHAIRPERSON:** It does not?

**ADV DORFLING:** It does have annexures. You will see in paragraph 3, there is reference ...[intervenes]

**ADV MOLEFE:** [Indistinct]

20 **ADV DORFLING:** ...to Annexure A, Chair.

**CHAIRPERSON:** Okay, alright. What is the number, Ms Molefe?

**ADV MOLEFE:** It is page 255. That is where the annexure appears. I am begging leave to enter the statement with its annexures as T-23.4.

**CHAIRPERSON:** That is the affidavit of Mr Desmond Nair which starts at page 251 together with its annexures, be admitted as an exhibit and will be marked as Exhibit T-23.3.

**AFFIDAVIT OF DEMOND NAIR STARTING AT PAGE 251 IS ADMITTED AND MARKED AS EXHIBIT T-23.3**

**CHAIRPERSON:** Okay.

**ADV MOLEFE:** Thank you, Chair. Then towards the end of this bundle, Chair, starting from page 257 all the way to  
10 269 is an affidavit by Mr Richard le Roux in answer to the application made by Ms Nair.

**CHAIRPERSON:** Yes.

**ADV MOLEFE:** I propose to tender that into evidence as T-23.4 unless the Chair would be inclined to only tender once I deal with it?

**CHAIRPERSON:** That is fine. The affidavit of Mr Richard le Roux that starts at 257 will be admitted as an exhibit and will be marked as Exhibit T-23.4.

**AFFIDAVIT OF RICHARD LE ROUX STARTING AT PAGE**  
20 **257 IS ADMITTED AND MARKED AS EXHIBIT T-23.4**

**CHAIRPERSON:** Okay.

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

**CHAIRPERSON:** That is with its annexures. Okay.

**ADV MOLEFE:** Thank you, Chair. Then there are two more affidavits which we will be dealing with. The

affidavits of Mr Riaan van der Merwe as well as the affidavit of Mr Doofjam(?) Kumar Bejoo.

**CHAIRPERSON:** Ja.

**ADV MOLEFE:** The first one I will be working in sequence is that of Mr Doofjam Kumar Bejoo which appears from page 294, Chair, all the way through to page 301.

**CHAIRPERSON:** H'm?

**ADV MOLEFE:** With your leave, may that one be tender into evidence as T-23.5?

10 **CHAIRPERSON:** This affidavit Mr Bejoo starting at page 294 will be admitted as an exhibit and will be marked as Exhibit T-23.5.

**AFFIDAVIT OF DOOFJAM KUMAR BEJOO STARTING AT PAGE 294 IS ADMITTED AND MARKED AS EXHIBIT T-23.5**

**CHAIRPERSON:** Ja?

**ADV MOLEFE:** Thank you, Chair. Then the last affidavit is, it appears from page 270 all the way through with annexures to page 293 and I beg leave to enter that into  
20 evidence as Exhibit T-23.6.

**CHAIRPERSON:** Is that one for Riaan van der Merwe?

**ADV MOLEFE:** Yes, Chair.

**CHAIRPERSON:** That should be Exhibit T-23.6?

**ADV MOLEFE:** Yes, please, Chair.

**CHAIRPERSON:** The affidavit of Riaan van der Merwe

which starts at page 270 together with its annexures be admitted as an exhibit and will be marked as Exhibit T-23.6.

**AFFIDAVIT OF RIAAN VAN DER MERWE STARTING AT PAGE 270 IS ADMITTED AND MARKED AS EXHIBIT T-23.6**

**CHAIRPERSON:** Okay.

**ADV MOLEFE:** Thank you. Mr Nair?

**MR NAIR:** Yes.

10 **ADV MOLEFE:** Can I know send you back to page 214 of the bundle where it is your first affidavit where in terms of Regulation 10.6 appears?

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

**ADV MOLEFE:** I propose to deal with the common cause issues by leading Mr Nair, Chair. I trust that this is in order?

**CHAIRPERSON:** Well, maybe it might be faster if we just let him just tell what happened and then when he is done, then you can just put questions in regard to specific  
20 issues. That might – because he knows what happened. That might be quicker.

**ADV MOLEFE:** As you please ...[intervenes]

**CHAIRPERSON:** Is that fine with you?

**ADV MOLEFE:** ...[intervenes]

**CHAIRPERSON:** Ja, Mr Dorfling, is that fine with you?



**ADV DORFLING**: We are happy with that approach, Chair.

**CHAIRPERSON**: Yes. Mr Nair, are you happy to do it that way?

**MR NAIR**: I am happy, Chair.

**CHAIRPERSON**: Please go ahead.

**MR NAIR**: Thank you, Chair. Insofar as the installation at my home, Chair. I take you back to around July 2016, and I had been aptly in the Pretoria(?) High Court on circuit for the nine months preceding that. At the time that  
10 I requested Mr Bejoo to see me, I was busy with a lengthy trial in Skukuza(?). It involved 23 accused with a number of counts, in excess of 20 and the charges related to murder and the use of petrol bomb.

I would be spending a considerable amount of time away from home and would arrive and would return home on weekends. So, I would stay at the hotel in Burgersfort and I found that the one carrier(?) that was of concern to me especially, you know, insofar as my family was that there were no cameras to cover the premises in the event  
20 of something happening.

I was alive to the fact that these 23 accused were out on bail and it was a serious cause of concern to me. So, I decided to approach Mr Bejoo. I called him and I indicated to Mr Bejoo that I have been busy in the high court for the past nine months. I have been doing

predominantly criminal court work and these were very serious crimes. I was concerned about the security at my home.

And Mr Bejoo asked me what was the problem and I told him I do not have cameras at home. It will be difficult to try and trace anybody should there be a problem at home especially with the type of cases I am dealing with and particularly this one matter.

I indicated to Mr Bejoo that I have an amount of  
10 about R 50,000 and these were my requirements. Mr Bejoo  
Was more than willing to assist me on one condition that  
he came to my home and have a look at the premises.  
About two or three weeks later, Mr Bejoo came back to me  
and told me that he was available that Saturday. He took  
my address.

Indeed he came to my home around the first or  
second week of August if I am not mistaken. he spent  
about an hour at my place. He met my wife. We discussed  
what I had at home, what security I had. I pointed out to  
20 him that there was an existing electric fence which was  
working, and there was an alarm which was working.

What I did not know how outdated it was and I see  
to Mr Bejoo there were times when they would malfunction.  
So what I was looking at was the CCTV cameras. we  
cheque these things which needed repairs and if it did and

to have a look at the alarm, and to make the necessary suggestions and Mr Bejoo agreed.

So as far as I am concerned I made an offer to Mr Bejoo to assist me with the CCTV cameras, with the electric fence if it needed repairs, with the alarm if it needed repairs. And when Mr Bejoo arrived at my home, he accepted the offer. so that is why I say I have a verbal contract with Mr Bejoo and the offer - there was an offer, there was acceptance.

10           And from there Mr Bejoo departed on the understanding that you would try and ascertain prices. whilst he was at the home he did mention on the issue of costs and that he knew the suppliers personally and the issue of later wouldn't be a problem for him because he would use one or two of his boys.

          Indeed when he came to my home on that Saturday, there were two gentlemen in the vehicle and he eluded to them in respect of the boys who will assist him. So I was quite happy. from that point onwards, Chair, I  
20           worked on the premise that Mr Bejoo is contracted. He will do the job.

          When the job is done, if I am happy I will pay him. Mr Bejoo returned on further two occasions in the subsequent weeks. on one occasion he returned with a white gentleman do I met. on another occasion he

returned with a gentleman who I do not remember who he was with.

Mr Bejoo and that gentleman spent time outside. There was a long lapse, Chair, during - from the end of August until the end of September and I started to think that Mr Bejoo was not taking me seriously. I called him and he undertook to revert to me. He indicated to me that he was so busy looking at what solution he had in mind for me.

10            If I recall correctly. towards the end of September, meeting the 1st of October, Mr Bejoo called me to inquire whether I will be available the next week because he wanted to start the job. I indicated to Mr Bejoo: Yes, I am around this week. I am here. I am available. Please let me know when you are around and you know we can start.

                 Unfortunately, Chair, on the 2nd of October, we received news that my wife's brother-in-law had passed away and I was really close to this gentleman, Mr Sugamane(?). Particularly because he had introduced me  
20 to my wife when I was a young man and I had a very good relationship with him. So the funeral took place on the 4th of October.

We left on the morning of the 4<sup>th</sup>, we returned on the evening of the 5<sup>th</sup>. Mr Bejoo started this job on the morning of the 4<sup>th</sup> of October in my absence. When I

returned from Durban, on the evening of the 5<sup>th</sup>, there was a box, a kind of monitor with a box in the undercover garage, and it seemed as if all the cameras were all up in the yard.

I discovered that they were no visuals on any of the monitors or my TV or any other TV upstairs. I had also indicated to Mr Bejoo during a second visit when he suggested placing the hard drive, I device which you can rewind and forward wind with a monitor in front of it in the  
10 undercover garage.

I have indicated to Mr Bejoo I am totally against that. It doesn't make sense to me and I want to be able to forward and rewind whatever was on the screen in front of me in my room. So, Chair, we had agreed that Mr Bejoo would install the CCTV cameras, that I would get visuals on the TV inside my house, that I would be able to rewind and forward wind whatever was on the hard drive in my bedroom was looking at that monitor.

When I returned from Durban, in the first place,  
20 the hard drive and the monitor was in the undercover garage which was contrary to the agreement. And there were no visuals at all upstairs in my home, Chair. So, for me I considered it a material breach. I felt that Mr Bejoo had not complied even then with the terms.

Replacing of that and the recording device with the

monitor in the undercover garage further expose me to risk because if my wife had indicated to me, for example, that there was somebody who ran pass the bedroom window, I would have to go, if I had visuals upstairs, I would have to leave the premises and go to the undercover garage to see what was happening and if I needed to be one. And I felt that that had further compromised my position.

And I made it very clear to Mr Bejoo but that is not what I wanted. I followed up with Mr Bejoo later that  
10 weekend he undertook to look into the problem with the visuals upstairs insofar as the movement of the hard drive and the monitor. his response to me was that it was going to be a mission.

And I immediately knew that we have a problem here. I am not going to allow a situation where I needed to go outside my premises to rewind and forward wind to determine who had just gone passed and exposed myself to any further risks. Indeed, Mr Bejoo did seen somebody and I meet the person a few days later when he was  
20 leaving. It was a technician.

And I enquired from the technician that our visuals upstairs ...[indistinct]. And he indicated to me that no the wiring is messed up. I was not the one who did the wiring but these are problems with the wiring. I followed it up with Mr Bejoo and Mr Bejoo confirm this in his very

statement that is attached in the papers before you today, Chair.

That I have complained to him about the work that was done and he had actually referred it to Mr Le Roux. now I did not know Mr Le Roux. I had no discussions with Mr Le Roux.

**CHAIRPERSON:** Yes.

**MR NAIR:** And the only person I spoke to about this installation and the terms of the contract was Mr Bejoo. I  
10 did not speak to Mr Agrizzi. I do not know Mr Agrizzi. I did not speak to Mr. Watson. I do not know Mr. Watson. I did not speak to Mr Mathenjwa. I do not know Mr Mathenjwa. And I did not discuss that terms with Mr Le Roux.

If Mr Le Roux was the white man who had accompanied Mr Bejoo on his second visit, I did not speak to that gentleman. I spoke to Mr Bejoo because my agreement was with him. for what purpose he was there, was at Mr Bejoo's request.

20 So, Chair, I noticed a change in Mr Bejoo's behaviour. I mean, after I had called upon him to remedy the situation, I had spoken to him or met him five times before the installation was done. After I had complained that I felt that the work had basically had to be redone from where I was standing, Mr Bejoo promised to come

back and sort the problem out and I called him successfully every month thereafter to ask him to come and remedy the defect. He failed to do that.

At some point I became frustrated. I felt that it was actually the job that was done for the trust that I placed in Mr Bejoo when he came and studied by home and indicated that he fully appreciated my circumstances in terms of the exposure to crime and in terms of the risk. I felt the job was an insult to me as a person.

10           And be running after him on a monthly basis to get him to come and remedy the defect was indeed for me beneath by dignity. At some point I stopped.

**CHAIRPERSON:** At some point you?

**MR NAIR:** I stopped calling him because he was not taking my calls. If it was not that: Mr Nair, I will get back to you. It became clear to me that at that point in time the reason Mr Bejoo was reluctant to attend to the problem was because the wiring had to be re done indeed and removing of the hard drive and the monitor from the house  
20           upstairs was, as Mr Bejoo indicated, a mission. So after January I stopped contacting Mr Bejoo.

**CHAIRPERSON:** Yes.

**MR NAIR:** And I did not hear from him thereafter for a long time, for about a year, when I saw him at court. I did not engage with him on the matter. I felt that the man had



misrepresented to me, that he would supervise the job. he clearly did not do that.

He failed on his responsibility and I felt that he had breached the contract and was not prepared to come and remedy the defect. And Chair, that is where we went. the next time I heard about - or the first time I heard that BOSASA was involved in the installation of my home was when Mr Le Roux testified in January 2019.

10 It came as a shock to me because like I said, the only person I doubt with was Mr Bejoo from this start of discussing the installation, during distillation and even after the installation.

**CHAIRPERSON:** H'm.

**MR NAIR:** my telephone records can confirm there are no calls to Mr Watson, Mr Agrizzi, M Mr Mathenjwa, Mr Le Roux. He only calls me. And I have them out to Mr Bejoo in the period immediately after the installation.

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

**ADV MOLEFE:** Thank you.

20 **CHAIRPERSON:** Ms Molefe.

**ADV MOLEFE:** Thank you, Chair. Thank you, Mr Nair. I have got about five or so questions or five themed questions regarding what you have just told the Chair. The first is. In relation to Mr Bejoo's version of how he came to know you. Can I please refer you to page 221 at

paragraph 10 of the statement?

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

**ADV MOLEFE**: Are you there?

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

**CHAIRPERSON**: Mister ...[intervenes]

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

**CHAIRPERSON**: Did you say 221?

**ADV MOLEFE**: Yes, Chair.

**CHAIRPERSON**: Okay, continue.

10 **ADV MOLEFE**: Are you there, Mr Nair?

**MR NAIR**: I am.

**ADV MOLEFE**: So, you say there in your statement that you came know Mr Bejoo as Mr Bejoo was employed by a company known to you as Sondolo and which company had assigned to him, being Bejoo, as one of his responsibility being the Pretoria Magistrate's Court. Then can I refer you to Mr Bejoo's version in as far as his involvement in the court?

**MR NAIR**: Yes.

20 **ADV MOLEFE**: Can you please turn to page 295 at paragraph 7?

**MR NAIR**: Yes.

**ADV MOLEFE**: Are you there?

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

**ADV MOLEFE**: So, Chair, can you please bear with me?

The lighting in my office is timed. It is a sensory light.

**CHAIRPERSON:** Oh.

**MR NAIR:** I have to stand up and wave around. Please bear with me.

**CHAIRPERSON:** [laughs] Okay.

**ADV MOLEFE:** Thank you, Chair. Sorry about that.

**CHAIRPERSON:** Okay, alright.

**MR NAIR:** Are you at paragraph 7, Mr Nair?

**MR NAIR:** I am there, Ma'am.

10 **ADV MOLEFE:** Thank you. So, this is Mr Bejoo and he said that you were part of a working group that was involved with the work that was to be carried out for the security upgrade at the Pretoria Magistrate's Court for which the Court Manager, a certain Mr Bansi(?), had to give the final approval for the work to be carried out. And Mr Bejoo goes on further to say that in this regard:

20 "Mr Nair specified the security requirements from the court and staff side that they wanted to be implemented and he needed... [he being you] ...needed to provide his approval of the work that they were to perform before the court manager. To get his final approval of the Project Installation Plan and the project Definition Project..."

He then says in paragraph 8:

“As a result of the above, the Project Team would have meetings with Mr Nair and the Court Manager to have the project documents finalised and approved...”

So, can you explain to the Chair, firstly, your knowledge of the contract that was awarded to Sondolo IT for security purposes as well as your involvement with the Sondolo IT employees as it is alleged by Mr Bejoo in paragraphs 7 to 8 of his statement?

10 **MR NAIR:** Yes. Thank you, Ms Molefe. Thank you, Chair. Let me start by saying that a Chief Magistrate do not have any role to play in the awarding of contracts and tenders. There is no provision for that in VFI(?) and it is not part of our function. From the time that the functions of the administration and judiciary were separated, there is very little that judiciary has to do with respect to service providers at all.

20 So, in respect of contracts awarded by the department, whether it is for the cleaning staff, whether it is for the security, the Chief Magistrate has no role whatsoever and that can be verified with the Original Head in the department and officials in the department... There is no role to play, there is no provision for that.

Our role and as Chief Magistrate insofar as service providers are concerned are to ensure that the word of the

service providers do not disrupt the functioning of the court. For example, if you have builders at the court and if ever building works are causing destructions, you would then engage the Court Manager to bring him and end to that.

Insofar as the security upgrade at the Pretoria Magistrate's Court. The court was built in 2010 and immediately after the fire, we had to take action to ensure that we could house all the staff in the unburnt portion of  
10 the building. Chief Justice Ncobo attended the court in the weeks after the fire, engaged me and asked me to show leadership at that time in respect of getting the court back to an optimum level

To that end and only at that point would I engage with the stakeholders and some service providers in one huge meeting and we call those Steerco meeting to ensure that, for example, air conditioning – okay, where are we with this? And we would take a consensus based approached to the way forward.

20 If magistrate's do not have approval function in respect of work that should – that falls within the ambit of the Court Manager and facilities. Security falls under facility and Mr Bejoo knows that. For him to relegate me to be part of a working group, I consider it as an insult because I was already at that point in time the Chief

Magistrate.

Mr Bejoo knows that I was tasked with spearheading the restoration and the – or rather the spearheading the process to get operations back on track. He, in fact, together with other service provides would meet with the facilities people at the court.

And then we – committees created by the Court Manager at the court, for example, security, air conditioning and they would take the issue of the upgrade  
10 after the awarding of the tender to that committee. From these Facility Committee if there were issues that were unresolved, it would be taken to the Court Manager.

The Court Manager, if those issues are separate stakeholders, like the prosecution and the judiciary would then seek an audience with me and say to me: Chief, there is this issue. For example – like I said, there is a problem with the builder. He does not want to cooperate insofar as the days on which he needs to do his renovation work and I think I need your assistance.

20 So, your role would basically be confined to ensuring that everybody understood that court operations must... If there is nothing that I could have said or approved or done, that would cast any sway because ultimately, any decision relating to finance, any discretion relating to money is a departmental issue.

Chief Magistrate's have no authority, no jurisdiction and as I said before, there is no provision in the VFI. It would be ultra vires in the any event. So, this statement by Mr Bejoo that I was part of a working group in respect of the work to be carried out for the security upgrade is incorrect and for which the Court Manager, Mr Bansi had to give the final approval for the work to be carried in this regard.

There he is correct. Mr Bansi is the Court  
10 Manager. He has to give direction in respect of decisions that do not affect... For example, the allocation of where the cameras must be in the court and then there would be discussions at the Facilities Committee, Mr Bansi would consult and if it is decided: Well, let us put ten cameras over for the judiciary, five for the prosecution, five for the administration, then at that point in time, Mr Bansi would give his approval.

Where I come in, is to ensure that there is consensus in the decisions that are taken so that no  
20 stakeholder group is prejudiced and my role would be of a ...[indistinct] [coughing in background] There is nothing that I could have said that if the department wanted to change, we could not change. I did not have that authority.

So, this issue of me given - providing approval. there is no provision for me to provide approval. What

indeed last required was my opinion. And we the court manager found that there was a decision that needed to be taken especially after the fire, he would seek my opinion.

And service providers like Mr Bejoo we are fully aware that the court manager definitely seek the opinion off the head of court, the chief magistrate and he will inform the chief magistrate that consensus has been reached on this issue and Mr Nair, what is your view on it, do you have some comings, do you have any concerns?

10 And that is where it stops.

This issue of the awarding of a Sondolo contract. In fact, when you started, Ms Molefe, you mentioned something about a Sondolo contract. it is the first time that I hear about it. I say that I met Mr Bejoo through Sondolo, indeed. It has nothing to do with the contract. The court burnt. Sondolo was the CCTV company at that point in time.

We had to get the court up and running so that it can be up and back in place. and they were meetings  
20 being held with large numbers of people and that we I came to know Mr Bejoo, subsequent to that. And you will see. Mr Bejoo is quite correct. He says: We completed our work at the court around 2012. this installation took place in 2016.

So after 2012 - in fact, by 2011, I had already



delegated the function of chairing of the Steer Com to my senior magistrate or the most senior of them but they which report to me. now from 2013 onwards, I took over not only being the chief magistrate but the head of the private court section at the court.

So I had moved myself away from anything that has got to do with the operations of the court. I had the head of judiciary operations, the court manager and I would only be consulted if they was really an issue for me  
10 that needed to be consulted.

So I do not - I have not read Mr Bejoo's affidavit. any suggestion that I was responsible for the awarding of the Sondolo contract, Mr Chair. You can go to paragraph 7 and the high watermark of what he is saying is that there was - I was part of a working group for work to be carried out for the security upgrade. That has got nothing to do with the awarding of a contract.

And then he goes on to add to that Mr Bansi, the court manager, had to give the final approval. So I think I  
20 have said enough on this, Chair. if you want to hear anything else I will be glad to reply.

**CHAIRPERSON:** Ms Molefe.

**ADV MOLEFE:** Thank you, Chair. Mr Nair, you mentioned that you played a role in what you refer to as the Steer Com. Is the role that you play content in any document?

**MR NAIR:** Well, the row that I played in the Steer Com flows from the fact that judicial heads of a court must coordinate activities in a court and you have stakeholder meetings or management meetings once a week, once a month depending on how you choose to do it. you invite the prosecution, you invite the administration, you invite the interpreters, and we discuss issues pertinent to the running of the court.

The Steer Com After the fire is something that was  
10 created so that we could get everyone to participate at a call at the time when it was important for everyone's views to be articulated and there to be consensus on the decision making.

So the chief magistrate's, there core responsibilities are in respect of the judiciary. They are also heads of office and that is contained in the circular that was signed by Simon Jehane(?), the then acting DG and former JP Ngcobo(?). So, it is policy. it is policy for the running of the court and in- post the fire, it was a term  
20 that we used for the purpose of getting everyone to know it is Monday morning, it is a Steer Com, you know that this meeting is taking place. everybody who ought to attend must attend in fact did not include the service providers all the time.

**ADV MOLEFE:** Thank you. Can I then refer your still on

Mr Bejoo's statement to page 297 at paragraph 18?

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

**ADV MOLEFE**: Are you there?

**MR NAIR**: Yes.

**ADV MOLEFE**: Thank you. So, then Mr Bejoo Talks about a meeting that he had together with yourself, Mr Trevor Mathenjwa at the Pretoria Magistrates Court ...[intervenes]

**CHAIRPERSON**: What page did you say, Ms Molefe? What page did you say?

10 **ADV MOLEFE**: 297, Chair.

**CHAIRPERSON**: 297?

**ADV MOLEFE**: Yes and I am at paragraph 18.

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

**ADV MOLEFE**: Thank you, Chair. Mr Nair, I was just summarising or paraphrasing what Mr Bejoo is saying there. He speaks of a meeting that took place with yourself, Mr Trevor Mathenjwa at the Pretoria Magistrates Court and he says at this meeting the issue of security of your residence was discussed. do you have any comment  
20 on what he says they Or do you admit or deny what he is saying?

**MR NAIR**: Thank you, Ms Molefe. this is nonsense. This never happened. The issue of my residential security what's discussed only with Mr Bejoo. If he saw it fit without me knowing to approach BOSASA or Mr Mathenjwa

or Mr Le Roux, that is his business. I was unaware of it.

This installation took place in October 2016 and the discussion started in July 2016. no by then I was acting in the high court, like I said, with the previous preceding nine months. I had even before that at different times in 2014 and 2015, I had left the court operations like I said earlier and the running of the court by 2013. It was completely out of my hands.

I have also indicated that service providers in the  
10 normal course of the running of the court have nothing to do with the judiciary and are delegated to participating in meetings with the Facilities Sub-Committee which is chaired by the Board Manager and the Heads Of Facilities. these no - there was no work that needed to be discussed with Mr Mathenjwa and – with Mr Mathenjwa.

And this never happened and I can tell you, at that point in time it could not be that any security should have needed to come to me because I had left a court - I had left the operations of the court insofar as the daily  
20 operation for some time. but I can just allude to something else, Ma'am, on the issue of Mr Bejoo's statement here about Mr Mathenjwa.

**ADV MOLEFE:** Yes?

**MR NAIR:** I am in possession of a statement by Mr Bejoo dated 6 April and my counsel is in possession of same. I

do not think you... In that statement, Mr Bejoo makes no mention whatsoever of Mr Mathenjwa. he sets out in four paragraphs and I will start with the second paragraph. If I may, Chair?

**CHAIRPERSON**: H'm. Yes, yes.

**MR NAIR**: in the second paragraph he says ...[intervenes]

**CHAIRPERSON**: Is that an affidavit that we do have here or is that a statement that we do not have here?

**MR NAIR**: You do not have it there, Chair. That is why I  
10 say I am in position of two further affidavits that was made by Mr Bejoo which are totally in contrast to this paragraph which has now emerged in this. And these statements are under oath, Chair.

**CHAIRPERSON**: Yes. How long have you had them?

**MR NAIR**: Well, I have had them from 2019 and they were furnished to me by the Magistrates Commission as they - to suit the investigator.

**CHAIRPERSON**: Oh. would it be affidavits that he made with the Magistrates Commission?

20 **MR NAIR**: Yes. I am not sure if he made it to the police in their investigation.

**CHAIRPERSON**: Ja.

**MR NAIR**: And the police handed it to Mag's Com, but one of them is to the Mag's Com or directly from the Mag's Com.

**CHAIRPERSON:** Ja, I just wish you had also made them available to the Commission in time so that they could have been included here.

**MR NAIR:** Well, Chair, I am so prepared to make it available.

**CHAIRPERSON:** Ja, you must please do that. Okay, just read what you say you say there.

**MR NAIR:** Well, in the affidavit dated 6 April, Mr Bejoo says that - at paragraph 2:

10

“I was in the presence.

So that is when I get to contact Mr Desmond Nair and the Court Manager by the name of Bansi.

Magistrate Desmond Nair needed advise on the security system at his rented house that he was intending to purchase in Pretoria.

I did go to Magistrate Nair’s house and found that it was not going to be a simple installation.

20

I got into contact with Mr Richard le Roux to assist as he has extensive experience with domestic installations...”

Nothing about him telling me that he got in touch with Mr Le Roux. And his affidavit goes on to conclude with no mention whatsoever of a meeting... I am prepared – I will

make the affidavit available, Chair. And in the interest of time. There is a second affidavit now.

**CHAIRPERSON:** Yes?

**MR NAIR:** Which is dated the 16<sup>th</sup> of August. In this affidavit ...[intervenes]

**CHAIRPERSON:** Which year?

**MR NAIR:** 16 August 2019.

**CHAIRPERSON:** Ja?

**MR NAIR:** In this affidavit, he says at paragraph 4:

10                   “Mr Mathenjwa requested me... [meaning him]  
                          ...to assist Richard le Roux with the  
                          assessment of security system installed at Mr  
                          Nair’s house at the beginning of 2014...”

He puts the date of this installation in 2014.

                          “I have made contact Le Roux to arrange a site  
                          visit...”

Once again, in this statement, which is not a long  
statement, but he makes no mention of Mr Mathenjwa or a  
meeting with Mr Mathenjwa. And I say to you, Chair, the  
20 only reason he mentions it in this one is because I was  
unaware of his involvement or with Mr Le Roux and mister  
– and whoever it was behind the scene.

**CHAIRPERSON:** H’m.

**MR NAIR:** And now, in an effort to shield himself, after  
having entered a contract with me and the installation was

done, he is now speaking to create some kind of link with somebody at Sondolo or BOSASA which never – which did not – which does not exist. Thank you, Mr Chair.

**CHAIRPERSON:** Do you – what ultimately happened to the installations that had been made to your house?

**MR NAIR:** Chair, I left the security system in a non-functional state that it was, as it was, because the only thing that was – that you could see how the cameras are outside. There were no visuals upstairs. There was this  
10 box, a hard drive of some kind with a monitor that was in the undercover garage, as I have indicated.

And from the technical reports or the reports – the reports by the technicians and the experts that I have consulted, there is some power surge which causes a few of those screens to go on, to go off. And so it remained in that condition in the undercover garage.

It was joined to the power source on the electric fence. That would be difficult to do otherwise, but to leave it. We switched off the fence and that box for most of the  
20 time.

Remember Chair, I was also assisted by the department because of the fact that from 2015 to the end of 2018, I spent about six terms in Polokwane doing mostly crime on circuit with a security guard at home and a security guard to be present with me.



So, I had that option at my disposal and I was happy with that. In addition thereto Chair. By November 2016, the matter in - had been finalised.

**CHAIRPERSON:** Ja.

**MR NAIR:** And that is in... Et cetera, et cetera. No longer – weighed still heavily on me. But I was not going to, you know, beg to come back and... I did, in fact, have the alarm system remedied. It also was defective. I also had the electric fence fixed and repaired where after the  
10 so-called BOSASA installation, it still gave me problems. And I have the receipts and the invoices for those repairs.

Insofar as the CCTV, like I say, I felt I am not going to touch anything. I will – when he comes back, but if he does not come back and elects because it had been installed, I am – as I saw it by him and decide to or whatever the case may be, I would then throw the book at him insofar as the breach of contract because what he did amounted to, as far as I am concerned, to... which is a breach.

20 And the point, Chair, as you are aware if there are simply obligations between two people and the understanding is that one party must respond(?) first, like Mr Bejoo. Put on the CCTV cameras and make sure the man has got visuals in the house because that is very important, to me. It is silly to just have security cameras

with no visuals... So, and then

**CHAIRPERSON:** So, is the position that you never paid Mr Bejoo for anything, whether labour or equipment?

**MR NAIR:** That is correct, Chair. Like I say. There were obligations between Mr Bejoo and I. And he had the duty to perform first. I was fully within my right to withhold payment until he did what he ought to have done. He must – from downstairs because it was posing a risk to me and restore the visuals. That was the – of our agreement.

10 **CHAIRPERSON:** Now, that the equipment was installed by Sondolo. Is that something you are disputing or are you saying you cannot dispute that but all you know is that you had an arrangement with Mr Bejoo? Or were you aware that BOSASA/Sondolo IT were involved?

**MR NAIR:** No, Chair, I was not aware of that. And until it is proven to you or to whoever that that equipment that is here emanates from or the ownership thereof is BOSASA. How can I admit it comes from him? Because as a point of departure, the invoices that are furnished in respect of the  
20 equipment installed here, you cannot identify what is there. And...

**CHAIRPERSON:** Yes. Well ...[intervenes]

**MR NAIR:** So you challenge it. I mean, if it is proven that it came from them. Well... came from them. I knew nothing of it.

**CHAIRPERSON:** Yes.

**MR NAIR:** I had an agreement with Mr Bejoo. He knows that.

**CHAIRPERSON:** Yes. Did you know him to be working for BOSASA or Sondolo IT or what was your knowledge of his employment or his business?

**MR NAIR:** Thank you, Chair. Yes, I knew Mr Bejoo to be an employer of Sondolo.

**CHAIRPERSON:** H'm?

10 **MR NAIR:** As the Head of the Court, BOSASA had a contract at the court awarded by the department. Let me get that bit clear. I have got nothing to do with that. But that was for the uniform personnel. So, there was BOSASA. They had security guards at the court who manned. They had nothing to do with the cameras and the CCTV.

Then there was a company called Sondolo which was the CCTV company. I was unaware that Sondolo was a subsidiary of BOSASA. That is how it was. And I got  
20 know Mr Bejoo, like I say, immediately after the fire. And once the job was done, I saw him two or three times a year. He was a friendly guy. He would come and greet me. And that is how I...

**CHAIRPERSON:** Okay. I am sorry. It has taken much longer than I thought we would and my registrar has just

reminded me that she has to go to beat the curfew and...  
Now, let me first ask. Who else will need to beat the  
curfew who is not close to home and so on? Ms Molefe,  
how is your situation?

**ADV MOLEFE:** I am five minutes away from home, Chair.

**CHAIRPERSON:** Oh, okay. Mr Nair, are you at home?

**MR NAIR:** I am. I am, Mr Chair.

**CHAIRPERSON:** Mr Dorfling?

**ADV DORFLING:** I am also at home, Mr Chair. I just need  
10 to move to my bed.

**CHAIRPERSON:** [laughs] Okay, alright. I think that it is  
going to be difficult. Let me ask. Ms Molefe, I do want  
that the issues be dealt with properly. So, I do not want  
you to be under undue pressure, but what is your estimate  
of how much time you need with Mr Nair?

**ADV MOLEFE:** Chair, I think if we can curtail the answers  
to the questions. I know Mr Nair is eager to set out his  
story.

**CHAIRPERSON:** Ja.

20 **ADV MOLEFE:** But I think we can be done in ten minutes.

**MR NAIR:** Okay.

**CHAIRPERSON:** Ja. Let me ask the lawyers involved in  
the matter of the Deputy Minister, Mr Makwetla. Ms  
Molefe, you are involved in that matter as well?

**ADV MOLEFE:** Yes, Chair.

**CHAIRPERSON:** Yes. Who is appearing for Minister Makwetla?

**ADV MOSIKILI:** Evening, Chair.

**CHAIRPERSON:** Good evening.

**ADV MOSIKILI:** It is Teboho Mosikili, Chairperson.

**CHAIRPERSON:** Yes.

**ADV MOSIKILI:** Yes.

**CHAIRPERSON:** How long did you think you would be with the re-examination of the Deputy Minister?

10 **ADV MOSIKILI:** Chair, we have been given 30-minutes by the Chair.

**CHAIRPERSON:** Oh.

**ADV MOSIKILI:** We are going to confine ourselves to that.

**CHAIRPERSON:** Yes.

**ADV MOSIKILI:** We need to Ms Molefe that we might go just over – maybe just close to 40-minutes or 45-minutes. But we have that 30-minutes slot.

20 **CHAIRPERSON:** Ja. I was trying to make sure we can finish both Mr Nair's evidence as well as the re-examination of the Deputy Minister's evidence. Let me ask you about a different way of doing it and see how you feel. In some of the matters, arrangements have been made for the witness to be given written questions, to provide written answers in an affidavit in the place of an oral re-

examination.

So, in other words, you being his counsel, you would prepare questions that you would have asked because the purpose of re-examination in terms of the regulations of the Commission is just to clarify matters that might not have – that might not be clear arising from the evidence.

So, arrangements have been made in regard to some witnesses and their lawyers and no problem. That is  
10 instead of an oral re-examination. The witness's lawyer would prepare questions, send them to the client and send to the Commission's evidence leader concerned.

And then the client can then prepare answers in a form of an affidavit which is then filed to the Commission which clarifies that needs to be clarified. So, I want to check whether you would be happy with that arrangement in the place of an oral re-examination or whether you would like an oral re-examination.

**ADV MOSIKILI:** Chair, my inclination is to agree to your  
20 proposal. However, I would have to confirm with my client.

**CHAIRPERSON:** Yes.

**ADV MOSIKILI:** Because I think – he said to me, at least he needs to dispel some of the ...[intervenes]

**CHAIRPERSON:** Oh.

**ADV MOSIKILI:** [laughs]

**CHAIRPERSON:** Yes. No, no. Some ...[intervenes]

**ADV MOSIKILI:** So, subject to that. [laughs]

**CHAIRPERSON:** Ja, ja. [laughs] Well, that is fine. But maybe I must accept that we are unable to finish this evening. And that in regard to you and your client. If, after you have taken instructions, he says he goes along with dispensing with an oral re-examination but submitting an affidavit on the basis I have suggested, then you will write to the or you will communicate with the Evidence  
10 Leader, Ms Molefe and then that is what will be done.

But if he would really like to have – to appear and have oral re-examination, I will make a – we will make another plan. But I think today we have tried our best to try and finish everything, but it has not been possible. So we will need to notify you of when we can try again.

**ADV MOSIKILI:** Thank you, Chair. I will all canvas those two options to client and we will communicate to the Commission.

**CHAIRPERSON:** Ja.

20 **ADV MOSIKILI:** That is the arrangement, Chair. I suppose then that we should be excused for today?

**CHAIRPERSON:** Ja, you are excused for today. Another date will be arranged if the proposal about written questions and written answers is not accepted by your client.

**ADV MOSIKILI:** Ja. We are indebted, Chair.

**CHAIRPERSON:** Yes. So you are excused and your client, Mr Makwetla is also excused.

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

**CHAIRPERSON:** Okay, alright. Okay. Mr Dorfling?

**ADV DORFLING:** Chair.

**CHAIRPERSON:** We have to stop here, unfortunately. Because without my staff, I am at a loss how to work with technology. But I will – I am going to try and make and  
10 make a plan for us to finish.

**ADV DORFLING:** Ja, it sound like we are close to finality, Chair. So...

**CHAIRPERSON:** Yes. No, we are very close to finality. So, Mr Nair, you understand the situation?

**MR NAIR:** I do. Thank you, Chair for being patient. I think we ...[intervenes]

**CHAIRPERSON:** Yes. No, no that is alright. So we will find – I will find time so that you can come back and then we can conclude.

20 **ADV DORFLING:** We are more than willing to accommodate you, Chair. Even if it is an early hour or a late afternoon. We – provided that you are available, we are more than willing to accommodate you.

**CHAIRPERSON:** Okay. No, thank you very much. Thank you very much. Ms Molefe, thank you very much. We will



arrange for a date so that we can finalise.

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

**ADV DORFLING:** Mr Chair, can I just as a matter of housekeeping indicate that my attorney, Mr Badenhorst, has already forwarded the two affidavits of Mr Bejoo to which Mr Nair has referred to, to Ms Molefe. It should be on her email already.

**CHAIRPERSON:** Okay, no, thank you very much. Thank you very much.

10 **ADV DORFLING:** Thank you, Chair.

**CHAIRPERSON:** Okay. It remains for me to thank everybody for your cooperation and for your patience. We will try again and finalise this.

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

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

**MR NAIR:** Thank you, Chair. Have a good evening.

**CHAIRPERSON:** Thank you, you too. Thank you. We adjourn.

**INQUIRY ADJOURNS SINE DIE**