

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

05 JULY 2021

DAY 421



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HELD VIRTUALLY

DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; K SWANEPOEL



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INQUIRY RESUME ON 5 JULY 2021

CHAIRPERSON: Good morning, Ms Molefe. Good morning, everybody.

ADV DORFLING: Good morning, Chair. I believe it is appropriate this morning to say good morning ACJ and not DCJ anymore.

CHAIRPERSON: Yes, good morning to you.

ADV DORFLING: I thought you had enough on your plate as it is.

10 **CHAIRPERSON:** Ja well, at least with the completion of the hearing of oral evidence and with the group of people that are helping me with the analysis of evidence it makes it possible to carry out my functions. A lot of people were thinking that it is a new appointment, but it is not an appointment, it is just that if you are Deputy Chief Justice and the Deputy Chief Justice is away, in terms of the law you are required to perform the functions of the Chief Justice as Acting Chief Justice without being appointed, it is automatic unless you are not available, in which case
20 then you do not, but yes, so I had to explain to a lot of people that were sending me messages to say congratulations, saying no, no, no, it is not an appointment, but anyway. Good morning, everybody. Good morning, Mr Nair.

MR NAIR: Morning, morning ACJ.

CHAIRPERSON: Thank you, thank you, thank you. Alright, I think let us do the oath again and then we can continue. Registrar, do you want to administer the oath please?

REGISTRAR: Will you still be taking the oath?

MR NAIR: Yes, madam.

REGISTRAR: Please state your full names for the record.

MR NAIR: My full names are Desmond Nair.

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

MR NAIR: No, I do not.

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

MR NAIR: Yes, I do.

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

MR NAIR: So help me, God.

20 **DESMOND NAIR:** (d.s.s.)

CHAIRPERSON: Thank you, thank you very much. Ms Molefe, do you want to continue from there?

ADV MOLEFE: Thank you, Chair.

ADV DORFLING: Mr Chair, if I may perhaps just before we commence.

CHAIRPERSON: Yes?

ADV DORFLING: I have this morning at 09:30 discovered on my e-mail inbox an e-mail that we received from Madam Molefe last night at 23:03.

CHAIRPERSON: Yes?

ADV DORFLING: Adding to the existing bundle of documents that is in front of you as T23, three more statements, being two affidavits of Mr Bejoo dated the 9th of April 2019 and the 16th of August 2019 and a further
10 affidavit of Mr Matenjwa dated the 16th of September 2019.

CHAIRPERSON: Yes.

ADV DORFLING: I have not seen this until 09:30 this morning.

CHAIRPERSON: Yes?

ADV DORFLING: I have quickly contacted Mr Nair to just discuss this with him. We have previously been made possessed of it as a result of happenings in front of the Magistrates Commission, so it is not novel or new.

CHAIRPERSON: Ja, ja.

20 **ADV DORFLING:** But it raises certain issues. You would know from the evidence so far presented that there is some substantial factual disputes between the evidence of Mr Bejoo, Mr le Roux and Magistrate Nair. We have not consulted on it. I have spoken to Mr Nair, we are ready to proceed, we do not want to delay the process.

CHAIRPERSON: Ja.

ADV DORFLING: But to the extent that it may occasion us the need to have the matter stood down to consider, Mr Nair will indicate when that happens.

CHAIRPERSON: Yes.

ADV DORFLING: There is also a matter of further substance that arises from that and that is the possession of the Commission, the Commission's possession of these affidavits. We believe they form part of what was
10 disciplinary proceedings in front of the Magistrates Commission and we are not sure how the Commission became possessed of it.

It also triggers the issue of whether or not if there are factual disputes those should be dealt with by way of an application for cross-examination of these witnesses, like we have done with Mr le Roux. I do not want to derail these proceedings.

CHAIRPERSON: Ja.

ADV DORFLING: I think we should proceed. We will
20 consider our position and to the extent that Mr Nair is uncomfortable with proceeding, dealing with these affidavits he will indicate so and the we may seek an adjournment for that purpose, but we are ready to proceed.

CHAIRPERSON: Okay, so just to sum up as I understand you, you are saying that the, are these new documents that

have been obtained by the Commission and have been furnished to you? You have not had a chance to consult with Mr Nair about them, but he is aware of them. He may be asked on them to the extent that he is comfortable, he can deal with them and give answers. To the extent that he may not be able he will indicate, in which case there might be a need for an adjournment for you to consult with him.

ADV DORFLING: That is indeed our position, thank you
10 Mr Chair.

CHAIRPERSON: Okay, alright. Ms Molefe, do you want to say anything about that?

ADV MOLEFE: Yes, Chair. Chair, the three affidavits, three of the affidavits are Mr Bejoo's statements that were referred to by Mr Nair in our, during our previous session.

CHAIRPERSON: Yes.

ADV MOLEFE: The third one is a statement by Mr Matenjwa, which is a statement made to you Chair, in terms of Regulation 10(6). It also does not implicate
20 Mr Nair, all he does is he deals very briefly with how he understood the arrangement between Mr Nair and Mr Bejoo.

CHAIRPERSON: Ja. Where do I find them in here, on what page are they?

ADV MOLEFE: So the first statement, Chair, it starts at, if

you go to page 302.

CHAIRPERSON: We are using the BOSASA bundle 5.

ADV MOLEFE: Yes, Chair.

CHAIRPERSON: And what page, 202?

ADV MOLEFE: 302, Chair.

CHAIRPERSON: 302?

ADV MOLEFE: Yes, and they go all the way up until page ...[intervenes]

CHAIRPERSON: Okay, let us take them one by one. 302
10 To 303, that is a statement of Mr Bejoo.

ADV MOLEFE: Yes, Chair.

CHAIRPERSON: Then page 306 begins, is the beginning of an affidavit by Mr Matenjwa and that goes up to, that goes up to 324 and you said it is an affidavit that Mr Matenjwa furnished to the Commission in compliance with a direction issued by, a direction issued by me in terms of Regulation 10(6), is that correct?

ADV MOLEFE: Yes Chair, and Chair, you skipped the second affidavit of Mr Bejoo that appears at page 304 to
20 305.

CHAIRPERSON: Oh, oh I missed that. Okay, and which one of these two did you say Mr Nair referred to already in his evidence previously?

ADV MOLEFE: He referred to both of them Chair, but he dealt in detail with, he really dealt with the conflicts of the

version [intervenes]

CHAIRPERSON: Okay.

ADV MOLEFE: So those are the two statements we received from Mr Nair and then the third statement, as I mentioned Chair, is that of ...[intervenes]

CHAIRPERSON: Sorry, you say you received them from him.

ADV MOLEFE: Yes, Chair.

CHAIRPERSON: The Bejoo, the two Bejoo statements?

10 **ADV MOLEFE:** Yes, Chair.

CHAIRPERSON: Oh okay, okay, so at least that is the answer to counsel's inquiry about how they were, how the Commission got them.

ADV MOLEFE: Yes, Chair.

CHAIRPERSON: And then Mr Matenjwa's one is an affidavit that was sought from him by the Commission.

ADV MOLEFE: Yes, Chair.

CHAIRPERSON: Okay, alright. Alright no, that is fine. I believe we can start. Mr Nair, are you ready?

20 **MR NAIR:** I am ready, Chair.

CHAIRPERSON: Thank you very much. Continue, Ms Molefe.

ADV MOLEFE: Thank you, Chair. Today we will be continuing with the evidence of Mr Desmond Nair, as has already become apparent. His evidence relates to the

allegations pertaining to the special projects under BOSASA work stream. I would just like to summarise Mr Nair, Chair, Mr Nair's evidence thus far, Chair.

CHAIRPERSON: Ja, and maybe before you do that, just for the public let us mention that mister, we are just, in regard to Mr Nair we are just completing evidence that he started giving on Wednesday evening, but we had to adjourn because of the curfew, so we are just completing his evidence that otherwise would have been completed on
10 June 30. Yes, okay.

ADV MOLEFE: Yes, and his evidence relates to the special projects in the BOSASA work stream. In summary Chair, Mr Nair has conceded that security cameras were installed at his private residence, but he says that this is pursuant to a private agreement between himself and Mr Bejoo and he says that the agreed contract amount was approximately R50 000.

To this end, Chair, Mr Nair has testified that he made an offer to Mr Bejoo to assist him with firstly CCTV
20 cameras, secondly with the electric fence if it needed repairs, and thirdly with the alarm if it needed disrepute.

Mr Nair states that the cameras were installed on the 4th of October 2016, he has further testified that, contrary to the terms of the agreement, Mr Bejoo had placed the hard drive and monitor of the cameras in what

Mr Nair has referred to as an undercover garage and he says that the agreement was that Mr Nair would be able to see the feed from the cameras in the TV in his bedroom and that he would be able to rewind and fast forward the recording from the cameras.

Mr Nair then further stated that Mr Bejoo, that he had made several attempts over a couple of months to get hold of Mr Bejoo so that he could remedy the breach, but that Mr Bejoo either did not take his calls or would tell him
10 that he would get back to him, which Mr Nair says never happened. Mr Nair then told you Chair, that he has left this equipment in a non functional state.

Now insofar as whether or not there is an implied influence of having taken advantage of the involvement of BOSASA or its subsidiary being involved in the work at the court where Mr Nair sits, Mr Nair's evidence so far is that as the Chief Magistrate he plays no role whatsoever in the awarding of contracts and Mr Nair has also testified that his involvement has only been in what he referred to as a
20 steer co, in terms of which he would engage with stakeholders and some service providers insofar as the progress of work by the service providers.

He further stated that Magistrates do not have approval functions in respect of work that should be done, as that falls within the ambit of the Court Managers and

Facilities. Chair, to this end Mr Nair further testified that where a decision had to be taken by the Court Manager, the Court Manager would merely seek his opinion and then he finally testified Chair, that by the year 2011 he had already delegated the function of chairing the steer co to his most senior Magistrate, so that is in essence Mr Nair's evidence so far.

CHAIRPERSON: Yes.

ADV MOLEFE: Can you just confirm that I summed it up
10 correctly?

MR NAIR: Yes.

CHAIRPERSON: Yes, okay.

MR NAIR: It is correct, if I may just add in respect of the purchase, the agreed purchase price of the equipment I indicated that it was a maximum price of R50 000, in other words you can go up to R50 000.

Then in respect of the complaint about the shoddy, pathetic workmanship, apart from the fact that I, rewind, forward wind visuals on the TV in my room or anyone,
20 anywhere else in the house and I would have had to leave the house to the undercover garage to do so, which further put me at risk, this was contrary to the express terms of our agreement.

There was no visuals on the TV at all, so if there, had there been visuals that would have been one issue,

there would have been visuals, but there would not have been recording and rewinding facilities, but in addition to them not, to my not being able to rewind, forward wind and see what is going on in the preceding hour or five minutes or whenever, there were no visuals at all in my home from the installation of the camera, so it was just cameras put and the feed into the house did not display any visuals.

ADV MOLEFE: Thank you.

MR NAIR: And I said that in my evidence.

10 **ADV MOLEFE:** Thank you.

CHAIRPERSON: Okay, continue Ms Molefe.

ADV MOLEFE: Now you have told the Chair that Mr Bejoo had introduced about two people that he referred to as his boys would be assisting him with the security upgrade at your house, correct?

MR NAIR: I did not say he introduced them to me. He was in their presence, he came to my house with these two gentlemen and he left me with the impression that he would be managing it or performing the undertaking as we had
20 agreed, and he would be assisted by the two technicians and there were two technicians in the yard and I formed the impression that it would be two or three of them that would be helping Mr Bejoo. I did not meet the gentlemen, they were in the vehicle outside.

ADV MOLEFE: And do you know what their names were?

MR NAIR: No, I did not meet them, I did not talk to them. Mr Bejoo sat in my lounge for about an hour, he was in the presence of my wife and I. I saw the gentlemen in the vehicle when he arrived and I saw the gentlemen in the vehicle when he exited the house.

ADV MOLEFE: Okay, now can I refer you to page 252 of the bundle?

CHAIRPERSON: While you are going there, Mr Nair, can I just confirm that my understanding of your evidence on
10 Wednesday was correct that your arrangement with Mr Bejoo, you understood, in terms of that arrangement you understood that it was going to be Sondolo who was, which was going to be carrying out the installations, or is the position that you thought Mr Bejoo was going to do this in his private capacity?

MR NAIR: The latter is correct, Chair. This was between Mr Bejoo and I and there were ...[intervenues]

CHAIRPERSON: Okay.

MR NAIR: Yes, it was not, it was not on the
20 understanding that Sondolo would be doing it. I had nothing to do with that.

CHAIRPERSON: Yes, but your coming into contact with Mr Bejoo, was it as a result of work that he, Sondolo was doing for the court or did you know him ...[intervenues]

MR NAIR: That is correct.

CHAIRPERSON: Or did you know him, or did you know him independently of Sondolo?

MR NAIR: No. When the court burned in 2010 Sondolo was the camera, the CCTV company that was at the court.

CHAIRPERSON: Yes.

MR NAIR: I met him in 2010 and there were Steer Co meetings where the stakeholders would be present and a few of the service providers would be present. Mr Bejoo would have been among the service providers in one of two
10 of those meetings.

CHAIRPERSON: Okay.

MR NAIR: Subsequent to that over a period of say six to seven years from 2010 to 2016 I would speak to Mr Bejoo, because he was like as good as a child in my house, I mean he was an employee of the service provider, like a cleaner is an employee of the service provider of the cleaning staff and then I would see him from time to time, maybe two or three times a year he would come into my office just to greet me, hello Mr Nair, how are you, how are
20 things, nothing to do with work that Sondolo did.

If there was something that related to the work that Sondolo did at the expense of repetition, Mr Bejoo's place and wherever his principles were, they would start on operational issues with the Court Manager and with the Facilities. If there was a matter that was really necessary

or it was necessary for a matter to be brought to the attention of stakeholders then it would be a meeting and there would be consensus reached. At that point I would perhaps see him, but my familiarity with him grows from the fact that he was frequently on the floor, I saw him often and I got to know him personally.

CHAIRPERSON: Yes, okay. Ms Molefe?

ADV MOLEFE: Thank you, Chair. Thank you, Mr Nair. Can you please turn to page 252?

10 **MR NAIR:** Yes, madam.

ADV MOLEFE: I am referring you to paragraph 9 of your statement.

MR NAIR: Yes.

ADV MOLEFE: In fact paragraph 10, pardon me.

MR NAIR: Yes.

ADV MOLEFE: You say that the transaction you entered into was strictly between yourself and Mr Bejoo and you have said that you have never spoken to or known [indistinct] or any of the Sondolo Directors, then in the last
20 sentence you say that:

“I will not dispute that Mr Matenjwa may have attended meetings at my office after the court burned in 2010.”

Now I would like to at this point refer you to Mr Matenjwa’s statement. Chair, this is the statement I referred to earlier.

CHAIRPERSON: Yes.

ADV MOLEFE: I am going to ask your leave Chair, to have the statement tendered into evidence as T23.7.

CHAIRPERSON: Page?

ADV MOLEFE: 306, Chair.

CHAIRPERSON: Yes, this is Mr Matenjwa's affidavit. You are asking that it be admitted as an exhibit and marked as exhibit what?

ADV MOLEFE: T23.7 please, Chair.

10 **CHAIRPERSON:** T23.7?

ADV MOLEFE: Yes.

CHAIRPERSON: The affidavit of Mr Saram Simangalisa Trevor Matenjwa, which starts age page 306, will be admitted as an exhibit and will be marked as EXHIBIT 23.7, okay.

ADV MOLEFE: Mr Nair, can you go to page 312?

MR NAIR: My pages are not numbered, if you can take me to the page of the statement itself, is it page 8 and what paragraph?

20 **ADV MOLEFE:** Alright, the statement itself is written there as page 7.

MR NAIR: Yes?

ADV MOLEFE: I am taking you to paragraph 16 of that statement.

MR NAIR: Yes.

ADV MOLEFE: Now this is Mr Matenjwa’s version insofar as the installation at your house.

MR NAIR: Yes?

ADV MOLEFE: And he opined on the allegations of Mr le Roux.

MR NAIR: Yes.

ADV MOLEFE: He says there that:

10 “All of the affidavits seem to implicate me in the installation of the security system during or about 2016 at the home of Mr Desmond Nair who was at the time the Chief Magistrate of Pretoria (the Nair installation).”

In 16.2 he says:

“The Nair installation was previously the subject matter of an inquiry conducted by the Magistrates Commission. I provided that Commission with the following statement.”

And he goes on to quote that particular statement. He says:

20 “I am a major male and the Senior Executive of Global Technology Solutions Proprietary Limited, previously known as Sondolo IT, a member of the African Global Operations Proprietary Limited Group of Companies (AGO). I am informed that the Magistrates Commission is investigating allegations

made by a Mr Richard le Roux, an affidavit deposed to during the course of the Judicial Commission of Inquiry into State Capture, corruption and fraud in the public sector, including organs of state. I do not have direct knowledge of the allegations.”

He then says:

“GTS held a contract for the maintenance of security at the Magistrates Court in Pretoria.”

Overleaf he then continues and says:

10 “I attended meetings with officials in the Department of Justice, including from time to time the Chief Magistrate of Pretoria, Mr Dennis Nair, to discuss operational matters pertaining to the agreement under which GTS has been contracted by the Department of Justice.

In passing and at one such meeting, the precise date of which I cannot recall, one of the GTS Managers, Mr Bejoo, brought to my attention that the Chief Magistrate had concerns for his
20 safety and was unhappy with the security system then installed at his private home.

Upon the request of Mr Bejoo I agreed to an evaluation of the existing security system by GTS. Save for agreeing to the aforesaid evaluation, I had no involvement in or knowledge of the installation of

security system at the private home of Mr Nair, whether by GTS or anyone else. The first time I learned of any such installation having apparently been undertaken by GTS was when disclosures to that effect were made during the course of the State Capture Commission. I deny the hearsay allegation of Mr le Roux that I instructed Mr Agriti to do anything with regard to the security installation at the private home of Mr Nair.

10 In passing I point that Mr Agriti as the Chief Operating Officer of AGO rarely, if ever, took instructions from Executives within AGO and certainly he would not have done so from me.”

Then in the body of his affidavit to the Commission at paragraph 16.3 he says that he confirms the correctness of the above statement. Now do you wish to comment in respect of the quoted paragraph 4 of the statement to the Magistrates Commission insofar as Mr Matenjwa having met with him from time to time to discuss operational
20 matters pertaining to the agreement under which GTS had been contracted by the Department of Justice?

MR NAIR: Yes, thank you Ms Molefe. Now as I have indicated in my statement at paragraph 10, the last sentence:

“I will not dispute that Mr Matenjwa may have

attended meetings at my office after the court burned in 2010.”

So you will recall Chair, that I did indicate to you that after the fire it became my responsibility to show judicial leadership. You know when a court burns Chair, not only is it a disaster, it requires leadership to get that court to run again and up until today the Pretoria Court has not been refurbished or renovated.

I met with stakeholders and I also met with service
10 providers in huge meetings, initially for the first month or so at the police station and then [indistinct]. There would be between 30 and 40 people in those meetings and the persons who would significantly contribute to the discussion would be my stakeholders, being the prosecutors, the administration staff and their management and the interpreters, of course the court orderlies and the police as well.

Stakeholders such as those that were going to be involved in restoring the air conditioning, those that were
20 going to be involved in putting up the pre slab walls in the undone portion and those that were involved in security would from time to time attend those meetings, hence I say if Mr Matenjwa had attended a meeting of that nature in 2010 I would not dispute that. I cannot say that he was not there.

What I can comment on is that in 2016, I cannot recall meetings with Mr Matenjwa six years down the line to such operational matters. Chair, as I indicated in my earlier evidence, I handed over this responsibility to the most senior Magistrate after about a year. I took the responsibility as Head of the Private Section for a while, maybe two or three years.

My office was upgraded from Chief Magistrate to Cluster Head around 2014 and that takes me to a level of
10 blistering issues. So from a governance point of view you function as a Chairman of the Board, if I can draw that parallel. You have got nothing to do with the work of the Executives or the Senior Magistrates or operational individuals, so it became even more rare for me to meet service providers for operational issues and then from the last term in 2015 JP Mlambo had requested me to engage with JP Makgoba to act in the High Court in Polokwane and I continued acting in the High Court in Polokwane from the first term in 2015 right through until the end of 2016 and
20 thereafter in 2017 and 2018 I remained for 80% of the time in the High Court.

In other words, for those three years and one quarter I must have spent 70% to 80% of the time acting, so I did not have anything to do in 2016 with operational issues that would have involved Mr Matenjwa and my

discussions with mister Bejoo with regard to the installation at my home, because I knew him so well and because I offered him the work and he accepted the offer, it had nothing to do with anybody and I was alive to the fact that Mr Bejoo was an employee of the service provider.

I could have no dealings with his principals or the Directors of the company, indeed Chair, I did not know who they were, I did not know who they were. The Department
10 would change or would award contracts on a yearly or every two years to different service providers, to different functions.

If we had cleaning staff for one year he contract would change without me knowing. I would find new cleaning staff or new security people at the court and I would be introduced to the Floor Manager and perhaps sometimes one of the members of that service provider company. Obviously the person is going to be, has been awarded some kind of work in the court, he will come and
20 meet the Head of Office, I am the father-figure of that office, no different if there were such contracts awarded at a hospital and you would go and meet the Superintendent General or the most senior staff.

So this meeting that Mr Matenjwa refers to or the meetings that he attended with officials from the

department, including from time to time the Chief Magistrate of Pretoria, Mr Dennis Nair, that alone will tell you, my name is not Dennis, he simply did not know me well enough to know my correct name when he refers to this affidavit and that is, these meetings that he refers to, I am unaware of and they did not happen.

CHAIRPERSON: Ja, okay. Ms Molefe?

ADV MOLEFE: Thank you. Then at the quoted paragraph 6 of Mr Matenjwa's statement he says that on
10 request by Mr Bejoo he, Mr Matenjwa, agreed on an evaluation of the existing security system by GTS. Do you have any knowledge about any discussion between Mr Matenjwa and Mr Nair insofar as the evaluation itself?

MR NAIR: Do you mean Mr Bejoo?

ADV MOLEFE: Mr Bejoo, pardon me. Thank you.

MR NAIR: Ja. Is that paragraph 6, Ms Molefe?

ADV MOLEFE: I quoted paragraph 6, yes.

MR NAIR: Well, I was not aware, Mr Bejoo at no point told me that after, at any point in as far as personal
20 discussions with me, two at my office and three at my home and in the over 10 telephonic discussions from me to him, leaving those from him to me, at no point did he tell me that he had engaged Mr Matenjwa or Agriti or Mr Watson or anybody else. I did not know these names.

When I heard Mr le Roux mentioning these names

on the 31st of January I could not, I did not know these people and hence I say if such individuals were part of the groups, large gatherings in 2010 I would not know. When I say 'know' I mean know well enough to sit at a restaurant and say hello Mr Agriti, how are you, oh I remember you. No, no, I did not know them and he, and to answer your question, at no point did he mention Mr Matenjwa, so.

CHAIRPERSON: Yes, Ms Molefe?

ADV MOLEFE: Now you have told the Chair that in your
10 understanding this was purely a private agreement.

MR NAIR: Yes.

ADV MOLEFE: Did mister who ever mention to you having his own company?

MR NAIR: No, no, no, he did not. I asked him to do this for me personally because this man was on the floor, he was the Project Manager in charge of the cameras, he was checking on the technicians, so he would know how the installations work, he would know who the suppliers were and I engaged him on that basis.

20 When he came to my home he indicated to me that he would source the goods from the suppliers himself, so this was something that was purely between Mr Bejoo and I, not because he had some other company. It would be no different Chair, if my cousin's husband worked for a large air conditioning company, I approached him and asked him

whether he could assist me with air conditioning, because he knew where to get it, he knew how to put it, come and help me on a weekend and do that. That does not mean that he must have had his own company, so no, this was not, I am unaware if he has got his own company. I did not engage him with his company.

ADV MOLEFE: Okay, so when he said that he would source the goods himself from suppliers, did the two of you have any arrangement insofar as a prepayment or deposit
10 of any kind?

MR NAIR: No madam, what had happened was Mr Bejoo had engaged with me during August. I started these discussions with him in July. He came to my home in August and when he left my home the understanding was that Mr Bejoo was still sourcing the equipment and he was doing, let me say his homework.

There was a long span of time, about four weeks when I had not heard from Mr Bejoo at all. In fact I had given up hope, thinking this guy was fooling around when
20 Mr Bejoo called me at the end of September, the 1st or 2nd of October to tell me that he would be ready to start the job the next week I was very excited, because I was still busy with that lengthy trial involving the bombings in Sekhukhune Mtukakomo and I was still glad, I was very glad that he had eventually come to the department.

I had placed my complete faith and trust in him that I would let him proceed and we would discuss the issue of the prices, et cetera, after he had done the job, trusting that he would not exceed the amount of R50 000. He knew the briefing that I had given him, it was simply to put on, install cameras, repair the things where necessary, check the alarm and repair where necessary. I did not ask him for a space craft or anything.

ADV MOLEFE: So he was to obtain all these equipments
10 at his own cost and you would later repay him.

MR NAIR: Well, that is how we proceeded on the understanding and hence the view that I held that it was agreed that he would perform and thereafter I would render the performance, because at the time that he called me to tell me he was going to start the next week and when he called to say that he was starting on that he did not mention that this is the price, this is what I have in mind.

It was based on trust, he had taken a very long time and I said go ahead, so the understanding of it would be
20 that do the job and I will pay you later.

ADV MOLEFE: Alright, now my understanding of him performing under the contract is that it could be divided into two aspects, the first is him purchasing the equivalent, as you say you have agreed and then the second part is the actual installation. Are you saying that the agreement

was that he would purchase the equipment by himself from his own pocket and that he would then install that equipment only after both the purchase and installation, would you pay him the amount of R50 000?

MR NAIR: That is correct, Chair. He indicated to me that he knew the suppliers, he would get it at cost and because he waited so long to start the job and told me that he was going to start the job I let him proceed on the basis that he would pay himself and if he needed money he would let me
10 know.

The problem was when I came back and found that it was a third grade disaster, for me the issue of the cost of the equipment and what he was told did not come to the fall. I called him to say that this is a mess, well to tell him that it was not working, not function as we had agreed.

ADV MOLEFE: So you were not at all involved in choosing the type of equipment that you wanted, the type of cameras that you wanted.

MR NAIR: No, no, I placed my complete faith and trust,
20 this is a man whom I knew for seven years was dealing with security cameras, installations, fixing, I did not need myself, you know, as if I was shopping for tiles and a certain colour of a tile, I wanted a basic system and once he agreed to do the job it was a question of well, let us get it done and we will, we will settle it. I was not, I did not

consider it to be something of you know, that was of big magnitude, it was a simple installation.

In fact Chair, I have subsequently insofar as the CCTV had a parallel system installed at my home for not more than R10 000 and it was done in a day. I took it this was not going to be rocket science and I was not asking for something you know, that I had to spend time and there is an outbuilding being built and I need to go and check it, no, no, no.

10 **CHAIRPERSON:** Yes, Ms Molefe?

ADV MOLEFE: Thank you, Chair. Mr Bejoo denies ever having discussed a budget with you and from your recollection can you tell the Chair whether you remember if, as your evidence, there was ever a distinction made between the cost of the equipment as well as the cost of labour?

MR NAIR: No, no, there was no distinction made. When I indicated to him that I had serious concerns with my security before of the matter in Sekhukhune and because
20 of the type of work that I was doing in Polokwane, travelling et cetera, I told him I had an amount of up to R50 000 available, I needed this, can you help me.

Mr Bejoo indicated that it would not be a problem, but he needed to come home and have a look at the house. He came home a few weeks later and we agreed he would

proceed. There was no distinction of labour was going to be so much and equipment is going to be so much. As far as I was concerned even the work, do the work and get done with it.

ADV MOLEFE: Alright, now Mr Richard le Roux has alleged that the cost of the equipment was approximately R66 384. Can I refer you to page 60 of the bundle? This is Mr Richard le Roux's supplementary affidavit, in particular I am taking you to paragraph 103. Are you
10 there?

MR NAIR: Bear with me madam, I just want to find the relevant page. Yes madam, I see it.

ADV MOLEFE: I am taking you to paragraph 103. There Mr le Roux alleges that the cost of the equipment was R66 384.94. Do you wish to comment on the cost of the equivalent?

MR NAIR: Thank you, thank you madam. Bear with me, Chair.

CHAIRPERSON: Yes.

20 **MR NAIR:** Ja Chair, let me start by saying that the invoices do not reflect the correct totals and differ from the value of the equipment as testified to by Mr le Roux ...[intervenes]

CHAIRPERSON: Sorry Mr Nair, when you are moving at the invoices you move out of the screen.

MR NAIR: Sorry, sorry, sorry Chair.

CHAIRPERSON: Ja, so just make sure that I can see you all the time, ja. Okay, continue.

MR NAIR: Well, let me start by saying Chair, that Mr le Roux when he gave evidence before you on the 28th of January he set the cost of the project at R200 000 and when he testified or when he deposed to his statement in June 2020 he adjusted the cost to be R252 864. Now when Mr le Roux testified the impression I got, hence the shock
10 of my life because there was no agreement with Mr Bejoo to exceed R50 000, that it was going to, it was about R200 000, it only emerges from this that these invoices reflect the cost of R66 384 insofar as the equipment.

In respect of these invoices Chair, if I can take you to the actual invoices themselves you will notice that these invoices reflect the 20th and 21st of September and attached to the invoices that I was given there is an invoice also for the 7th of October which speaks to another amount.

20 Now these invoices speak to another amount. Now these invoices, the two that you are referring to Ms Molefe, if I can refer you to them.

ADV MOLEFE: Sorry Mr Nair, before you proceed. Chair, the particular invoices appear at page 155 all the way to page 150.

CHAIRPERSON: Thank you.

ADV MOLEFE: Please proceed, Mr Nair.

MR NAIR: These invoices Commissioner, do not bear Mr le Roux's signature and if you look at the bundle that you gave me last night or over the weekend in respect of all the other so-called beneficiaries it is either Richard le Roux or Johan Fourie.

The ones that relate to the installation at my home bears no signature by Mr le Roux or Mr Fourie, that is one.

10 Number two, if you look at the invoice which is page 116
Chair ...[intervenes]

ADV MOLEFE: That is 155 of the black numbering.

MR NAIR: Yes. There are handwritten numbers on this invoice and it is a concern for me that the invoice has shown numbers which relate to equivalent with no serial numbers and no amounts, so I actually have a problem with this invoice and when Mr le Roux deposed to a statement on the 15th of May 2019 to the police in respect of this matter he typed out an affidavit or the affidavit that he
20 signed refers to the equipment in invoices which are not these.

CHAIRPERSON: Ms Molefe?

ADV MOLEFE: Yes, Chair?

CHAIRPERSON: I do not know to what extent the dispute about what the equipment or the installations may have

cost, how important it is, but you have got, you can ask questions on it if you, if that is something that you would like to highlight.

ADV MOLEFE: Yes Chair, I would like to deal with the amount of the particular benefit as has been alleged and that is the reason why I am taking Mr Nair through these amounts and, as the Chair might have heard, Mr Nair has also referred to an amount R252 000.

CHAIRPERSON: Yes.

10 **ADV MOLEFE:** And I would like him to comment on the additional costs in addition to the equipment, also pursuant to dealing with a particular benefit, an amount of benefit as has been alleged.

CHAIRPERSON: How much time would you, do you think you would need to reach completion?

ADV MOLEFE: Well, I will be dealing with those costs.

CHAIRPERSON: Okay.

ADV MOLEFE: Then I will be dealing with one last aspect, so I think I can be done in half an hour.

20 **CHAIRPERSON:** I will give you 15 minutes' time, do it within 15 minutes.

ADV MOLEFE: I will try, Chair.

CHAIRPERSON: Okay, alright.

ADV MOLEFE: Mr Nair, my particular question to you was your comment in respect of the cost of the equipment. Are

you disputing the approximate value of the question or what exactly is your particular dispute in respect of the amount of the equipment?

MR NAIR: Well Chair, if the invoices relate to equipment at my home and I can discern that then it would be much easier for me. The equipment on these two pages, on these two invoices, the 20th and the 21st where it ties up to the equipment at my home, and I am particularly concerned because Mr le Roux, and I wish Chair, with your leave to
10 present to you and to tender into evidence the statement made by Mr le Roux where he refers to the invoices and in particular invoice 2472475 and invoice 2472614 and there is no reference whatsoever to the serial numbers that are handwritten on the invoices that you have before you Chair, and I can only assume that that was written in there after the photographs were taken of the equipment at my home.

CHAIRPERSON: Maybe Ms Molefe, to the issue of the invoices and where it relates to the equipment that was
20 used at Mr Nair's home could be dealt with by way of raising questions that you can, we can send to, you can send to him and he can do an affidavit to respond and he will get a chance to check and see whether the invoices do relate to the equipment used at his home.

ADV MOLEFE: Thank you.

CHAIRPERSON: Would that be fine?

ADV MOLEFE: Thank you Chair, but may I just ask one more question about the price?

CHAIRPERSON: Yes.

ADV MOLEFE: Mr Nair, in your opinion what would have been the cost of the equipment excluding additional costs such as labour?

MR NAIR: Ms Molefe, as I indicated to you I had a parallel system installed for under R10 000. I cannot
10 estimate the cost of the equipment that is here, because I can tell you the electric fence was not replaced or does not appear to be.

There are cameras that were installed and it appears as if the keypad was changed. This figure of R252 000 you will realise Ms Molefe, in Mr le Roux's eighth affidavit regarding this matter, I am in possession Chair, of eight statements by Mr le Roux in respect of this matter, each one amending and changing the figures.

For the first time in the statement that is contained
20 in your bundle, the August 2020 statement there, Mr le Roux puts the labour at something like R167 000 and he attributes it to 14 days' work with seven technicians. Chair, this job did not take more than three and a half days, I know that because after the first two days I was here. I never saw Mr le Roux at my home. In fact it is my

view that Mr le Roux was not here at all during the installation.

In addition to that, Chair, the work that was, there were no technicians here for that period of time, the inclusion of the technicians is to boost this amount to somewhere near the amount that he testified about and if I can add as to why Mr le Roux would not have been at my home, if you look at the date of the signature of the invoices Chair, you will note that these invoices, the 27th of
10 September as the date on which the equipment was collected, Mr le Roux deposed to an affidavit in March 2019 where he says that he went to Regal Suppliers with four men and collected the invoices on that day, being the 27th of September.

If you look at where Mr le Roux was on the 27th of September you will find that attached to Mr Mlambo's affidavit are travel and accommodation vouchers for Mr le Roux and one Mr Mdau whom he says was in his team, that they were booked in at East London from the
20 25th to the 27th of September in respect of some other project and the time on the invoices is around 11:25 when the goods were collected. Mr le Roux could not have commenced this job on the 27th of September like he alleges in his affidavit of the 6th of March. It is a pity Chair, we do not have that much time.

CHAIRPERSON: Those affidavits, those affidavit, you said Mr le Roux has deposed to eight affidavits that you have.

MR NAIR: Yes.

CHAIRPERSON: I would like your counsel and Ms Molefe to see whether the Commission has got those, all of those affidavits or not so that if there are some that the Commission does not have you can furnish to us insofar as they are relevant to the issues that the Commission is
10 dealing with.

MR NAIR: Yes.

CHAIRPERSON: Ja.

MR NAIR: So I am saying, Chair that Mr le Roux ...[intervenes]

CHAIRPERSON: The point that you have made about him being in East London with at least one of the members of his team that you say he said he went to Regal with, that would be important, but I must also point out that I heard evidence of Mr le Roux I think maybe two weeks back as
20 well as Mr Ningana, Mr Ningana was, security installations were made on his house as well by Sondolo/BOSASA and his story seems to have some similar features with yours.

He said the installations were definitely done by BOSASA or Sondolo, that is accepted, but he said the installation of security, those security installations were

made as a result of an arrangement that he had made with somebody who was a BOSASA Director or employee or official, but he said it was just an arrangement that they had agreed upon. He did not deny that BOSASA people had installed the security, but his arrangement was with a particular individual, he did not know that BOSASA or Sondolo would be used.

In regard to that matter Mr Richard or BOSASA's story or version said, it was to the effect that those
10 installations, the job took about 20 days and in that case Mr Ningana also said, if I recall correctly the arrangement he had with the particular official of BOSASA or Sondolo was that the installations should not go beyond either R40 000 or R50 000, but the invoices that were put up also I think reached R200 000 and so on.

So I am just mentioning that, you might not be aware of it, but I am just seeing that in your case it seems that the invoices are also a lot more as well as the number of days seem to be a lot more than what may, on your
20 version may have actually happened.

MR NAIR: You are absolutely correct, Chair, absolutely correct. I was gone to Durban for two days, when I came back this job was practically done.

CHAIRPERSON: Ja, okay alright.

MR NAIR: So these 14 days and seven men is nonsense,

with respect Chair, with respect.

CHAIRPERSON: Ms Molefe?

ADV MOLEFE: Alright, thank you Chair. You have told the Chair that you did not return the equipment, is that correct?

MR NAIR: Yes, ja I left the question as it was in the condition that it was on the understanding that Mr Bejoo would come back and rectify and remedy the defects, which he did not do.

10 **ADV MOLEFE:** And to quote you, you said that you left the equipment in a non functional state.

MR NAIR: That is correct.

ADV MOLEFE: Did Mr Bejoo or anyone ever seek any kind of payment from you?

MR NAIR: Not at all, not at all. Well, I did not know anyone else, but Mr Bejoo, in the time that I know him in the discussions before the installation, during the installation and after the installation and I have already told you how many times it was Chair, to the exclusion of
20 anyone else he showed a lot of, and he was a respectful guy, he would not dare, he would not dare, Chair.

ADV MOLEFE: Alright, and had you ever considered making some sort of reduced payment to Mr Bejoo?

MR NAIR: No. Why would I, Ms Molefe? In all fairness, if you understand the *exceptio non adimpleti contractus*

where a party has, it is agreed that a party would deliver and perform their part, I do not have to perform my part unless he has fulfilled his obligation, that is [indistinct]

Where there is a small, minor issue with the performance obviously the other party would be expected to pay. This installation was a botched third grade installation which did not benefit me in any way and what is more, further compromised my personal safety, because from those small screens that Mr Bejoo left on the device
10 in the undercover garage it could, I mean it indicated areas in the house that were inside the residence and it was accessible through the garage. There are three garages, the main, the two meter garage door and the side door, so he failed to comply with the [indistinct], as I indicated to you earlier in my previous testimony.

ADV MOLEFE: Alright, can I refer you to page 223?

MR NAIR: 223.

CHAIRPERSON: What is the page number, 223?

ADV MOLEFE: 223, Chair. And then in particular Mr Nair,
20 I am referring you to paragraph 16 of your statement. There you speak about having called upon Mr Bejoo to remedy the situation insofar as the cameras and you say it never happened, you then go and say that you eventually from the agreement and you called, you called, and you subsequently caused the contractual deficiencies in the

installation to be remedied by a third party.

Now on your last appearance you said that the cameras were in a non functional state, so can you please clarify what the correct position is?

MR NAIR: Well, thank you Ms Molefe. Indeed I had the alarm, because it also did not work, rectified to a functional state after the installation, I also had the electric fence rectified. Insofar as the camera installation I did not touch it and more especially after Mr le Roux testified on the 31st of January in light of the fact that there would be concerns that we would, or I would be seen to be interfering with the system, I got technicians to give me opinions on its non-functionality and I left it as it was.

As I said, I have installed a parallel system to cover myself, but in respect of the CCTV cameras I did not touch that system at all.

ADV MOLEFE: Alright, now Mr le Roux alleges that you made contact with him in relation to an issue you had with the equipment that was installed at your house and I am going to refer you to his particular affidavit. So if you go to page 61 of EXHIBIT 21, being Mr le Roux's statement, he says that in respect of... Are you there, Mr Nair?

MR NAIR: I am here, I am here. Sorry, madam.

CHAIRPERSON: What paginated page, Ms Molefe?

ADV MOLEFE: Page 61, Chair.

CHAIRPERSON: 61?

ADV MOLEFE: Yes, and I am referring Mr Nair to paragraph 111.

CHAIRPERSON: Okay, continue.

ADV MOLEFE: Thank you, Chair. Now Mr le Roux alleges that on one or two occasions maintenance was done for the fence and the CCTV system and then he says that a proof of his contact with you after the installation in September 2016 in relation to the maintenance of work performed is
10 attached and in that respect he refers to a WhatsApp message between you and him on the 3rd of April 2017.

The particular WhatsApp message as is referred to would appear at page 159 of the bundle and there he summarised the communication between you and him and it says there that he says that it appears he sent you a message after you tried to contact him and he, excessive
bleeding Mr le Roux, stated can I call you later, just busy in a meeting. Mr le Roux then says your response to that was 'okay thank you'. Now do you confirm or deny having
20 had any communicate with Mr le Roux in relation to the maintenance of any of the equipment that was installed at your property?

MR NAIR: Thank you, Ms Molefe. Yes, indeed I deny having discussed the issue of the installation and maintenance with Mr le Roux. This is a singular, a

screenshot of a message on the 3rd of April, seven months after this installation took place on my account in October and eight months on Mr le Roux's account, if it happened in September.

Now there was no, there was no communication or discussion with Mr le Roux and I regarding the installation. He speaks about this WhatsApp, I will only assume because he has proper WhatsApp communications from some other beneficiaries which are in the packs and I have
10 seen them last night. It may well be that, and I cannot comment, it may well be that I called Mr le Roux seven months after the installation, but it would have been only at Mr Bejoo's request and only if Mr Bejoo gave me his number.

Mr Bejoo does not put a context to these, to the message. What you see is actually just a missed call. In all other instances there are WhatsApp discussions and it would be very difficult for me to say for what reason would I have called him except if there was occasion for Mr Bejoo
20 to have, I complained to Mr Bejoo and Mr Bejoo asked me to call his technician, in which case I would have and there was no, obviously as per the message, Mr le Roux said I will get back to you or I will call you back, and he did not.

If Mr le Roux is truthful he would say I called Mr Nair back and I discussed A, B, C, D with him. He

cannot attach a screenshot of a missed call and say those are WhatsApp messages, then Chair, he contextualises it if you look at his June 2020 statement at paragraph 111 on page 23, he explains the reason behind the call from the WhatsApp that is not attached for the maintenance work done on the fence and CCTV.

In his statement in June 2020 he is talking about WhatsApps and a fence and CCTV system, in his August statement he contextualises this single screenshot with
10 reference to moving of the camera to the television, which confirms that he knew that there was a problem with the camera and the television, but he did not hear it from me and I would not have brought it to his attention seven months later.

ADV MOLEFE: Alright, do you recall your evidence to the Chair that you had tried to contact Mr Bejoo over a couple of months?

MR NAIR: I do.

ADV MOLEFE: So is it plausible that that could have
20 been over a period of eight months?

MR NAIR: I would say yes, about six, seven months in respect of the CCTV problem and the installation of the camera equipment and the lack of visuals.

ADV MOLEFE: Alright, now when you identified your need for additional security at your residence, have you

ever brought that to the attention of the Department of Justice?

MR NAIR: I did. I did, Ms Molefe. I raised this issue with Mr Thobane who was the person responsible at National Office for the Security of Magistrates around June 2016 and I raised this issue of my residential security being a concern to me with the then Regional Head of the department.

She informed me that unfortunately for acting
10 Judges there was no policy in respect of an upgrade of the residential security, there was such in respect of others and if I, because there was no policy, if I needed to proceed with it I would have to submit a motivation which would go to her and from her then to National, from National to Treasury and whatever, so she could not assist me.

ADV MOLEFE: So this interaction with Mr Thobane, was it before you engaged Mr Bejoo?

MR NAIR: Yes.

20 **ADV MOLEFE**: And was your interaction with Mr Thobane in writing?

MR NAIR: No, no, I spoke to him verbally and I spoke to Ms Dlamini the Regional Head, verbally as well.

ADV MOLEFE: And did you ever pursue the avenue that was proposed by Thobane insofar as motivating for your

need for additional security?

MR NAIR: No, it was not proposed by Thobane, it was proposed by the Regional Head. Thobane indicated that he could not assist me. The Regional Head indicated that because there is no such policy for acting Judges or Magistrates doing serious crime, I would have to motivate, but I elected to do it privately. It would have been quicker.

The red tape and bureaucracy behind motivations for a judicial or for Magistrates in circumstances where there are no policy, would have taken a year.

ADV MOLEFE: Alright, then you said ...[intervenes]

CHAIRPERSON: I said that you had time, Ms Molefe, and you did not keep an eye on your time. You have exceeded. Do you want to ...[intervenes]

ADV MOLEFE: Yes, I want to ...[intervenes]

CHAIRPERSON: Do you want to wrap up?

ADV MOLEFE: Yes please, thank you Chair.

CHAIRPERSON: Ja, okay.

ADV MOLEFE: Mr Nair, you earlier testified that sat on a committee in which you would give your opinion on certain matters relating to a decision that had to be taken and I understood this to have been part and parcel of your duty.

MR NAIR: I did not testify that I sat on a committee wherein I had to give an opinion. I testified that I was involved in the Steer Co where matters were discussed and

consensus, decision-making had to be taken. My role insofar as service providers was merely to provide an opinion to the Court Manager if he asked and my views and for suggestions impacted on court operations. I did not sit in a committee that, wherein I had to express an opinion.

When you are chairing meetings involving stakeholders at a court you take consensus based decisions. You will listen to everybody's input and only once there is consensus do you take a decision. Indeed
10 from time to time the Court Manager would approach me and indicate that there is a problem with water in the building and would ask my opinion, indeed particularly because of the fire the Court Managers or the Court Manager would engage me often in relation or with regard to the operations.

ADV MOLEFE: Okay, but in essence you could give an opinion.

MR NAIR: Well, I could give an opinion to the Court Manager and I could provide my opinion in a large
20 gathering as any Chairperson would also provide an opinion, but it would merely be an opinion.

ADV MOLEFE: And could your opinion sway the Court Manager in a particular direction?

MR NAIR: No, the Court Manager was not bound by my opinion.

CHAIRPERSON: Yes.

MR NAIR: He would come to me and ask my view on something and I would tell him that this is my view, for example if there was a question of access control and turnstiles or if there was a question of a number of portable air conditioners that had to be allocated among all stakeholders, if he spoke to me privately and said to me Mr Nair, we have got 40 and we need to share it out and we have taken a decision at a lower level where your
10 Senior Magistrate chaired and this was the outcome and what is your view, I would give him my opinion. He is not bound by my opinion.

CHAIRPERSON: Ja.

MR NAIR: No Court Manager is bound by any opinion.

CHAIRPERSON: Ja, Ms Molefe?

ADV MOLEFE: So have you made any disclosures about the equipment that was installed at your house?

MR NAIR: To whom, madam?

ADV MOLEFE: To anybody in the Department of Justice.

20 **MR NAIR:** No, no, no, no. This was a private contractual agreement.

ADV MOLEFE: And what is the current status of your employment?

MR NAIR: I am currently on suspension following Mr le Roux's testimony on the 31st.

ADV MOLEFE: From which time have you been on suspension?

CHAIRPERSON: Ms Molefe, I will stop you there.

ADV MOLEFE: Okay.

MR NAIR: It is not for the Commission whether he is on suspension or not and how long, but I think you have covered substantially the important issues, have you not?

ADV MOLEFE: I have. My last question really Chair, was going to be to ask Mr Nair if there are any other factors
10 that he wishes to bring to your attention in consideration of the allegations made against him.

CHAIRPERSON: No, Mr Dorfling is there, I will ask him if he wants to re-examine.

ADV MOLEFE: Yes.

CHAIRPERSON: Mr Dorfling, is there any re-examination you would like to do?

NO RE-EXAMINATION BY ADV DORFLING: I have got no re-examination, thank you Chair.

CHAIRPERSON: Okay, thank you. Mr Nair?

20 **MR NAIR:** Thank you, Chair.

CHAIRPERSON: Yes, is there something else that you wanted to say that you have not been able to say?

MR NAIR: Thanks, thanks Chair, I would just like to add that in the interest of you getting the full picture I have discovered [indistinct] towards Agrizzi's statement

annexures that relate to Mr le Roux dated 2017 and 2018 which are two affidavits wherein he sets out the special project beneficiaries, et cetera, and he makes no mention of me in both of them.

CHAIRPERSON: Yes.

MR NAIR: And those were made available to your investigators before I have mentioned it.

CHAIRPERSON: Yes. Yes, no, no that is fine. Maybe just to make sure that when your matter is looked into, that
10 aspect is not lost sight of, maybe you could just do a short affidavit where you draw my attention to that, you put annexures, those affidavits or whatever documents and you make the point that you have just made and then send it to the Commission with, through your lawyers and Ms Molefe would become aware of it and then we make sure that it is in the file relating to your matter.

MR NAIR: Yes, thank you Chair.

CHAIRPERSON: Okay, alright.

ADV DORFLING: Mr Chair, if I may?

20 **CHAIRPERSON:** Yes.

ADV DORFLING: Mr Chair, if I may, I think on that score Mr Nair has already discussed that in an affidavit and perhaps we should just again focus the Commission's attention on that affidavit and deal with it.

CHAIRPERSON: Yes, yes.

ADV DORFLING: Thank you.

CHAIRPERSON: Yes, I think ...[intervenes]

ADV DORFLING: I think it will, we just need to focus on that again.

CHAIRPERSON: Okay no, if it is already there that is fine, that is fine. No, thank you very much, Mr Dorfling.

ADV MOLEFE: Thank you.

CHAIRPERSON: Thank you very much, Mr Nair and thank you Ms Molefe. I know Ms Molefe, you will remain because
10 we are now going to deal with the evidence, the re-examination of Mr Makwetla, but Mr Makwetla and Mr Nair are now excused. Thank you very much.

ADV DORFLING: Thank you, Mr Chair.

MR NAIR: Thank you, thank you Chair.

CHAIRPERSON: Thank you, thank you.

MR NAIR: Thank you.

CHAIRPERSON: I am going to adjourn for about
20 10 minutes or so to enable Mr Makwetla and his counsel to come in and then I will return and then we continue. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good morning, good morning.

ADV MOSIKILI: Morning.

MR MAKWETLA: Morning Chair. Morning everyone.

CHAIRPERSON: Yes. Thank you. Thank you. Our earlier session took longer than we – I thought they would take but we – we are ready so let us have Mr Makwetla – good morning Mr Makwetla.

MR MAKWETLA: Good morning Chairperson – good morning.

CHAIRPERSON: Good morning thank you for availing yourself. I will ask the Registrar to now administer the oath or affirmation. Registrar will you do that please?

10 **REGISTRAR:** Will you be taking the oath or the affirmation?

MR MAKWETLA: The oath Ma'am.

REGISTRAR: Please place your full names for the record.

ADV MOSIKILI: My full names are Thabang Samson Phathakge Makwetla.

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

MR MAKWETLA: No.

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

MR MAKWETLA: Yes.

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

MR MAKWETLA: So help me God.

CHAIRPERSON: Thank you – thank you very much Mr Makwetla. I see that you share at least one name with the National Chairperson of your party. Okay. No I just noted because obviously he has also appeared before me to give evidence and he has given his full names.

MR MAKWETLA: Indeed Chairperson, indeed.

CHAIRPERSON: Ja you see when people have to testify that is when you get to know all their names. Okay all right.
10 I will let your counsel then ask you questions in re-examination. Just for the benefit of the public I mention that Mr Makwetla did previously give evidence before the commission and was questioned by the evidence leader of the commission but what was left was his re-examination by his counsel. He was due to be re-examined on Thursday evening last week but we could not get to him because of the early curfew that had to be respected and that is why he is back today just for that re-examination which his counsel said might take if I recall correctly about twenty or so
20 minutes or is it thirty minutes?

MR MAKWETLA: Thirty minutes Chair.

CHAIRPERSON: Thirty minutes okay all right. Okay thank you. You might just want to – to place yourself on record first again before you proceed.

ADV MOSIKILI: Thank you. My name is Tebogo Mosikili on

behalf of Mr Thabang Makwetla.

CHAIRPERSON: Yes.

ADV MOSIKILI: Chair we plan on at least re-visiting three topics. The first topic we want to deal with the work that was done at Mr Makwetla's house. Secondly we want to deal with the Parliamentary Report and lastly Mr Makwetla would like to discuss at least with the commission the relationship he shared briefly with Mr – the late Mr Gavin Watson.

10 **CHAIRPERSON:** Yes.

ADV MOSIKILI: Yes.

CHAIRPERSON: Yes that is fine but as you put questions to him just do remember that in terms of the Regulations of the Commission the purpose of re-examination is to clarify issues that might not have – that might need clarification. So I mention that just to say there should not be a re-visiting of any issue unless there is something to be clarified.

ADV MOSIKILI: Yes Chair I – I thank you Chair for that.

20 Chair – so the last two topics should take less than five minutes.

CHAIRPERSON: Okay.

ADV MOSIKILI: Each. (Indistinct) I am focussing on Chairperson is the work done at Mr Makwetla.

CHAIRPERSON: Yes.

ADV MOSIKILI: And – and Chair we will be dealing with the evidence of Mr Le Roux directly. What Mr Makwetla's complained of is that as much as when he was given chance to at least to lead his evidence he was no afforded an opportunity to deal with at least to comment on – on Mr Le Roux's allegations both in his statements and in his testimony. So we just want to deal with that Chairperson.

CHAIRPERSON: No that is fine. That is fine.

ADV MOSIKILI: And – said that. And more so that
10 remember Chairperson at the end of the day Mr Le Roux is the only person who at least implicates Mr Makwetla to the state capture Chair.

CHAIRPERSON: No that is fine. That is fine ja.

ADV MOSIKILI: Yes Chair let us get onto it Chairperson. We will start dealing with the statement by Mr Le Roux which is T3 which – the statement also concludes the invitation to Mr Makwetla to come to the commission and the reference is RLR and we dealing with 00 – at page 009 to 010 wherein he deals with Mr Makwetla in three
20 paragraphs Chairperson.

At paragraph 47 to 50 that is where Mr Le Roux refers to Mr Makwetla.

CHAIRPERSON: Just one second.

ADV MOSIKILI: Yes Chair.

CHAIRPERSON: The bundle we are using is BOSASA

Bundle 3, is that correct?

ADV MOSIKILI: Yes Chair we ...

CHAIRPERSON: That is the bundle in front of me. It is paginated – what is the paginated number that should say BOSASA-03- something – at the black numbers on the top left corner of each page.

ADV MOSIKILI: Yes Chair we – we have that but right now Chair we dealing with – there is three bundles that were given to us. It is – so what is (talking over one another).

10 **CHAIRPERSON:** Yes the one – the one where you are – the one you are starting with that is the one I am looking for.

ADV MOSIKILI: The one I am starting with it is T3. What the Chairperson is looking at is Exhibit T31. We are looking at T3.

CHAIRPERSON: Ms Molefe are you able to assist me. I do not –

ADV MOLEFE: Thank you Chair. It is at page 33 of the bundle.

CHAIRPERSON: Of the – of Bundle 3.

20 **ADV MOLEFE:** Yes and particular my learned colleague is referring you to paragraph 47 all the way to 49.

CHAIRPERSON: Okay. Page 33 is part of Mr Frolick's statement, is that what he is talking about?

ADV MOLEFE: No. The bundle number BOSASA 05 the place –

CHAIRPERSON: Ja no that is a different one. I have got Bundle 03 – BOSASA Bundle 03 that is the bundle that was placed before me. So it should be Bundle – BOSASA Bundle – Bundle BOSASA 5.

ADV MOLEFE: Yes Chair.

CHAIRPERSON: Okay I have got it and what is the page number – is it 33?

ADV MOLEFE: Yes Chair page 33 at paragraph 47 to 49.

CHAIRPERSON: Okay I have got it.

10 **ADV MOLEFE:** Yes.

ADV MOSIKILI: Sorry Chair we were given three document volumes so we have got T3, T31 and T21. And...

CHAIRPERSON: Look at the – at the spine they should have something written BOSASA Bundle 05, BOSASA Bundle 03 so when you make a reference it is better to start by telling me which bundle and then you can tell me the exhibit number. But actually most of the time I do not want the exhibit number because it gets confusing. If you tell me the bundle and then you tell me the page at the top left
20 hand corner, the black numbers that takes me to the page.

ADV MOSIKILI: Noted Chair.

CHAIRPERSON: Yes okay. So I am at page 33 of Bundle – BOSASA Bundle 5.

ADV MOSIKILI: Yes Chair we – we dealing with the three paragraphs there.

CHAIRPERSON: And then – and that is the Mr Le Roux’s affidavit that starts at page 25. Okay. You can continue.

ADV MOSIKILI: Mr Makwetla are you okay with that?

MR MAKWETLA: I thought I was okay and let me just confirm the document you are referring to is Mr Richard Le Roux’s affidavit is it not?

ADV MOSIKILI: Yes. This is the first one that was referred to. I think your copy is like mine – it should say RLR009.

MR MAKWETLA: Yes.

10 **ADV MOSIKILI:** The page number. Yes.

MR MAKWETLA: Yes and on page 9 paragraph 47 to 49 you were saying.

ADV MOSIKILI: That is the one we are referring to yes.

MR MAKWETLA: Yes I am with you.

ADV MOSIKILI: Thank you. Now Chairperson without wasting the time of reading what is said there but basically what Mr Le Roux is talking about is the work that he attended to do at Mr Makwetla’s house and at paragraph 48 he said:

20 “I attended to the following work.
Maintenance was done on the electric fence
and alarm systems after the installation.”

And then on the next page he says:

“Full electric fence, alarm system new, IP
CCTV camera system, Cata6 server offsite

monitoring capabilities.”

And then on paragraph 49 he says:

“All of that is the total value of
approximately R350 000.00.”

Now Mr Makwetla before – before I ask for your comment on that can you just maybe refresh the Chair and the commission as to what kind of work did you need to be done at your – at your house?

MR MAKWETLA: The work that I asked for to be done at
10 my house were two things. First it was the installation of the electric fence and secondly it was the repairs to the alarm system which got damaged when renovations were done to the house.

ADV MOSIKILI: Thank you. Now my second question is, have you ever discussed with Mr Le Roux at any point at least before this – before he visited your house as to what needed to be done at your property?

MR MAKWETLA: No I have not had any discussions with Mr Le Roux regarding this job. The person that I spoke to
20 is Mr Gavin Watson. Mr Le Roux my understanding was that he was not just a technician who executed the job but he was the leader of the team of three people that he was – that was in charge of the job.

So I only met him on I think two occasions and very briefly as they were working on site. Chair I do not know if

...

CHAIRPERSON: Yes. Ja. Counsel for Mr Makwetla unmute yourself or something like that. You seem to have disappeared. I think he cannot hear us. Let us wait and see whether he comes on-board. There is something that says connecting. Registrar.

ADV MOSIKILI: Maybe Chair – oh.

CHAIRPERSON: Oh there he comes back. Okay – oh then he disappears. Okay are you back?

10 **ADV MOSIKILI:** Apologies for that Chair. As it were (indistinct) let me down I just collapsed and disappeared Chair. I apologise.

CHAIRPERSON: Okay. Okay. But you did hear Mr Makwetla's response?

ADV MOSIKILI: Indeed so Chairperson.

CHAIRPERSON: Okay.

20 **ADV MOSIKILI:** Yes to what he had actually needed to say and I think he did refer that he wanted an electric fence and a repair to his alarm system which was damaged due to some renovations that were happening at his – at his property Chair.

CHAIRPERSON: Yes I think he said he met Mr Le Roux once or twice while they were doing work in his house but the person that he used to deal with was Mr Watson in regard to the matter. Okay you can continue. It looks like

there are technical challenges. Can everyone hear me?

ADV MOLEFE: Yes Chair.

MR MAKWETLA: Yes Chair.

CHAIRPERSON: Oh okay. Let us continue. Oh counsel for Mr Makwetla I am told that you need to unmute yourself.

ADV MOSIKILI: Can I be heard Chair?

CHAIRPERSON: Now we can hear you ja.

ADV MOSIKILI: Thank you so much apologies for that Chair.

10 **CHAIRPERSON**: Okay all right. Let us continue.

ADV MOSIKILI: Yes. Chair I will like to refer you to a testimony of Mr Le Roux as to what he said when he appeared before you in regard to Mr Makwetla.

CHAIRPERSON: Yes.

ADV MOSIKILI: I refer you to day 44 Chairperson of the commission and it is on the 31st of January 2019.

CHAIRPERSON: Is that transcript in this bundle or not?

ADV MOSIKILI: Chairperson we have been given this as part of the – it was attached to the statement by Mr Le
20 Roux.

ADV MOLEFE: : Chair the –

CHAIRPERSON: Yes Ms Molefe.

ADV MOLEFE: The transcript is not in – in the bundle. I think my learned friend is referring to it because it was attached to a Rule 3.3 Notice.

CHAIRPERSON: Oh. Okay that is fine then. He can go ahead.

ADV MOLEFE: Thank you.

ADV MOSIKILI: Chair because we are going to refer to it at length we will need you to at least follow us. I am not too sure if Chair can follow us.

CHAIRPERSON: Well I will – I can follow. I will listen. I will see if it becomes necessary that I get a copy but I think you can proceed.

10 **ADV MOSIKILI:** Thank you Chair. Mr Makwetla can you turn to page 115 of the said transcript.

MR MAKWETLA: Yes I am there.

ADV MOSIKILI: For ease of reference yes the one that is attached to the Rule – the notice in terms of Rule 3.3. Yes. You will see there right on top where Mr Le Roux answers – well – at least Ms Molefe first deals with paragraph 47, 49 which we have just read and most importantly Mr Le Roux says the property belongs to Mr Makwetla and then Mr – Ms Molefe asked if he knows the position that he would hold.

20 And Mr Le Roux responds to say that he does not or he did not know at that point what position you held. And then importantly he is asked by Counsel Molefe, can you recall when this project was undertaken? Can you follow Mr Makwetla?

MR MAKWETLA: Yes I can follow. I can follow.

ADV MOSIKILI: Thank you. And then you will see that Mr responds to say to the Chair that I cannot recall the dates or the months that on the question that he is being asked and also he is being asked to whose instructions was this project undertaken? And he answers there that it was done on the instructions of Mr Gavin Watson directly.

Now the question that I want to ask you is that did you know Mr Le Roux directly before coming to your house?

MR MAKWETLA: No I did not know Chairperson Mr Le
10 Roux before he came to my house at all and maybe whilst still at that point I want to just flag this to the commission and to the Chairperson of the commission that in his own admission Mr Le Roux did actually not know where I was working, what position I was holding where I was working. Not only at the time when he executed the job but even at the time when he appeared before the commission he still was not sure of this person called Mr Makwetla that he had come to the commission to testify against that he is involved in state capture. He is involved possibly in
20 corruption. He is involved possibly in fraudulent activities. He did not – the Chair even asked him following up on the question that was asked by Advocate Molefe to confirm in...

ADV MOSIKILI: (Inaudable) We will get there.

MR MAKWETLA: Sorry.

ADV MOSIKILI: We will get there yes – we will get there.

Perhaps what you should do then – sorry to interject. On page 117 of the same transcript.

MR MAKWETLA: Yes.

ADV MOSIKILI: Yes this is what you are referring to when the Chairperson asked very specific question. The Chairperson says:

“Do not – I mean what was wrong? What needed to be done that is what I want to know?”

10 At the bottom of the page. Do you see that?

MR MAKWETLA: Ja.

ADV MOSIKILI: At page 117.

MR MAKWETLA: No Mr Mosikili I – and Chairperson my apology I am actually looking at a different transcript because the – the pages that you are...

CHAIRPERSON: Yes.

MR MAKWETLA: Referring to do not tally with the one I have before me.

20 **ADV MOSIKILI:** Okay what does your page say at the bottom?

MR MAKWETLA: My page at the bottom is page 95 of 144 and this is a transcript of Day 44 of the Commission.

ADV MOSIKILI: Yes it is the same transcript we looking at.

MR MAKWETLA: Yes.

ADV MOSIKILI: With the different numbering. Let me see

if I can find for ease of reference for you. It is fine Mr Makwetla I will – Chairperson we seem to have two transcripts with different numbering. I am trying to figure out how to assist Mr Makwetla to follow me. Can Chair bear with me.

CHAIRPERSON: No that is fine. Or maybe do you want me to adjourn for ten minutes and you can try and sort it out and then I will come back.

ADV MOSIKILI: Yes Chairperson.

10 **CHAIRPERSON:** And then if need to be in touch with Ms Molefe you can be in touch if she can assist but that – then ten minutes could also be used Ms Molefe if it is possible to see whether that transcript can be obtained and be emailed to my Registrar here.

ADV MOLEFE: Indeed Chairperson.

CHAIRPERSON: But if there is a delay we are not going to be delayed by its absence. I should be able to follow. But let us take a ten minutes adjournment.

ADV MOSIKILI: We are indebted Chairperson.

20 **CHAIRPERSON:** Ja adjourn for ten minutes. .

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay. Can everybody hear me?

ADV MOLEFE: Yes, Chair.

ADV MOSIKILI: Yes, Chair.

CHAIRPERSON: Okay, alright. Let us continue.

ADV MOSIKILI: Thank you, Chair. We have resolved the numbering differences in the transcript, Chair.

CHAIRPERSON: Yes.

ADV MOSIKILI: Just to revisit the question that you were answering Mr Makwetla I asked you with reference to the transcript was that: Have you met Mr Le Roux prior to him coming to your house or did you know him in any form or manner?

10 **MR MAKWETLA:** Yes, I have explained is that Mr Le Roux is a person I got to know when he was going through the job he was assigned to do at my place. And as I have said. I think I have met him twice or so as in that installation and once after the installation and the equipment was not functioning well. I have not met him ever since. I have not met him before.

And as I was saying. It is there in the transcript of his evidence that in his admission, to his best recollection, he did not know me at the time he executed the job, nor
20 did he know me when he was appearing before the Commission. He had a suspicion that I am a Deputy Minister at the Department of Correctional Services when he was appearing before the Commission.

And when the Chair tried to get certainty of what he actually recollected, what his recollection was, he

emphasised to say he did not want to commit himself to something he could not vouch for. He did not know where I worked, what position I had. Now, I may just at this point, with your indulgence.

That this thing has always really pained me. That I am here before the Commission because of Mr Le Roux. And this Commission is a Commission that deals with state capture. It is a Commission that deals with corruption. Is a Commission that deals with fraud in ...[indistinct] The
10 person who says I am guilty of those things does not even know where I worked at, even as he was appearing before the Commission.

What I am trying to make the Commission appreciate that this is, you know, the most, you know, funny of cases I have ever come across. Of such serious allegations against a person you do not even know where he works.

CHAIRPERSON: Well, I do not know Mr Makwetla whether it is accurate to say that Mr Le Roux says you are
20 guilty of certain things. I doubt that he goes that far. You will be aware that he has given evidence with regard to the installation of security equipment at various peoples homes.

My recollection is that his attitude in evidence is usually that: Look, I am a technician. I get instructed to –

I used to get instructed to go and install at somebody. Install security system at somebody's house. I would not know that person. Sometimes he would say: I was told that we must not ask too many question.

For example. I think in regard to the work that he and his team or the people that they got in touch with, if I am not mistaken with Ms Mokonyane's home. I think he said that when they went there, at least, maybe, for the first time, he did not know whose house it was. And they
10 had been instructed not to ask too many questions, I think, about the owner and so on.

So, I am just saying to be fair to him. I do not know whether you were attributing statements to him statements that he says you are guilty of something because you have seen his evidence where he says that, or whether you assumed that he was saying that because my suspicion is, that all he was saying is, he got instructions to go and install the equipment in your house. That is what he did.

20 **MR MAKWETLA**: Chair, I think you are correct.

CHAIRPERSON: H'm.

MR MAKWETLA: You are correct.

CHAIRPERSON: H'm.

MR MAKWETLA: And it is what I am not understanding because no one has come before the Commission making

allegations of my involvement in state capture, corruption, or fraud. No one. The only reason I am before the Commission is because a technician who was head of the team that installed security features I asked or, came here to say I am among the people who the allegations made is that they are involved in state capture.

I do understand your point that it is not in his evidence, but it is not in his evidence that I am involved in state capture. But there is no other person who says I am
10 involved in state capture.

CHAIRPERSON: Yes, well, this is the context, Mr Makwetla, and you should remember it. You will recall that Mr Agrizzi gave wide-ranging evidence and some officials connected with BOSASA including Mr Richard le Roux and others. But Mr Agrizzi gave wide-ranging evidence which included allegations of corruption between – in dealing that BOSASA had with the Department of Correctional Services, or let me say, with the state or some government departments, but particularly with the Department of
20 Correctional Services.

He went to town about contracts, how they were obtained. Including, in some case where he said somebody within the Department of Correctional Services, I forget his name now, an official, was in contact with somebody at BOSASA or maybe it was Mr Agrizzi himself,

where the arrangement was that BOSASA should formulate the specification that should go to the tender documents for some work that was going to be advertised and tenders were going to be invited.

And obviously, BOSASA would formulate the specification in such a way that it suited them and if possible try and eliminate competition. So, what would happen in due course is, therefore, is that, after BOSASA had done that, the department and this official would make
10 sure that when the tender documents go out to invite bids, they would go out with this specification that has been formulated by an entity that it also going to put in a bid. That is, obviously, irregular, and unacceptable. So.

And you will also recall, and that is something that I have said publicly during hearings of the Commission, but I was concerned also about the fact that BOSASA continued over many years to get contracts from the state despite the fact that there were lots of allegations of corruption that were associated with BOSASA and the
20 Department of Correctional Services, but they continued to get contracts and contracts got extended.

So, obviously, with the evidence that had been placed before the Commission, it was important that the Commission, whether there was somebody who says Mr Makwetla is involved in corruption or not. It was important

for the Commission to say: Which officials or positions within government got benefits from BOSASA? Under what circumstances did they get them? That is where somebody like you comes in.

So, in other words. There might not be an individual who says: Mr Makwetla was involved in corruption or Mr Makwetla was involved in state capture, but because of the evidence that has been placed before the Commission relating to BOSASA and the state and in particular Department of Correctional Services, it became
10 necessary to say: Let us try and establish all the public figures who may have had benefits from BOSASA and enquire as to what were the circumstances under which they got those benefits. Did they play for those benefits? And so on.

And with you having been at the time Deputy Minister of Correctional Services, it became even more important to say this is a deputy minister in this department where there have been a lot of allegations of
20 corruption involving BOSASA and this department. But you can also think of Mr Mantashe.

He got – he was not even in government at the time, but he has been asked to come and testify because Mr Agrizzi and some officials of BOSASA testified that he got some benefits where he installed security equipment at

his homes.

So, the Commission had to enquire what were the circumstances and when all the evidence is been given including your evidence, then the Commission can make findings. Was this an innocuous arrangements? Was there something untoward? But that is the circumstances.

So, you get brought because the Commission wants to know. Who got benefits from BOSASA? Under what circumstances? Is there something untoward or not?

10 You understand that?

MR MAKWETLA: I understand, Chairperson. Chairperson is correct. So correct. The events or the problems that Chair is referring to are indeed a subject of the SIU report which was compiled ...[intervenes]

CHAIRPERSON: H'm.

MR MAKWETLA: ...against the Department of Correctional Services.

CHAIRPERSON: H'm, h'm.

MR MAKWETLA: That report was compiled in 2009.
20 Those – the issues that the Chair is referring to happened years before I went to that department. I only was appointed to the Ministry of Justice and Correctional Services in 2014.

CHAIRPERSON: H'm.

MR MAKWETLA: The matters that the Chair is referring

to, as the Chair would know, are actually before the court in another case, where the people who were involved in those things are actually ...[indistinct]

CHAIRPERSON: H'm.

MR MAKWETLA: So, my point is. My – actually, this what we are talking about, Chair, is a relevant factor because I approached the Minister of Justice and Correctional Services to say the ministry must take responsibility for the legal fees that I have to pay for appearing at this
10 Commission because the understanding is that the only reason why I am appearing here, it is because I was a Deputy Minister there, but there is nothing else.

CHAIRPERSON: H'm?

MR MAKWETLA: And the Minister decided to be cautious about it. Decided not to come to my appeal(?). It is fine, but as you can see – as you can see for yourself, Chair, I am actually caught up in something that has got nothing to do with me. Absolutely nothing to do with me. And ...[intervenes]

20 **CHAIRPERSON:** Well, Mr Makwetla, do not go that far. Do not go that far. I am not sure that it has got nothing to do with you because the mere fact – the point you are making, and you will remember that this was something that was raised when you gave evidence previously. The fact that it may have been 2014 when you became Deputy

Minister and I think this appointment happened in 2016. If am not mistaken. Is that right?

MR MAKWETLA: 2015.

CHAIRPERSON: 2015.

MR MAKWETLA: Yes.

CHAIRPERSON: The fact that BOSASA's relationship with the Department of Correctional Services had been going on for a long time. With all the allegations of corruption being in the public domain, but still in 2016 it was still having
10 contracts with Correctional Services and with the state, actually, makes this – calls for more probing to say: But you being Deputy Minister of this department, how could you ask this same company about which there is so much talk of corruption with your department? How could you ask that company to have anything to do in your house?

So, that question, as you will recall, it was raised and you did deal with it. But I am saying, it is a question that I think is legitimate, but the evidence must be weighed when all the evidence is in because my understanding is
20 that the state only terminated agreements with BOSASA after these things had been exposed in the Commission, you know.

Because then there was the question: How can the state continue? What is going on? Why is there- why was BOSASA not blacklisted all along? Why did it continue

to have, you know, these contracts? Is that because it has connections with politicians? Is that because it has connection with high-ranking officials?

So, those are the kinds of questions that the public would be asking and those are the kind of questions that the Commission would be bound to ask. And if it did not look into them, it would be unfair. And it is in your own interest and in the interest of other government officials that the Commission is able to make findings.

10 And if there was nothing wrong, clear the air once and for all, you know. And it cannot do that without listening to evidence from everybody concerned.

ADV MOSIKILI: Chair ...[intervenes]

CHAIRPERSON: Do you understand?

ADV MOSIKILI: I ...[intervenes]

CHAIRPERSON: Yes, okay, alright. I just thought I must explain this because Mr Makwetla was taking a position that seems to be saying: I do not know what the Commission wants from me because I am really not
20 involved here. So, I thought I must clarify this.

ADV MOSIKILI: Okay ...[intervenes]

MR MAKWETLA: [Indistinct]

[Parties intervening each other – unclear]

MR MAKWETLA: I have got it. I accept the explanation the Chair has provided.

CHAIRPERSON: Yes.

MR MAKWETLA: And indeed, those matters were canvassed ...[intervenes]

CHAIRPERSON: Yes.

MR MAKWETLA: ...during my first appearance before the Commission.

CHAIRPERSON: Yes.

MR MAKWETLA: And I do not think we should go back there.

10 **CHAIRPERSON:** Go back, ja.

MR MAKWETLA: I think the context is appreciated.

CHAIRPERSON: Yes, okay. No, that is fine.

MR MAKWETLA: And to that, I want to just draw the attention of the Commission to the statement, Chair, that I made immediately when these allegations appeared against me in the media.

CHAIRPERSON: H'm.

MR MAKWETLA: I said the following, Chair. And I have got the statement in front of me.

20 **CHAIRPERSON:** Ja.

MR MAKWETLA: That I do not know why the job at my place has been a subject of a confidential discussion by any person in BOSASA, their employees or managers.

CHAIRPERSON: H'm.

MR MAKWETLA: Any suggestion that this job was treated

differently concerns me.

CHAIRPERSON: H'm.

MR MAKWETLA: Any member of BOSASA who seeks to use my name to lend credence – to their came in the internal feud at this company will in the end be exposed for their unethical practises and ...[indistinct] I was so concerned that it appears here that there is a – there is something very sinister.

CHAIRPERSON: H'm.

10 **MR MAKWETLA:** Because I just could not make the connection with what was being said about this having been a confidential issue. And it is clear now from the affidavit by Mr Le Roux that when they were coming to my house they even had to removing by bounce, if I – excuse that expression. That is a military... That they had to be covering up their approach to my house. Stop at the garage, change clothes. I mean, that is – those are crazy things that I never even thought that this kind of corporate company could be involved in.

20 **CHAIRPERSON:** H'm.

MR MAKWETLA: But I went further to say. I wish to assure everyone that I am not guilty of any wrongdoing in the entire period that I had been Deputy Minister at Correctional Services.

CHAIRPERSON: H'm.

MR MAKWETLA: I have not sought to communicate or influence, not once, any of the department's officials who served on the structure of the Department of Correctional Services Supply Chain environment. To ensure that the interest of the broader public are protected at all times, I undertake to approach the Office of the Public Protector to investigate all tenders issued to BOSASA at any – or any other big enterprise during my term as the Minister.

And to interview all the officials who were involved
10 in adjudicating these tenders, as to whether they ever had any individual discussion of their work with me at any time during these processes. I make this as a public statement and it was my intention to approach the Public Protector to actually satisfy the public that these allegations are really spurs allegations.

CHAIRPERSON: H'm. Yes.

ADV MOSIKILI: Before(?) ...[intervenes]

MR MAKWETLA: Okay.

ADV MOSIKILI: Thank you, Chair. Can we just get back
20 because I am worried about the time?

CHAIRPERSON: Yes.

ADV MOSIKILI: Just two issues that I left on this topic. Mr Makwetla, you will see there on page 97 on the transcript ...[intervenes]

MR MAKWETLA: Yes.

ADV MOSIKILI: ...where the Chairperson asked Mr Le Roux when he had to be done at your property.

MR MAKWETLA: Yes.

ADV MOSIKILI: And I want to ask you a direct question. Did you request any of these things that Mr Le Roux ...[intervenes]

MR MAKWETLA: That I ...[intervenes]

ADV MOSIKILI: [Indistinct]

[Parties intervening each other – unclear]

10 **MR MAKWETLA:** No, as I said before. All of these other things, I have never requested them.

ADV MOSIKILI: Yes.

MR MAKWETLA: I requested two things. One, the electric fence which was – which I did not have that even installed. Two, that my alarm system, which was damaged, should be repaired. Those are the services I asked for. The rest of the other things I have not asked for that.

ADV MOSIKILI: Do you have any idea where Mr Le Roux could have taken these things from?

20 **MR MAKWETLA:** No, it is clear in the affidavit of Mr Le Roux. He was given this instruction to do all of this work by Mr Gavin Watson.

ADV MOSIKILI: I suppose the question is then. Have you informed Mr Gavin Watson that you did not want these things that he mentions?

MR MAKWETLA: No. Absolutely no. And for what I had asked him to do at my place, the security fence - the electric fence, rather, and the repair to the alarm system. I asked for a quote for that work.

ADV MOSIKILI: Yes.

MR MAKWETLA: I asked for a quotation for that work.

ADV MOSIKILI: While we are there. Go to page 99 where we deal with the costs of this project. You will see there, Mr Le Roux when asked by Advocate Molefe to say:

10 “Thank you, Chair. And can you recall what
 the approximate cost was for this project?...”

Do you see that?

MR MAKWETLA: Yes.

ADV MOSIKILI: Do you see the response thereto?

MR MAKWETLA: That is right.

ADV MOSIKILI: Yes.

MR MAKWETLA: All I can say, Chairperson, with respect to this figure that Mr Le Roux says the job at my place cost. I want the Commission – I want to enjoin the
20 Commission to – I am not technically skilled to do a proper reading of some of the documentation provided here, but in the attachments with respect to different bills that Mr Ricard le Roux paid for equipment that he was using at the different projects he was doing. I would want to direct the Commission to Exhibit RLR-035, which is a – and it is

contained in Annexure RLR-1.

CHAIRPERSON: Ms Molefe, are you able to direct me to the right page?

ADV MOLEFE: Yes, Chair. The reference to the annexure of Mr Richard le Roux is RLR-6. Mr Makwetla, is that where you are taking us?

CHAIRPERSON: RLR-6?

MR MAKWETLA: Yes, it is RLR-1. That is the annexure. The title of – the annexure and it is T-21, RLR-035. That
10 would be the page.

ADV MOSIKILI: Perhaps let us do this. Chairperson, we are referring to a – it is a supplementary affidavit by Mr Le Roux and to us it has been given as T-21.

ADV MOLEFE: Ja-no, no, let me ...[intervenes]

CHAIRPERSON: What? T-21?

ADV MOLEFE: Mister ...[intervenes]

MR MAKWETLA: Exhibit... Yes, Exhibit T-21 and it is a record of the transactions at a vendor called Regal(?) Distributors Trading in Greenstone where... Yes. And it is
20 a – I think it is a very helpful document because ...[intervenes]

CHAIRPERSON: Ja, let me get Ms Molefe to guide me first on my bundle as to where I will find it.

ADV MOLEFE: Thank you, Chair. As I was saying. The annexure that Mr Le Roux refers to insofar as the invoices.

It is not RLR-1. It is RLR-6. So, I am trying to establish whether Mr Makwetla meant RLR-6 or if he specifically wants to take you, Chair, to RLR-1.

CHAIRPERSON: Mr Makwetla?

MR MAKWETLA: Let me just... According to the file I have, Ms Molefe. It is T-3 affidavit or Richard le Roux and it is T-21, RLR-025. That is where it starts.

ADV MOLEFE: Alright. In that case, Chair ...[intervenes]

MR MAKWETLA: And it is a printout. It is just a long
10 printout of transactions for a period of about three years,
from 2014 to 2017 but ...[intervenes]

ADV MOLEFE: So ...[intervenes]

MR MAKWETLA: Yes?

ADV MOLEFE: I am sorry, Mr Makwetla. Chair, that would be Bundle 5.

CHAIRPERSON: Ja?

ADV MOLEFE: Page 65.

CHAIRPERSON: Page 65?

ADV MOLEFE: Of Bundle 5.

20 **CHAIRPERSON:** Okay. Ja, I have got page 65. Yes,
Mr Makwetla?

MR MAKWETLA: Chair, ...[intervenes]

CHAIRPERSON: Invoice from Regal.

MR MAKWETLA: From Regal, that is right.

CHAIRPERSON: It is a statement, yes.

MR MAKWETLA: Yes. It a long ...[intervenes]

CHAIRPERSON: And it is addressed to ...[intervenes]

MR MAKWETLA: ...printout that starts from 2014, Chair, to 2017.

CHAIRPERSON: Ja, I just want to finish this. It is addressed to Richard le Roux. Yes, continue, Mr Makwetla.

MR MAKWETLA: Chair, I was saying that I was trying to find out, out of these many transactions here which ones
10 would have been of material that was used at my house.

CHAIRPERSON: Yes.

MR MAKWETLA: The only reliable thing that I could use as a guide are the dates of the invoices of the transactions.

CHAIRPERSON: Ja.

MR MAKWETLA: And the one that sounds a bit relevant of these transactions to purchases that could have had something to do with my house are those on the 9th of February 2015.

20 **CHAIRPERSON:** 2015?

MR MAKWETLA: Yes, 2015. The 9th of February 2015.

CHAIRPERSON: Yes.

MR MAKWETLA: There are several transactions. There are about four of them. No, actually, five of them.

CHAIRPERSON: Ja?

MR MAKWETLA: Now these transactions. When I looked at them, they include also the – for instance, a fence.

CHAIRPERSON: Ja.

MR MAKWETLA: And that fence is R 9309,00.

CHAIRPERSON: Yes, I see that.

MR MAKWETLA: That is right, Chair. And the others is an intercom. Yes, an intercom was fitted. R 2667.00.

CHAIRPERSON: H'm?

MR MAKWETLA: And then, what comes after that is not
10 an item but it says project.

CHAIRPERSON: Ja?

MR MAKWETLA: Now, you cannot buy a project, Chair. I thought that this project would mean, you know, everything that was done in a project in terms of the costing, but you do not buy a project from a vendor.

CHAIRPERSON: Ja.

MR MAKWETLA: So, I would not be sure what that refers to.

CHAIRPERSON: Unless, Mr Makwetla, you and I not
20 being in the sector ...[intervenes]

MR MAKWETLA: Yes.

CHAIRPERSON: ...who do not know. Maybe there is something called project something that you can buy and it could mean – I do not know. So, but when you are foreign to a sector, sometimes there are words you do not

understand.

MR MAKWETLA: [Indistinct], Chair.

CHAIRPERSON: Ja.

MR MAKWETLA: [Indistinct]

CHAIRPERSON: Ja, ja.

MR MAKWETLA: Chair, when I looked at all of those figures... You can go on and on. Put them together all those figures. I do not – they do not tally. They do not give you a total that you would be around three hundred
10 thousand or three hundred-and-fifty thousand. Those figures.

CHAIRPERSON: Yes.

MR MAKWETLA: That is the first thing. But the second ...[indistinct] after I got from BOSASA. When Gavin Watson eventually conceded and apologised and gave me the bill.... The Commission has that bill. It is R 85 000,00 and I queried that bill and the reason – the ground on which I queried the bill, it is because the bill included things that I did not ask for.

20 And I told Gavin, I have not asked for these things. What have you put there? You must remove. I am not going to pay for what I have not... And that is why I paid R 25 000,00, as I have explained in my earlier appearance – in my previous appearance, Chair.

CHAIRPERSON: H'm.

MR MAKWETLA: So, what I am saying is that. If the Commission could just look at the things that Richard le Roux is saying is there and see if they make sense, I will be happy. When I made my affidavit, it was with the understanding that this is a condition for me to be granted the privilege of cross-examining Richard le Roux.

CHAIRPERSON: Yes.

MR MAKWETLA: Only, it is not necessary. The information is there. Let the Commission just interrogate,
10 using its own expertise, the information before the Commission.

CHAIRPERSON: Yes.

MR MAKWETLA: Yes.

CHAIRPERSON: Okay, alright.

ADV MOSIKILI: Mr Makwetla, while you are on that. I think you can go to paragraph 60 and that will be on page 13. So, it is T-21, RLR-013 and it is paragraph ...[intervenes]

CHAIRPERSON: Whose affidavit is that? Is that
20 Mr Le Roux's affidavit?

ADV MOSIKILI: Mr Le Roux's affidavit, Chair.

CHAIRPERSON: You say paragraph?

ADV MOSIKILI: Six, zero (60).

CHAIRPERSON: Is that the one starting: I was always instructed...?

ADV MOSIKILI: No, Chair. It starts with: I personally attended to the installation together with other four technicians.

CHAIRPERSON: That affidavit ...[intervenes]

ADV MOLEFE: Yes... It is bundle ...[intervenes]

CHAIRPERSON: Yes, Ms Molefe?

ADV MOLEFE: It is Bundle 5, page 52.

CHAIRPERSON: Okay. We are at the end of oral evidence, but it would have been much better if everybody
10 had the same thing.

ADV MOSIKILI: Indeed.

CHAIRPERSON: Page 52?

ADV MOLEFE: [No audible reply]

CHAIRPERSON: Is that page 52, that you gave me, Ms Molefe?

ADV MOLEFE: Yes, Chair.

CHAIRPERSON: Yes. Ja, okay, I am there. Paragraph 60: I personally attended...

ADV MOSIKILI: Yes. Mr Makwetla, are you there?

20 **MR MAKWETLA:** Okay, you can continue. You can continue.

ADV MOSIKILI: I need you to be there at paragraph 60. This is Mr Le Roux's second statement or at least submitted statement that he gave ...[intervenes]

CHAIRPERSON: I think I know what question you want to

put, Mr Mosikili.

MR MAKWETLA: Ja, I have got it.

CHAIRPERSON: Paragraph 60 says, Mr Makwetla:

“I personally attended to the installation
...[intervenes]

MR MAKWETLA: Yes.

CHAIRPERSON: “...together with another four technicians
...[intervenes]

MR MAKWETLA: Four technicians. Yes, yes. I see.

10 **CHAIRPERSON:** “...which I said a minimum of 21-days to
complete...”

MR MAKWETLA: I am there, Chair, thank you.

CHAIRPERSON: Yes.

MR MAKWETLA: Yes.

CHAIRPERSON: Mr Mosikili, do you want to take it from
there?

ADV MOSIKILI: Perhaps in the interest of time, Chair. I
would also want Mr Makwetla to consider paragraph 61
where he gives a breakdown of the costs that are incurred,
20 and you will see from there on, he mentions an amount of
hundred-and-fifty-one just one for labour and he goes and
mentions another amount of, I think, it is about twenty-one
thousand at six point – 60.2.

No, Chair, it is 61.3, which the costs per five
technicians. And you will also see that he also mentions

another amount which refers to travel costs. That is 61.2. So, I want to give your comment, globally, from 60 to 61, in the interest of time, to say that this type of invoice... First of all. Have you been given this invoice? Have you seen this invoice to you? Seen this invoice before?

MR MAKWETLA: No, I have not been provided – favoured with an itemised invoice from BOSASA and I fought over this when we were – they were demanding eight-five thousand from me. I said you itemise your bill. If you do
10 not itemise your bill, I am not going to give you eight-five thousand because among the things that you have done at my place are things I have not asked for. So, it must be clear that the bill must be itemised because if it is not ...[intervenes]

ADV MOSIKILI: Yes.

MR MAKWETLA: If it is not itemised, I would not see what is it that I was – need to pay for. And that is why I ended up paying twenty-five thousand. The manner in which I arrived at that twenty-five thousand, I have
20 explained it to the Commission before. But in relation to this breakdown that is provided here of the bill. There are things that are very, you know, worrying.

ADV MOSIKILI: Can I ...[intervenes]

MR MAKWETLA: For starters ...[intervenes]

ADV MOSIKILI: I ...[intervenes]

MR MAKWETLA: Yes, for starters. Mr Le Roux says he had five other technicians.

CHAIRPERSON: Four. Four plus him.

MR MAKWETLA: Oh, five... He was the fifth, yes.

CHAIRPERSON: Ja.

MR MAKWETLA: There are two technicians that Mr Le Roux was working on the project with. He was the third person. That is the first thing. The second point is that they never came there, not even with two vehicles.
10 They have always been in one panel van. I see here, he says they came there with three vehicles. They have never been to my place with three vehicles. There has never been more than three people including Mr Le Roux himself onsite when the job was done.

CHAIRPERSON: H'm.

MR MAKWETLA: So, it is some of these things which clearly says the evidence that he has provided here cannot be relied upon. As I said, I was not there in the other days when Mr Le Roux – especially when he started and did the
20 greater part of the job. I was not there.

CHAIRPERSON: H'm, h'm.

ADV MOSIKILI: So ...[intervenes]

MR MAKWETLA: That is why I am worried – I am worried that he is mentioning things that are evidently to me, from where I sit, absolutely misleading. Incorrect.

ADV MOSIKILI: Can I just ...[intervenes]

MR MAKWETLA: Incorrect.

ADV MOSIKILI: The last question on this topic, because I think we are out of time.

MR MAKWETLA: Yes.

ADV MOSIKILI: Mr Makwetla, have you received a question, as you had requested before, requesting that, at the very least, there will be a labour of hundred and fifty thousand? Had you received that? What would have been
10 your comment?

MR MAKWETLA: The hundred and fifty thousand when I saw it here – actually, hundred and fifty-one thousand. It left me baffled because my calculation was simple conventional logic that on any technical work that is being done, material bought – or let me say, the labour charged on the work done can never be half of what the bill of the material used is. On..

The bill is about three hundred thousand and he says the labour was about hundred and fifty thousand. It
20 means half of the amount was labour of a job that needed material of about hundred and fifty thousand. I am just saying that even when you take a car for a service to a garage, the amount of parts that you will pay for the repair of the vehicle it will always be far above the unit of labour to fix the car.

Nowhere, I am – we are told that the labour expanded on this project that needed to material of about hundred and fifty thousand. It is hundred and fifty thousand worth of hours. I have a serious problem with this. Not even BOSASA themselves in the bill that I got from BOSASA have they – if they said the job cost eighty-five thousand, where has the whole hundred and fifty thousand cost of labour going to?

So what I say is. These are the things which I
10 think Mr Le Roux who was just pairing(?), you know, stuff here than providing a sincere accurate information about what he did and how it happened.

ADV MOSIKILI: Mr Makwetla, just because we are out of time. You had said that you wanted to ...[intervenens]

CHAIRPERSON: Mr Mosikili?

ADV MOSIKILI: Yes, Chair.

CHAIRPERSON: Although there are time challenges. In the end, I do want you to be able to do justice. So, if there are important thing that you still want to cover, you must
20 tell me.

ADV MOSIKILI: I am indebted, Chair.

CHAIRPERSON: Ja.

ADV MOSIKILI: Perhaps one last sub-topic on this and then I want him to speak to you briefly about the Parliamentary report.

CHAIRPERSON: Yes.

ADV MOSIKILI: Mr Makwetla ...[intervenes]

CHAIRPERSON: Let me ask... May I ask him this question? Do you have any comment, Mr Makwetla, on Mr Le Roux's evidence in paragraph 60 that the job took a minimum of 21-days to complete?

MR MAKWETLA: I do have a view on that, Chair.

CHAIRPERSON: Yes.

MR MAKWETLA: And my view is that this is totally
10 incorrect. Totally incorrect.

CHAIRPERSON: Yes.

MR MAKWETLA: Because it took them one week to do almost 80% of the job, as I said in my evidence. To say, I came back – I work in Cape Town when Parliament is in session. When I left on Monday of that week, Gavin Watson has said he will send a team to go and do an evaluation of the work to be done and I was expecting an invoice. I am sorry. A ...[intervenes]

ADV MOSIKILI: Quotation.

20 **CHAIRPERSON:** Quotation.

MR MAKWETLA: A quotation. Thank you very much. I was expecting a quotation. When I came back on Friday, the work was done already, 80%. The only thing remaining at the time was that – because they could not go into the house, they could not do the necessary connection in

relation to the, you know, the controls of this alarm system. They needed access into the house.

And because I only had a person who worked – I mean, who assist me in the garden, who lives on the property, he could – and he does not have access into the house. That was all that was remaining. 21-days are three weeks.

CHAIRPERSON: H'm, h'm.

MR MAKWETLA: I do not know where he gets these three
10 weeks from.

CHAIRPERSON: Okay. Continue, Mr Mosikili.

ADV MOSIKILI: Mr Makwetla, both you and Mr Le Roux agree that there was a problem with the camera system. Can you just tell the Chair, the Commission, how that problem was ultimately resolved?

MR MAKWETLA: Right from the word-go. A few days after they had installed the entire system, I was supposed to have access to a view of the house from wherever. Of course, that did not work. First week. And I phoned them
20 the following week to make them aware that this system has actually collapsed. They came back to fix it.

As soon as they left, the system was down again. I then decided I am not going to pursue this matter of the system that is not working because I had not even paid for it. That was my problem. I have not paid for it and I had

no grounds as a customer to exercise my rights to force them to come and sort out the problem.

It gave me the opportunity to say to Gavin: Gavin, remove this system. I will install this system when I need it and when I have money... Because the system never worked. It never worked. I was listening to the earlier ...[intervenes]

CHAIRPERSON: Witness.

MR MAKWETLA: ...witness who was appearing before the
10 Commission and to me it appeared as if the technologies that they were using were actually not as all as what they made them to be. That system never worked and they removed it.

CHAIRPERSON: H'm. Ja.

ADV MOSIKILI: If somebody was to say that you benefited from these cameras. What would be your comment then?

MR MAKWETLA: I have just said that they have never worked. I first said that they have never worked.

20 **CHAIRPERSON:** H'm.

ADV MOSIKILI: Thank you. And I want us to deal with the Parliamentary report. You had testified earlier on, when you were led in-chief, that you have difficulties with the report. Chair, in the report is containing BOSASA-03. I think this is the Bundle 3, 124.

CHAIRPERSON: Bundle 3 and you are saying page 124?

ADV MOSIKILI: No, no Chair. We are dealing with page 181.

CHAIRPERSON: Okay.

ADV MOSIKILI: This is the committee report, Chair.

CHAIRPERSON: Yes, okay.

ADV MOSIKILI: Mr Makwetla, are you on the document?

MR MAKWETLA: The committee report, yes, I am the committee report.

10 **ADV MOSIKILI**: Yes.

CHAIRPERSON: Ja, you can continue.

ADV MOSIKILI: Okay. You had alluded earlier on that you have difficulties with the report both in terms of procedure and the substance thereto. Care to highlight to the Commissioner procedurally what difficulties you have with this report?

CHAIRPERSON: I know that last time he did deal with procedural issues. Is there something that you did not cover that you want him to cover on procedural issues? Mr
20 Makwetla, am I correct, you did deal with procedural issues that you have with how the report came about, is it not?

MR MAKWETLA: I did, Chair, and that what perhaps I should just underline, Chair.

CHAIRPERSON: Yes, ja.

MR MAKWETLA: Are the gross irregularities that occurred

on this matter.

CHAIRPERSON: Yes, now what I am saying is I know that we dealt with the report last time.

MR MAKWETLA: Yes.

CHAIRPERSON: Well, not last week when you appeared. All I am simply saying is, I do not want us to repeat the same thing.

MR MAKWETLA: No – yes.

CHAIRPERSON: I am just saying are there aspects that
10 you did not cover which you would like to cover?

MR MAKWETLA: Indeed.

CHAIRPERSON: Okay, alright, if you want to cover aspects that you did not cover, that is fine, you can deal with them.

MR MAKWETLA: Chair. What I did not make the Commission aware is that the report that we are referring to as an exhibit here, I saw the report as I was taking my seat at the Commission the last time I appeared for the first time and I was actually shocked that there is a record
20 of parliament on the case against me by the ethics committee, that there was actually a record of parliament. As the Chair would understand, we explained – I explained that from January this year right up to March I had to get to engage lawyers to write to parliament to share the record of parliament on this matter and the Commission –

and it is attached, has three letters that were written to the Speaker of parliament and the Chair of the Ethics Committee by my lawyers asking for this record none of those letters were responded to, no replies, no document provided by parliament. I was actually surprised that they had sent a document purportedly to be a report of this case to the Commission.

Now this is the most gross of irregularities committed in parliament, it is a travesty of justice it is
10 unprecedented, Chair, it is an unprecedented scandal in parliament. I am prepared to go to those lengths because what has happened is that this report, two things about them that I want the Commission to underline is that according to the rules of the National Assembly, that is the 8th Edition of the Rules of the National Assembly which we have here, I have the booklet, we will send through to the Commission for perusal. Chapter 15, talks about the lapsing of business before the assembly and it says:

“Lapsing of business on the last sitting day of
20 annual session or term of assembly or when the assembly is dissolved:

1. All motions and all other business other than bills on the order paper on the last sitting day of an annual session of the assembly lapses at the end of that day.

2. All business referred to in sub-rule 1 before the assembly or any assembly committee on the last sitting day of a term of the assembly or when the assembly is being dissolved lapse at the end of that day.”

The reason I am directing the Commission to this, it is because this report was ATC a week after parliament had been dissolved.

What had happened, Chair, is that the term of the
10 last parliament, the 5th parliament, and its term ended on the 20 May 2019. On that day all business of the house, it does not matter whether it was at the committee level, it was on the way to the assembly, it lapses.

Now what happened is that the committee continues work, at least from what we are told, until the 28th because I get written by the ethics committee a letter to say we have met and we have found you guilty. I was shocked, I was at home when I got that. Parliament had adjourned – not adjourned, I am sorry, had been dissolved, we had
20 started campaigning now for the elections of 2019 – I am sorry ...[intervenes]

CHAIRPERSON: When parliament is dissolved, what is the effect of that and I know maybe this might be a legal issue but you might be able to assist because you are an MP and you have been an MP for a long time and, of

course, I think the same thing would happen in a provincial legislature and you have got experience of that as well. Does a committee continue to have power to do anything after parliament has been dissolved at the end of a five year term?

MR MAKWETLA: Chairperson, the answer is no, it does not have those powers because all committees of parliament are simply processing body of the work that is before parliament on behalf of parliament and that is why
10 the reports of the committees for as long as they have not been tabled for adoption by the plenary of parliament they enjoy no status.

So even in relation to this ethics committee's report, this report – okay, we put aside the issue about parliament having been dissolved. Procedurally this report should have been tabled in the National Assembly and the National Assembly would have had to adopt, reject or amend the report. That did not happen and it was not going to happen because parliament had been dissolved.
20 So the report had not status.

That is why when I perused the matter with the office of the Speaker to find out from the Speaker why have I been written a letter by the committee itself, I have not been written a letter by the – because these matters are eventually executed by the Speaker of parliament as

the representing panel. The Speaker of parliament never wrote to me about this decision and when I checked with the Speaker's office it had not record of this meeting and this decision.

What is even worse is that in the findings or in the sanction that is contained in the report, sanction number 1 is that the Speaker must address me in a sitting of parliament and order me to make a public apology. It is sanction number 1.

10 But this report, the speaker's office had no sight of it, it is not there, it was never submitted to the Speaker's office. Not only that, I followed the matter up with the Chief Whip of my party, the late Mr Jackson Mthembu, may his soul rest in peace, I checked with him whether he had received a report from the ethics committee because as my whip, the whip of my party in parliament, he would have been cited of this report by the ethics committee to say take note that one of your member's case that we have been dealing with, this is what is our finding against him.
20 He had no record of that.

Thirdly, Chair, the report is not signed, this report has names at the end of the people who are supposed to have signed it. The ethics committee is a joined committee of the National Assembly and the NCOP. The two court Chairs ...[intervenes]

ADV MOSIKILI: Just wait, Mr Makwetla. Chair, those names will appear at the end of the report at page 186. There is Honourable Maxegwana and Honourable Singh at the bottom, Chair, page 186, Chair. Page 186, Chair.

CHAIRPERSON: Yes, I can see it, ja.

ADV MOSIKILI: Yes. Sorry, Mr Makwetla.

MR MAKWETLA: Honourable Chairperson, Mr Humphrey Maxegwana is a member of the ANC of my party. I have asked him whether he is aware of this report. He was
10 puzzled. He knew nothing of this report.

Mr Singh, the other name that is attached there, belongs to the IFP. I do not know – I did not have access to him but at least to this ANC member who is part of this committee, I had a confirmation, no doubt this report, he does not know about it but not only that, Chair, it is interesting for me and I would be happy if this commission can at least force parliament to produce the minutes of this meeting that discussed my matter and who attended it and when did it take place because from where I sit and as I
20 am appearing before this Commission, I have no doubt that meeting never took place.

CHAIRPERSON: Ja, no, no, I think Ms Molefe, it is going to be necessary for the Commission to write to Mr Maxegwana and to Mr Singh to find out what they know about this report, if they can do that by way of an affidavit,

each one, and as well as – do you know, Mr Makwetla, whether they are still chairing the ethics committee or not or is it other people now?

MR MAKWETLA: It is other people, Honourable Chairperson, Mr Maxegwana is no longer a member of parliament, he is actually the Speaker of the Buffalo Municipality in the Eastern Cape.

CHAIRPERSON: Yes.

MR MAKWETLA: Mr Singh, I am not sure whether he
10 returned to parliament, I am not sure.

CHAIRPERSON: Okay, alright. That is fine, I think they should be written to even if they are no longer in parliament so that we get the story as to what do they know about this and then, Ms Molefe, we need to write to – and in writing to them, if they know something about it, they must also indicate what meetings were held which resulted in the report by the committee and when those meetings were held and whether there are minutes that they are aware of and we need to write to the current – the
20 Secretary of the Commission must write to the current Chair or Chairs of the ethics committee to establish or write to the secretary of that committee or parliament to establish if parliament has got minutes of meetings of this committee which dealt with this issue that resulted in this report and whether there is any transcript of deliberations

or evidence that was led before the committee that led to this report.

So, Ms Molefe, you can assist to the drawing of, the drafting of the letters for the Secretary to be directed to various people so that we can get that and I think it should be – ja, then we can take it from there and then when we receive it, Mr Makwetla can be – through his lawyers, can be furnished with copies and he can then comment if there is a need for comment.

10 **MS MOLEFE**: Thank you, Chair.

CHAIRPERSON: Okay, alright, Mr Mosikili?

ADV MOSIKILI: Mr Makwetla, just probably the last comment on this report. At 5.2, which is page 189, Chair.

CHAIRPERSON: Yes, continue.

ADV MOSIKILI: Yes, the essence of what is being said at 5.2 is that the committee also found the member in the ...[intervenes]

CHAIRPERSON: I am sorry, it cannot be 189. Do you say 185?

20 **ADV MOSIKILI**: 185, Chair.

CHAIRPERSON: Okay and the paragraph? 5 point?

ADV MOSIKILI: 5.2.

CHAIRPERSON: Ja, okay, continue.

ADV MOSIKILI: Yes, Chair, the crux of it is that the committee found the member to have breached the item as

listed there of the code and it says that when he allowed a company that was contracted to his department to conduct work at his private place which was not paid for. That is the ...[intervenes]

MR MAKWETLA: That is malicious.

ADV MOSIKILI: What is your comment to that?

MR MAKWETLA: Adv Mosikili, through you, Chair, the report is a five page document. The Commission will have the time to read the report, it is the shortest of work I have
10 ever encountered at that level. It is actually no – there is no report. There is no report except for stating what the allegations against this member are, what the member has said, what the code says the findings, the interrogation of the evidence provided by the member, are not anywhere, they are not there in the report. From that the report just goes straight to sanction and I am raising this because, Chair, in the rules of the code of ethical conduct and disclosure of member's interest, it is a booklet, it is here, we will also forward it to the Commission for the
20 Commission to see for itself.

Chapter 10 of this code of conduct deals with breaches of the code of conduct and the investigation procedures. It has 12 pages. It is the longest chapter of this code. Not a single one of the provisions in this chapter were observed by the committee, it is like the

committee just took – they threw the rule book out by the window. Not a single one, 12 pages that guides how the committee must – what is important of those principles that I want to draw the Commission's attention to, it is two issues.

It says, with respect to procedure for the investigation of complaints, general principle, this procedure is based on and intended to be guided by the principle of promptness, fairness and consistency. That is
10 the first issue.

Promptness – Chair, this matter arose in 2018. The committee wrote to me and said provide an explanation, which I did. That was the end, Chair. I provided an explanation in 2018, nothing happened and I thought they are satisfied with the explanation that I provided.

A year later in 2019 a week before the adjournment of parliament – and that is why this whole, you know, matter is very worrisome. A week before the parliament is dissolved – in 2019 now, I am written a letter to say
20 provide paper trail to say you have paid to – you paid BOSASA but also you have engaged the President on this matter as you allege. I provide that evidence.

From there the committee does not say we are not happy with the evidence you have provided can you come and explain yourself. Instead they proceed to find me

guilty, I am never called to come before the committee.

One of the rules says here, Chair, that is the second rule, on hearings, hearings must be held when the facts are in dispute. If the committee found - the forensic I provided of the payments to BOSASA, not satisfactory, of my engagement with the President's office was actually not satisfactory, why did they not call me to come and explain myself because they were disputing? Nothing of that happened.

10 So as I am saying, the just threw out the rule book, that meeting ever happened and decided to become a kangaroo court in an institution that is sitting at the apex of advancing democracy in our country. Totally unacceptable, Chair.

CHAIRPERSON: No, no, that is fine. Mr Mosikili?

ADV MOSIKILI: Chair, I know when I am over, I know when ...[intervenes]

CHAIRPERSON: Ja, I think I have given you more than enough, ja.

20 **ADV MOSIKILI:** Perhaps Mr Makwetla can just deal with the last topic hopefully in less than a minute that I wanted him to canvass – at least we wanted to canvass with you, Chair, which is just briefly explain the relationship he had with Mr Gavin Watson to an extent that it is necessary for this Commission ...[intervenes]

CHAIRPERSON: He did that quite at some length last time. Mr Makwetla, I thought you did that quite at length last time.

MR MAKWETLA: Yes, indeed, Chair.

CHAIRPERSON: Ja.

MR MAKWETLA: I would – I would – yes.

ADV MOSIKILI: Chair ...[intervenes]

MR MAKWETLA: But all what is important...

CHAIRPERSON: Ja.

10 **MR MAKWETLA:** All what is maybe a detail that was never evident or clear.

CHAIRPERSON: Okay, ja.

MR MAKWETLA: Is that when I met with Mr Gavin Watson, the day I asked him for this service and when I discovered that his company also executes domestic security because I was not aware of that, I was meeting Gavin Watson for the second time in my life, the first time having been the year before when I visited BOSASA with the officials of the department, this was the second time I was meeting with
20 him. I know the Watson brothers but I never had any exposure to Gavin Watson. I know his brother Ronnie Watson very well and it is a long story that I can talk about that, but not Gavin Watson.

CHAIRPERSON: Okay.

MR MAKWETLA: My relationship with Gavin was

professional and to that extent, Chair, I can share with the Commission the issues I took up with Gavin in relation to the corporate social investment of BOSASA, the work that they did in the constituency where I was in Mpumalanga, a whole orphanage or, you know, families where parents were perished to the AIDS pandemic, they things that they did to that – we can send the reports for the Commission to see for itself. I have had a professional relationship and nothing else.

10 **CHAIRPERSON**: Okay, okay.

MR MAKWETLA: Thank you, Chair.

ADV MOSIKILI: I think that will be it from us, Chair, we are very much indebted, Chair, for the great indulgence. We thank you so much, Chair.

CHAIRPERSON: Yes, no, no, that is fine, but if there are aspects that maybe you or Mr Makwetla think were not covered, you could just ask to put in a supplementary affidavit to deal with them but I think we can stop here. But thank you very much to you and to Mr Makwetla and
20 thank you, Ms Molefe. I think that I will just mention for the benefit of the public that we done with the hearing of oral evidence except for about five or six witnesses plus the President whose evidence will be heard later in July.

So there will be no further oral evidence this week nor next week so this is the end for now and then it will

just be those five or six witnesses and then the President later in July. But thank you very much, Mr Mosikili, thank you very much Mr Makwetla. We will now – thank you, Ms Molefe, we will now adjourn. Thank you.

INQUIRY ADJOURNS