

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

**10 AUGUST 2021**

**DAY 426**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN



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**PROCEEDINGS RESUME ON 10 AUGUST 2021**

**CHAIRPERSON:** Good morning everybody.

**ADV MYBURGH SC:** Good morning DCJ.

**ADV SOLOMON SC:** Morning Chair.

**CHAIRPERSON:** Morning, good morning, good morning.

**UNKNOWN COUNSEL:** Morning Chair.

**MS MZIMELA:** Good morning.

**CHAIRPERSON:** Good morning Ms Mzimela.

**MS MZIMELA:** Good morning Chair.

10 **CHAIRPERSON:** Good morning, good morning. We apologise for the slight delay. Mr Myburgh are you ready?

**ADV MYBURGH SC:** Yes thank you Chairperson. Chairperson as you know and for the benefit of the public.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** This morning's session involves Mr Gigaba's cross-examination of Ms Mzimela. Now...

20 **CHAIRPERSON:** I am sorry - I am sorry Mr Myburgh. They have – there is something they have not done here which will enable you to – your picture to come forward when you speak.

**ADV MYBURGH SC:** All right.

**CHAIRPERSON:** I think they will help me with that because I do not know what to do. You know what I am talking about so as they speak somebody speaks they come forward and – ja, ja, okay all right. Thank you. Thank you Mr Myburgh

now at least.

**ADV MYBURGH SC:** We can see one another DCJ.

**CHAIRPERSON:** Much better.

**ADV MYBURGH SC:** All right.

**CHAIRPERSON:** Much better.

**ADV MYBURGH SC:** As I was saying the morning session is scheduled for Mr Gigaba's cross-examination of Ms Mzimela.

At all material times DCJ Ms Mzimela was the Group  
10 Chief Executive Officer of SAA. You might recall that she gave evidence a long time ago.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** On the 26<sup>th</sup> of June 2019.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Now much of the evidence that she gave related to the cancellation or closure of the Mumbai route.

You will recall also DCJ that more recently on the  
21<sup>st</sup> of June 2021 Mr Gigaba was led in evidence in relation  
20 to many topics across a number of streams one of which related to Ms Mzimela's evidence in relation to the closure of the Mumbai route.

And it is in that context then that her cross-examination takes place.

So as far as the documentation is concerned DCJ of

relevance – particular relevance is Transnet Bundle 8. It is divided into various sections. I understand that your file should be open at Section 2 commencing black numbers page 241.

**CHAIRPERSON:** Yes, ja.

**ADV MYBURGH SC:** And it runs up until page 754 and what you find contained in that section DCJ is Ms Mzimela's affidavit and then Mr Gigaba's application to cross-examine her.

10           Mr Gigaba filed two affidavits. The initial affidavit and then a supplementary affidavit. What we have also done is that we have identified Ms Mzimela's transcript of her evidence in 2019 and also the relevant portion of Mr Gigaba's evidence.

          The various members of the legal team have that. I had endeavoured to ensure that the secretariat delivered hard copies to you but I understand that that has not happened and that you have them only electronically.

          Perhaps we can deal with that DCJ as it unfolds.

20           **CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So it might be something that you catch up with later.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** I – what extent the transcript will be referred to.

**CHAIRPERSON:** Ja, no that is fine. That is fine.

**ADV MYBURGH SC:** So...

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** If I could ask then unless anyone has anything else to say – the representatives to confirm their – their representation and then Ms Mzimela can be sworn in as a witness.

Thank you.

**CHAIRPERSON:** Yes. Mr Solomon do you want to say  
10 anything before you (indistinct).

**ADV SOLOMON SC:** No – morning Chair only to mention that my learned junior Mr Gumbi – Advocate Gumbi will be cross-examining Ms Mzimela.

**CHAIRPERSON:** Yes. Okay, no that is fine. In terms of – in terms of the scope apart from the meetings with – between SAA, the Ministry of Public Enterprises and the Jet Airways people – apart from that how much else would fall within the scope of today's cross-examination? Mr Gumbi. I think Mr Gumbi are you -

20 **ADV GUMBI:** Thank you Chair yes.

**CHAIRPERSON:** Muted – okay, yes.

**ADV GUMBI:** Chair it is the issue relating to corporate governance that is contained in paragraph 12, 13 of Ms Mzimela's statement because he – she alluded to the effect that during the former Minister's tenure there was a grey

area in respect of corporate governance.

So I will dwell specifically on that as to whether the prescripts were not followed – what did she mean when – when she was saying that there was a grey area.

So those are the issues that we will actually deal with.

**CHAIRPERSON:** Is there any reason why we should take more than thirty minutes.

**ADV GUMBI:** I beg your pardon DCJ.

10 **CHAIRPERSON:** Is there – is there any reason why we should – I should allocate you more than thirty minutes.

**ADV GUMBI:** Well I think thirty minutes should suffice Chairperson.

**CHAIRPERSON:** Yes. Okay all right then. In that event then Registrar please administer the oath to Ms Mzimela.

**REGISTRAR:** Okay thank you. Could I please have my video on – my video open please? Ms Mzimela. Ms Mzimela.

20 **CHAIRPERSON:** Ms Mzimela do you want to unmute yourself.

**REGISTRAR:** Yes Ms Mzimela (inaudible).

**MS MZIMELA:** Good morning Judge.

**CHAIRPERSON:** Ms Mzimela can you hear me? Can you hear me?

**MS MZIMELA:** Can you hear me Chair?

**CHAIRPERSON:** Yes I can hear you.

**MS MZIMELA:** I can – can hear you.

**CHAIRPERSON:** But can I see you.

**MS MZIMELA:** I am not on mute.

**CHAIRPERSON:** Because – oh I see a picture that has got your name but I do not see you speaking but I can hear you speaking.

**MS MZIMELA:** Oh thank you. Thank you Chair.

**CHAIRPERSON:** Yes now – now that is – that is much  
10 better. On a light note I just want to say Ms Mzimela it is –  
I can remember that you ...

**MS MZIMELA:** The strange thing is (inaudible) myself of  
Chair.

**CHAIRPERSON:** My – Registrar.

**REGISTRAR:** Okay.

**CHAIRPERSON:** I – I see Mr Gumbi on the big screen even  
when Ms Mzimela is speaking. When somebody else is  
speaking Mr Gumbi's picture should recede and then  
whoever is speaking comes forward.

20 **REGISTRAR:** Ms Mzimela could you please try and speak  
up so that we can see if there is a problem. Ms Mzimela.

**ADV MYBURGH SC:** She seems to have dropped off.

**CHAIRPERSON:** Ms Mzimela.

**MS MZIMELA:** Chair can you hear me now?

**CHAIRPERSON:** I can hear you now.



**MS MZIMELA**: I have been (indistinct) in trying to see if ...

**CHAIRPERSON**: Ja I can hear you now.

**MS MZIMELA**: Yes.

**CHAIRPERSON**: And – you can hear me as well.

**MS MZIMELA**: Apologies for that I do not know what is the problem.

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

**MS MZIMELA**: Yes I can hear you Chair.

**CHAIRPERSON**: Oh okay.

10 **MS MZIMELA**: Yes I can hear you Chair.

**CHAIRPERSON**: Okay all right thank you, thank you. I was – I was saying on a light note at least I can remember when I see you that you did testify before me some time back even if it is years ago because earlier this year a witness who was giving evidence in front of me told me that he had appeared before me and given evidence before and I had – could not remember him at all because I have – so many witnesses have appeared before me over 300 so I cannot remember – I cannot remember all the faces but – no I can  
20 – I can remember you.

**MS MZIMELA**: Chair I am honoured. Thank you Chair I am honoured that you do remember me.

**CHAIRPERSON**: Okay. Registrar please administer the oath or affirmation.

**ADV SIYO**: Chairperson.

**CHAIRPERSON:** Yes.

**ADV SIYO:** Chair could I be granted leave to place myself on record.

**CHAIRPERSON:** Oh yes.

**ADV SIYO:** I appear on behalf of Ms Mzimela. The name is Lunga Siyo. I see am being given permission to start the video.

**CHAIRPERSON:** Yes.

**ADV SIYO:** The name is Lunga Siyo I appear on behalf of  
10 Ms Mzimela on the instructions of Bogwana Burns Attorneys.

**CHAIRPERSON:** Okay thank you very much. I am sorry – I was not aware there was legal representation for her so we nearly overlooked you so – but thank you for raising that.

**ADV SIYO:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV SIYO:** Thank you Chair.

**CHAIRPERSON:** Okay all right. Registrar please administer the oath or affirmation.

20 **REGISTRAR:** Ms Mzimela will you be taking the oath or the affirmation?

**MS MZIMELA:** The oath. The oath.

**REGISTRAR:** Please state your full names for the record.

**MS MZIMELA:** Sizakele Petunia Mzimela.

**REGISTRAR:** Do you have any objection to taking the

prescribed oath?

**MS MZIMELA:** No.

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

**MS MZIMELA:** I do.

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

10 **MS MZIMELA:** So help me God.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Okay thank you. Thank you Ms Mzimela. Mr Gumbi.

**ADV GUMBI:** Thank you Chair. Ms Mzimela may I just take you to paragraph 12 of your statement.

**MS MZIMELA:** Paragraph 12 of my affidavit.

**ADV GUMBI:** Yes.

**CHAIRPERSON:** Just for the record Mr Gumbi tell us where her affidavit appears on the bundle.

20 **ADV GUMBI:** It is Bundle 8 page 252.

**CHAIRPERSON:** 252.

**ADV GUMBI:** Correct.

**CHAIRPERSON:** Well it starts – earlier it starts at page 247 but you obviously want to direct her attention to page 252.

**ADV GUMBI:** To paragraph 12 Chairperson

**CHAIRPERSON:** Yes, okay all right. Have you got it Ms Mzimela?

**MS MZIMELA:** Yes I do Chair.

**CHAIRPERSON:** Okay. And thank you for availing yourself Ms Mzimela – I did not thank you for availing yourself earlier on – thank you.

**MS MZIMELA:** Thanks Chair.

**ADV GUMBI:** Ms Mzimela if I were to read paragraph 12 it  
10 says:

“My experience of the approach to the governments under the then Minister Gigaba who tenure was different under his tenure that developed a grey line on what would ordinarily be the board’s responsibility and duties, management responsibility and duties and delegation.”

Do you see that?

**MS MZIMELA:** I do.

20 **ADV GUMBI:** And now if you read line 3 it says that:

“The grey line was in respect to the board responsibilities and duties.”

Do you see that?

**MS MZIMELA:** I do.

**ADV GUMBI:** Now I am assuming that the responsibilities

of the board would be contained in certain documents or prescripts. If you turn to page 5 to paragraph 8 of the same bundle.

**MS MZIMELA:** Yes.

**ADV GUMBI:** I see that there..

**CHAIRPERSON:** I am sorry Mr – I am sorry Mr.

**ADV GUMBI:** Ja.

**CHAIRPERSON:** I am sorry Mr Gumbi I think I missed that. You said she should turn to?

10 **ADV GUMBI:** To paragraph 8 Chairperson.

**CHAIRPERSON:** Oh okay.

**ADV GUMBI:** The very same bundle yes.

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

**ADV GUMBI:** So I – I see that there are key government document between the board, SAA and shareholder. The first one is MOI Significance and material different work shareholders competitive corporate plan. Now the board responsibilities and duties where would they be contained amongst these key government documents?

20 **MS MZIMELA:** So firstly Chair I think it is important not to just pick one line of that paragraph because the paragraph and I would like to just read it again.

**CHAIRPERSON:** Ja.

**MS MZIMELA:** So that I can make my point.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** It says:

“Under his tenure there developed a very grey line on what would ordinarily be the board’s responsibility and duties, management’s responsibilities and duties and delegation.”

So I am not too sure that you can split out one portion of that paragraph and not read it in its entirety. That is the first issue.

10           But in re – in attempting to respond to the question that has been raised I think that all of us would be quite familiar with what the PFMA actually stipulates as duties of the Executive and the Accounting Officer and so therefore when I make those statements it is also in relation to that.

It is also in relation to what the Company’s Act would you know specify in terms of what is the role of – of the board, what is the role of the management and what is the role of the shareholder and that would be my response Chair.

20           **CHAIRPERSON:** Yes.

**MS MZIMELA:** The documents that are – paragraph 8 then would detail other elements in terms of the relationship or the deliverables that are expected between the shareholder and the organisation.

**ADV GUMBI:** Which – which document would be that

amongst the one contained in paragraph 8?

**MS MZIMELA:** Okay so I mean the MOI I think all of us would be quite familiar with in that it is a document that is set up with the governance rules for the organisation and – and some of the elements of how the relationship between the shareholder and the board would also be contained there.

The significance in materiality framework is a document which would normally be concluded between a  
10 SOC and the board in order to highlight those matters that are reserved for the board. So that is what it would actually contain.

In the shareholder's compact the shareholder's compact is a document that was renewable and on an annual basis which would actually detail the focus areas or the key performance indicators or areas that would have been agreed on between the board and the shareholder and the corporate plan is a corporate plan as I am sure you would be familiar which is actually compiled - I mean  
20 internally, signing off by the board that talks to how we intend to operate our business and what the focus areas would be.

**ADV GUMBI:** Yes Ms Mzimela.

**MS MZIMELA:** They go by business -

**CHAIRPERSON:** Just before – just before you proceed Mr

Gumbi. I see Ms Mzimela that there was a writing here on my screen saying that your bandwidth is low. I think – I do not know whether it is bandwidth is low. I think when – there might be something you need to do to make sure we are not going to be cut off or something or you will not run out of the battery or something. Why is it – why is it saying Ms Mzimela's..

**REGISTRAR:** Oh it is just to warn you if she gets cut off.

**CHAIRPERSON:** Oh.

10 **REGISTRAR:** Yes that will happen.

**CHAIRPERSON:** Have we fixed it now?

**REGISTRAR:** No I cannot she has to fix it.

**CHAIRPERSON:** Oh but you said it is mine.

**REGISTRAR:** No I did not.

**CHAIRPERSON:** I am sorry. My – my Registrar here is advising me – Ms Mzimela did you hear the conversation? Oh did you mute me or what? Ms Mzimela can you hear me? Mr Gumbi can you hear me?

**ADV GUMBI:** I can hear you Chair.

20 **MS MZIMELA:** Yes Chair – Chair.

**CHAIRPERSON:** Oh.

**MS MZIMELA:** Yes I can hear you Chair – can you hear me?

**CHAIRPERSON:** Yes now I can hear you. I am told that there is something.



**MS MZIMELA:** Chair.

**CHAIRPERSON:** That you are supposed to do that side to make sure that you are not going to be cut off.

**MS MZIMELA:** Chair I am going to try and see if I can log onto a different network if maybe that may help.

**CHAIRPERSON:** Oh okay.

**MS MZIMELA:** If you please just give me a minute.

**CHAIRPERSON:** Okay all right – we will wait.

**MS MZIMELA:** Okay. Is it better Chair?

10 **CHAIRPERSON:** Well I can see you quite – quite well. It has gone for now. It was just a writing that it was saying something like your – is it bandwidth – ja bandwidth is low. So – oh it has come back. It says your network bandwidth is – bandwidth is low. So maybe we should continue in the meantime as long as you are aware because maybe by the time it gives us problems it is – we might have to – we might be done. So let us continue. Ja.

**MS MZIMELA:** Okay – thanks Chair.

**CHAIRPERSON:** Okay. Mr Gumbi.

20 **ADV GUMBI:** Thank – thank you :Chair. Ms Mzimela the question I was asking in relation to paragraph 12 was that the board responsibility duties, management responsibilities and duties and delegation that you referred to in paragraph 12. Now did he – it impact on paragraph 8? In other words was there an infraction of the key government documents

that are contained in paragraph 12 when you were saying there was a green – sorry – when you said there was a grey line?

**MS MZIMELA:** Chair I will again repeat that – and I have spoken I mean to the various documents that are highlighted in paragraph 8. But as to the question that you are asking in relation to what defines the role of the board and what defines the role of the shareholder that is governed by the PFMA as well. It is also governed by the  
10 Company's Act where it is very clear that the – the board has the responsibility for the day to day running of the business – well not the day to day – the running of the business but the – as setting the strategic direction of the organisation. Management has the responsibility of the day to day running – I mean of the business and so forth.

I am – Chair unless there is another specific question or in relation to the paragraph I am of the view that I have actually responded to the question.

**CHAIRPERSON:** Well ...

20 **MS MZIMELA:** Unless you would like me to pull out what the Company's Act actually specifies.

**CHAIRPERSON:** Mr Gumbi I wonder whether it might not assist to – if I ask Ms Mzimela this question. When you say Ms Mzimela in paragraph 12 that there developed a very grey line on what would ordinarily be the board's

responsibilities and duties, management's responsibilities and duties and delegation. What actually do you mean at a practical level?

**MS MZIMELA:** Yes thank you very much Chair I mean for that question. You would note that I mean in paragraph 4 – no sorry paragraph 13 I go further to explain what I mean by that by what is meant in paragraph 12.

When I share that there were no proper protocols that were now being followed in engagement with the  
10 organisation and yet there had been established protocols.

Let me give an example. Whenever there is any communication with the organisation because the board had the responsibility on authority of the organisation correspondence from the department would come via the chairperson and matters whether it be queries relating to anything that the organisation would be undertaking would equally come through the board because the management reported to the board and it was the board that had a direct line to the shareholder.

20 **CHAIRPERSON:** Would that be the case namely correspondence from the department would be directed to the board and then the board would direct it to management. Would that be the case irrespective of who in the department had written to the board or who wanted to raise an issue.

For example if it was the Minister would – would it go to the chairperson that is correspondence? If it was the DG would it also go straight to the chairperson or is the position that if it was the DG writing he or she could write directly to the CEO?

**MS MZIMELA:** Yes so Chair you are absolutely correct. If it was the Minister actually writing the Minister would write to the chairperson of the board. The only person the department that actually could also write and direct it to the  
10 – to the GC – CEO would be the DG because he is deemed as the equivalent of the CEO of the department so he would actually write to the CEO. And then we would also have other engagements in terms of established meetings with the organisation where there would be other representatives that are chosen already from the organisation’s side to meet with the department in the event that – in order to ensure that the department was privy as well to – to organisations performance on a more regular basis.

But what was unusual as you would see as I have  
20 stated in that paragraph 13 is to have a Minister’s advisor come into the space and getting involved in issues which are more – would have been reserved I mean for the board, the management or anybody else.

**CHAIRPERSON:** Hm. Mr Gumbi.

**MS MZIMELA:** So I am quite specific in my – in paragraph

13 in relation to that.

**CHAIRPERSON:** Okay. Mr Gumbi.

**ADV GUMBI:** Thank – thank you Chairperson (mumbling) and witness. Ms Mzimela perhaps maybe may I just refer you to your transcript which is at page 24.

**MS MZIMELA:** Sorry about that.

**ADV GUMBI:** It should be the fat line.

**CHAIRPERSON:** You said page 24 of the bundle.

**ADV GUMBI:** Yes – of her transcript.

10 **CHAIRPERSON:** Ja where does it start – what page – is it 24?

**ADV GUMBI:** At page 24 I would say line 3 where it begins to say

“Are you familiar with the framework under which the SAA operates?”

**CHAIRPERSON:** I suspect your – the page number must be wrong. When you give us the page number look at the black numbers at the top left corner of the page.

**ADV MYBURGH SC:** Sorry DCJ might I just interject?

20 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Mr Gumbi is referring now to Ms Mzimela’s transcript of her evidence.

**ADV GUMBI:** Yes.

**ADV MYBURGH SC:** Given on the 26<sup>th</sup> of June 2019. I did mention in my introduction.

**CHAIRPERSON:** Oh that – that I do not have that.

**ADV MYBURGH SC:** Yes you have it in electronic form.  
We have not been able to get you a hard copy.

**CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** What I would just ask Mr Gumbi to do  
is just to make sure that he very accurately places on  
record the – the relevant passage and perhaps he can  
identify and leave it out and perhaps you can follow in that  
way. If it becomes too cumbersome, we might have to make  
10 another – another plan.

**CHAIRPERSON:** Oh okay. My Registrar has given me  
another laptop so I can have a look so I have got the right  
page?

**REGISTRAR:** I think so.

**CHAIRPERSON:** Is it page 24?

**REGISTRAR:** Yes.

**CHAIRPERSON:** Okay, alright. so that is page 24 of the  
transcript. And I see it is – the date is ...[intervenes]

**REGISTRAR:** 26.

20 **CHAIRPERSON:** 26 June 2019. Yes, okay, alright. I have  
got it, Mr Gumby(?).

**ADV SELOANE:** Thank you, Chair. In paragraph 3 – line  
3. Chairperson says:

“It refers to the question to Ms Mzimela to say  
that I am familiar with the framework under

which as it operates.”

And her response was:

“Yes, I am, Chair.”

And if you go down, Chair, it says:

“In regard – in this regard, obviously, within SAA there are various documents that existed such as the MOI. The significance and material – the framework and the shareholders compact and the corporate plan.”

10 So the document that I have just referred to, unlike the PFA, which are of universal application. These ones, specifically, applied to SAA. Is that correct, Ms Mzimela?

**MS MZIMELA:** Yes, they do. And that is correct.

**ADV GUMBI:** Now, if they – specifically the document that I have just referred to. Is there any of them which the Minister purportedly breached ...[intervenes]

**MS MZIMELA:** Ja, so ...[intervenes]

**ADV GUMBI:** ...when you say there was a ...[indistinct]  
[00:31:33]

20 **MS MZIMELA:** Again, Chair. I think that you cannot actually read my response to that in the absence of reading the total conversation that does talk to the PFMA, that does talk to the King Report on governance. And that all I do, I say in addition to those documents, there are additional documents such as the following, which I then

list as the corporate plan, I list as the significance and materiality, the MOI and so forth as part of that.

So the reason I speak to those specifically is because we have already made mention of the PMFA, there is already been mention of the Companies Act, and King's report on good governance.

**CHAIRPERSON:** Let me save this – will ask this Mr Gumbi. What are the things that you say Minister Gigaba did or did not do which resulted in there being a grey area  
10 in respect of the responsibilities of management and the board and the board in the department?

So if you could identify them or make examples to say you... I know you have referred to Minister Gigaba's advisor but if you could be more specific and tabulate them, as it were, to say, one, this is what was done which should not have been done. This is what was done which should have been done.

And then you can specify whether you talk about him doing that or not doing that or you simply talk about  
20 his office or his Ministry or the department. Would you be able to do that?

**ADV GUMBI:** Yes, Chair.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** So, I will again start off by referring to my paragraph 13 and maybe – in fact, if I can just try and put



certain things into context.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** The reason why and I am using it as an example when I say there was a blurring of lines and I use his advisor ...[intervenes]

**CHAIRPERSON:** Ja.

**MS MZIMELA:** ...in how he was interacting with the organisation.

**CHAIRPERSON:** Yes.

10 **MS MZIMELA:** As a very clear example.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** I think further in my affidavit or when I came through to the Commission, I would have equally indicated that up until Mr Gigaba became Minister, I was well-aware that the previous Ministers had advisors and had encountered some of those advisors but purely in meetings with the Minister.

**CHAIRPERSON:** Okay.

20 **MS MZIMELA:** It was the first time that we actually had an advisor. And in my view, Chair, you must understand. The advisor for me is the advisor of the Minister.

**CHAIRPERSON:** H'm.

**MS MZIMELA:** So when he comes into the environment, I want to believe that he comes with the mandate from the Minister.

**CHAIRPERSON:** H'm.

**MS MZIMELA:** And he now starts to come into our environment to request information directly which ordinarily we would not have been requested in that manner. If there was any information that was required of the organisation, it would either have come through from the Minister writing to the Chairperson, or as you indicated earlier, from the DG writing to myself requesting such information.

10 But now, I mean, there is an individual, who for me, represents the office of the Minister, as far as I know. I mean, he did not have any other role except being the advisor of the Minister. So he represents the office of the Minister. And he now comes into the environment to request information which actually ordinarily the shareholder probably should not even be requesting as it pertains to issues or procurement and everything else, I mean, that we are doing within that space. That is one example.

**CHAIRPERSON:** H'm.

20 **MS MZIMELA:** I mean, other examples would pertain to possibly then talking a little bit further in terms of the two meetings that took place in relation to the Jet Airways matter. And my example around that as well is that the Jet Airways issue was a route discussion, not a financial discussion. A route discussion which would ordinarily be

held at a certain level of management escalated, I mean, to the board for approval.

But now we had a situation where the department was getting to involved in these discussion to a point of even asking us for information which you would need to have on hand in order to conduct analysis of the route. Now that for me is getting very operationally involved in the business in itself.

**CHAIRPERSON:** H'm.

10 **MS MZIMELA:** I will top there, Chair, unless, I mean, there any more examples that you would like me to give?

**CHAIRPERSON:** Okay. Mr Gumbi.

**ADV GUMBI:** Chair, I will attempt to ask direct questions because those ones that requires explanation would consume much of the time that has been allocated to me.

**CHAIRPERSON:** H'm.

**ADV GUMBI:** Then the last question with regard to paragraph 12, Ms Mzimela, is that, when did you for the first time realise about the grey area, the grey line that has  
20 developed? Was it immediately after the Minister was appointed, which was November, or when exactly?

**MS MZIMELA:** I think when I make... Chair, in response to you. When I make the statement in paragraph 2. It is not specific to a particular timeframe but I am – and paragraph 12, I am referring to the period, the whole

period in which – or the experience, the tenure of Mr Gigaba's role as the Minister when I was at SAA.

So it is not as if I would I realised in the first month, in the second month, in the third month. I am basically reflecting on the period that I was at SAA at the point at which Minister Gigaba is the Minister in charge of the Department.

**ADV GUMBI:** On the very first meeting that you had, the 10<sup>th</sup> January meeting, where the Minister called you for a  
10 briefing in relation to SAA and Jet Airways. Did you during that briefing just tell the Minister that there was some grey line that has been developed since he was appointed?

**MS MZIMELA:** No, Chair. I had no reason to be having a conversation with the Minister about grey lines that would have developed. And I think that, as you correctly indicate, the Minister had started in November. We had a meeting with him – is it, what, January? I do not think that one would have been in a position to already been saying there are grey areas that have already been observed in  
20 that first meeting. That was not the purpose of the meeting.

In that meeting, the Minister had requested a meeting with the Chairperson and therefore I was supposed to be attending that meeting together with the Chairperson.

**ADV GUMBI:** You were already, when the Minister was

appointed, in the aviation industry for more than 15-years.

Is that correct?

**MS MZIMELA**: That is correct, Chair.

**ADV GUMBI**: You were familiar with the prescripts, the PFMA and also the MOI's that were applicable to SAA. Is that correct?

**MS MZIMELA**: That is correct.

**ADV GUMBI**: Is it not that it accords with good corporate governance that you see the Minister which has been two  
10 months appointed to say: Minister, as the CEO can I advise you on some certain prescripts which are applicable?

**MS MZIMELA**: No, Chair, I do not believe that that would have been role. I mean, my role – I mean, as the Group CEO is to run the organisation. And in reference, I mean, to that first meeting, I mean, as well. The Minister had sent – or an invitation to the Chairperson of the board which is the correct way to request a meeting.

The Minister had actually indicated that he would  
20 want, you know, or at least, I mean, I had to write a brief on what our relationship with Jet Airways was like or what are the things that we were discussing with Jet Airways at that point in time.

So that was my role going into that meeting of January. I do not believe that it was my place, you know,

in January to already been having a discussion with the Minister to say this might be a grey, a potential grey line. I do want to believe, however, that possible if the invitation to the Minister had been a lot more detailed, maybe that is something that the Chair of the board would have dealt with but it was not in my ambit to have that discussion with the Minister.

**ADV GUMBI:** Were you not concerned to say to the Minister called a meeting on issues that are operational  
10 than instead of your counterparty being the Director General of the department dealing with operational issues?

**MS MZIMELA:** Again, Chair, I will repeat. The invitation came through the Chair. The invitation came through the Chair. The Chair then said we have to attend the meeting. So I have no reason at that point in time prior to the meeting to be concerned about the way in which the meeting has been called because the invitation came through the Chairperson.

Had the meeting come through directly or the  
20 meeting request came through to me directly then you are absolutely correct that that is something that I would have actually probably even raised with my Chairperson so say I do not understand why the invitation is coming directly to myself.

**ADV GUMBI:** When the meeting was called, the first and

the second between the one in Cape Town, you raised a concern about the Minister's silence in the meeting after you had briefed him about the dangers inherent in the Mumbai/South African route.

**MS MZIMELA**: No, think that I raised concern, Chair, about the Minister's silence in the way that the Jet Airways representative speaks to us within that meeting.

**ADV GUMBI**: Now that concern, why was it not addressed to the Minister?

10 **MS MZIMELA**: I ...[intervenes]

**ADV GUMBI**: Raised the concern with the ...[intervenes]

**MS MZIMELA**: Maybe I need a bit of clarity because I think that I am probably confused, Chair, as to what the question is.

**CHAIRPERSON**: Yes.

**MS MZIMELA**: So, this is what happens in a meeting and I described what happens in a meeting. And pose ...[intervenes]

**CHAIRPERSON**: Yes.

20 **MS MZIMELA**: And I, posed the meeting, I raised those very that I had raised in my affidavit to my Chairperson.

**CHAIRPERSON**: H'm.

**MS MZIMELA**: And which is why when she came to the came to the Commission she actually indicated as such. She indicated that immediately after attending this

meeting, I raised, both myself and the other board representative, raised the concerns with her.

**CHAIRPERSON:** Mr Gumbi, I understand your question of asking the witness why she did not raise that issue with the Minister at the meeting if your client's version was to deny that he was silent but my recollection is that his version is not to deny that he was silent. I understood him to accept or admit that he was silent but that his explanation is that is the way he chose to handle the  
10 meeting.

So I am just saying if you are not denying that he was silent, I am not sure that I understand why you would ask why the witness did not raise the question as the meeting?

**ADV GUMBI:** Chair, the statement of – and also during her testimony, she raised the concern about the fact that after she briefed the Minister about the danger inherent in the Mumbai/South African route. The Minister never said anything in that meeting. In fact, she was expecting the  
20 Minister to have reacted ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV GUMBI:** ...even in her favour or to object to the pressure that has been put by Mr Gowell from SA – from ...[intervenes]

**CHAIRPERSON:** British Airways.



**ADV GUMBI:** British Airways, yes. So according to her, her silence – the Minister’s silence demonstrated that the Minister was not in support of her contention about the closure, the fact that the Mumbai route, Mumbai/SA/Mumbai route should not be closed.

**CHAIRPERSON:** But your question is not about whether it should be closed – whether the Minister supported or did not support. Your question is. Why did she not raise her concern about the Minister’s silence at the meeting? So I  
10 was simply saying. I am not sure that I understand why you would ask that question where it is common cause that the Minister was silence and the explanation he has given is a certain explanation.

Maybe you are still going to come to the issue that you are raising namely whether her understanding – what she made of the Minister’s silence. Whether she understood it to mean support for a particular view or not.

**ADV GUMBI:** Indeed so, Chair. Indeed.

**CHAIRPERSON:** Ja. Okay, alright. Go ahead.

20 **ADV GUMBI:** Ms Mzimela, the Minister’s silence in the meeting. What did it mean to you?

**MS MZIMELA:** Chair, I think that I actually indicated when I came to give testimony that one cannot actually recall the exact words but for me what I was highlighting is that I was a little bit taken aback that the Minister did not say

anything.

And it – just to also be clear. It is not about the Minister speaking up to say he agrees with our position or not but taken aback that an individual comes into a meeting and speaks to all of us in that meeting in the manner that he did to a point of instructing that this is what the SAA management team should be doing and no one says anything until the Deputy Minister actually speaks up.

So even when the Deputy Minister raised – speaks  
10 up – essentially, what he is raising a concern about is that all of us are gathered to listen or give audience to the Jet Airways individuals, you know, to position whatever proposal that they would have wanted to actually discuss.

However, it is unacceptable for them to come into a meeting and begin to instruct us on how – what should actually happen. And that is what, I mean, the Deputy Minister was also taking issue with. The instructive manner in which the individual was speaking and that surprised me. It surprised me that it took the Deputy  
20 Minister to actually raise that as a concern when the Minister was present in the room and the Minister was the Chair or of the meeting.

**CHAIRPERSON:** Just to make sure I understand you. So, is your evidence that you are not saying that the Minister's silence meant that he agreed or did not agree with the

closing or not closing of the Mumbai Route. All you are saying is that the manner in which Mr Gowell - if that was his name, I cannot remember – the Jet Airways representative was speaking to everybody at the meeting was unacceptable.

And you expected the Minister to put a stop to that and the fact that he kept quiet is what concerned you in the face of this kind of behaviour on the part of the representative of Jet Airways. Is my understanding of your  
10 evidence correct?

**MS MZIMELA**: Yes. So, Chair, I think that – yes, for me, I mean, it is. I mean, it is the manner in which he actually spoke and of course in speaking he was being instructive in basically indicating that SAA should just close the route and get off the route.

So the reason why I am saying and I am stating purely to what I actually provided as evidence because I think the question that is being asked now is that possible I must now try and – I cannot determine what was going on  
20 in the Minister's head on whether he was supportive or not supportive.

I can only rely what I experienced and my take of the meeting. As I say that I was quite surprised that someone comes into and who is rude, is loud, instructs. And that there is no – nobody is – and the Chairperson of

the meeting says nothing, you know, about that.

Equally, I mean if I – if the intention of the meeting was to bring two parties who are potentially looking at building a relationship. I would find it very strange, Chair, that somebody comes into a meeting and instructs.

And as I said. I mean, there is the Chair who is sitting there, who is the Minister of this entity that he has responsibility for overseeing and he is now listening to somebody giving an instruction of how this entity must  
10 actually operate or not operate.

**CHAIRPERSON:** H'm. Mr Gumbi.

**ADV GUMBI:** Yes, Chair. Ms Mzimela, I just want to go again to paragraph 12 and 13. Is it correct that paragraph – both paragraph 12 and 13 does not mean that the Minister authorised Mr Mhlango to be involved or maybe to interfere in the running of the SAA? I do not read paragraph 12 and 13 to say that, that the Minister specifically instructed Mr Mhlango to do so.

**MS MZIMELA:** Yes, so, Chair ...[intervenues]

20 **ADV GUMBI:** [Indistinct]

**MS MZIMELA:** So, Chair, you are – it is true that I could not – I never go and say the Minister instructed Mr Mhlango because I would have to have been there for him to have instructed Mr Mhlango. However, the point I make is that Mr Mhlango is the Minister's advisor. And my

understanding ...[intervenes]

**ADV GUMBI**: No, I understand that.

**MS MZIMELA**: ...if the Minister's advisor ...[intervenes]

**ADV GUMBI**: [Indistinct] ...[intervenes]

**MS MZIMELA**: ...so the Minister. H'm.

[Parties intervening each other – unclear]

**ADV GUMBI**: I understand that but one question that I have asked, to say you are not saying that the Minister instructed Mr Mhlango to have acted in a manner that he did. The answer yes or no would do for now.

**MS MZIMELA**: I would not have been there, Chair, to have actually had any instruction been given to Mr Mhlango.

**ADV GUMBI**: It also does not mean that the protocols that you are referring to that the Minister was aware of because the Minister had ...[intervenes]

**CHAIRPERSON**: Just repeat your question, Mr Gumbi.

**ADV GUMBI**: That no – paragraph 13 says no protocols were followed for engagement with the organisation that established protocols were ignored. I cannot also read this paragraph to say that the Minister was aware of those protocols because you were not aware whether the Minister knew them or not. Is that not correct?

**MS MZIMELA**: Chair, I have a question but I will be honest that that question actually confuses me because I

will again go back and repeat. When a person comes – if I go to a meeting or if I went to the meeting as the CEO of SAA, I would be representing SAA. And it is in that context that I am saying the Minister's advisor comes into an environment and in my view he is representing the Minister's office.

That is why he even had access to the organisation. In the absence of him being viewed as a person who is representing the Minister's office, he would  
10 not have been provided access into our environment.

**CHAIRPERSON:** H'm.

**ADV GUMBI:** Chair ...[intervenes]

**CHAIRPERSON:** Okay. I think let us put the question this way. Do you know or do you not know whether the Minister would have been aware of the protocols you talk about in paragraph 13?

**ADV GUMBI:** Yes.

**MS MZIMELA:** The Minister would have been well-aware of those protocols, Chair. If the Minister was – ja. I would  
20 find it very strange if the Minister was not aware of that.

**CHAIRPERSON:** Okay. Mr Gumbi.

**ADV GUMBI:** But except for PFMA and all those pieces of legislation, there are prescripts that are applicable to SAA that I have mentioned about MOI which also accords with good corporate governance. Why would you say the

Minister would have known especially such pieces of legislation which are applicable only to SAA?

**MS MZIMELA:** Chair, again I am absolutely, I mean, confused because the assumption seems to be that those prescripts which applies specifically to SAA are in conflict with the PFMA and the Companies Act and they are not.

**ADV GUMBI:** Okay maybe ...[intervenes]

**MS MZIMELA:** [Indistinct]

**ADV GUMBI:** Let me repeat the question.

10 [Parties intervening each other – unclear]

**CHAIRPERSON:** Let ...[intervenes]

**ADV GUMBI:** Let me repeat the question.

**CHAIRPERSON:** ...first.

[Parties intervening each other – unclear]

**ADV GUMBI:** As far as your concern, you had never briefed the Minister about the MOI that is applicable to SAA. You had briefed the Minister about those prescripts that significance and material framework that is only applicable to SAA. As far as you are aware, you had not  
20 briefed him about that. So you cannot say that the Minister ought to have known about those. Is that not correct?

**MS MZIMELA:** So, Chair, my understanding is that. I mean, for everybody who gets appointed into office that there would be an obligation for their offices to provide

them with at least – what is the word – induct them in terms of whatever the documents that are relevant, I mean, to them.

As much as, I mean, when I take over a CEO, I will – somebody in the office would have the obligation to ensure that I am actually familiar with whatever documents that govern the business are. And likewise, I would have thought that it would have been the responsibility of the department to be able to ensure that the Minister is well-  
10 aware of all the various protocols and the various documentation.

And then specifically to respond to the question. It would not have been my role to update the Minister. That is not my – I had no obligation and it was not in my space to be the one to share with the Minister as to what is contained in each of these documents and how he – and what protocols should be in place between himself and the organisation.

But I would want to believe that the Minister was  
20 quite familiar with those for the mere fact that he would call the Chairperson in trying to set up meetings and not myself.

**CHAIRPERSON:** Mr Gumbi, we have gone way beyond 30-minutes. We have done over 45-minutes. I will give you five minutes more to cross-examine but before you



continue. I just want to say, I am getting the impression from your question that your instructions are that Mr Gigaba was not aware of the MOI of SAA. Are those your instructions?

**ADV GUMBI:** No, Chair. The assumption that he ignored, it creates the impression because you can only ignore what you know. So ...[intervenes]

**CHAIRPERSON:** Yes, but that is why I am saying. Your question suggests to me that he was not aware because  
10 otherwise if your – if his version is that he was aware, then I am not sure that the question is helpful. And I would imagine Mr Gigaba would – is likely to be the kind of person who would have taken the trouble to familiarise himself with a document such as the MOI of an important SOE like SAA.

**ADV GUMBI:** Chair, what – we do not have instructions with regard to that specifically but the – all I that I need to submit with regards to his because he had been appointed only for two months and there were many SOE's under his  
20 portfolio. So, obviously, some of the specific documents like MOI might need someone to eviscerate on them for him to understand.

I understand about the PFMA with its overarching but you know the – some prescripts such as MOI or those are – those were specifically for SAA. It cannot be

assumed that he was aware of them. Therefore he did not know those kind of prescripts. So those are my submissions with regards to that question, Chairperson.

**CHAIRPERSON:** Okay, alright. Your last five minutes starts now.

**ADV GUMBI:** Mr Mzimela, I just want to refer to paragraph 65 of your statement.

**MS MZIMELA:** Yes, I am there, Chair.

**ADV GUMBI:** Can you see that – that it says:

10 “After this meeting I do not recall ever meeting Minister Gigaba to discuss the Mumbai route again.”

Can you see that?

**MS MZIMELA:** That is correct.

**ADV GUMBI:** Now that was after the second meeting in Cape Town. Can you see that?

**MS MZIMELA:** Yes, I do, Chair.

**ADV GUMBI:** Now if you read – I do not have to read it because I am under pressure of time, if you read from  
20 paragraph 65 up until paragraph 75, 75 says that:

“At the stage at which code sharing agreement was concluded the agreed terms were beneficial to SAA, that Jet Air was totally moved off Johannesburg/Mumbai route and enhanced added benefit to South Africa to SAA and beyond the

post.”

Can you see that?

**MS MZIMELA:** Yes, I can.

**ADV GUMBI:** Can you immediately after the minister disassociated himself from intervening or interfering between this time in paragraph 65 when the minister was not involved and also his adviser was not involved. Do you agree with me?

**MS MZIMELA:** I do.

10 **ADV GUMBI:** And everything that happened here because the DG, being your counterparty, was involved up until the signing of the codeshare agreement. Do you believe that? Do you agree with me?

**MS MZIMELA:** No, the only thing that I disagree with is that the DG was not involved up until the signing of the codeshare agreement.

**ADV GUMBI:** Okay, but now the minister – purportedly the minister was in favour of the SA Mumbai agreement that you did not want but he was not involved from this stage  
20 up until the signing, nor was Mr Mahlangu involved at this stage, is that correct?

**MS MZIMELA:** That is correct.

**ADV GUMBI:** Now the signing of the codeshare agreement was in accordance with the prescripts.

**MS MZIMELA:** That is correct.

**ADV GUMBI:** There was nothing wrong with it.

**MS MZIMELA:** That is correct.

**ADV GUMBI:** And then my question is, assuming that for the purposes of this cross-exam that in any event the only agreement that was signed, it was codeshare agreement during your tenure is that not correct?

**MS MZIMELA:** That is correct.

**ADV GUMBI:** Then in this instance the minister was not involved and his adviser was not involved, everything was  
10 done according to the prescripts, is that correct?

**MS MZIMELA:** That is correct, Sir.

**ADV GUMBI:** Now he says that in any event the minister's adviser interference did not bring - does not bring about any process which is signing of the contract or any signing of an agreement which was a – which was not consistent with the SAA prescripts.

**MS MZIMELA:** Ja. So, Chair, I mean, once again  
...[intervenes]

**ADV GUMBI:** But in any event, in any event, what I am  
20 trying to say that ...[intervenes]

**MS MZIMELA:** Ja, I hear you.

**ADV GUMBI:** ...his involvement – his involvement did not have anything to do with the balance sheet of SAA or anything for that matter because it was never taken to a further step, did not bear any fruit, is that correct?

**MS MZIMELA:** Yes, so Chair ...[intervenes]

**ADV GUMBI:** And also that is applicable to ...[intervenes]

**CHAIRPERSON:** Hang on...

**MS MZIMELA:** So, Chair, I wanted to respond to that.

**CHAIRPERSON:** Okay, you – I think finish your question, if you have not finished it, Mr Gumbi, and then Ms Mzimela can then respond.

**ADV GUMBI:** Yes.

**MS MZIMELA:** Yes.

10 **ADV GUMBI:** So my question to you, Ms Mzimela, was that the interference of the adviser or the involvement of the minister did not lead to any conclusion of a contract that was not consonant with the PFMA or any of the prescripts that you have mentioned. Is that not correct?

**MS MZIMELA:** That is correct, Chair, but let us – I think it is also important not again – I think that we are reading one line and not putting everything into context. Right from the beginning the management already indicated that we were in discussions with Jet Airways on the codeshare  
20 agreement.

So there has never been and there was never any dispute about that. So right from the beginning, even in first meeting, the very first meeting with the minister, we indicated that we are in discussions with Jet Airways on a codeshare agreement.

The only thing that we were not in agreement with is that we were not going to finalise that codeshare agreement on the basis that SAA terminates off the route and those discussions and the various meetings and what you deem or what the advocate actually deems as interference, had nothing to do with the codeshare and how that codeshare should be shaped but it was really around the closure of the Mumbai route and you are absolutely correct that both management and the board at the time  
10 did no accede to the closure of the Mumbai route. What we did is that we still concluded that agreement on the basis of what we thought was correct for the organisation, which was a codeshare agreement.

**ADV GUMBI:** Chair, just last three questions, maybe general propositions with regard to this and I think I do not have much time.

**CHAIRPERSON:** Ja, I will give you two instead of three. Okay, two.

**ADV GUMBI:** Chair. Paragraph 75 that I have just – the  
20 one that I have just alluded to and you can say that in your statement that in fact the codeshare agreement enhanced added benefit to SAA on beyond points. Do you see that?

**MS MZIMELA:** Yes, I do.

**ADV GUMBI:** You were actually the driver of this codeshare agreement, is that not so?

**MS MZIMELA:** Indeed, which is why I refer even the first instance that I was a driver even from the start until there were these meetings.

**ADV GUMBI:** So eventually, eventually, stripped of all verbiage, eventually the agreement that was signed, you were the driver of it being the code sharing agreement, the minister was not involved, nor his adviser was involved in coming to this agreement.

So all being said, the involvement of the minister or  
10 the involvement of his adviser had nothing to do with this contract that has been signed, you being the driver, is that correct?

**MS MZIMELA:** So, Chair, I think I have already indicated that – that that is actually true that we – when I say we, I mean both the management and the board stuck to their guns in ensuring that they concluded exactly what they believed was correct for SAA which was purely a codeshare agreement. So I do think that it is kudos to both the management and the board for understanding  
20 what their roles were in relation to governance and that we have the right to make sure that I everything that we do we take SAA into consideration first. So I agree with you that in the end, that is exactly the type of agreement that was signed.

**ADV GUMBI:** And Chair, just lastly, and in the end

...[intervenes]

**CHAIRPERSON:** Mr Gumbi ...[intervenes]

**ADV GUMBI:** I do not want to take an advantage, this is the last question, this is the last question.

**CHAIRPERSON:** Okay, alright.

**ADV GUMBI:** Now assuming that the minister wanted the closure of SA/Mumbai route, so the minister eventually did not get what he want, is that correct?

**MS MZIMELA:** Is that a question?

10 **ADV GUMBI:** Yes, because – all that he was actually negotiated is a codeshare, not the closure, so the minister did not get what he wants – he wanted, assuming that he wanted the closure of SA/Mumbai route.

**MS MZIMELA:** Ja. So I will not say that – I am not going to comment about what the minister wanted, what the minister did not want but the one thing that I can actually – and I will go back again to say we concluded the codeshare agreement on the basis of what was agreed within the organisation was beneficial to SAA. If the  
20 minister – because we believed that that was the route that we needed to take and our view was that if the minister had a different viewpoint then he should put it in writing because he would always have had the ability to instruct in writing but that was never forthcoming and therefore, we did what we were supposed to do in light of what we



thought was beneficial to SAA.

**ADV GUMBI:** Chair, I do not want to take advantage of you.

**CHAIRPERSON:** That said, Mr Gumbi.

**ADV GUMBI:** Thank you, Chair.

**CHAIRPERSON:** Thank you. Mr Myburgh, do you – oh no, counsel for Ms Mzimela, do you have any re-examination?

**ADV SIYO:** Chairperson, there are no questions in re-examination.

10 **CHAIRPERSON:** Okay, alright. Thank you. Mr Myburgh, do you have any questions?

**ADV MYBURGH SC:** Yes, thank you, DCJ, I just have one question.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Ms Mzimela, you were asked about whether you had any personal knowledge of Minister Gigaba having instructed Mr Mahlangu in any way. I just want to ask you one question about that and it relates to the second meeting, the Cape Town meeting.

20 **MS MZIMELA:** Ja.

**ADV MYBURGH SC:** I think everyone will be familiar with what you say in your statement or affidavit at paragraph 61 at page 269 where you explain – and I am going to paraphrase that on your version Mr Mahlangu treated you rudely, you say at paragraph 62 that you lost your temper

and that throughout this Mr Gigaba remained silent. If I could take you please to paragraph 62.1, over the page, at page 270. You say that:

“Days after the meeting Mr Mahlangu would telephone me to request a few minutes of my time. He offered to take the Gautrain to meet with me. We met at the Intercontinental Hotel at the OR Tambo International Airport.”

And this is the sentence that I would like you to comment  
10 on insofar as instructions are concerned.

“He personally apologised to me for his bad behaviour and informed me to the effect that the end of the day he was just doing his job and acting on instruction.”

Now how did you understand that? On whose instruction was Mr Mahlangu allegedly acting?

**MS MZIMELA:** Ja. No, I mean, thank you, and that is absolutely correct, that is exactly what transpired after the meeting in Cape Town and my understanding of him  
20 indicating that he was acting on instruction is that his only boss was the minister and therefore he was acting on instruction of the minister to behave and raise the issues that he raised at the meeting in Cape Town.

**ADV MYBURGH SC:** To behave in the manner that you have described?

**MS MZIMELA:** Yes and to raise to issues that he raised at the meeting in Cape Town.

**ADV MYBURGH SC:** Thank you, Chairperson, we have no other questions.

**CHAIRPERSON:** Thank you. Were there other examples, Ms Mzimela, that you were aware of or that indicated the grey areas of things that were done which should not have been done by either the minister or his adviser that you were aware of that you did not deal with?

10 **MS MZIMELA:** I think, Chair, the manner in which the second meeting was handled as way for me was a very clear indication of another area, another grey area, and if I could just take you back, I mean, very quickly.

**CHAIRPERSON:** Ja.

**MS MZIMELA:** Is that I think I would have actually indicated that a call had been actually been put through to the Chair of the board to meet in Cape Town at very short notice which is why she was not able to attend and I had to attend together with Mr Daka. In going through to the  
20 meeting our understanding was that we were going to be probably having a discussion relating to the financial situation of SAA but on our arrival there – so no forewarning that what would happen is that – so on our arrival in Cape Town, the meeting then focused on nothing else except for the Mumbai route and the closure of the

Mumbai route.

In addition to that, nobody had actually informed us that Jet Airways would be at the meeting and as I indicated that we then established that the Jet Airways people had been sitting outside when we were having the initial meeting with the minister and then they were invited, you know, to join the meeting towards the end. So that is really odd.

I mean and for me, I mean, those are grey areas  
10 because ordinarily if the ministry was well-aware that the discussion was supposed to be a discussion on Mumbai and that they had external guests that they invited, they are the shareholder of the entity and should have probably communicated that correctly and indicated what information needed to be prepared for that meeting. That did not happen.

Instead we were ambushed effectively by the presence of Jet Airways people and firstly, by even the discussion on Jet Airways because we did not understand  
20 that that is what we were at that meeting for. So that is another example, Chair, from my side.

**CHAIRPERSON:** Okay, alright. Thank you very much. We are done, thank you for availing yourself, Ms Mzimela and thank you Mr Gumbi, thank you, Mr Solomon, thank you Mr Myburgh, thank you, Mr Siyo.

**MS MZIMELA:** Chair...

**CHAIRPERSON:** Yes, Ms Mzimela, you want to say something?

**MS MZIMELA:** Am I allowed to say something, Chair? There is something that I feel quite strongly about.

**CHAIRPERSON:** Ja, tell me about it.

**MS MZIMELA:** Yes. So, Chair, I mean, I think – I mean, firstly, you thanked me for coming through to Commission and availing myself to the Commission once again.

10 I think the first time around it was one is doing one's duty to the country in coming forward with whatever evidence that we had but when then Mr Gigaba requests a cross-examination for some of us who have never had to find ourselves in that space which obviously meant that I would had to also bring in lawyers from my side in order to assist me in educating me as well as to what to expect in a cross-examination. So that is fine.

20 But what I take issue with is that I am going to have to pay for my lawyers while Mr Gigaba's lawyers are paid for by the state, my taxpayer's money. I take exception to that.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** I really do.

**CHAIRPERSON:** Well, is your concern – does your concern relate to why is the state not paying for your

lawyer just as it is paying for Mr Gigaba's lawyers or is your concern that none of you should be paid by the state?

**MS MZIMELA:** Yes, I think it is the second, Chair.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** I think, I mean, for me it is one's choice, I mean, to come and assist, I mean, the Commission.

**CHAIRPERSON:** Ja.

**MS MZIMELA:** But the process, I mean, that we follow, how many people would be in a position to also be able to  
10 engage their own lawyers to assist them.

**CHAIRPERSON:** Yes.

**MS MZIMELA:** And my question is that how fair is that that he, his lawyers get paid for by the state, which is my tax money and everybody's actually tax money. So I am wondering, I mean, why is that? And I do take quite serious exception to that.

**CHAIRPERSON:** Ja. Okay, no, I hear you. Mr Solomon, I do not know if you want to say anything? You might not wish to say anything, but I do not want you to think I did  
20 not give you a chance to say something.

**ADV SOLOMON SC:** Chair, just that one is a bit taken aback by what Ms Mzimela says. Mr Gigaba is entitled to be represented by the state and, you know, one wonders why she has some particular axe to grind with Mr Gigaba, but we will deal with that in legal submissions.

**CHAIRPERSON:** Yes. Okay, alright. Mr Myburgh, did you want to say anything?

**ADV MYBURGH SC:** No, just to remind you, DCJ, that you and I have another order of business after the completion of this hearing relating to Mr Mahomed's affidavit.

**CHAIRPERSON:** Oh, yes.

**ADV MYBURGH SC:** So I suppose others can go but please do not cut me off.

**CHAIRPERSON:** No, thank you for reminding me. I had  
10 forgotten about it. Thank you, Ms Mzimela. I think maybe  
in relation to your concern, Ms Mzimela, all I can say is  
that I am sure different people in the country have different  
views about the issue you raise. I understand that there is  
some law that is understood to be the basis for giving  
assistance, legal assistance to ministers and maybe other  
government officials when there are legal proceedings that  
relate to the time when – to what they did or did not do  
when they were in office but I cannot say anything more  
than that. I understand that there is some basis, we know  
20 what is in the public domain about litigation relating to the  
former President and legal assistance that had been given  
to him. So I cannot say much, I am not the one who grants  
– who makes those decisions but thank you very much for  
availing yourself and thank you, Mr Solomon, thank you, Mr  
Gumbi, thank you Mr Siyo and I will now excuse all of you

except Mr Myburgh and his team. Thank you very much, you are now excused.

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

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

**ADV SIYO:** Thank you, Chair.

**CHAIRPERSON:** Thank you. Mr Myburgh, do you want me to take a short break and then we continue or maybe we should just try and do this and get over it and then adjourn?

10 **ADV MYBURGH SC:** Yes, I think we can deal with it quite swiftly, Chairperson, if that suits you.

**CHAIRPERSON:** Yes. Ja, okay.

**ADV MYBURGH SC:** I have asked your registrar to have available application SEQ 36/2019, that is the affidavit of Mr Yusuf Mohamed. Do you have it?

**CHAIRPERSON:** I think she is only now going to pick it up. Yes, I have got it.

**ADV MYBURGH SC:** Chairperson, you will recall that Mr Yusuf Mahomed brought a Rule 3.4 application in relation  
20 to certain evidence given by Mr Callard as to Mr Mahomed's role in the 1064 locomotive transaction. What Mr Mahomed originally wanted to do, DCJ, was to present this affidavit and also to give oral evidence. This was an application that came before you and you granted it.

Sometime after that and agreement was entered



into between Mr Mahomed and the Commission, this is in December of 2019, to the effect that his affidavit would be placed on record before the Commission, the short summary of his affidavit would be delivered by you during the public hearing and that in the circumstances he would not testify. [inaudible – speaking simultaneously]

**CHAIRPERSON:** A short summary would - I am sorry, I did not hear the part, a short summary would...?

**ADV MYBURGH SC:** A short summary would be delivered  
10 by the Chairperson during a public hearing and then in the circumstances he would not testify. Now, DCJ ...[intervenes]

**CHAIRPERSON:** I do not think there is such an agreement, I do not ...[intervenes]

**ADV MYBURGH SC:** No, you were not but to absolve your ...[intervenes]

**CHAIRPERSON:** Did somebody decide that they would impose that on the Chairperson?

**ADV MYBURGH SC:** Well, insofar as that was done, I  
20 relieved you of that responsibility on Friday because I wrote to Mr Mahomed and I asked him and suggested ...[intervenes]

**CHAIRPERSON:** But I am interested in knowing who is the person that thought they could do that?

**ADV MYBURGH SC:** In fairness, in that email that I have

referred you to...

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** The author did say that this would be communicated to you, DCJ, for consideration but ...[intervenes]

**CHAIRPERSON:** Oh, okay.

**ADV MYBURGH SC:** It has been resolved in this way.

**CHAIRPERSON:** Okay, okay.

**ADV MYBURGH SC:** On Friday last week I wrote to Mr  
10 Mahomed and I said that it would be more appropriate that I, as evidence leader, provide the summary letter to you.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And Mr Mahomed – he agreed to that.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** So all that remains to be done is for me simply to provide a very short summary of this affidavit and then ask you for it to be admitted into evidence.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** And, DCJ, by way of a short  
20 summary, you will see at paragraph 1.1 of the affidavit that Mr Mahomed at all material times was the General Manager Office of the Group Chief Financial Officer. And if you skip forward, all the way to page 4, paragraph 2.7, he says:

“I proceed now to provide context around my involvement in the 1064 locomotive business

case and deal with Mr Callard's statement."

And if I could then take you to page 6 at paragraph 3.3 he says:

"Relevant to any role I played in the business case I draw your attention to the fact that he was on leave for the period 1 November 2012 to 28 February 2013."

And then at 3.4:

10 "The 1064 transaction advisers were appointed on the 6 December 2012."

At 3.5:

"The 1064 transaction advisers were deployed to support the internal teams, the business case was the responsibility of TFR supported by GCIA and McKinsey."

At 3.6 he says:

"I had no role in any capacity on the 1064 locomotive project team including but not limited to the following."

20 And then, DCJ, at paragraph 4, which was in a landscape form, in paragraph 4.2 he says:

"I can confirm that at no stage did I calculate or verify the calculations of forex hedging, forex escalation and other price escalations."

And then at 4.3:

“In my view based on my recollection and review of documents the sequence of events of the improvement/recommendation of the ETC...”

And that is in the business case.

“...excluding the potential effects from forex hedging, price escalation and other price escalations of various committees were as follows.”

10 You will recall, DCJ, that evidence has been given already that Mr Mahomed was the person that actually made this amendment on the business case, the excluded amendment. Said so on the table by the various decisions and perhaps I could then take you to page 8 and ask you to have a look in the middle of the page at paragraph 5.1.2, it seems that this is the essence of it.

“The change...”

Says Mr Mahomed.

20 “...was on the instruction of Mr Singh to align the business case to the approval memoranda and submissions of the committees listed above and represented a mere transfer of the information that was already approved.”

At paragraph 5.1.2.1:

“In making the edits of Mr Singh I would have

acted upon his instruction and trusted his knowledge as he was intimately involved in the business case.”

And then at page 9, DCJ, Mr Mahomed concludes at paragraph 5.1.4 by saying:

“I confirm that:

- 10           1. I had no role in any capacity on the 1064 locomotive project team/streams for finance, procurement, commercial operations, business case, technical and legal.
2. At no stage did I calculate or verify the calculations of forex hedging, forex escalation and other price escalations.
3. I was not part of any of the governance committees that approved the ETC of R38.6 billion “excluding the potential effects from forex hedging, forex escalation and other price escalations.”
- 20           4. The business case was the responsibility of TFR supported by GCIA and McKinsey.”

I think the long and the short of it, DCJ, is that Mr Mahomed says that he played no role in the 1064 other than for effecting the amendment, the exclusion amendment, as we call it, on the instruction of Mr Singh.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** If that suffices as a fair summary of Mr Mahomed's affidavit I would then ask you please, DCJ, to admit into evidence then Mr Yusuf Mahomed's affidavit attested to on the 17 May 2019.

**CHAIRPERSON:** And do you have an exhibit number or something that we would use? What exhibit will you call it?

**ADV MYBURGH SC:** Well, I suppose for present purposes it could just be under SEQ 36 of 2019. I am aware of the  
10 fact that Mr Mahomed has previously put up an affidavit as a particular exhibit. If you could just maybe give me a second, I can try and find it, DCJ.

**CHAIRPERSON:** Ja, okay.

**ADV MYBURGH SC:** DCJ, Mr Yusuf Mahomed's exhibit is EXHIBIT BB4(g) and under that exhibit an affidavit has already been entered. Perhaps I could ask you then to admit this affidavit dated the 17 May 2019 as EXHIBIT BB4(g).1?

**CHAIRPERSON:** That is BB4(g).1?

20 **ADV MYBURGH SC:** Yes, DCJ. Okay, Mr Yusuf Mahomed's affidavit that was deposed to on the 17 May 2019 and appears or is contained in file SEQ 36/2019 is admitted as an exhibit and will be marked as BB4(g).1.

**AFFIDAVIT OF MR YUSUF MAHOMED DEPOSED TO ON THE 17 MAY 2019 AND CONTAINED IN SEQ 36/2019**

**HANDED IN AS EXHIBIT BB4(G).1.**

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

**CHAIRPERSON:** Okay, thank you. I hope you could get a message last week that you will just have to remember that we do the same with regard to some of the affidavits that came late such as the one for Mr Makwanazi.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** In relation to Mr Molefe's appointment.

**ADV MYBURGH SC:** I did get that message. I was  
10 wondering, DCJ, would it be in order if I was to provide you with a written order that you could make him sign or is it something that you want to deal with on the record publicly like we have now?

**CHAIRPERSON:** I think it is preferable that we just arrange and deal with it publicly.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** So there is a transcript that refers to it and there is that transparency.

**ADV MYBURGH SC:** Yes.

20 **CHAIRPERSON:** So I think once you are ready we could do that, we could just find time and do that.

**ADV MYBURGH SC:** Yes, thank you. And perhaps I could do it at a time where I have parcelled together all the various affidavits that we may want you to look at.

**CHAIRPERSON:** Ja, ja.

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

**CHAIRPERSON:** Yes. Okay, thank you. Okay, thank you, we will adjourn. Thank you.

**INQUIRY ADJOURNS**