

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

16 APRIL 2019

DAY 84

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PROCEEDINGS HELD ON 16 APRIL 2019

CHAIRPERSON: Good Morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: Thank you. I am going to deliver my decision in the application brought by Mr Moyane for leave to cross-examine Mr Gordhan. It will not be immediately or a typed version will not be immediately available but it will be available in the next few days. So – but otherwise it will be subject to one qualification a full decision.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. The legal
10 representatives of Mr Moyane are present and the legal representative of Mr Gordhan have asked to be excused.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: May I be seat during...

CHAIRPERSON: Yes you may be seated thank you. This is an application brought by Mr Thomas Swabihi Moyane for leave to cross-examine Mr P J Gordhan the Minister of Public Enterprises who submitted a statement in this commission last year and subsequently gave evidence. I shall refer to Mr Moyane as the applicant. A copy of Mr Gordhan's statement was sent to the applicant by the secretary of
20 the commission in accordance with Rule 3.3 of the Rules of this commission. A notice contemplated in Rule 3.3 was also sent to the applicant. In support of his application the applicant delivered a founding affidavit with extensive annexures as well as a supplementary affidavit also with annexures. Mr Gordhan opposes the applicant's application in support of his opposition. Mr Gordhan delivered an

opposing affidavit with extensive annexures as well. Thereafter the applicant delivered a short replying affidavit with annexures. In due course the applicant's counsel and Mr Gordhan's counsel delivered written submissions on the applicant's application for leave to cross-examine and Mr Gordhan's opposition thereof. I subsequently had oral argument presented by counsel for the applicant Mr Mpofu SC counsel for Mr Gordhan Ms Le Roux and some limited comments by the head of the commission's legal team Mr Pretorius SC. I am indebted to all counsel for their written and oral argument. After hearing argument I reserved my decision and indicated that I would announce it due course. Subject to one qualification that I will deal with later this is my decision. In order to properly consider the applicant's application it is necessary to first refer to the legal framework within which an application for leave to cross-examine a witness before this commission must be evaluated in order to decide whether leave should be granted or refused.

The legal Framework

This commission was appointed in terms of Section 84 of The Constitution. The Commissions Act has been made applicable to it. Certain regulations have been promulgated that apply to it. Neither the Constitution nor the Commissions Act contains any express provision relating to the cross-examination of witnesses by anybody adversely affected by any statements or evidence of a witness in a judicial commission of inquiry such as this one. However Regulation 83 of the Regulations applicable to this commission provides and I quote:

“Any witness appearing before the commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he deem it necessary and in the best interest of the function of the commission.”

Regulation 15 reads:

“The commission may – the commission may determine its own procedures.”

Pursuant to Regulation 15 the commission has determined its own
10 rules. Rule 3.1 of the rules of this commission provides in effect that
as a general rule the commission’s legal team bears the overall
responsibility to present the evidence of witnesses to the commission.
This is subject to anything to the contrary contained in the rules or
subject to the Chairperson’s directions in regard to any specific
witness.

Rule 3.3 sets out what the commission’s legal team is required to do if
the commission is in possession of a statement by witness who is to
give evidence before the commission when his or her evidence
implicates or may implicate another person.

20 Rule 3.3 reads and I quote:

“If the commission’s legal team intends to present to
the commission a witness whose evidence implicates
or may implicate another person it must through the
secretary of the commission notify that person
[implicated person] in writing within a reasonable

time before the witness gives evidence.

3.3.1. That he or she is or may be implicated by the witness' evidence.

3.3.2 In what way he or she is or may be implicated and furnish him or her with the witness' statement or relevant portions of the statement.

3.3.3 Of the date when and the venue where the witness will give evidence – will give the evidence.

10 3.3.4 That he or she may attend the hearing at which the witness gives evidence.

3.3.5 That he or she may be assisted by a legal representative when the witness gives evidence.

3.3.6 That if he or she wishes

3.3.6.1 To give evidence himself or herself.

3.3.6.2 To call any witness to give evidence on his or her behalf or

3 3.6.3 To cross-examine the witness he or she must within two weeks from the date of notice apply in writing to the commission for leave to do so and

20 3.3.7 That the Chairperson will decide the application”

I shall refer to the procedures set out in the provisions of this rule as the Rule 3.3 procedure.

It will be seen from the introductory part of Rule 3.3 that the Rule 3.3 procedure only applies and I quote:

“If the commission’s legal team intends to present to the commission a witness whose evidence implicates or may implicate another person.”

This means that the Rule 3.3 procedure does not apply if the evidence of the witness proposed to be presented to the commission does not or will not implicate the person who seeks leave to cross-examine the witness.”

The purpose of the phrase and I quote:

10 “Evidence that may implicate another person”

In the introductory part of Rule 3.3 is to ensure that where the commission’s legal team is not certain whether the evidence of a witness implicates a particular person but think that it is arguable that it does they send a Rule 3.3 Notice to that person and leave it to him or her to take a view whether or not he or she is implicated or will be implicated by the witness’ evidence. In both cases the commission’s legal team will be obliged to send the affected person a Rule 3.3 Notice.

20 Once a person has received a Rule 3.3 Notice he or she must take his or her own view whether he or she is implicated and if so what steps he or she wants to take.

Rule 3.3.6 makes provision for a person who for example seeks to cross-examine such a witness to apply to the commission for leave to do so. If the person concerned does not wish to cross-examine the witness he or she is not obliged to do anything. However even where a

person has taken the view that he or she is not implicated or has not done anything pursuant to the receipt of a Rule 3.3 Notice the Chairperson of the commission still has power under both Regulation 10 10.6 as well as under Rule 3.10. Should he choose to do so to direct such a person to respond to allegations made against him or her. In terms of Regulation 10.6 the Chairperson may issue a directive directing or requiring any person to depose to an affidavit and deal with certain issues or directing the person to appear before the commission and be questioned on matters falling within the terms of reference of
10 the commission.

Rule 3.3.6 provides that the Rule 3.3 Notice must notify the implicated person that if he or she wishes to cross-examine the witness he or she must within two weeks from the date of the notice apply in writing to the commission for leave to do so. Once the secretary of the commission has received an application for leave to cross-examine he or she must place the application before the Chairperson and give a copy thereof to the commission's legal team. The Chairperson may then issue directions as to the future conduct of the application including giving the witness the opportunity to oppose the application by delivering an
20 answering affidavit.

The first important point to make in regard to an application for leave to cross-examine a witness is that it must be made by a person who is or may be implicated in the witness statement or evidence. In other words he or she must be able to state that he or she is implicated by the witness concerned in his or her statement. If a person is not implicated

or cannot be said to be implicated in a witness statement or in the witness' evidence he or she is disqualified from making an application for leave to cross-examine.

Furthermore an applicant for leave to cross-examine must identify those parts of a witness statement which he is she says implicate him or her. He or she may disagree with the contents of a Rule 3.3 Notice in the sense that while such a notice may state or suggest that he or she is or may be implicated in the witness statement or evidence or is or may be implicated by a certain part or parts of a witness statement
10 he may take the view that he is not implicated as suggested or at all.

Rule 3.4 is the rule that governs the submission of an application for leave to cross-examine and its' content. The Rule reads and I quote:

“An application in terms of Rule 3.3.6 above must be submitted in writing to the secretary of the commission within fourteen calendar days from the date of the notice referred to in Rule 3.3. The application must be accompanied by a statement from the implicated person responding to the witness' statement insofar as it implicates him or her.
20 The statement must make it clear what parts of the witness statement are disputed or denied and the grounds upon which those parts are disputed or denied.”

The second sentence of Rule 3.4 obliges an applicant for leave to cross-examine to make sure that his or her application is and I quote:

“Accompanied by a statement from the implicated person responding to the witness statement insofar as it implicates him or her.”

The word ‘from’ in the second sentence of Rule 3.4 must be read as meaning by:

“With the result that the statement that is said to be a statement from an implicated person is a statement by the implicated person.”

The part of Rule 3.4 which reads and I quote:

10 “Responding to the witness statement insofar as it implicates him or her.”

Qualifies the implicated person’s statement that must accompany the application for leave to cross-examine.

That part of the first sentence of Rule 3.4 referred to in the preceding paragraph must be read with the last sentence of Rule 3.4. The third and last sentence of Rule 3.4 reads and I quote:

20 “The statement must make it clear that is the statement by the implicated person – must make it clear what parts of the witness statement are disputed or denied and the grounds upon which those parts are disputed or denied.”

This sentence requires the implicated person’s statement to make it clear what parts of the witness’ statement are denied or disputed and the grounds upon which those parts are disputed or denied.

The purpose of the second and the third sentences of Rule 3.4 is to

ensure that an implicated person does not simply provide a bare denial to a witness' statement that implicates him or her or to a part of a witness' statement that implicates him or her.

Read together these two sentences require or oblige an implicated person to do three things namely:

- a. Identify the parts of the witness' statement that he or she accepts implicate him or her.
- b. Respond to the parts of the witness' statement that implicate him or her by stating whether he or she admits or denies them and setting out his or her version in regard to the incident or event or allegation and
- c. Ensure that his or her response or statement or affidavit provides the basis or grounds upon which he or she disputes or denies the version or allegation or evidence implicating him or her as reflected in the witness' statement or evidence.

It should be clear from the above that part of the idea behind Rule 3.4 is that the Chairperson who must decide the application for leave to cross-examine is fully apprised of what is common cause between the respective versions of the witness and the implicated person or persons and where the areas of divergence between them are.

This enables the Chairperson to have a full picture of the position when he considers the application for leave to cross-examine so that he can take into account the extent of the divergence in the two persons versions in determining how much time will be appropriate to allocate for the cross-examination should he grant leave to cross-examine.

If cross-examination is granted it takes place within the context of the witness' version as well as the version of the implicated person and the grounds or basis upon which the witness statement is or certain parts of the statement are denied or disputed insofar as the statement implicates the applicant for leave to cross-examine.

As already stated earlier Regulation 8.3 provides and I quote:

10 "Any witness appearing before the commission may be cross-examined by a person only if the Chairperson permits such cross-examination should he deem it necessary and in the best interest of the function of the commission."

Rule 3.7 then reads and I quote:

 "In accordance with Rule – Regulation 8.3 there is no right to cross-examine a witness before the commission but the Chairperson may permit cross-examination should he deem it necessary and in the best interest of the work of the commission to do so."

And Rule 3.6 reads:

20 "In deciding an application contemplated in Rule 3.3.6 the Chairperson may in his discretion and on such terms and conditions as he may deem appropriate grant leave to an implicated person to and then see cross-examine the witness implicating him or her."

Rule 3.7 basically says the same thing as Regulation 8.3. What

Regulation 8.8.3 and Rule 3.7 mean is that in determining whether an application for leave to cross-examine should be granted the Chairperson must ask the question whether and I quote:

“It is necessary and in the best interest of the function or work of the commission to”

Grant the applicant leave to cross-examine the particular witness whom he or she wishes to cross examine. If the Chairperson takes the view that it is he grants leave. If he takes the view that it is not he does grant leave. Therefore the test for determining the merits of an
10 application for leave to cross-examine is whether it is necessary and in the best interest of the function of the commission for the Chairperson to grant leave.

It can be seen from the above discussion of the Rules of the commission that the first requirement that an applicant for leave to cross-examine must satisfy is that the – is that the statement or evidence of the witness whom he or she wishes to cross-examine implicates him or her. If he or she fails to show this his or her application is defective and may be dismissed or will be dismissed.

If an applicant for leave to cross-examine succeeds in showing that he
20 or she is implicated in the statement or evidence of the witness then he or she must state in accordance with the second and third sentences or Rule 3.4 what he or she admits in the witness statement or evidence and what he or she denies or disputes set out his or her full version of the incident or to the allegation and state what the grounds are for denying or disputing the witness statement or part or parts thereof.

He or she must then show that it would be necessary and in the best interest of the function of the commission for the Chairperson to grant him or her leave to cross-examine the particular witness.

If he or she succeeds in showing all this the Chairperson grants him leave or may grant him leave to cross-examine the witness if he or she fails the Chairperson will or may dismiss the application.

Rule 3.6 makes it clear that in deciding an application for leave to cross-examine the Chairperson exercises a discretion. That discretion must be exercised judiciously with due regard to all relevant
10 circumstances.

From the above analysis of the provisions of Regulation 8.3 and various rules of the commission what emerges is that some of the important requirements that a person who applies for leave to cross-examine a witness before this commission must satisfy that must deal with is that there is no right to cross-examination but the Chairperson may grant leave to cross-examine in certain circumstances.

The witness implicates the applicant for leave to cross-examine. The applicant must clearly identify the part or parts of the witness statement evidence which implicate or implicates him or her.

20 The applicant for leave to cross-examine must state whether he admits or denies or disputes the witness allegations or evidence that implicate or implicates him or her and he or she must set out his or her version in relation to any allegation or evidence by the witness or in relation to each incident and the grounds upon which he or she denies or disputes or qualifies the allegation made or evidence given by the witness.

The Chairperson exercise that discretion in granting or refusing an application for leave to cross-examine. In determining whether to grant or refuse an application for leave to cross-examine the Chairperson considers the test to which reference has been made above.

In principle – a principle that is not expressly articulated or covered by the rules but is of obvious application is that an applicant for leave to cross-examine must take the commission into his or her confidence and disclose his or her true and full version in regard to any
10 allegation made or evidence given by the witness that implicates him or her.

Obviously an applicant for leave to cross-examine or fails to take the commission into his or her confidence and disclose his true version of matters risks having that factor taken into account against him or her in the Chairperson considering the application for leave to cross-examine.

Despite the fact that the applicant's affidavits were deposed to in support of an application for leave to cross-examine they reflect the applicant's attitude as being that he has a right to cross-examine Mr
20 Gordhan.

This position is also reflected in the applicant's counsel's written submissions. However to his credit when Mr Mpofu SC who appeared for the applicant as I have indicated presented his oral argument on behalf of the applicant he quite correctly made it clear that he accepted that in this commission the applicant has no right to

cross-examine but has to apply for leave to cross-examine and will only have that right if the Chairperson grants him leave to cross-examine.

Mr Mpofo also accepted that the applicant is required to also give his version in regard to matters in which he is implicated in Mr Gordhan's statement or evidence.

It is now necessary to consider or to apply the requirements that I have discussed above to the application before me. In applying the rules as discussed above to the applicant's application and Mr Gordhan's opposition of that application the first issue for the applicant
10 is whether as required by Rule 3.3 the applicant has shown that he is implicated in Mr Gordhan's statement or evidence.

In respect of many issues in his founding affidavit where the applicant articulates issues in respect of which he seeks leave to cross-examine Mr Gordhan the applicant has not shown that he has implicated Mr Gordhan's statement or evidence.

However there are a few areas in his founding affidavit in which it is shown that he is implicated in Mr Gordhan's statement or evidence. I shall deal with these in due course. I have also made the point that Rule 3.3 requires from an applicant for leave to
20 cross-examine a statement responding to the witness statement insofar as it implicates him or her.

This means that an applicant for leave to cross-examine must respond to those parts of the witness' statement which implicate him or her. The applicant's statement in this case does not at all respond to certain important parts of Mr Gordhan's statement which implicates him

or does not respond adequately to some parts of Mr Gordhan's statement or evidence.

One example of this relates to paragraphs 127.2 to 127.4 of Mr Gordhan's statement where Mr Gordhan implicates the applicant of blatant refusal:

"To account to him as Minister of Finance on material issues (such as the operating model of SARS)".

Mr Gordhan accuses the applicant of even refusing to
10 acknowledge his authority and Mr Gordhan suggests that this conduct on the applicant's part appeared to have been part of a campaign aimed at forcing him to resign as Minister of Finance. He says the applicant made serious allegations against him and continued to refuse to accept that he was accountable and answerable to him as Minister of Finance.

The applicant - as I have indicated - does not respond to these allegations in Mr Gordhan's statement and put his, his version. Furthermore I have also stated that Rule 3.4 requires the statement of an applicant for leave to cross-examine to make it clear which parts of
20 the witness' statement are disputed or denied and the grounds upon which those parts are disputed or denied.

Because the applicant's affidavit in this case do not identify or do not clearly identify the parts of Mr Gordhan's statement that are denied or disputed it cannot be said that it complies with that part of Rule 3.4 that requires that an applicant's statement makes it clear what

parts of a witness statement are disputed or denied. One struggles to see which parts of Mr Gordhan's statement the applicant admits or disputes.

The applicant's statement should have made this quite clear. Rule 3.4 obliges an applicant for leave to cross-examine. To also give his version in regard to allegations made by a witness on regard to evidence given by a witness. It will also have been clear from the discussion of Regulation 8.3 and Rule 3.7 that an applicant for leave to cross-examine is required to show that it is necessary and in the best
10 interest of the function or work of a Commission that he or she be granted leave to cross-examine.

Neither in his founding affidavit nor in his supplementary affidavit did the applicant deal with the issue of why it can be said that granting him leave to cross-examine Mr Gordhan is necessary and in the best interest of the function of the Commission. I have read his affidavits carefully and I am satisfied that he does not address this important issue.

As an applicant for leave to cross-examine he should have addressed the question of why I should conclude that it is necessary
20 and in the best interest of the function of the Commission that he be granted leave to cross-examine Mr Gordhan. By contrast in his opposing affidavit Mr Gordhan specifically contended that the first reason why he opposes the applicant's application is that it and I quote:

"Fails to comply with requirements of Rules 3.4 and

3.7.”

Of the Commission’s Rules. Both Rule 3.4 and Rule 3.7 have been quoted above. Rule 3.4 is the rule that among other things requires an applicant for cross-examination or rather - excuse me - an application for cross-examination to be accompanied by the applicant’s or implicated persons and I quote:

“Statement responding to the witness statement insofar as it implicates him or her.”

And that such statement by the applicant or implicated person:

10 “Must make it clear what parts of the witness statement are disputed or denied and the grounds upon which those parts are disputed or denied.”

Rule 3.7 is the rule that effectively regularise Regulation 8.3 and is to the effect that in this Commission there is no right to cross-examine by the Chairperson:

“May permit cross-examination should he deem it necessary and in the best interest of the work of the Commission to do so.”

20 Rules 3.4 and 3.7 are therefore together with Regulation 8.3 at the heart of the consideration of an application for leave to cross-examine a witness before this Commission. In support of his contention that the applicant’s application fails to comply with Rules 3.3 and 3.7 Mr Gordhan said in his affidavit and I quote 6.1:

“Contrary to those requirements the application fails to make it clear what parts of the witness

statement are disputed or denied and the grounds upon which those parts are disputed or denied.”

6.2:

“Nor does it establish that cross-examination is necessary and in the best interest of the work of the Commission to do so.”

6.3:

“This defect is a basis to dismiss the application in its entirety.”

10 Mr Gordhan also pointed out that he was advised that the purpose of cross-examination would be to test his evidence against an alternative set of facts provided by the applicant, but said Mr Gordhan the applicant did not put up any alternative set of facts or any evidence contradicting his evidence. Mr Gordhan stated in his opposing affidavit that in his evidence before this Commission he had testified about the applicant in three respects.

He said that: A, he expressed his concerns about the applicant’s appointment and the applicant’s resistance to his executive oversight when he was the Minister of Finance to whom the applicant
20 was accountable. B, he provided evidence to the Commission regarding the apparent irregularity of a contract approved by the applicant in terms of which New Integrated Credit Solutions (NICS) was appointed as a debt collector at SARS and:

“The applicant’s misleading statements to Parliament regarding his involvement.”

C, he testified about the campaign against him when he was reappointed as Minister of Finance that included the launching and subsequent withdrawal of criminal charges against him arising from a docket opened by the applicant. He said I testified regarding its impact on me personally. After setting out the above three issues as the only issues that related to the applicant that he testified about in this Commission Mr Gordhan made the point - in the next paragraph - that the applicant has no placed a complete and factual version before the Commission with which to test any of his factual evidence through
10 cross-examination.

He said that the applicant's disagreement with his personal impressions and experience does not assist the Commission. Mr Gordhan thereafter pointed out in his opposing affidavit that and I quote:

“All three of the issues identified above regarding which I testified have been confirmed by Justice Nugent in the work of the Commission of Inquiry into tax administration and governance by SARS (Nugent Commission).”

20 Mr Gordhan went on to say and I quote:

“As set out below that Judicial Commission has investigated, considered and made several findings that render this application by the applicant redundant.”

In his replying affidavit the applicant does not deny or

dispute Mr Gordhan's assertions that the three respects in which he says he testified about him in this Commission are the only respects in which he testified about him nor does he deny or dispute Mr Gordhan's evidence that and I quote:

"All three of the issues identified have been confirmed by Justice Nugent in the work."

Of the Commission he chaired. The applicant also does not deny Mr Gordhan's assertion that the Nugent Commission:

10 "...investigated, considered and made several findings..."

About those three issues. Before I deal with what the applicant says in his replying affidavit let me make one point that is that after Mr Gordhan had delivered and served his opposing affidavit the applicant had an opportunity to meaningfully and directly respond to Mr Gordhan's opposing affidavit. However in his replying affidavit the applicant said in part and I quote:

20 "I do not propose to deal with the allegations contained in the opposing affidavit *ad seriatim* due to the nature of my responses which are thematic and cut across the gist of such opposition. Any allegations which are not specifically addressed but which are in consistent with the version contained in this, the founding and supplementary affidavits including annexures thereto must be regarded as having been specifically denied and disputed."

There are three points to be made in connection with this passage from the applicant's replying affidavit. The first is that the applicant says that he will not respond to all the allegations made in Mr Gordhan's affidavit *ad seriatim* because his responses are thematic and cut across the gist of Mr Gordhan's opposition. The danger with this approach adapted by the applicant is that there may be material parts in Mr Gordhan's affidavit in evidence to which he may end up not responding which may therefore stand as undisputed or uncontroverted.

The second point is that where Mr Gordhan's affidavit
10 contains a version on a certain issue and that version is inconsistent with the applicant's affidavits and the applicant relies simply on the second sentence in the passage quoted above to say that he denies or disputes Mr Gordhan's allegation or evidence. His denial will be nothing more than a bare denial of what Mr Gordhan may have said in his opposing affidavit.

That will not assist the applicant's application for leave to cross-examine. The third point is that there may be parts of Mr Gordhan's affidavit and evidence which might not be said to be inconsistent with any of the contents of the applicant's affidavits. In
20 such a case the fact of the last sentence in the passage quoted above would be that such evidence is not denied or disputed because the sentence only says that what is inconsistent with – what is denied or disputed, what will be denied or disputed or must be regarded as denied or disputed is what is inconsistent with the applicant's affidavits and annexures.

The applicant does not dispute or deny any explanations that Mr Gordhan may have given in his opposing affidavit in respect of what he may have said in his statement or evidence. In his replying affidavit the applicant attacked Mr Gordhan's reliance on the findings of the SARS Commission on the basis that they are irrelevant opinions. However he failed to substantiate this contention.

All he said was that they are hit by at least three exclusionary rules relating to opinion evidence but he did not say what those three rules are. He then set out some of his complaints about
10 the SARS Commission which included that: A, the SARS Commission had its own terms of reference. B, he was allegedly denied the right to participate in the SARS Commission.

C, he will shortly be setting down Part B of his challenge to the SARS Commission's Report seeking relief to review and set it aside and mentioned some of his intended grounds of review. I am unable to agree with the applicant's contention that findings made by the SARS Commission in respect of issues on which he requested leave to cross-examine Mr Gordhan are irrelevant.

He himself fails to say why such findings are irrelevant other
20 than to say that the SARS Commission had its own terms of reference. Although the SARS Commission had different terms of reference they may have made findings of fact that relate to some of the allegations or facts on which the applicant seeks leave to cross-examine Mr Gordhan. Obviously its findings are not and cannot be binding on me.

However I must have due regard to them when among others

I consider whether it is necessary and in the best interest of the function of the Commission to grant the applicant leave to cross-examine on an issue that has been considered by the SARS Commission and in respect of which that Commission has made a finding.

The applicant points out that his application was prompted by a Rule 3.3 Notice that he received from the Secretary of the Commission. He says that that notice stated that Mr Gordhan had submitted to the Commission a statement that implicated him in
10 wrongdoing and pointed out two respects in which it said Mr Gordhan implicated him.

In his founding affidavit the applicant states that the one respect in which the Rule 3.3 Notice said Mr Gordhan implicated him was in his statement. He quoted that part as well as the other respect in which the Rule 3.3 Notice suggested that Mr Gordhan had implicated him. The applicant put it in these terms and I quote, 5.1:

“My alleged participation in the awarding of the contract or tender to new integrated credit solutions a company owned by my alleged friend
20 Mr Patrick Monyeki.”

And 5.2:

“My alleged refusal to account to Minister Gordhan as Minister of Finance on material issues, a deteriorating relationship between the two of us alleged ongoing personal and institutional attacks

by me and Minister Gordhan and related relationship issues.”

The applicant set this out in paragraph 5 of his founding affidavit. I deal later with these two respects in which the Rule 3.3 Notice said Mr Gordhan had implicated the applicant. A proper reading of the applicant’s paragraph 6 of his founding affidavit reflects that the applicant makes the point that a cursory reading of Minister Gordhan’s statement submitted to this Commission reveals that the issues that Mr Gordhan raised in his statement which directly or indirectly affected
10 him - that is the applicant – included the following and I quote, 6.1:

“The role played by Minister Gordhan as Minister of Finance to assist or oppose perceived state capture.”

6.2:

“Minister Gordhan’s request for my removal.”

6.3:

“His complaints about the manner in which I was employed.”

6.4:

20 “His belief that I was responsible for the charges against him and others of the alleged rogue unit.”

6.5:

“The lawfulness or otherwise of the rogue unit and if it existed Minister Gordhan’s role in it.”

6.6:

“My allegation of racism and disrespect towards me by Minister Gordhan.”

6.7:

“His conduct and abuse of power related to his return to the Ministry of Finance in 2015 and more recently the victory of President Cyril Ramaphosa at the ANC Conference. This is coupled with a personal vendetta and campaign driven by Minister Gordhan to influence President Ramaphosa to complete Minister Gordhan’s dream of my removal as Commissioner of the South African Revenue Service (SARS) for the sake of revenge and misplaced hatred towards me.”

For convenience I shall refer to the issues listed under paragraph 6 of the applicant’s founding affidavit as the paragraph 6 issues. In paragraph 7 the applicant lists seven “additional issues” which he says and I quote:

“Are related to [the paragraph 6 issues] but are not directly raised in the papers.”

I shall refer to the issues he lists in paragraph 7 as the paragraph 7 issues. Paragraph 7 reads and I quote:

“Seven additional issues which are related to the above but are not directly raised in the papers include.”

7.1:

“Mr Gordhan’s narrative that when it comes to state capture there is a line between the devils (led by former President Zuma) and the angels of which he counts himself as one.”

7.2:

“Related to the above Minister Gordhan’s misleading of Parliament about his relationship with the Guptas which is similar to that of other self-styled angels such as former Minister Nene.”

10 7.3:

“Minister Gordhan’s role in rogue unit saga.”

7.4:

“Minister Gordhan’s improper leading role in my disciplinary inquiry.”

7.5:

“Minister Gordhan’s improper role in the Nugent Inquiry including his holding of an improper and undisclosed meeting with the Commissioner, Judge Robert Nugent and the legal implications thereof.”

20

7.6:

“Minister (or Commissioner) Gordhan’s track record of mismanagement, lawlessness and flagrant breach of procurement rules which I confronted with at SARS.”

7.7:

“Reports of the above of one of my predecessors Mr Oupa Magashula by Minister Gordhan and his rogue unit and the views of the current Acting Commissioner thereon.”

In the first sentence of paragraph 8 of his founding affidavit the applicant states and I quote:

“The above make seven topics for intended cross-examination.”

10 It is not immediately clear whether the reference to and I quote “above” in the first sentence of paragraph 8 of the applicants founding affidavit is a reference to the paragraph 6 issues or a reference to the paragraph 7 issues because under both seven issues are listed. However it would seem that the applicant must have intended to refer to the paragraph 6 issues because he said that those were raised by Mr Gordhan in his statement whereas he said the paragraph 7 issues were not “directly raised in the papers” or accordingly this matter must be approached on the footing that the issues or matters in respect of which the applicant seeks leave to
20 cross-examine Mr Gordhan are the paragraph 6 issues.

If I am correct that the reference to the seven topics in the first sentence of paragraph 8 is reference to the paragraph 6 issues then the first sentence of paragraph 8 of the applicant’s founding affidavit must be understood to mean that those are the seven topics for the applicant’s “intended cross-examination”. However the

applicant goes on to say in paragraph 8 that these seven topics:

“Can be reduced to five broad cross-examination themes”.

He lists those things as follows and I quote, 8.1:

“The general credibility and general attitude of Minister Gordhan characterised by a propensity to distort and spin the facts.”

8.2:

10 “Bias hostility and vindictiveness as guiding attitude of the relation between the two of us leaving no room for professionalism, objectivity and impartiality in our mutual dealings. This calls for any evidence given by Gordhan about me in any ongoing forum including this one to need to be taken with more than the proverbial pinch of salt.”

8.3:

20 “The distortion of the evidence in order to support the false narrative of devils and angels and specifically my alleged breach of procurement procedures.”

8.4:

“Racism and other unbecoming behaviour by Minister Gordhan towards me symbolises regrettable behaviour which has no place in the nation we are all trying to build and which there is

no place for looking down upon African people. The deep role of Minister Gordhan in the rogue unit saga also referred to a Sunday Evening Project which was a form of state capture.”

It seems to me that the applicant’s case is that he seeks leave to cross-examine Mr Gordhan on the paragraph 6 issues using the cross-examination themes which he sets out in paragraph 8 of his founding affidavit. After outlining in paragraph 8 what he calls his cross-examination themes the applicant says in paragraph 9 and I
10 quote:

“The rest of this affidavit will briefly outline my submissions herein organised along the lines of the above mentioned five cross-examination themes or headings and in respect of which my version will be outlined and the relevant supporting documents where applicable will be identified and annexed.”

Paragraph 9 seems to emphasise that if one wants to consider the basis of the applicant’s application the proper place to look at is not after paragraph 8 except for what the applicant indicates are his
20 versions. Paragraph 10 of the applicant’s founding affidavit seems contains a request about the amount of time that the Commission or the Chairperson should allow for cross-examination should he grant cross-examination or leave to cross-examine.

It is important to point out that from paragraph 1 to paragraph 9 of the applicant’s founding affidavit the applicant does not anywhere

draw attention to any allegation made by Mr Gordhan that implicates him in any wrongdoing. The closest to which he comes is in paragraph 6.3 and paragraph 6.4. In paragraph 6.3 the applicant suggest that Mr Gordhan had “complaints about the manner in which he was employed”. That does not say that Mr Gordhan implicated him in any wrongdoing in regard to his appointment.

In paragraph 6.4 the applicant refers to “Mr Gordhan’s belief that he was responsible for the charges against Mr Gordhan and others of the alleged Rogue Unit”. On its own this does not amount to Mr Gordhan implicating the applicant in any wrongdoing. In any event the applicant has admitted in his affidavit that he laid a complaint with the Police which led to Mr Gordhan and others being criminally charged.

Other than this none of the paragraph 6 issues refer to any statement or refers to any statement by Mr Gordhan that can be said to have implicated the applicant in any wrongdoing.

When one goes to the paragraph 7 issues there to what the applicant does is to list his own allegations or complaints or accusations of alleged improper conduct by Mr Gordhan. They are not instances or areas in Mr Gordhan’s affidavit where he implicates the applicant. By the applicant’s own admission the paragraph 6 issues are not directly raised in Mr Gordhan’s statement. Therefore he cannot apply for leave to cross-examine Mr Gordhan on issues that are not raised in Mr Gordhan’s statement or in Mr Gordhan’s evidence.

I have already referred to paragraph 8 of the applicant’s founding affidavit which contains what the applicant calls five broad

cross-examination themes. In paragraph 11 of his founding affidavit the applicant states that he is proceeding:

“to outline issues to be raised by him as (his version) in respect of each of the broad themes identified above”.

The so-called cross-examination themes start from paragraph 11 and go up to paragraph 30.7 of the founding affidavit. The balance of the founding affidavit is then taken up by a condonation application, subject to what is contained in the applicant’s supplementary affidavit with which I shall deal shortly, the applicant’s case on whether or not
10 he should be granted leave to cross-examine Mr Gordhan is based on paragraphs 5 to 30.6 of his founding affidavit. I have dealt with all the above paragraphs except that I have not dealt with the contents of paragraphs 11 to 30.6. These paragraphs relate to the so-called cross-examination themes. I deal with them one by one.

Cross-examination theme one, that is general credibility. Under this theme the applicant does not state what Mr Gordhan said about him in his statement or evidence, which implicates him. He simply sets out his version on certain issues. In the first sentence under this theme the applicant states that:

20 “his version is that Minister Gordhan’s affidavit is more significant for what it omits than what it says.”

I have examined everything that the applicant says under this theme, he does not anywhere state that Mr Gordhan implicated him. Accordingly there is no basis for him to apply for leave to cross-examine Mr Gordhan on an issue in regard to which Mr Gordhan does

not implicate him.

Cross-examination theme two, that is anti-Moyane bias and hostility. Under this cross-examination theme the applicant states that he:

“will seek to demonstrate that the levels of acrimony, hostility, enmity and anger harboured by Mr Gordhan towards him as a person is sufficient to disqualify him as an impartial and dispassionate commentator on any issue in which he is allegedly involved.”

10 Also under this cross-examination theme the applicant states:

“It will be demonstrated that Gordhan has made it his lifelong mission to have me removed from office by hook or by crook.”

He also alleges that:

“Minister Gordhan’s meddling in [that is his disciplinary enquiry and the Nugent Inquiry] is in the circumstances improper, unlawful, unfair and in breach of the Constitution and the rule of law in various ways.”

I have also examined everything said by the applicant under this theme in the founding affidavit. He does not anywhere articulate anything that
20 was said by Mr Gordhan that he says implicates him in any wrongdoing.

Cross-examination theme 3, that is alleged breach of procurement procedures by the applicant [the Monyeki case]. It is only under this heading, or this is one of the headings where the applicant points out that Mr Gordhan made a direct accusation against him. The applicant states that Mr Gordhan made a direct accusation that he at:

“2.1 Improperly participated in the award of a tender to my friend Mr Patrick Monyeki; and

2.2 Lied to Parliament about such involvement by denying it.”

In response to this the applicant provides a bare denial, and after pointing out that it is not clear where Mr Gordhan made the above accusations because they are not included in his affidavit, nor in his evidence before the Commission the applicant says:

10 “In any event I deny these accusations and will put questions to Gordhan to demonstrate their falsity.”

He does not say whether he admits that he participated in the awarding of the contract but denies that his participation was improper. He denies the entire allegation.

In his opposing affidavit Mr Gordhan points out that he mentioned the Monyeki case in his evidence. He says that he has no personal knowledge of the matter, but mentioned it in his evidence before the Commission as a suggestion that the Commission should consider investigating the case because there appear to have been no compliance with procurement procedures.

20 He points out that the Monyeki case has already been dealt with by the SARS Commission of Inquiry. He refers to passages in the final report of the SARS Commission, in which that Commission made a clear finding that the applicant participated in the award of a tender to a company called New Integrated Credit Solutions. It is also stated in the SARS Commission Report that the applicant approved the

appointment of New Integrated Credit Solutions to the panel of service providers on 17 December 2015. It is also stated in that report that the applicant approved the appointment of that company to Phase 2 of the Project on 15 February 2018. It is said that in each case the applicant did so by signing the report of the National Bid Adjudication Committee.

That Commission's report says:

"Later on SARS ..."

no I am sorry, the affidavit by Mr Gordhan continues and says:

10 "Later on the SARS Commission this finding in its report: 'it is also not true that Mr Moyane does not get involved in such appointments. His was the final approval for the award of the contract, indeed that assertion contradicts the assertion he made in the application to set aside the contract with LTC, the very foundation of which was that he was involved in the award of the contract. In his replying affidavit he acknowledged expressly that he had been involved in the award of the contract; "as a matter of fact I was involved with the evaluation and adjudication of the bids. The National Bid Adjudication Committee's process resulted in that recommendation made to
20 me in my capacity as SARS Accounting Officer which recommendation I personally signed. I was also involved with the evaluation and adjudication in the sense that I am responsible for ensuring that all procurement occurs in accordance with a lawful system and in that the ultimate recommendations emanating from that system needed my

approval.”

The SARS Commission also made this finding:

“So far as Mr Moyane conveyed that he had no hand in the appointment of New Integrated Credit Solutions that is not true. It is apparent from the documents that on each of the occasions that New Integrated Credit Solutions was appointed to the panel and again appointed to Phase 2. The National Bid Adjudication Committee made a recommendation to Mr Moyane who then approved it by appending his signature to the report.

10 He cannot but have known that the NPA’s decision was not the end of the process and cannot but have known that New Integrated Credit Solutions was appointed bearing in mind that he approved it.”

In regard to this transaction, the award of this contract it is important to also point out that in his opposing affidavit Mr Gordhan referred to an affidavit that he said he sent to the disciplinary enquiry before which Mr Moyane was supposed to appear and he pointed out that in that affidavit, and that affidavit was attached to his affidavit as one of the annexures, that in that affidavit he pointed out that indeed there was
20 even a transcript of what was said by Mr Moyane in Parliament in regard to the award of this contract. Mr Gordhan made it clear that the transcript indicated that Mr Moyane had denied that he had been involved in the award of the contract to that company and according to that transcript and according to Mr Gordhan Mr Moyane, the applicant, had admitted when he appeared before the relevant committee in

Parliament that he, Mr Monyeki, of that company, was a friend of his, so the question that arises therefore is what it is that the applicant said to Parliament about whether he was involved in the award of the contract. If he said as the transcript or the affidavit by Mr Gordhan suggests that he had not been involved the position is that the SARS Commission found that in fact he had been involved in the awarding of that contract.

What then becomes important is the fact that in this Commission, in his application for leave to cross-examine Mr Gordhan
10 in regard to this issue the applicant took the position that the allegation that made as quoted by him in the paragraph that I indicated earlier on which is in paragraph 49 of this decision, he indicated that all those allegations were false, or that allegation of his involvement was false and the allegation that he lied in Parliament was false.

However he did not proceed to give his full version as to what exactly he said in Parliament and to also state whether his version is that he did not take part in the award of the contract or whether he admits that he took part but denies that such participation was improper. It seems to me that in this regard to say the least the
20 applicant failed to give his version of what happened in regard to an issue on which he seeks leave to cross-examine Mr Gordhan. In terms of the rules as discussed earlier he was obliged to give his full version in regard to that issue but he has failed to do so.

For that reason in regard to his request for leave to cross-examine Mr Gordhan in regard to that issue therefore his application

cannot be accepted in regard to that issue.

The next is cross-examination theme four, that is alleged racist and hateful utterances, impairment of dignity and vendetta. This is the fourth cross-examination theme on which the applicant seeks leave to cross-examine Mr Gordhan. Under it the applicant simply says:

“26. These issues which will be treated as a discreet theme will have already been alluded to in different context above.

10 27. Under this theme the issue will be invoked in a separate context of the constitutional obligation contained in *inter alia* Section 96(2)(b) of the Constitution as well as Section 195 thereof.

28. No new documentation will be relied on other than what has already been annexed [AGTM2, the Constitutional Court Affidavit, Annexure TMZ3] hereto.”

20 The applicant does not make any effort in his discussion of this cross-examination theme to demonstrate how it is necessary and in the best interests of the function of this Commission that he should be granted leave to cross-examine Mr Gordhan on these issues or on this theme and that would be a reason why leave should not be granted that he should cross-examine Mr Gordhan in regard to that issue.

The last cross-examination theme is cross-examination theme five, and that is about the role of the so-called Rogue Unit. Under this cross-examination theme the applicant seeks leave to cross-examine

Mr Gordhan on the alleged Rogue Unit, its existence and lawfulness. The applicant does not say under this theme what it is that Mr Gordhan said in his affidavit or evidence before this Commission that implicated him in State Capture or corruption in regard to the Unit.

Interestingly the applicant states in paragraph 30.1 of his founding affidavit under this theme:

10 “This issue plays a central role in that the existence and lawfulness of the Rogue Unit was repeatedly and independently exhausted. The likes of Mr Gordhan falsely assert that this is not the case. In this regard I attach a copy of the Sekane report as Annexure TMZ4. I will soon also provide a copy of KPMG report in due course.”

The question arises if the existence and lawfulness of the alleged Rogue Unit have been repeatedly and independently exhausted why is it necessary and in the best interests of the function of the Commission to allow cross-examination on it. In his opposing affidavit Mr Gordhan points out that the SARS Commission considered these very issues in regard to the unit and concluded that the unit was lawful. It seems to me that the applicant has not shown that in regard to the so-called
20 Rogue Unit it is necessary and in best interests of the function of the Commission that he should be granted leave to cross-examine Mr Gordhan.

In his supplementary affidavit the applicant indicated that he or his legal team had had the opportunity of studying the transcript of Mr Gordhan’s oral evidence. He said that except for one issue he saw

no reason to add to what he had already covered in his founding affidavit. He said that the exception related to Mr Gordhan's evidence regarding his laying of criminal charges relating to the so-called Rogue Unit against him with the Hawks on 15 May 2015.

The applicant quoted what Mr Gordhan said about him having laid charges against him. The applicant said:

“About that issue Gordhan had the following to say. This envelope contained 27 questions addressed to me from the Hawks demanding that they be answered by 2 March 2016.

10 The questions related to the high-risk investigation unit within SARS formed years earlier. Charges against me relating to that unit had been filed by Mr Moyane on 15 May 2015.”

After quoting this passage the applicant says I intend to cross-examine Mr Gordhan extensively on this issue so as to assist the Commission in evaluating a number of issues which the applicant sets out. He gives a list of three issues, he says that these are”

(a) “The actual events and evidential material which led him to lay charges against among others Mr Gordhan so as to assess whether or not there was probable cause or whether as implied by Mr Gordhan I was out of malice and personal vindictiveness and the like.

20 (b) The credibility of Mr Gordhan as a witness and whether anything he says including his implication of me in alleged State Capture can ever be taken with anything less than a pinch of salt.

- (c) His motives and painting himself as innocent untainted by State Capture and a paragon of virtue namely to conceal his own central role in State Capture.”

Out of all these three issues that the applicant has set out in the preceding paragraph which I have just finished reading the only issue that has caused me some concern is one relating to the allegation that Mr Gordhan alleged malice on the part of the applicant in laying charges against him.

When one reads Mr Gordhan’s founding affidavit there are
10 places where one gets the impression that he may be suggesting that in laying charges against him the applicant was part of a scheme that sought to capture the National Treasury, but when one reads certain paragraphs in the founding affidavit one may also get sometimes the impression that what he says in that regard might be limited to the Hawks who served him with 27 questions when they were under the leadership of General Ntlemeza. Also when one has regard to Mr Gordhan’s opposing affidavit in responding to the affidavit of the applicant there one sees that it appears that he might be equivocating with regard to whether he presses the point relating to what the motives
20 of the applicant were in laying the charges, but also when one has regard to the applicant one can see that in paragraph 5 of his affidavit where he sets what I’ve called paragraph – in paragraph 6 rather not paragraph 5 in paragraph 6 where he sets out what I’ve called the paragraph issues in regard to which he sought leave to cross-examine Mr Gordhan there is no reference to any allegation by Mr Gordhan that

he acted with malice or he was accusing him of malice in laying the complaint.

It seems to me that it would be better that I get clarification from both sides in regard to this issue before I make any final decision. I therefore propose that in regard to this particular issue I will issue directions in the next few days in which I will set out clearly what I would like both parties to address before I make a decision in regard to that issue.

10 Other than that issue I am satisfied having regard to all the circumstances that there is no other issue in regard to which the applicant should be granted leave to cross-examine Mr Gordhan and therefore in regard to all other issues the applicant's applications falls to be dismissed and in regard to the issue to which I have referred that issue remains reserved and I will issue directions and ask, direct the parties to file written submissions so as to afford me more clarification as to exactly what – where they stand in regard to that issue. Once all the written submissions are in I would give the issue further considerations and announce my decision in due course.

Therefore the decision I make is the following:

20

DECISION

- (a) Subject to (b) below the **APPLICANT'S APPLICATION FOR LEAVE TO CROSS-EXAMINE MR GORDHAN IS DISMISSED;**
- (b) Directions will be issued in the next few days for the parties to

deliver written submissions in regard the issue of whether or not Mr Gordhan's position is that in laying charges against him the applicant did so with malice and both parties will submit written submissions and then I will make my decision thereafter.

That is my decision.

ADV PAUL JOSEPH PRETORIUS SC: Noted, thank you Chair.

CHAIRPERSON: I think we will need to take the tea adjournment now.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

10 **CHAIRPERSON:** And then we can proceed after that. It is eleven o'clock, we will adjourn and resume at quarter past eleven.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Those who might not have been here earlier on good morning to everybody. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Morning again Chair.

CHAIRPERSON: Yes Mr Pretorius.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Before the adjournment yesterday Mr McBride we were dealing with the transcript of the telephone conversation at page 1557 of the bundles which is Yd. We had got to page 1564 and we were discussing the list of persons at the top of page 1565 who were at the very least subject matter of an investigation. Do you see that list of persons at 1565?

MR ROBERT JOHN McBRIDE: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: That list would have included Mr Mahlangu one of the speakers on the transcript as well as yourself as ED?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Executive Director.

MR ROBERT JOHN McBRIDE: Yes that is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Now you going to tell the Chair in a moment hopefully in a moment of the – of the investigation conducted by IPID into certain police officers and of what is referred to
10 as a counter investigation by those police officers or persons associated with them into IPID and we will deal with that. That matter eventually came before His Lordship Mr Justice Touchton who dealt with the result and dispute in matters arising from the investigation and the counter investigation.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So we will explain the origins of that list of names in due course but it – what you have already told the Chair is that the context of all this is what you described as at least a questionable counter investigation by police into IPID investigators.

20 **MR ROBERT JOHN McBRIDE:** Yes that is correct. I think the larger picture is important because it – it exhibits the extent to which police are not doing their work and are busy with protecting themselves from previous and continuing wrongdoing.

ADV PAUL JOSEPH PRETORIUS SC: Alright now we are going to come to that in a moment. If we could just complete the references in

the transcript and go to page 1566. At the top of the page the English portion reads:

“Okay I do not know but if you have something on those seniors you will present it along then you would explain what they were up to. We had a meeting on that date they briefed us on what to do which I personally know that.”

And this is now a person referred to as male 2, do you know who that is? Perhaps Mr Mahlangu will give some clarity in respect of that but
10 once again the theme that emerges is that the persons involved in this telephone conversation seemed to be talking about the obtaining of evidence in respect of a counter investigation and cooperation required in order to obtain those – that evidence against the background of an offer of promotion. Do you see that?

MR ROBERT JOHN McBRIDE: Chair yes except I do not know the exact context and why it is male 2. If I hear it maybe I will be able to see whether this is...

ADV PAUL JOSEPH PRETORIUS SC: Alright well let us just summarise.

20 **MR ROBERT JOHN McBRIDE:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: Your references to this transcript insofar as we are able. This is a transcript of a telephone conversation of an uncertain date between a Mr Mahlangu an IPID investigator and Mr Gomo a senior officer in Crime Intelligence, correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: The first part of the conversation deals with what is in effect an offer or a prospect of a substantial promotion to Colonel in Criminal Intelligence – in Crime Intelligence.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Correct?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: There is then a brief reference to a fear that this might constitute favouritism or corruption and those issues are dealt with. There is then a discussion on evidence in
10 relation to a criminal investigation where Mr Mahlangu might be an accused?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And he is clearly speaking to Mr Gomo about bringing evidence against his co-accused?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And you say this is the counter investigation?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In that context you are said to
20 be going down?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Right and then finally we see indications which Mr Mahlangu will explain or suggestions of finding evidence?

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: In pursuance of what is being discussed. If we can move on then to paragraph 79 of your statement. You have told the Chair already in another paragraph about your discovery when you returned after your suspension that cases being investigated by IPID had been prematurely closed without carrying out proper procedures and this was done in certain instances you say to manipulate the statistics upwards?

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. You have already told the
10 Chair that this was intended to portray an impression that performance had been better under your replacement on an acting basis Mr Kgagmanyane – Kgamanyane better performance than under your watch?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you say that the Auditor General had noticed this issue?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: What happened as a result of your investigations into these facts or allegations? Were there any
20 disciplinary proceedings?

MR ROBERT JOHN McBRIDE: Yes there was a disciplinary investigations into Morema I am not sure the outcome and at which stage it was but Mr Morema left soon afterwards. He was also one of those who I never saw again. And there was an investigating into the special closures and one employee was – was eventually dismissed.

There was also a criminal case that was laid at Pretoria Central about defeating the ends of justice with some of these cases and I think one of the people in the – in terms of the internal disciplinary and the criminal case as a suspect was Mr Kgamanyane himself and he also then left. He was then transferred to the DPCI.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Do I understand you correctly one employee was dismissed and another employee resigned and there were others who were also subject to investigation in relation to these issues?

10 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Of in effect falsifying statistics by closing cases prematurely and improperly?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Let us move on then to the counter investigation that we flagged earlier in your evidence. At paragraph 80 you deal with the investigation conducted by IPID into the then acting National Commissioner of Police General Phahlane.

MR ROBERT JOHN McBRIDE: That is correct yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Please briefly provide the background to that investigation?

MR ROBERT JOHN McBRIDE: Okay. So during my suspension at some stage March 2016 Paul O'Sullivan was approached by police officers at some stage prior to that. As a result he then laid a complaint with IPID and the complaint dealt with I think initially sub-standard equipment at the forensics lab including if I remember

correctly some chemicals that were used in a testing and for example fingerprint brushes. So the fingerprint brushes have to be of a particular specification but instead significant amount of the wrong brushes were bought and a complaint was laid and the complaint was given to initially Morema and Gomo to deal with. One of the witnesses who had approached...

ADV PAUL JOSEPH PRETORIUS SC: Sorry before you go on. At that time was Mr Gomo part of IPID?

ADV PAUL JOSEPH PRETORIUS SC: Yes he was appointed in August
10 2015.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: Into IPID.

ADV PAUL JOSEPH PRETORIUS SC: Yes. In any event you say there was a complaint laid with IPID about the conduct of General Phahlane?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In broad terms how would you – how would one categorise those complaints?

MR ROBERT JOHN McBRIDE: Initially the complaint...

ADV PAUL JOSEPH PRETORIUS SC: You deal with that in paragraph
20 80.

MR ROBERT JOHN McBRIDE: 80. Well the issues about the corrupt relationship with General Phahlane or the allegations of a corrupt relations General Phahlane and a number of service providers.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

MR ROBERT JOHN McBRIDE: And that was the initial thrust of the

investigation.

ADV PAUL JOSEPH PRETORIUS SC: That was brought to the attention of Mr Kgamanyane during your suspension?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: As I understand it.

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Was that case then brought to your attention?

MR ROBERT JOHN McBRIDE: On my return Paul O’Sullivan sent a
10 complaint to me requesting the status update of the case which a few months earlier he had complained about to IPID.

ADV PAUL JOSEPH PRETORIUS SC: Is that when you discovered the – that two files had been opened and both of them had been closed on account of the fact that they were duplicates of one another? You mentioned that in paragraph 81?

MR ROBERT JOHN McBRIDE: Yes – not immediately it is only after Mr Sesoko came back that I was made aware of the extent of dysfunctionality and wrongdoing. So at that stage Mr Sesoko is not back yet. I think he only comes back either December or January. And
20 that is directly linked to how he comprised the task team to then deal with the Phahlane investigation.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You do mention the duplicate files being closed in the same paragraph where you talk about O’Sullivan’s complaint but you say they are separate in time?

MR ROBERT JOHN McBRIDE: Yes it is just – it is Mr Sesoko who

briefed me that this is what was going on.

ADV PAUL JOSEPH PRETORIUS SC: In any event...

MR ROBERT JOHN McBRIDE: Upon his return.

ADV PAUL JOSEPH PRETORIUS SC: As a result of the complaints laid by O’Sullivan and as a result of the matter again being brought to your attention was a task team established?

MR ROBERT JOHN McBRIDE: Yes it was...

ADV PAUL JOSEPH PRETORIUS SC: When was the task team established in relation to your suspension and return? You deal with
10 that in paragraph 82.

MR ROBERT JOHN McBRIDE: Ja it is around about November towards the end of November we established a task team. It could have been one or two weeks earlier but...

ADV PAUL JOSEPH PRETORIUS SC: What year?

MR ROBERT JOHN McBRIDE: 2016.

ADV PAUL JOSEPH PRETORIUS SC: Are you back by this stage?

MR ROBERT JOHN McBRIDE: Yes I am just – I arrive – I return to work the 19 October.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So there is a complaint
20 about corruption or corrupt relationships.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Alleged between General Phahlane and service providers?

MR ROBERT JOHN McBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: That is brought to your acting

predecessor Mr Kgamanyane?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: On your return you receive a com – further complaint by Paul O’Sullivan that these matters have not been attended to?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: A task team is established?

MR ROBERT JOHN McBRIDE: Yes that is right.

ADV PAUL JOSEPH PRETORIUS SC: Okay who were members of that
10 task team?

MR ROBERT JOHN McBRIDE: If I can just add also during the period members of POPCRU also made an appointment and came to see me at the office about the same complaint around about end of October beginning of November also. They had indicated to me that they had had some interaction with Mr Mandla Mahlangu and as a result of that I requested a briefing from Mr Mahlangu which he gave to me indicated he knew a bit about the case and that Morema and Gomo were handling it.

ADV PAUL JOSEPH PRETORIUS SC: Alright was Mr Mahlangu part of
20 this task team?

MR ROBERT JOHN McBRIDE: That is the reason why I appointed him to head the task team because he had some knowledge of it.

ADV PAUL JOSEPH PRETORIUS SC: And we know is this the same mr Mahlangu as the person who participated in the telephone conversation we have just dealt with?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. Who else was on the task team?

MR ROBERT JOHN McBRIDE: Initially it was Mr Temane Binang and Mr Mantsha Raphesu and later on Mr Nkabinde was conducting a course or was attending a course in Pretoria. He is based in the KZN office and he approached Mr Mahlangu to request to be placed on the task team and Mr Mahlangu wrote to me and requested that he needs extra help on the task team.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Now if you would go back to page 1565 please. This is the transcript of the telephone conversation.

MR ROBERT JOHN McBRIDE: Okay I have it.

ADV PAUL JOSEPH PRETORIUS SC: It seems that there is some coincidence between the members of the task team that you refer to in paragraph 82 who are now investigating General Phahlane.

MR ROBERT JOHN McBRIDE: That is right.

ADV PAUL JOSEPH PRETORIUS SC: Or acting National Commissioner Phahlane on the one hand and the list of persons who are the subject matter of the collection of evidence and potential charges on page 1565
20 at the top of the page.

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Nkabinde, Binang and Mahlangu are mentioned there?

MR ROBERT JOHN McBRIDE: That is right.

ADV PAUL JOSEPH PRETORIUS SC: So what is the link?

MR ROBERT JOHN McBRIDE: Well the link is that that list on page 1565 includes complainant and investigators dealing with the complaints related to the forensic lab which at relevant times were under the command of General Phahlane.

ADV PAUL JOSEPH PRETORIUS SC: Right. So what appears to be happening on the face of it and there will be further evidence to deal with this and place it into full context with further facts is that Mahlangu is approached with an offer of promotion or the prospect of promotion.

10 **MR ROBERT JOHN McBRIDE:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: To testify against a range of people some or all of whom or some of whom are members of the task team investigating General Phahlane?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And that I understand from your evidence which you are going to give to the Chair now is part of what was termed a counter investigation?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right.

20 **MR ROBERT JOHN McBRIDE:** I just want to add a small point on. At the time when this task was set up in November Mr Mahlangu during his regular reports to me indicated to me that he met Gomo in the passages and Gomo said to him, "Ha there is nothing in that case we looked at it already' meaning the Phahlane case. And when he told me this I said just ignore it you go and investigate and see what you find.

ADV PAUL JOSEPH PRETORIUS SC: Right. What was – in paragraph 83 you deal with the subject matter and this is relevant to the counter investigation of some of the investigation against General Phahlane. What was that subject matter?

MR ROBERT JOHN McBRIDE: Okay initially the issue was that one of the service providers that [indistinct] information had assisted in the funding of the building of the – of Mr Phahlane's house and...

ADV PAUL JOSEPH PRETORIUS SC: Funded by whom allegedly?

MR ROBERT JOHN McBRIDE: By the service provider.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Right.

MR ROBERT JOHN McBRIDE: I think it was Service Provider was called Criminalistics. They were also involved in forensics equipment if I remember correctly. And another aspect to it was and at the initial stage the link was not seen was that a motor car dealer provided vehicles to the Phahlane family and other police officers basically gratis. Later on they would claim it was sponsorships but usually a sponsorship is for some community work or something like that but these cars were on the Phahlane names and were insured by – by the Phahlane's.

20 **ADV PAUL JOSEPH PRETORIUS SC:** During January of 2017 as a search warrant issued and executed at the home of General Phahlane?

MR ROBERT JOHN McBRIDE: Yes. Yes that is correct. The purpose of the search warrant was to verify information received that indeed a sound system had been installed in Mr Phahlane's house and it was facilitated and processed by a service provider.

ADV PAUL JOSEPH PRETORIUS SC: Right. Was that search warrant then the subject matter of a civil suit?

MR ROBERT JOHN McBRIDE: Ja the – I am going to refer to it these terms because there a number of such warrants that come afterwards. But this is the initial search warrant which was a search and identify and indeed General Phahlane opposed the validity of the search warrant. Now the – I just want to add this. Whatever the outcome – and the litigation is still ongoing and whatever the outcome of the litigation it will be in any event be mute because General Phahlane
10 himself admitted that a system is installed in his house. So the purpose of the search warrant to search and identify the system was in any case negated subsequently by General Phahlane.

ADV PAUL JOSEPH PRETORIUS SC: Right. This – would you refer to the testimony then of one of the original task team members that is the task team to investigate General Phahlane?

MR ROBERT JOHN McBRIDE: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Cedrick Nkabinde?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Also one of the persons on the
20 list.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In the telephone conversation transcript.

MR ROBERT JOHN McBRIDE: That is right.

ADV PAUL JOSEPH PRETORIUS SC: What happened in regard to

him?

MR ROBERT JOHN McBRIDE: So General Phahlane in 2017 launched the challenge of the search warrant. All well and good a response from IPID's side was given and General Phahlane identified from his perspective a number of technical issues with the search warrant all well and good. However the matter lay dormant for almost eighteen months and upon the removal of Nkabinde from the task team and upon his resignation we became aware that General Phahlane's initiating and attempting re-enrol that initial search warrant challenge based on
10 evidence testimony he got from Nkabinde. Without going into the detail the testimony from Nkabinde on the – his affidavit ended with a paragraph which in effect was saying; 'I am available to make statements for any other police officers having problems with IPID and I have instructed my attorneys to make me available for it.'

ADV PAUL JOSEPH PRETORIUS SC: Alright. Thank you. Would you go to paragraph 87 please?

MR ROBERT JOHN McBRIDE: I have that.

ADV PAUL JOSEPH PRETORIUS SC: And just tell the Chair what you say in that paragraph please?

20 **MR ROBERT JOHN McBRIDE:** Okay. So I say I want to pause here and go back to when the initial investigation into the case of corruption and money laundering was initiated against Phahlane. O'Sullivan was the complainant and also because of his background in the matter he and attorney Sarah Jane Trent accompanied IPID investigators to the Sable Hills Estate to point out witnesses that he had identified to IPID

investigators. I think perhaps yesterday I had said Trent was a secretary but I am reminded now that indeed she is an attorney.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR ROBERT JOHN McBRIDE: And these witnesses later gave statements which in – which included statements related to the investigation and provided clarity on the rate of development of the house at Sable Hill and other matters relating to who the contractor is for the house.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

10 **MR ROBERT JOHN McBRIDE:** And I think there were discussions and a statement from the contractor also.

ADV PAUL JOSEPH PRETORIUS SC: What you referred to as the Sable Hills house is that the same house in respect of which the search warrant you referred to earlier was granted?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And executed?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. So now we have a task team investigating General Phahlane and we have the complainant.

20 **MR ROBERT JOHN McBRIDE:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: As Paul O'Sullivan?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And to an extent at least his attorney Ms Trent?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. What happens then?

MR ROBERT JOHN McBRIDE: So...

ADV PAUL JOSEPH PRETORIUS SC: And you deal with that in paragraph 88 if you would refer to it please?

MR ROBERT JOHN McBRIDE: Okay. Okay as a result of the visit to Sable Hills residential estate a complaint was initiated within the police services by General Phahlane that there was a security breach at his house and that his life is now in danger. He then requested acting divisional commissioner Magele for her to establish a team to
10 investigate the security breach. At some stage in his contact with General Magele General Phahlane also contacted General Jan Mabula and his team from North West. Now an investigation was carried out by Crime Intelligence on the alleged security breach. A record of that report has gone missing. It has gone through the hands of four
Generals and they cannot provide it because allegedly that report is what resulted in General Mabula and team getting involved. However it subsequently became clear that they had been involved prior to the completion of the report and secondly that the people who conducted the report upon realising that IPID was doing an investigation came to
20 the conclusion that there is no security breach. It was IPID doing the investigation and they made a report to that effect.

ADV PAUL JOSEPH PRETORIUS SC: You say that report went missing?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You talk of a second charge of

defeating the ends of justice that was registered against the Mabula Team and other Generals?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: It is all very complicated.

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: But essentially what we have as I understand your evidence is an investigation into General Phahlane, an investigation now into other Generals particularly from the North West and a counter investigation for security breach and the like and
10 the execution of the search warrant in related matters. Am I correct?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Let us go then to paragraph 90. What happened during the course of the investigation and counter investigation?

MR ROBERT JOHN MCBRIDE: In essence the Mabula Team moved to Gauteng. So from North West they came to Gauteng and they set up in a hotel in, in the CBD of Pretoria or just outside the CBD in Arcadia and were basically permanently based there for I would say almost a year and the only purpose for being there was dealing with O’Sullivan, Trent
20 and IPID.

ADV PAUL JOSEPH PRETORIUS SC: Right and if you would have regard to paragraphs 90 and then 91 please and tell the Chair of what you say there.

MR ROBERT JOHN MCBRIDE: Okay. Their, sorry 91 I say:

“Their counter investigation resulted in a case

being opened in the Kameeldrift CAS 12/01/2017 against O’Sullivan and Trent. The charges related to them were amongst others of accompanying IPID Officials to Phahlane’s Sable Hills home and impersonating IPID Officials.”

ADV PAUL JOSEPH PRETORIUS SC: So as part of the execution of the search warrant O’Sullivan and his attorney accompanied IPID investigators. Is that correct or not?

MR ROBERT JOHN MCBRIDE: No, no, no that is not correct. This is
10 prior to a search warrant even being obtained and prior to BS – to a search warrant being executed.

ADV PAUL JOSEPH PRETORIUS SC: *Ja*, but is it correct that O’Sullivan and Trent accompanied IPID investigators to the Sable Hills premises or estate rather, rather than the [intervenens]?

MR ROBERT JOHN MCBRIDE: But not during the search warrant execution.

ADV PAUL JOSEPH PRETORIUS SC: Okay. I understand and on the basis, is it on the basis of O’Sullivan and Trent accompanying the IPID Officials that there were charged with impersonation of IPID Officials?

MR ROBERT JOHN MCBRIDE: Yes. That is – so they were with IPID
20 Officials but they were charged for impersonating IPID Officials.

ADV PAUL JOSEPH PRETORIUS SC: Right and this was part of the investigation in relation to the complaint?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Made by O’Sullivan. Is that

right?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Were O'Sullivan and Trent arrested?

MR ROBERT JOHN MCBRIDE: Yes indeed they were arrested.

ADV PAUL JOSEPH PRETORIUS SC: You mention in paragraph 92 an incident that occurred during the course of that arrest. What is that?

MR ROBERT JOHN MCBRIDE: During Trent's arrest her mobile phone was confiscated by the Mabula Team and booked in for investigation in
10 order to support charges that were being fabricate against the pair and later on the IPID investigators that were added. So at different occasions both Trent and O'Sullivan were arrested and I think O'Sullivan was arrested twice for the same case. One of the instances I think there were, there was bail given and the bail had conditions attached to it and so which did not necessitate the second arrest. Some undertakings were given during the first arrest. In any even O'Sullivan was arrested twice by the Mabula Team.

CHAIRPERSON: I am sorry. Just to go back to impersonation. As you understand it what was the factual basis of the charge that they were
20 impersonating IPID Officials? Were they wearing any uniform that IPID Officials wear? Were they alleged to have said they were IPID Officials as you understand the position?

MR ROBERT JOHN MCBRIDE: From what I remember Chair there were no specifics attached to it. Mainly it was related to the fact that they accompanied IPID Officials and that they had spoken to witnesses who

provided statements. I would just hasten to add here that at a later stage the Mabula Team visited every one of those witnesses and got them to change statements.

CHAIRPERSON: The ones on the basis of which the charges had been put together of impersonating?

MR ROBERT JOHN MCBRIDE: No, those who made statements implicating General Phahlane.

CHAIRPERSON: Oh, yes okay.

MR ROBERT JOHN MCBRIDE: In, in.

10 **CHAIRPERSON:** *Ja.*

MR ROBERT JOHN MCBRIDE: The corrupt relationship and.

CHAIRPERSON: *Ja.*

MR ROBERT JOHN MCBRIDE: And so on. They, every one of them were visited.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And altered their statement to some extent or another.

CHAIRPERSON: Hm.

20 **MR ROBERT JOHN MCBRIDE:** People who had indicated that they, they had seen bags of money being paid over to the contractor that is in cash.

CHAIRPERSON: So they could not remember well?

MR ROBERT JOHN MCBRIDE: Subsequently after the Mabula Team.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Had visited them. So that is what

resulted in the defeating the ends of justice. I think the second one being opened up against the Mabula Team.

ADV PAUL JOSEPH PRETORIUS SC: So against the background of the information and the telephone conversation transcript?

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: You have Khomo talking to Mahlangu one of the task team members investigating Phahlane?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: About giving evidence against
10 other members of the task team about collating or obtaining evidence and the like. The precise wording used is “instructive” but we can deal with that when Mr Mahlangu is called if he comes to testify. So what you have basically is an investigation into General Phahlane and what you have referred to as a counter investigation?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: That issue was taken to court?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: And was dealt with by His Lordship Mr Justice Tuchten?

20 **MR ROBERT JOHN MCBRIDE:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: In the annexures to your original statement and the original annexures there are at least part of the judgment of His Lordship Justice Tuchten, but it is incomplete. So we have obtained a proper copy of the judgment together with the order granted. It is EXHIBIT Y2 Chair and it has been handed to your

Registrar.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: I am not going to go into it in any detail but just to highlight certain aspects of the judgment and order. If you would just look at page 1 of EXHIBIT Y2. Is that the matter where IPID is the first applicant, you are the second applicant, Mahlangu is the third applicant?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And Binang another member of
10 the Task Team is the fourth applicant?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: The respondents are Lieutenant General Phahlane and certain other persons including Major General Mabula?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Were they to some extent or another involved in the counter investigation against IPID and others or members of IPID and O'Sullivan as well?

MR ROBERT JOHN MCBRIDE: Yes, yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** There is a related matter.

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: That obviously was joined involving others as well?

MR ROBERT JOHN MCBRIDE: *Ja.* If I can just give the context of this. For the Mabula Team to leave North West and come to Gauteng

they would need their Provincial Commissioner's permission. To come and work in Gauteng they would need the Provincial Commissioner of Gauteng's permission also and, and that is why they are cited for allowing them to come into Gauteng to work if supposedly an offence they are investigating which occurred in Gauteng and just to indicate that Mahlangu is investigating Phahlane and was part of the initial team whilst I was on suspension still and that Binang was investigating General Mabula and his team from 2011 already under ICD.

ADV PAUL JOSEPH PRETORIUS SC: So we have two IPID
10 investigations that.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Form the background to this application before His Lordship Mr Justice Tuchten?

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: They are an IPID investigation into General Phahlane and an IPID investigation into General Mabula.

MR ROBERT JOHN MCBRIDE: That is correct. That is correct.

ADV PAUL JOSEPH PRETORIUS SC: General Mabula and others now come to Gauteng to conduct what we call the counter investigation?

20 **MR ROBERT JOHN MCBRIDE:** That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: All these events are relevant to the transcript of the telephone conversation that you have spoken about and about which there may be further evidence?

MR ROBERT JOHN MCBRIDE: Yes and just to – I would just like to add here Chair is that indeed it is the same Khomo who took

Mandla Mahlangu to Potchefstroom to meet with Mabula and Ncube to, to concoct a story. So it is, so the team is investigating these people yet Khomo is the person who takes them to Mabula. The fact that Mabula sees them is sinister for the bigger games at play here in addition to this litigation that is going on.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Can we go to page 12 of EXHIBIT Y2 please? After obviously hearing the parties the Judge concludes in paragraph 22 as background to the declaration he makes:

“In formulating the declaration I shall issue...”

10 He says.

“I bear in mind the important special position IPID and its investigators occupy in our constitutional architecture. Members of SAPS have enormous powers. They can deprive people of their liberty and intrude upon their private spaces either with prior oversight at all or where oversight is required as in the cases of arrest or search and seizure under the authority of a warrant. Necessarily without the subject of the action being heard on the question. All members of SAPS can decline to exercise those powers. A potential for abuse is obvious. That is to my mind the primary reason why IPID exists to investigate complaints of such abuses. I bear in mind to that members of SAPS are constitutionally obliged to protect the

20

independence and effectiveness of IPID. It is of the utmost importance that members of IPID and I may say of SAPS as well are able to carry out their duties vigorously.”

And then there is reference to the Constitutional Court judgment in Glenister. Over the page on page 13 the Judge continues.

10 “Of special concern to IPID members as demonstrated by the allegations in the present case is the risk of what I might term a revenge investigation i.e. the risk that a member of SAPS subject to or fearing that an IPID investigation might use the powers vested in that SAPS member to conduct a counter investigation against the very IPID member investigating or likely to investigate the SAPS member.”

If I may interpose there before quoting further. That is precisely as I understand what you say happened?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 25 reads:

20 “It must seldom if ever be necessary for a SAPS member in the position I had just described to participate in such a counter investigation. Perhaps the participation in the investigation of such a SAPS member can be justified on the basis of very scarce skills or knowledge without which the

counter investigation cannot be conducted. In such a rare case the SAPS member in question would have to be the subject or would have to be subject to a stricter level of oversight to ensure that the IPID investigation was not compromised.”

He then refers to certain - a section of the IPID Acts and seeks to apply that to the facts before him and if we can refer please to page 21 which is a draft court order. It was a consent order. Is that correct? In other words the parties agreed to the order.

10 **MR ROBERT JOHN MCBRIDE**: (No audible reply).

ADV PAUL JOSEPH PRETORIUS SC: And the first respondent there agreed not to take part in the investigation?

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: That is the counter investigation to which you refer?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And a further draft order appears at page 24 of EXHIBIT Y2.

MR ROBERT JOHN MCBRIDE: Yes, yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Where an undertaking was given by Deputy National Commissioner Lieutenant-General Mfazi in the capacity of the Acting National Commissioner that certain members would be removed from the counter investigation and those persons are Major General Mabula, Brigadier Ncube, Lieutenant Colonel Dawood, Brigadier Kgorane and Colonel Reddy. You see that on page 24?

MR ROBERT JOHN MCBRIDE: Yes that is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So whilst the counter investigation was not stopped the outcome of the litigation the application was that persons who might have an interest in the outcome of that counter investigation were removed. Am I correct?

MR ROBERT JOHN MCBRIDE: That is correct. Chair I just wanted to check. I do not have – my page 25 is blank.

CHAIRPERSON: Mine is blank too.

ADV PAUL JOSEPH PRETORIUS SC: No I am just talking – I am
10 referring to page 24. Are you saying that – if you go to page 26 that is the completion as I understand it, paragraph 4 of that draft order there on page 24? So you can ignore page 25.

MR ROBERT JOHN MCBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The undertakings were made by the respondents – we should place on record – without any concession or admission of liability but the net effect of the application was the removal of certain interested persons in the counter investigation.

MR ROBERT JOHN MCBRIDE: Just to add that a key element in summing up in a judgment was that IPID has a provision in its Act,
20 Section 25 that no investigator may be involved in an investigation in which he has any interest and that SAPS does not have a similar provision and at some stage there was a – at some stage there was a directive that the necessary, the necessary changes to the legislation or regulations of SAPS needs to be done but.

ADV PAUL JOSEPH PRETORIUS SC: To provide for a similar

[intervenes]?

MR ROBERT JOHN MCBRIDE: That is correct. That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. In paragraph 94 you continue your evidence in relation to the counter investigation?

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: This would have been – I just want to check its relationship in time to the application to court before Judge Tuchten. Before that application the events which occurred in paragraph 94 would have occurred. Is that correct or not?

10 **MR ROBERT JOHN MCBRIDE:** (No audible reply).

ADV PAUL JOSEPH PRETORIUS SC: You see what you say in paragraph 94? If you could have regard to it please.

MR ROBERT JOHN MCBRIDE: Yes I have it.

ADV PAUL JOSEPH PRETORIUS SC: In relation to the application before Judge Tuchten.

MR ROBERT JOHN MCBRIDE: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: When did the events in paragraph 94 occur before or after?

MR ROBERT JOHN MCBRIDE: It was before the Tuchten judgment.

20 **ADV PAUL JOSEPH PRETORIUS SC:** So before the Tuchten judgment the events in paragraph 94 occur?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And were probably relevant to the need I understand for the bringing of the application at all?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: What happened in May 2017?

MR ROBERT JOHN MCBRIDE: So during May 2017 Brigadier Ncube of the Mabula Team on the instruction of Advocate Molatlhwa Mashuga charged IPID investigators Mahlangu and Binang for allegedly contravening the IPID Act.

ADV PAUL JOSEPH PRETORIUS SC: Just to remind the Chair Mahlangu and Binang were part of the Task Team set up by yourself to investigate Phahlane?

MR ROBERT JOHN MCBRIDE: That is correct yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Right and were certain other accused or alleged accused joined to that proceedings?

MR ROBERT JOHN MCBRIDE: Yes Chair. Mahlangu and Binang were then joined to O'Sullivan and Trent as co accused. I think in the transcript Mr Mahlangu refers to this and indicates that he was accused number 1 or two or number three. He is accused 3 at some stage. He is referring to this where they are all charged together - on page 1563. He says I was accused 3 when he is talking about.

ADV PAUL JOSEPH PRETORIUS SC: Right.

20 **MR ROBERT JOHN MCBRIDE:** When Khomo is about adding other co accused on. So this is what Mahlangu is referring to.

ADV PAUL JOSEPH PRETORIUS SC: The incident you referred to in paragraph 95 before you testify to that is that of your knowledge or is that information received by you?

MR ROBERT JOHN MCBRIDE: No that is information received by us.

ADV PAUL JOSEPH PRETORIUS SC: What is the information received

by you?

MR ROBERT JOHN MCBRIDE: The information received.

ADV PAUL JOSEPH PRETORIUS SC: [Intervenues] the subject of our own investigation?

MR ROBERT JOHN MCBRIDE: *Ja.* That Trent was arrested and after been driven around for a whole was then interrogated and asked for her phone and then taken back to go and get the phone at the office where she was arrested. This was at least an hour and a half later and the phone was then taken. The phone was not part of a search warrant or
10 relevant to any charge of impersonating an IPID Officer which were the charges at that stage. The phone was then – the chain of evidence of the phone was last. Rumours from within the police itself was that the phone was taken to Israel to get it downloaded.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 96 you talk of charges being brought against Mahlangu and Binang who were members of the IPID Task Team?

MR ROBERT JOHN MCBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that the same occurrence that you talk about in paragraph 94?

20 **MR ROBERT JOHN MCBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN MCBRIDE: So what is key in 96 is when Ncube came to IPID offices to take the warning statements of Messieurs Binang and Mahlangu I became aware that he is in the building. So I then approached him and to ask him is it true that you

are from the North West and he said yes he is from the North West. So I asked him how is it that you came here to Gauteng to carry out an investigation against my officers and I indicated to him that he is, is he aware that he is a suspect and that part of what he is doing he is defeating against – is an attempt to defeat the ends of justice. He is a suspect in that investigation. He then decided to charge me for intimidation because I enquired how he came from North West to be functional in Gauteng. I am not – not sure where that case is. I gave a warning statement to the investigator and I am sure it was thoroughly
10 investigated.

ADV PAUL JOSEPH PRETORIUS SC: You referred earlier in your evidence to an occurrence that is or was not uncommon in relation to people in your position that you would be charged and charged again and charged again?

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: After the charges and the rendition saga how many times after that were you ever charged with any offence?

MR ROBERT JOHN MCBRIDE: Well complaints were laid but it never,
20 it never went to court *ja.*

ADV PAUL JOSEPH PRETORIUS SC: Okay.

MR ROBERT JOHN MCBRIDE: It never went to court. Even on the – we know that documents were prepared to make the whole case which started off as a security breach into racketeering and, and that is what Khomo was talking about “he is going down” and all of that. It is about

the plan, the ruse, the concoction but it never comes to fruition perhaps as a result of the Tuchten judgment and that no other prosecutor would want to touch something so obnoxious.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: One second Mr Pretorius. Thank you. You may proceed.

ADV PAUL JOSEPH PRETORIUS SC: On what basis were charges contemplated in relation to yourself of racketeering? Do you know?

MR ROBERT JOHN MCBRIDE: Off the top of my head I cannot
10 remember what it was about. At one stage I was – Cedric Nkabinde brought a member who identified himself from Crime Intelligence and said he was aware of a conversation taking place to charge me and it was the Mabula Team and in particular Ncube talking to a prosecutor in order to obtain an arrest warrant and the Crime Intelligence person – you know – asked me is there any way I can help with this. So there was an arrest warrant being prepared and I said to the Crime Intelligence guy when I am investigating corruption there is no way I can come to any agreement or understanding or reconciliation. They are suspects of IPID and so it cannot happen. So they must do what
20 they want. My suspicion it might have been to do with Nkabinde's double game he had been playing and basically in short the allegations were that there was a conspiracy to undermine the security cluster by targeting SAPS Officials.

ADV PAUL JOSEPH PRETORIUS SC: Let's just summarise then at a general level, arising out of the rendition series of events.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You were charged.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You were also suspended?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The charges came to nought.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You returned after suspension
and you continued investigations or IPID under your watch continued
10 investigations into senior police officials?

MR ROBERT JOHN McBRIDE: That's correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Further charges both in relation
to the counter investigation and other matters were contemplated at
least, or prepared against you?

MR ROBERT JOHN McBRIDE: That's correct yes. Just to add on
some occasion the official who took over from General Sibiya in
Gauteng, Prince Mokededi, on an Intelligence Report laid a charge of
treason against myself, General Sibiya, Paul O'Sullivan and I can't
remember who else, and eventually Mokatedi admitted to Mr Sesoko
20 that they were not after me, they, Paghlane had a bone to pick with
O'Sullivan and that was the basis of that and he was basically under
the instructions of Ntlemeza, so that was immediately upon my return, it
would have been December or January. So it's been quite relentless
and it's been continuing and the plots and the schemes and the
conspiracies continued non-stop.

CHAIRPERSON: And do you think the motive or aim was to drive you out of IPID or at least to deter you from any determination you might have had to fight corruption with the vigour that you might have displayed before, to try and slow you down and soften you. Do you think it's either of the two that they might have wanted to achieve with you in particular?

MR ROBERT JOHN McBRIDE: Chair I think it includes what you have said but it also includes spending resources on harassment and disruption of IPID's activity, it is the same tactic that they use when
10 they're dealing with criminal syndicates, if they're doing their work properly they will disrupt and they would tie them up in litigation and all of that. Now ...(intervention)

CHAIRPERSON: Is that to keep you away from your work?

MR ROBERT JOHN McBRIDE: From your work and all of what they have done has delayed us. To add insult to injury they had willing collaborators within the Prosecuting Authority who assisted in this process but SAPS and I just ask for our indulgence for me to just divert a bit, SAPS runs on a patronage system, I do favours for my senior, I get promoted, promotions, like what you see with Goomo and Mahlangu
20 but also with the other Mahlangu and Mr Khuba, what you see is they had the willingness and power and practice and custom to offer out jobs as patronage, and that's how the police system works, it works on patronage and people being promoted and appointed to carry out tasks on behalf of seniors. And that's how it's been running. You take that and its related to – so promotions within the forensics lab area will be

related to assisting and facilitating further corruption and mal-administration and in the process everybody has an interest in protecting the seniors because it's indeed it's the seniors that put them there, they might even feel under obligation to protect. They also have a process where sometimes people who were in the same college together or come from the same village or at the same station and they might have been in patrols together, they might have survived shoot-outs together, so bonds are formed between them on various reasons, including patronage and unless you have a strong hand about good
 10 governance and respect for the rule of law and the Constitution you will never get the SAPS right and it's – and it's a system that's not being challenged, it's a system on its own and it affects all aspects of our life.

Criminal syndicates and corruption syndicates, not that there's a difference between the two, require good senior policemen not to investigate past acts of corruptions, current ones being permitted and ones in the future, that's how it works, because the intention of a corruption syndicate is to steal money, and in the instance I'm talking about and if it's requested I can show a litany of cases where billions
 20 have been stolen. The best person to deal with that would be Mr Soko to outline step by step all the theft and how it works.

The point I'm making is we will have this Commission, Your Lordship will make recommendations and they will be carried out, but the patronage system within the police service will stay unchanged, and politicians will require compliant senior police officers, will come and

go and they will use the police service for their own interests, and that's what will happen and that's our experience where very often we immediately at loggerheads with the Minister of Police, whoever it is, regardless of personality, because the Minister of Police is responsible for the Police, the police must shine, it's under their executive authority and watch and every time the police shine and their image has been polished up pops a case from IPID which might become an irritant and there's an institutional tension there, but it's precisely because the practice of patronage and corruption within SAPS so if we have to go
10 back how far back do we go, for example the removal of Dramat and the installing of Nkemeza, Nkemeza immediately appoints other police officers, they get rid of Sibiya, they get rid of Booyen and they put other people in place, and they have appointed people, people got transferred out of DPCI into the greater SAPS and new people are installed.

CHAIRPERSON: And of course was it in the conversation that was recording it yesterday where there was talk of if you do this we will remember you or we won't forget you, or so and so won't forget you, so that's part of what you're talking about?

20 **MR ROBERT JOHN McBRIDE:** Exactly.

CHAIRPERSON: Ja and if you want to be remembered you need to be pliant, you need to keep that person happy so they can remember you.

MR ROBERT JOHN McBRIDE: Exactly Chair, and the forces that should be fighting against this patronage system are being sabotaged politically, we've seen it in (indistinct) you will find other occasions, if

you look at it, and by police officers resisting IPID, sabotaging counter-investigations, or as referred to in one of the judgments revenge investigations, in essence we might take it as personal issues because we are personally affected, we get falsely charged and we go through our own pain and disadvantage, but for the people carrying it out it's actually survival and until – and it hasn't started now, SAPS is the oldest organisation in South Africa from the Act of Union in various forms and evolutions it started.

The idea of being investigated they don't like, number one, the
10 idea of any oversight over them they don't like.

CHAIRPERSON: And being arrested.

MR ROBERT JOHN McBRIDE: They don't like that, and the issue of resistance to change because of old cultures and traditions so it's instinctive not to do it and the Constitution of Democracy is relatively new, notions of Constitutional independence like in IPID, SAPS is not accustomed to it yet, they have not been re-orientated towards constitutionalism and respect for the rule of law so that is an institutional and attitude problem which further feeds into the patronage and corruption.

20 **CHAIRPERSON:** And obviously if you have that culture in any organisation but talking about SAPS now if that is the position then it's very easy for those members of SAPS who are quite happy to be pliant to the seniors to be actually pliant to outsiders as well.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: So private companies, individuals, you know criminal

syndicates because there would be – I mean the seniors would offer them either money that they might be getting illegally or offer them positions that will give them money, high positions, so people outside can give them money and then they would be happy, that's why they would be wanting if they see the position.

MR ROBERT JOHN McBRIDE: Thank you Chair. There's another side which is even worse, so for the good police officers, the ones that work diligently, that get the work done, they come to work every day and go about their business, who are not in it for being compliant of
10 corruption, they have to start at some stage thinking what is it all for, this person doesn't do half as much work as me, has half the qualifications but he is promoted above me because they are close to colonel or brigadier so and so. What it does it then demoralises the good people who are actually holding the ship afloat and the result is not only you will get them either leaving the service or thinking why should I work hard, there's nothing for me, I see no benefit and then they start thinking in terms of their own material situations, and more of them are won over to the crooked side, and the issue of recruiting people as part of the crooked system as in the two recordings that's
20 ongoing, it's going on all the time, this is late in the Paghlane investigation, and yet Mr Goomas is fit to do it, startlingly he says don't go in detectives you will end up chasing criminals, you don't want to be chasing criminals, I'm not sure what other work police is supposed to do and what does he imply that ...(intervention)

CHAIRPERSON: That's their core function.

MR ROBERT JOHN McBRIDE: Absolutely. So what is he intending Mahlangu to do away from chasing criminals. I suppose he should explain.

CHAIRPERSON: Thank you. Mr Pretorius I just want us to take five minutes break, we will adjourn for five minutes, and we will resume in five minutes, twenty five to.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON**: Okay you may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. The counter investigation what was the outcome of that? You deal with that in paragraph 97.

MR ROBERT JOHN McBRIDE: Ja. So the – the state advocate in the matter was Advocate Mashuga who also has some links to the North West team. Their case was remanded several times for investigation. Until October 2007 when the...

ADV PAUL JOSEPH PRETORIUS SC: 2017?

20 **MR ROBERT JOHN McBRIDE**: 2017 my apologies. When the accused made an application that the matter be struck off the role in terms of Section 342A of The Criminal Procedure Act.

ADV PAUL JOSEPH PRETORIUS SC: That deals with undue delays?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Was it in fact struck off the role by the relevant magistrate?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And apparently could only be re-enrolled with a written instruction of the National Director of Public Prosecutions?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Briefly tell the court of the Prinsloo application. Judge Prinsloo application or the application heard by Judge Prinsloo and I understand that that application preceded the application that you have referred to before Judge
10 Tuchten?

MR ROBERT JOHN McBRIDE: I think so. So the order by the magistrate to strike the case off the role was – and that the investigation be stopped unless there is a written instruction from the National Director of Public Prosecutions was not adhered to by the Mabula team. They continued with their counter investigation. And then shortly after this Brigadier Ncuba took a – another warning statement. This time against Mr Mantsha Raphesu and he also threatened to arrest other members of the task team. In his interview
20 with Raphesu he had – he basically dropped a remark during the process.

ADV PAUL JOSEPH PRETORIUS SC: That you say in paragraph 99 that he would arrest other members of the task team including yourself?

MR ROBERT JOHN McBRIDE: That is correct ja.

ADV PAUL JOSEPH PRETORIUS SC: And what was the purpose then of approaching the high court?

MR ROBERT JOHN McBRIDE: Well the high court was to...

ADV PAUL JOSEPH PRETORIUS SC: This is the Judge Prinsloo application.

MR ROBERT JOHN McBRIDE: Thank you Chair. It – it was to basically obtain an interdict against the Mabula team from continuing with the harassment and disruption of IPID's work.

ADV PAUL JOSEPH PRETORIUS SC: And the outcome of the – it is in the bundle but I want to try and avoid referring to it in any detail but we can refer to it?

10 **MR ROBERT JOHN McBRIDE:** Okay thanks. So ultimately there was an order of court by Judge Prinsloo which was a result of an undertaking that the counter investigations would not continue. The exact provisions would be somewhere in the bundle.

ADV PAUL JOSEPH PRETORIUS SC: That was an application brought by the Helen Suzman Foundation, is that right or is that a different application?

MR ROBERT JOHN McBRIDE: I think the application was brought by IPID.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Alright we will see if we can find a reference to that.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: There is another judgment in the bundle by Judge Prinsloo which we will not deal with now. If you look please at page 24 of your statement – of your statement?

MR ROBERT JOHN McBRIDE: Thanks Chair.

ADV PAUL JOSEPH PRETORIUS SC: From page 24 to page 27 you deal with circumstances giving rise to and the bringing of the application in the North Gauteng high court which was heard by His Lordship Mr Justice Tuchten. You have dealt with that. If you could assist the court – or assist the Chair rather by looking at paragraphs 101 to 118 to see if there is anything further that you want to say in relation to those events about which you have testified this morning?

MR ROBERT JOHN McBRIDE: Yes a key element in the – the whole litigation with the Mabula team is that the then acting commissioner
10 General Mothiba was willing to abide by the court's decision. But whilst he was willing to abide Mabula who had been activated by General Phahlane was writing affidavits opposing it and his main thrust of his reasoning was that IPID is investigating cold cases. And the cold cases he is actually referring to here involved torture and including the death of one suspect. And he refers to them flippantly as cold cases as if somehow because a case is cold no-one can light a fire under it. And during the period we also had his – he becomes increasingly desperate because he is also placed on the scene of one of the tortures and death of a deceased and I am here at paragraph 104 and there is a recording
20 related to that. In fact for the record this recording is made long before I am appointed at IPID I think it is made in 2013. That is the recording that initially went missing after having been given to the – prior to my suspension and after having been given to the Provincial Head of North West Province to investigate the IPID head who subsequently left the department and went into SAPS.

ADV PAUL JOSEPH PRETORIUS SC: Right. Just before you go on it seems that amongst the cases that IPID was investigating against amongst others General Mabula in the North West.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Concerned torture and a death and detention?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And these are the cases that were described as “cold cases”?

10 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That is the one aspect. The paragraph 106 and 105 you refer to an order of court by Prinsloo J, is that not perhaps Tuchten J that should be referred to there?

MR ROBERT JOHN McBRIDE: No it is Prinsloo. Prinsloo. Tuchten comes ...

ADV PAUL JOSEPH PRETORIUS SC: Later?

MR ROBERT JOHN McBRIDE: Prinsloo is in November and Tuchten is in June 2018.

ADV PAUL JOSEPH PRETORIUS SC: So...

20 **MR ROBERT JOHN McBRIDE:** So Tuchten ...

ADV PAUL JOSEPH PRETORIUS SC: As I understand it the – the undertakings not to continue with the investigation by those people were not obeyed which resulted in further application being necessary and that came before Prinsloo J. Is that – am I understanding you correctly?

MR ROBERT JOHN McBRIDE: The other way around. It started with Prinsloo J first as an urgent application.

ADV PAUL JOSEPH PRETORIUS SC: You said Prinsloo J18. Let us get the sequence right. You said 2018 for Prinsloo?

MR ROBERT JOHN McBRIDE: No 2017, November 2017.

ADV PAUL JOSEPH PRETORIUS SC: And then Tuchten?

MR ROBERT JOHN McBRIDE: June 2018.

ADV PAUL JOSEPH PRETORIUS SC: Alright that is the order.

MR ROBERT JOHN McBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. But the reasoning – the reason for the second is what you have said?

MR ROBERT JOHN McBRIDE: It is the same reason they just continued.

ADV PAUL JOSEPH PRETORIUS SC: And they – they covered the same subject matter?

MR ROBERT JOHN McBRIDE: Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright but let us just deal with the sequence then in paragraph 109. You say the – despite obtaining an order from Prinsloo J, what was the nature of the order obtained
20 from Prinsloo J?

MR ROBERT JOHN McBRIDE: It was along this similar vein that they would desist from carrying out certain ...

ADV PAUL JOSEPH PRETORIUS SC: Counter investigations?

MR ROBERT JOHN McBRIDE: Counter investigations.

ADV PAUL JOSEPH PRETORIUS SC: Or having certain people

involved in counter investigations.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Investigations who had an interest in the outcome of that investigation?

MR ROBERT JOHN McBRIDE: That is correct. I think it would be better to have the two orders in front of us and then we can see the dates.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: I just tried to find the Prinsloo
10 judgment I cannot.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: It relates to another matter.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So I am not sure we have the correct one on file but we will attempt to do that. But because you have dealt with the facts giving rise to the judgment by Tuchten J the same principles as I understand it are involved?

MR ROBERT JOHN McBRIDE: Yes that is right.

ADV PAUL JOSEPH PRETORIUS SC: You say in paragraph 109:
20 “Despite obtaining an order from Prinsloo J the Mabula team continued with their counter investigation against the IPID.”

And you say:

“They continued harassing and attempting to intimidate IPID members and impede the IPID

investigation into Phahlane.”

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. And you talk about the warning statements there.

MR ROBERT JOHN McBRIDE: Yes. And I think it is important at the end of 109 to say that there was a fear in trepidation amongst the investigators because of what they had seen being done to O’Sullivan, Trent, Mahlangu and Binang. So – so others were a bit hesitant and often they would request to see me to say how should we approach it?

10 Investigating officers of IPID we were also not sleeping at home we were moving around and sleeping in different places. For example we became aware that there was an illegal use of tracking equipment in order to arrest O’Sullivan the second time which was used by Crime Intelligence. We are aware that we were being tracked and monitored and our phones interfered with. There is only one other time that I have lived like that in my life and it was during – as an activist during the apartheid era and my officials were – were scared a lot of the time. And – and it cannot be you know over estimated – over emphasised but in fairness to them they did decide to stand firm whilst a number of

20 them were approached in effect only one turned and actively went about sabotaging cases. So this is not a constitutional democracy 20 something years down the road and police are behaving like this against the exact body that is – has been created by the constitution to prevent abuses and yet this is what was happening. As far as we are aware none of the abuses have stopped. It has been passed from one

commissioner to another commissioner. It is either [indistinct] fair or you know look the other way allow it happen because again it is your – the brotherhood of the blue curtain. It is there and most good – most of our – I must put it this way in fairness to all police officers. Our information on corruption and maladministration in the police service comes from police officers.

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: Mostly from good police officers who want to do their job and do not like what is going on.

10 **CHAIRPERSON**: And...

MR ROBERT JOHN McBRIDE: So...

CHAIRPERSON: And the – there would still be many of those?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: I guess that has to be acknowledged.

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: Hm, hm.

MR ROBERT JOHN McBRIDE: So there are people who want to do work. Our – we do not have an intelligence team or an intelligence budget. We have just good citizenry especially from within the police
20 service that help us with cases to identify cases and of course complaints from the general public who do not like being abused.

CHAIRPERSON: The harassment that you have been talking about is primarily aimed at IPID – IPID or is – I know that maybe some of the Law Enforcement Agencies that may – that are supposed to fight corruption might not have been seen to be very effective in the past.

So maybe they might not have been targeted. But what is your experience? Is it this kind of harassment from SAPS and Crime Intelligence being directed at just really primarily IPID?

MR ROBERT JOHN McBRIDE: If I can put it this way and again we talking in stages and different stages. By the time the Mabula team came on the scene...

CHAIRPERSON: Yes.

MR ROBERT JOHN McBRIDE: There was nobody left within policing within DPCI within the Prosecuting Authority who could from my opinion
10 firmly I would believe could give a good account of themselves when it came to corruption. So we were the last and organisation standing. And we are a very small nationally there is 265 investigators and the core group did not make up more than 20 the people dealing with special investigations. And those that would – the sort of the higher up you went the more the resistance. We did anticipate resistance, the push back but we did not think they would resort to this level that they would be brave enough ordacious enough to just go against everything that is good in the country. So...

CHAIRPERSON: Ja thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Mr McBride just to deal with page 24 to 27 of your statement in an attempt to summarise the evidence you have given to invite you to make any further comment. On your return to IPID after your suspension investigations into very senior police officials including acting commissioner continued. There are counter investigations to which you have referred.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Those counter investigations involve the very IPID members conducting sensitive investigations.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: On two occasions IPID finds it's necessary to approach the courts for one or other form of interdict?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: These come before Judge Prinsloo and Judge Tuchten?

10 **MR ROBERT JOHN McBRIDE**: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: We have referred to the Tuchten judgment and we will try to find the Prinsloo judgment. I think the wrong one may have been filed. Nevertheless you say notwithstanding the order obtained before Judge Prinsloo the investigations and as you talk – as you describe it harassment of the IPID investigators continued?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

MR ROBERT JOHN McBRIDE: It still continues now.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Yes. I would like to refer then just before the long adjournment to paragraph 109 where you say:

“Despite obtaining an order from Prinsloo J the Mabula team that is the North West team that came to Gauteng.”

Is that correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC:

“Continued with their counter investigation against the IPID. Mabula and his team continued harassing and attempting to intimidate IPID members to impede the IPID investigation into Phahlane.”

Is that your evidence?

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: [Indistinct]

10 **MR ROBERT JOHN McBRIDE:** Yes that is correct.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 110 you say:

“As a result IPID continued to engage the SAPS, the Ministry as well as the office of the NDPP trying to ascertain whether the continuing investigation”

That is the counter investigation I presume?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC:

“Was sanctioned at a senior level.”

20 What I want to ask is you in relation to your evidence on page 26 is whether apart from the court applications attempts were made by approaching people in high office to try and address what was happening?

MR ROBERT JOHN McBRIDE: If I can just go back further and it is the first time I mentioning this to anyone. At a certain stage after my return I realised that their counter investigations and that the criminal

justice system is shaking or its effectiveness is eroding. I became concerned about national security. I then approached the state security agency to call a meeting between all the heads of services so that we could get an undertaking that we will be allowed to do our work and we might be either investigating each other but we will do it properly and we will refrain from statements in the newspapers just until we are allowed to do our work. So I was concerned that the crumbling of the whole criminal justice system was basically in effect and I went to the only authority who does not have investigative prosecutorial powers
10 and they are seized with security of the state which were state security agents and I went to the DG. The DG arranged a meeting between heads of the department and I can just – it was at least two meetings perhaps three. On – in the meetings was the NDPP Shaun Abrahams, Acting Commissioner Phahlane, Commissioner Moyane, myself and the DG SSA. And a number of issues were discussed. We undertook that we will not discuss cases or that we will manage perhaps difference of opinions or different positions we find ourselves in through the work that we do, through our professional work. In one of the meetings I think immediately after the first meeting General Phahlane went to the
20 media about something and therefore the effectiveness of kind of trying to contain fallout from investigations that we were doing and counter investigations and that the interest of the country must – must come first. Out of that – out of that process those meetings kind of fizzled off. I engaged with other police officers Mr Sesoko and Mr Khuba ceaselessly engaged with them that we have responsible way in which

they respond to IPID. And – so from the side of IPID we went out of our way to avoid litigation to at least [indistinct] people about the interest of the state and the constitution and rule of law. It did not really work because and I think I touched on it earlier with – that perhaps long input I gave but it is not – the minds of the people involved in the corruption and the counter investigation are not anywhere near the issue of constitutionality and respect for rule of law. They are there in greed and survival. That is where their minds are so it is like we are on different dimensions you are talking different
10 languages two people and there are different interests. What I can say is that the heads of – I mean Moyane is gone, Abrahams is gone, Phahlane is in effect gone and last I went so the point I am saying is in any event those kind of meetings should have been taking place to maintain the security of the state and national interest. And that well-meant investigations are not thwarted because people have narrow interests. Overall all these agencies are there to ensure proper governance and to root out maladministration. So I think it is important to say that generally without adding specifics which I already have that there was attempts by IPID at various levels including engaging and
20 regularly updating the different ministers that were involved. I mean we even sent info notes to Nhleko even though Nhleko had said he does not want to engage with me anymore. I continued giving him reports so that he was aware of the situation as I did right until my last month at IPID. So the issue of personalities did not interfere with IPID's professionalism at all here.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps we should take the long adjournment now Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And when we come back Mr McBride we will deal with a summary of the aspect that you are dealing with now the counter investigation and then move onto page 27 hopefully we can finish this afternoon.

MR ROBERT JOHN McBRIDE: Thank you.

CHAIRPERSON: Yes it is one o'clock we will take the lunch
10 adjournment and resume at two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. Mr McBride can we go to page 26 please at paragraph 116 of your statement? You there deal with the circumstances of the application before Judge Tuchten?

MR ROBERT JOHN MCBRIDE: Yes Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You say that in relation to that application:

“There were arguments for both sides and at the last minute Deputy National Commissioner General Mfazi gave a written undertaking that the members of the Mabula Team would no longer be

involved in any revenge investigations against members of the IPID that were investigating them.”

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you say in paragraph 117 that the term “revenge investigation” was made by Judge Tuchten in his judgment on 26 June 2018. The order was in effect drafted around Section 25 of the IPID Act and you explain that it is that Act that precludes IPID members from investigating matters where there is a conflict of interest?

10 **MR ROBERT JOHN MCBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: [Intervenes] as a declaration of that conflict of interest?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And the Judge noted that the SAPS Act did not have a similar clause?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And it was advised or even directed that SAPS should look into that matter?

MR ROBERT JOHN MCBRIDE: That is correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right. In paragraph 119 you deal with the search and seizure related to a vehicle investigation related in turn to General Phahlane. Would you tell the court briefly about that?

MR ROBERT JOHN MCBRIDE: Thanks Chair. By the time of the search and seizure the investigation had expanded and the

investigation basically involved a process of corrupt, corrupt relationship and.

ADV PAUL JOSEPH PRETORIUS SC: Between whom?

MR ROBERT JOHN MCBRIDE: Between.

ADV PAUL JOSEPH PRETORIUS SC: Relationship between who?

MR ROBERT JOHN MCBRIDE: Between General Phahlane and a number of service providers. In this particular case a person by the name of Keith Keating from Foreign Data Analysts and Durand Snyman and [intervenes].

10 **ADV PAUL JOSEPH PRETORIUS SC:** Is that the same Keating that you referred to earlier?

MR ROBERT JOHN MCBRIDE: I am not sure I did refer to Keating yet.

ADV PAUL JOSEPH PRETORIUS SC: Criminal Analytics?

MR ROBERT JOHN MCBRIDE: I think Criminal Analytics was another, another service provider. I am not sure but there, there is a whole interrelationship with a lot of the service providers dealing with forensics. In any event the structure, the model of the corruption involved these two entities in South Africa establishing Namibian equivalents and there are transactions between them in Namibia. No
20 transaction in South Africa and in that way money that is transferred to one company for example Company A to a South African Company A – the same company – would then be made available for patronage. In one of these instances it was the roundabout trip of money went to – from SAPS as the client paying the service provider and then landed in Namibia and a transaction between then one Namibian company and

the other one and then a car being made available for a, a corresponding amount and in terms of dates of the Namibian transaction.

ADV PAUL JOSEPH PRETORIUS SC: A car being made available in South Africa?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So you say that - as I understand it – IPID was investigating a money laundering operation?

MR ROBERT JOHN MCBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Which was used to facilitate the provision of motor vehicles in South Africa but the money originated from SAPS itself?

MR ROBERT JOHN MCBRIDE: To give you another example is a person who was in charge of procurement did not have any transactions or improper relationship in South Africa with the service provider, but indeed did so with the same business in Namibia and in terms of the evidence a, a transaction for the same, same type of service took place in Namibia for the Namibian Police which involved a capitalisation of the Namibian equivalent of, of FDA and the policemen then
20 [intervenes].

ADV PAUL JOSEPH PRETORIUS SC: FDA being?

MR ROBERT JOHN MCBRIDE: Forensic Data Analysts. That is Keith Keating so – if I can put it – a twin company of Keating was set up in Namibia but it was owned by the police officer the general who had been responsible for issuing contracts or had been in an influential

position to influence contracts.

ADV PAUL JOSEPH PRETORIUS SC: Anyway as you say that these matters were the subject of investigation?

MR ROBERT JOHN MCBRIDE: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: [Intervenes].

MR ROBERT JOHN MCBRIDE: I am using the example for the purposes of understanding that this was not petty corruption. It was big corruption on a grand scale and it involved billions.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

10 **MR ROBERT JOHN MCBRIDE:** And I will give other examples later on. Just so that it is clear that we are not talking about one country or one, or one general but that we are dealing with a system of corruption that operates. I will give two more examples just now.

ADV PAUL JOSEPH PRETORIUS SC: Right. You say that search warrants were issued in relation to these investigations?

MR ROBERT JOHN MCBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: What happened to the search warrants?

20 **MR ROBERT JOHN MCBRIDE:** Well the search warrants were executed and documentation including cash money – I think it was R800 000,00 was seized from Keith Keating's office for which an explanation is not given yet but which a few months after that he charged IPID investigators for stealing the money and an investigation team was rapidly set up and they were shocked when they came and saw the money had been bagged and tagged and was in a safe and

secure place as an exhibit because they were made to believe it was stolen. The money was declared at all relevant stages. In any event Keith Keating went to challenge on a technicality the validity of the search warrant.

ADV PAUL JOSEPH PRETORIUS SC: Was that challenge successful?

MR ROBERT JOHN MCBRIDE: No it was not, but just to add a search warrant was executed at Phahlane's house. It is the second search warrant. He never challenged that one where stuff was seized. So he is dealing with the one where nothing was seized where there was
10 identification. I am mentioning that so you can see the malicious and ulterior motives in the court challenges and the litigation. So in any event Keith Keating failed before Judge Kollapen and he bizarrely sought to argue amongst other things that IPID Officers had no right to execute such warrants and that was clarified by the Judge. He then applied for leave to appeal and that was refused. Apparently he is approaching the SCA at the moment.

ADV PAUL JOSEPH PRETORIUS SC: At page 28 of your statement at paragraph 123 you made the general point that IPID has been under attack and continues to be under attack. Is that correct?

20 **MR ROBERT JOHN MCBRIDE:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Or I should qualify that. You say that:

“Should these attacks continue and succeed there is a real risk that IPID could be marginalised and an important constitutional check mechanism over the

police be minimised.”

And then you proceed to give an overview of these attacks. You speak firstly of the National Prosecuting Authority. May I just perhaps caution at least from the legal team’s point of view you mention a series of names there as leadership of the NPA.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But if you have or if you are confident to make allegations we will not intervene, but just caution that you should be conscience of that fact.

10 **MR ROBERT JOHN MCBRIDE:** Yes. So, thank you Chair. In terms of the NPA I think firstly to note that there exists within IPID a paper trail of engagement. Letters upon letters and at all given stage engaging with them on instances where they have dragged their feet on certain cases including the Panday case, including the Mabula case and yet there seems to be obscene haste to deal with anti-corruption people, people who fight against corruption including IPID. Those issues are raised and the people who are quoted there we can give – I can give examples now about instances there of their involvement in what I believe is a bias view of what they are doing and we have a record of

20 that and I am not in IPID now so I do not have access to those records and a litany of letters and the traffic of letters to Abrahams, Mzinyathi and Baloyi. I can mention that there was a complaint given against Baloyi by Mr Mahawka and Mr Khuba regarding the rendition matter because at a certain stage Khuba and Mahawka approached Baloyi. My understanding is it is at Baloyi’s insistence and they explained to

Baloyi that the difficulties were prosecution. Baloyi's response was and he went to – we assume it was Mzinyathi. He says he has to go to his boss and he want to him and he came back and said no IPID must bite the bullet. Formal complaints were made at that stage. When I approached Mr Nosana about it he indicated he does not, he does not deal with stories. I must put it in writing. The two guys then submitted affidavits but no action was taken against Baloyi on any aspect. There is a case of the open as a complainant against the Mabula Team by O'Sullivan and Trent on kidnapping and torture and a number of related

10 matters. Two senior public prosecutors recommended that in the interests of preserving human rights and having and removing any idea of impunity that there should be prosecutions and they gave a long – support the recommendation with case long and then it goes – the same case goes to Baloyi to decide. The Baloyi in which we have complained against already. Baloyi refuses to prosecute. The docket is returned. The investigator then goes to the two complainants - O'Sullivan and Trent - and informs them that there is a decision to decline to prosecute against them. Immediately Baloyi recalls the docket. The docket then goes back to Baloyi. Letters are written for a review on

20 Baloyi's decision not to prosecute and it goes to Mzinyathi. Mzinyathi says he agrees with Baloyi. Abrahams says he agrees with Baloyi. No reasons are given. They are not prosecuted now for amongst others kidnapping, defeating the ends of justice and torture.

ADV PAUL JOSEPH PRETORIUS SC: These are police officials that are not prosecuted?

MR ROBERT JOHN MCBRIDE: *Ja* that is right. Then of course Advocate Mayema with the rendition issue was one of those who went ahead with the prosecution in the absence of evidence and including the disclaimer with the only evidence in his hand was the Werksmans Report. We have spoken to – I mean Advocate Tori Pretorius is the one who gave the go ahead for our warrant of arrest and for our – and the decision to prosecute us on the rendition matter. Yet it is the same Tory Pretorius who Mayema consulted for the final decision to withdraw charges against us in the absence of evidence which could sustain a
10 prosecution. So all of the names mentioned of course Raymond Mathenjwa was in the reference group. I am not sure whether he should have been in the reference group and involved in a process and making recommendations that ultimately led to Dramat and Sibiya being prosecuted without evidence to substantiate a prosecution and myself Khuba and Sesoko also.

CHAIRPERSON: [Intervenues].

MR ROBERT JOHN MCBRIDE: Why would he make himself available on a police reference group?

CHAIRPERSON: Reference group being a reference to what appears to
20 have been an advisory kind of group of people put together by the then Minister Nhleko?

MR ROBERT JOHN MCBRIDE: That is correct Chair.

CHAIRPERSON: Okay.

MR ROBERT JOHN MCBRIDE: So the cases I mentioned they are documented and there is a paper trail of all of this that is in existence

but because I am not in IPID anymore I cannot access it.

CHAIRPERSON: You just said about a few minutes ago in relation to I think Mr [indistinct] he is the one who was prosecuting in your cases?

MR ROBERT JOHN MCBRIDE: Yes that is correct.

CHAIRPERSON: Yes you just said that he was prosecuting on the basis of the Werksmans Report only, but I am – my recollection is that when we spoke yesterday or was it Friday that you said you never got to know whether there were any statements in the docket or not. Is that right?

10 **MR ROBERT JOHN MCBRIDE:** Hm.

CHAIRPERSON: You asked for statements – witness statements, you were not give or you were refused but you never got to know whether they were there or they were never there. I thought that is what you said.

MR ROBERT JOHN MCBRIDE: I think I am coming to the conclusion that was all the evidence he had because if any of the evidence was relevant and of any prosecutorial value he would he would have placed it before the court. He did no such thing. On a point that Mr Sandile July refused to testify the matter was withdrawn and I think
20 at that stage when Mr Sandile July did not make himself available and was going to approach the courts so that he does not have to testify I actually think he did good by doing that. One would have hoped he would have done good earlier on but credit to him he did not go and testify and he knows as a lawyer which is strange because he knew as a lawyer there is no evidentiary value in a hearsay statement of

hearsay which he was going to testify about and yet he could not see that an opinion of an investigator is of no consequence to decide whether to prosecute or not.

CHAIRPERSON: But is the difficulty not – I know that Mr Pretorius is on something else but is the difficulty not with saying that about him and his report that you have got to ask where was the factual basis for his conclusion that there should be a criminal prosecution then because if the factual – if there was a factual basis based on witness statements on the – on which his recommendations were based then at least those
10 statements should have been available to the prosecution.

MR ROBERT JOHN MCBRIDE: Absolutely Chair, absolutely.

CHAIRPERSON: So that even if his report was taken away those statements should have remained there which of course might go towards what you are saying that maybe in all probabilities that the report was the only thing but it would really be most surprising if both the police and prosecutor who would put people, comments, criminal proceedings against somebody with no witness statements. *Ja*, okay. Thanks so.

MR ROBERT JOHN MCBRIDE: So thanks Chair. In the, in mentioning
20 the names in 125 there are records and I give an example of the environment and I know we are all tired and we want to get done. On one occasion after Sesoko came back and after Khuba came back we approached the NDPP to discuss these issues which we had written about.

ADV PAUL JOSEPH PRETORIUS SC: Came back to IPID?

MR ROBERT JOHN MCBRIDE: IPID. Yes that is correct and in one of the meetings he was – he had given us the floor for – to have a meeting and we were going to raise with him what the issues were and that is why Mr Sesoko and Mr Khuba were with me and were going to raise issues and Mr Sesoko had prepared and he even had prepared a presentation what he is going to deal with. With this very issue of prosecutorial bias by the Prosecution Authority and in.

CHAIRPERSON: I did not hear who – I am sorry. I did not hear who it was that you were going to address or Sesoko and Khuba were going to
10 address.

MR ROBERT JOHN MCBRIDE: Thanks Chair. The National Director of Public Prosecutions.

CHAIRPERSON: Oh, okay.

MR ROBERT JOHN MCBRIDE: Yes. So when we came.

CHAIRPERSON: Who was who at the time?

MR ROBERT JOHN MCBRIDE: It was Mr Shaun Abrahams.

CHAIRPERSON: Okay.

MR ROBERT JOHN MCBRIDE: *Ja* and so whilst we were there Mr Abrahams welcomed us and he continued speaking and he was with
20 all his Deputy National Directors or Acting Deputy National. There were a number of them there and he started pre-empting what we had written to him to discuss already before we had spoken. So he went on for about 20 minutes to a half an hour. So I then asked him is IPID going to have a chance to speak in this meeting and so he burst out at me and told me to get out of his meeting and I said no but I wanted

answers. I am not leaving and he proceeded to point at all his deputies that not one of them must comment in a meeting. They must all keep quiet. No comments allowed in the meeting and I found it very strange that the prosecutorial authority is subject to such intimidation. What is poor little IPID going to experience in this. So that gave me a good idea what is going on. I mean in fairness to Mr Shaun Abrahams afterwards I said to him I am glad I did not leave your meeting and in response he said I am glad I did not insist you leave. So we left on a professional basis but it really was an eye opener to see what the
10 environment was like that and later on I could then understand when prosecutors in the NPA told us they were actually scared to act in a particular way because they perceived that this is the attitude of the NDPP and in fairness in the entire NDPP Phahlane and Keating and all these people no action would have been taken against them, search warrants, prosecutions, appearance in court if everyone was bad. So there are good people there and there are good people who committed to fighting against corruption. So I think it is important in fairness I need to mention them.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps we will refer to some
20 correspondence as an example of the exchange between IPID under your watch and the NDPP under the watch of Advocate Abrahams but in your statement apart from the examples that you have given you talk of prosecutions that did take place and you contrast those with prosecutions that did not take place.

MR ROBERT JOHN MCBRIDE: yes.

ADV PAUL JOSEPH PRETORIUS SC: What is your comment there?

MR ROBERT JOHN MCBRIDE: Well I think the most appropriate response is to and the correct one as it was for example Dramat, Sibiya, Sesoko, Khuba and myself they have been told the outcome of investigations indicates evidence is not there to sustain the prosecution. Prosecutions nevertheless go ahead. There is evidence because they have to postpone for delays on Mahlangu, Binang, O'Sullivan, Trent. They go ahead. The matter is struck off the roll but on all these other matters which is a list of them and there are about 20
10 cases that have been investigated over years, no prosecutions.

ADV PAUL JOSEPH PRETORIUS SC: And the quality of the investigation and evidence in your opinion?

MR ROBERT JOHN MCBRIDE: Well in the matters that were prosecuted and were later withdrawn or struck off the roll there was no evidence. People were anti-corruption fighters. In essence – and I have seen it with what happened in DPCI. I have seen it with other people who have been fighting against corruption and the initial stages of and the initial stages of state capture. Whereas in many of our cases as in IPID which we submitted to the NPA much of those dockets
20 had gone to the NPA and the NPA said the following is missing. We went and gone to get it and bring it back, send it back to them. So to cover each and every possible evidentiary loophole and in some instances investigations we were not cautiously precisely because we wanted to convince ourselves first that indeed there is a case and we would always ask ourselves about it and we got the evidence and it was

sustainable evidence and I am sure that with the changes at the NPA we might see some prosecutions starting but the issue here is why was some prosecutions why did they not take place and we can start from Panday as one of the first cases that had dealt with to Phahlane to Mabula Team and there are a number of other corruption cases are starting to get – to be ventilated now in the open court and people are appearing in court. So there is a change but at that time the bias we speak about it is indeed tangible and we can, we can back up what we are saying.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes, perhaps that should be the topic of further investigations on the part of the investigation team of the Commission to see if your allegations are borne out.

MR ROBERT JOHN MCBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: By that analysis.

MR ROBERT JOHN MCBRIDE: Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: Is there anything else you wish to add then on the National Prosecuting Authority before we go to page 30 of your statement?

20 **MR ROBERT JOHN MCBRIDE:** I just give an example which is one case which was another case of corruption. Firstly there are all the cases relating to Crime Intelligence but there is one that mirrors Crime Intelligence case is the case of – it is 31 March. It is 2016. It is the end of the 2015/2016 financial year. Someone in SAPS decides that there is an emergency – urgent need for a particular set of products. They write a memo at 5 o' clock in the afternoon. The memo is

approved. So approval for the procurement. Orders go out presumably. Supplies are delivered. In any event by 10 o' clock that same evening a matter which was only generated that same day 54 million is paid out. The stock is supposed to have arrived from Australia because it must be imported from Australia. So I am not sure which transport method they were using but there is no way a product could arrive within five hours from Australia and 54 million went out on the same day and that is – it was not picked up by none of the agencies that should deal with that. IPID picked it up with the cooperation of
10 police officials. That is an open and shut case of fraud and corruption. It is there. It has not been prosecuted.

CHAIRPERSON: How long ago was this? It was March, the 31st 2016?

MR ROBERT JOHN MCBRIDE: Yes.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: And so that is the [intervenes].

CHAIRPERSON: Is it with the NPA?

MR ROBERT JOHN MCBRIDE: Yes, yes.

CHAIRPERSON: And it has been there for how long? Since when?

MR ROBERT JOHN MCBRIDE: It is part of the range of Phahlane
20 cases.

CHAIRPERSON: Oh.

MR ROBERT JOHN MCBRIDE: It has been there since.

CHAIRPERSON: Hm.

MR ROBERT JOHN MCBRIDE: Since we became aware of it say about six months to a.

CHAIRPERSON: 2017?

MR ROBERT JOHN MCBRIDE: 2017, *ja*.

CHAIRPERSON: Oh, okay.

ADV PAUL JOSEPH PRETORIUS SC: On page 30 you deal with the firm of attorneys Hogan Lovells again before you deal with it, may I just highlight a distinction between a firm of attorneys being used and a firm of attorneys deliberately being part of the clients cause. On the fact of it there's nothing wrong with anybody using any firm of attorneys and you do so – Hogan Lovells allowed itself to be used so bearing that
10 in mind what point do you make in paragraph 131?

MR ROBERT JOHN McBRIDE: The fact that Hogan and Lovells was the company of choice under Nglego number one, number two they were involved in all disciplinaries, all labour matters, all Constitutional challenges related to rendition and this is the funny part, and maybe I should be cautious also but they used the same senior counsel each time so the way I understand how it works, the advocates – they get instructed by law companies and the same law company can instruct different advocates during the process and in the normal course of events it often happens that the same law company can even instruct
20 advocates that were maybe on opposite sides of a particular case at some stage and with the professionalism attached to the profession that's all in order. How is it possible that advocate Mokhari was involved at every step of the way in every disciplinary, in every Labour Court matter, in every Constitutional challenge, didn't he have any other work?

ADV PAUL JOSEPH PRETORIUS SC: Well there's nothing wrong with respect to your evidence to brief counsel repeatedly, in fact, it might sometimes advantage a client because that person then has knowledge and experience and is relied upon to use that knowledge and experience in a clients cause, in fact it's the duty of the legal profession to act in the cause of the client.

MR ROBERT JOHN McBRIDE: I accept that Chair except it's expected in a legal profession they will not promote anti-Constitutional behaviour.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright is there anything else you wish to add to paragraph 131?

MR ROBERT JOHN McBRIDE: No I'm covered yes.

ADV PAUL JOSEPH PRETORIUS SC: And then paragraph 132, you talk about the CATS unit, the Crimes Against The State Unit, would you tell the Chair about that unit please and how you regarded its activities?

MR ROBERT JOHN McBRIDE: Well Crimes Against The State Unit was the unit that was used against Minister Gordhan, was used against myself, was used to force Vlok Symington to hand over documents
20 which documents concerned legal advice which would have been exculpatory in the matter in which they were gunning for Minister Gordhan. Vlok Symington was a complainant in – to IPID about their behaviour because they held him against his will there was video evidence, there were statements and there were witnesses. They also were not prosecuted but the fact that it's called Crimes Against The

State infers that everybody there in investigating is somehow treasonous or anti the democratic establishment and one doesn't see how charges of fraud and defeating the ends of justice, for example, against Khuba, Sesoko and myself can be regarded as Crimes against the State – within Crimes Against The States purview. Ja so that was also the group that went to see Mr Khuba and offered him a job as the recording showed yesterday, so it's the same group, Crimes Against The State. So one needs to wonder who's actually committing a crime against the State where you are prepared to attack Constitutional oversight bodies and even offer jobs in the process.

CHAIRPERSON: I thought when we were listening to the recording yesterday, the other person was not from IPID I thought he was from Crime Intelligence, I may have misunderstood.

MR ROBERT JOHN McBRIDE: No the first recording, the recording with Mr Khuba.

CHAIRPERSON: Oh okay.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is there any relationship, to your knowledge between the Priority Crimes Litigation Unit which operates under the auspices of the NPA and the CATS or the Crimes Against the State Unit which operates under the Hawks or the DPCI? You deal with an issue on page 31 paragraph 134.

MR ROBERT JOHN McBRIDE: Ja there is a direct link between CATS and PCLU both have to deal with priority issues, and yet – cases are passed on to PCLU and my understanding is that there has to be a

particular process of involving the NDPP in PCLU matters I'm not sure the relevant legislation or regulations but I'm not sure whether they comply with this provision or not but they work hand-in-glove.

ADV PAUL JOSEPH PRETORIUS SC: Alright at paragraph 135 you deal with Police Minister Nglego as Chief of Staff.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Tell the Chair what you wish to say about that please?

MR ROBERT JOHN McBRIDE: Chair...(intervention).

10 **ADV PAUL JOSEPH PRETORIUS SC:** And explain, please, to the Chair the point that you wish to make in paragraphs 135 to 136 and 137 in fact.

MR ROBERT JOHN McBRIDE: So Mr Leon Mbangwa whose real name is Lionel Moyo is employed by Minister Nglego as the Chief of Staff in his office, Mr Mbangwa also known as Lionel Moyo is a Zimbabwean citizen, that alone doesn't disqualify him, people can get naturalised, he could have been a South African, but Mr Mbangwa was arrested for false ID in about 2000 he was convicted and he served custodial sentence. He was recently – he recently appeared in court on the 31st
20 of March 2019 for also having false documentations or qualifications in the KZN Court but he was hired by Minister Nglego as a Chief of Staff, he did not have a security clearance, in fact they applied through IPID as if he was going to be appointed by IPID to obtain his security clearance. The State Security Agency wrote a report to IPID and indicated that he has a conviction and it relates to dishonesty and that

he has financial problems, they didn't pick up he was a Zimbabwean and that he had not been naturalised. This matter was also raised within Crime Intelligence in my engagements with them. Now at the time when they applied for his security clearance, it was when we were on suspension, Mr Ngamanyane was the Acting Executive Director. The question, Chair, the key question is why would a Minister of Police hire a convicted criminal whose not a South African who still is flashing his counterfeit identity document. Now, again, as with other issues – I've thought about this a long time there is no reasonable explanation, why

10 a Minister of Police will insist, as his Chief of Staff, in such a sensitive place where sensitive documents move past the Minister's desk every day, he would want to employ this particular person there. In a later affidavit which – in an affidavit which was made before this one, a statement to the Commission, I've traced the background and the link and I'm sure it would be most appropriate for me to testify about that link at that occasion when we're dealing with that particular focus and how important it is but it's an intelligence failure, it's a security risk, how does a Commissioner of Police or Acting Commissioner of Police feel safe to send documentations or briefing to the Minister where the

20 Minister's Chief of Staff actually deals with them, he doesn't have a security clearance, he's not a South African, he's known for his dishonesties, fraud and flashing counterfeit documents. This is what happened in the time in which IPID came under attack, this is what was taking place...(intervention).

CHAIRPERSON: You were raising, among others, this issue?

MR ROBERT JOHN McBRIDE: As overall to perhaps exclude any reasonable explanation for all that was done to IPID based on why the Minister appointed this person, and the Minister has prerogative to do that. So the security of the State, clearly was not an important consideration or National interest for the Minister, there must have been something else, the Minister must explain it and he has never sought to explain it ever, and I've raised this openly. We've also got a paper trail on this whole process...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Alright perhaps you can go to
10 Annexure X to the – to Exhibit Y at page 1765.

CHAIRPERSON: Exhibit Y?

ADV PAUL JOSEPH PRETORIUS SC: It's Exhibit X of – well it's Annexure X to Exhibit Y, let me just refer to the page Chair, page 1765.

CHAIRPERSON: Okay let's try again, Exhibit Y?

ADV PAUL JOSEPH PRETORIUS SC: Page 1765, it's YD.

CHAIRPERSON: Okay, I think your junior is laughing at you.

ADV PAUL JOSEPH PRETORIUS SC: Well she sent me the note, so she's entirely responsible.

CHAIRPERSON: So, okay the page is 1765.

20 **ADV PAUL JOSEPH PRETORIUS SC:** The paper trail you refer to there, I'm not sure if you feel it necessary to show it to the Chair, the contents of that paper trail, I'll leave it up to you from page 1765 onwards it just shows that a query was raised by your acting predecessor.

MR ROBERT JOHN McBRIDE: The issue that is – what's (indistinct)

with the prospective Chief of Staff for the Minister and if you take his answer to me asking for hand-over report he says, he had his instructions from his Minister so presumably the minister says to him, can you process this through IPID as if it is IPID that wants to employ him. This is a very serious matter, it doesn't need further explanation, this alone should have had alarm bells ringing and...(intervention).

CHAIRPERSON: So the whole thing of this person's employment started while you were on suspension and Mr Ngamanyana was the acting Executive Director?

10 **MR ROBERT JOHN McBRIDE:** That's correct Chair.

CHAIRPERSON: And when you arrived he was already working in the ministry but on the books was it reflected under IPID as an employee official or whatever or do you know where he was reflected as?

MR ROBERT JOHN McBRIDE: He was in the ministry and apparently on the ministry website he is still there now listed because it hasn't been updated but the point is not so much that he had a job, the issue is why was he processed through IPID. So IPID became a tool for the Minister and – yes sir.

20 **CHAIRPERSON:** Yes, no, no that's the most important question, how come he had anything to do in terms of paperwork with IPID if he was going – he was not going to be employed by IPID and if he was not employed by IPID and I take it that you never got any explanation from Mr Ngamanyana because you said he left and he never came back when you returned.

MR ROBERT JOHN McBRIDE: That's correct Chair but also that

nobody saw anything wrong with this and no-one picked it up, no-one was interested and why not. So he was not given a security clearance.

ADV PAUL JOSEPH PRETORIUS SC: Well perhaps we should just refer briefly to the correspondence at page 1765 is a letter from the Acting Executive Director of IPID Mr Ngamanaya dated 22 February 2016 to a Mr Dlodlo it requests a personnel suitability check or a security check as you put it in relation to Leon Mbangwa do you see that?

MR ROBERT JOHN McBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** The answer to that request for a check appears at page 1767 and it says in summary, “no negative information of National security relevance was obtained with regard to the above candidate, the candidate is a confirmed South African citizen, the candidate has a criminal record, the candidate has a negative credit record, it should be noted that the inability of a person to manage his/her finances could pose a security check” and then you take up the (indistinct) on page 1770 after your return and you do so in a letter of 25 October 2016 where you address a letter to Mr Arthur Fraser of the State Security Agency, do you see that?

20 **MR ROBERT JOHN McBRIDE:** That’s correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you say that, “it has come to the attention of the Executive Director of IPID that the Chief of Staff of the Minister of Police is a Zimbabwean, he’s a convicted fraudster, he was convicted and sentenced for providing a false ID, he continues to use this false ID, for some unexplained reason the request for pre-

employment screening was done via IPID in my absence”, which is the point that you’ve emphasises, “whilst the results of the pre-employment screening by your domestic branch was able to detect that the subject had a criminal record and had financial problems, it was unable to detect that the ID was false and that the subject is a Zimbabwean” and you then attach to that letter supporting documentation. Is that the paper trail you referred to?

MR ROBERT JOHN McBRIDE: Yes.

CHAIRPERSON: And nobody ever gave you an answer to the question
10 from the Department of Police Ministry or anybody, you never got any answer?

MR ROBERT JOHN McBRIDE: No Chair we were attempting, even in preparation, for this – providing this evidence before the Commission and we haven’t received any explanation after my letter, but I think, perhaps this is a case Crimes Against the State should have been looking at but they didn’t look at it.

ADV PAUL JOSEPH PRETORIUS SC: Before we deal with your evidence on page 32 can we go back to paragraph 128 please. You refer in that paragraph to correspondence between yourself in your
20 position as Executive Director of IPID and advocate Shaun Abrahams of the NDPP and perhaps we just ought to place that correspondence on record. Annexure U to which you refer is at page 1742 of Exhibit YD.

MR ROBERT JOHN McBRIDE: I have it sir.

ADV PAUL JOSEPH PRETORIUS SC: Now the sequence – you refer to U, V and W the sequence may be incorrect in the Annexures to your

statement, let's just check that. Perhaps you can explain at page 1743 is a letter addressed to you in your capacity as Executive Director of IPID and its dated the 19th of December 2017, that's the date of its signature, do you see that, it's marked as having been received on the 19th of February 2018 and it refers to correspondence from yourself addressed to the NPA during 2017. How does that relate to the letter at 1749 and at 1753, it seems that we've got to begin at the end of the sequence of correspondence at 1754, the letter of 2 May 2017, is that correct?

10 **MR ROBERT JOHN McBRIDE**: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Right would you tell the Chair briefly and in summary, because you've dealt with much of the contents of this in evidence what you were addressing to the NDPP and the purpose of your letter please?

MR ROBERT JOHN McBRIDE: Okay thanks – thanks Chair, so a number of letters which I've already testified about were written to the National Director of Public Prosecutions just querying a number of issues and they – from 2017 2nd of May, August 2017, November 2017 and the one that I wrote to him in December 2017 – let me just get it.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Let's start with the one of 2 May 2017, that's the first in this chain, what was the purpose of you addressing Advocate Abrahams of NDPP or the NDPP rather?

MR ROBERT JOHN McBRIDE: Thank you Chair, the specific issue was dealing with the failure to re-enrol the case – the cases against the Mabula team for – some of the CAS numbers are from 2010 on page

1755 and ...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: It seems that what you say to Advocate Abrahams is that IPID has investigated a number of cases against senior police officials.

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: That the files have been delivered to the NPA but there has been no action in relation to the matters referred to the NDPP is that correct?

MR ROBERT JOHN McBRIDE: Chair just a slight correction, they had
10 appeared in court, they were charged at some stage, most of the team and then the charges were withdrawn to centralise cases and was never re-enrolled. So from 2012 to 2017 over a five year period, charges had not been re-enrolled.

ADV PAUL JOSEPH PRETORIUS SC: Right so they had not been prosecuted to finality?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And that was your complaint?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So you had made reports in
20 accordance with your investigations and duties to the NDPP, you say that some action was taken but they were not finalised over a long period of time.

MR ROBERT JOHN McBRIDE: The key issue was the NPA had decided to prosecute and decided to centralise all these cases because it was a series of torches and the NPA itself then did not enrol, what is

the purpose of a delay of five years to re-enrol it, I mean that was the key issues, what is holding up the re-enrolment of the charges which you decided should be prosecuted? Chair in any event this constant engagement (indistinct) on these particular cases resulted in two out of the seven being on trial at the moment now. Why initially it was seven now it's only two, we don't know, we've raised it with Advocate Batochi the new NDPP just prior to me leaving IPID, so the matter is with the new NDPP.

ADV PAUL JOSEPH PRETORIUS SC: On page – you then in the long
10 letter beginning at 1754 refer to a number of individual cases some of which you've testified to now in evidence.

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Is that correct?

MR ROBERT JOHN McBRIDE: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: You reach your conclusion at 1763, you're free to mention, in summary, any particular case that we might not have dealt with in evidence but I would like you to put your conclusion on record at 1763 please.

MR ROBERT JOHN McBRIDE: Okay, so "as of 2nd of May 2017 the
20 following conclusion was pinned on the memorandum to the National Director of Public Prosecutions. Having regard to the above it is clear that we are dealing with rogue elements within SAPS that had been operating with impunity over the years it is clear to IPID that they are assisted by some in the NPA to further their nefarious objectives. To restore confidence in a criminal justice system we requested the

appointed team of prosecutors who will work with Advocate van der Westhuizen to look at all matters involving these members as well as looking into all investigations initiated by them linked to the Paghlani investigation. It is IPID's firm view that senior members of the SAPS will not be held to account when every time they're investigated by IPID they start counter investigations against witnesses and IPID investigators with the assistance of the NPA. We would have expected, as a matter of good governance, the NPA takes an impartial position in this regard. We believe for justice not only to be done but to be seen
10 to be done it will be the interest of justice for the NDPP to intervene to ensure that State resources are not used to compromise legitimate investigations against senior members of the SAPS.

ADV PAUL JOSEPH PRETORIUS SC: There is an intervening letter from yourself again dated 23 February 2018 but before we go there we should have regard to the letter received by you on 19 February 2018 addressed to you by the NDPP, Advocate Abrahams and signed by him on 19 December 2017. What does he say in response to your various communications of which we have referred to but one?

MR ROBERT JOHN McBRIDE: Okay that is 1743 on page 1743?

20 **ADV PAUL JOSEPH PRETORIUS SC:** That is correct.

MR ROBERT JOHN McBRIDE: Okay. He ends the document with a comment that a MOU is important the two organisations. But in essence none of our matters are dealt with some of them which I mentioned the Vlok Symington case. He just says he supports the decisions not to – to prosecute the Cats team on the Vlok Symington

matter.

ADV PAUL JOSEPH PRETORIUS SC: And he deals with various investigations and matters reported by IPID to the NDPP?

MR ROBERT JOHN McBRIDE: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Including the matter involving General Phahlane, the matter involving Executive Director General Kgamanyane, the Mabula team, Brigadier Ncuba and he says that the decision has been taken not to prosecute and he gives his reasons for that. Do you have any comment?

10 **MR ROBERT JOHN McBRIDE:** No comment but I will put it in contra-distinction to paragraph 6.3 where in response to myself enquiring on behalf of IPID the reason for swiftness for charging IPID investigations. He says because the matter has been handled by the organised crime component and they have dedicated resources so expects that they will act with swiftness.

CHAIRPERSON: So – but when it is other people those matters are not given to that unit?

MR ROBERT JOHN McBRIDE: Indeed Chair ja. So there is no answer to that because he is having a go at me and it is on a professional
20 matter I cannot say anything.

ADV PAUL JOSEPH PRETORIUS SC: Yes I think the point you making is that in relation to all the matters that had been outstanding for a long period of time he deals with them in the way he does but in relation to the swiftness with which you and others were dealt with he says well special resources and efficient resources were dedicated to that

prosecution?

MR ROBERT JOHN McBRIDE: Cert – that – that answer shows clear bias and he justifies it by having lots of resources whereas on other [indistinct] he will complain he does not have resources. But he is having a dig at me and good for him. But it does show bias because there is other reason except the clearly sarcastic one.

ADV PAUL JOSEPH PRETORIUS SC: Yes. I have not referred to the letter addressed to Advocate Abrahams on the 23 February 2018 which appears at page 1749 and following. It is marked confidential I am not
10 sure that that would preclude us dealing with it unless you have any reason not to deal with it. But in a nutshell and I do not think that we need the letter to establish that you did not accept Advocate Abrahams explanations, is that correct?

MR ROBERT JOHN McBRIDE: That is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: And you give your reasons?

CHAIRPERSON: That is – you did not accept that explanation and informed him or you did not accept and you left it at that?

MR ROBERT JOHN McBRIDE: In the letter of 23 February

ADV PAUL JOSEPH PRETORIUS SC: At page 149.

20 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You repeat some of the information you have already given about two people being charged in relation to the Mabula team torture investigation with no explanation for why the other accused members were not charged and other matters.

MR ROBERT JOHN McBRIDE: Ja we just – we just stated our

disagreement and basically stating the status quo as it was then. There is not much more we could do with it. We could not – we could not take it further than that. But it is indeed a record of which we think indicates a biasness and a purposeful differing swiftness to dealing with different types of cases. And there is a bias towards our biased against anti-corruption fighters.

CHAIRPERSON: Well it is quite concerning if a matter – if matters and it looks like many matters in respect of which the NPA had already taken a decision to prosecute wait for five years and more without
10 being enrolled again. In the meantime witnesses could disappear, could pass on. It is quite concerning.

MR ROBERT JOHN McBRIDE: And on top of that Chair the same team who is under investigation is then commissioned by Acting National Commissioner Phahlane to investigate IPID. So it adds insult to injury.

ADV PAUL JOSEPH PRETORIUS SC: On page 32 Mr McBride you deal with the Reference Group. Before you do so I would like to just allow you to see and to comment on the document placed before the commission by Advocate Muofhe who gave evidence before the commission and a document which shows the terms of reference at
20 least apparent terms of reference on the letterhead of the Ministry of Police. It is a letter addressed to Advocate Muofhe appointing him as a Reference Group member dated the 30 September 2014. Before you give your evidence on the Reference Group I would just like to place this on record and before you. We have extracted page 55 from the – I do not have the Exhibit letter of Advocate Muofhe's evidence. Yes it is

Exhibit Q I am told. Anyway Chair may I hand up a copy of Exhibit Q1?

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: It is page 55 of Exhibit Q1 for record purposes but for convenience...

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: I have it here.

CHAIRPERSON: So you saying a document that is in one of the exhibits that already exist?

ADV PAUL JOSEPH PRETORIUS SC: Exhibit Q.

10 **CHAIRPERSON**: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Q1.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Page 55. But this is only for convenience sake for you Chair and for the witness. Would you just have a look please at the requirements placed upon the Reference Group? I am not sure whether these are officials' terms of reference but it is an instruction from Minister of Police Minister Nhleko to Advocate Muofhe setting out the tasks that the Reference Group is required to execute.

20 **MR ROBERT JOHN McBRIDE**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Just look at it please and comment if you will? I must confess it is not very clear in respect of what these activities are intended to achieve.

MR ROBERT JOHN McBRIDE: Chair that is all I can say also I am not sure what is their target investigations about to do all the things that

are listed in the – at the bullet points.

ADV PAUL JOSEPH PRETORIUS SC: Yes so for example it says “gather all necessary background and information and material” it does not say in respect of what. It says interview persons and connection with specified matters. The matters are not specified in this letter. Research examine analyse written material documents or media articles relevant to each specified matter. But this letter at least does not specify the matters to be examined. Do you know of your own knowledge what those matters were?

10 **MR ROBERT JOHN McBRIDE:** No I am – I am not...

ADV PAUL JOSEPH PRETORIUS SC: Or what any of those matters were?

MR ROBERT JOHN McBRIDE: I am not sure. We were able to in preparing this statement and we quoted from documents which we had at the time of preparation which we cover in paragraph 138.

ADV PAUL JOSEPH PRETORIUS SC: Yes perhaps you better place evidence on record then.

MR ROBERT JOHN McBRIDE: Okay.

20 “In October 2014 the Minister of Police Nkosi Nathi Nhleko established a Reference Group and a court to deal with issues of human resources, suspensions, the state of crime intelligence, administrative queries and perceptions of the SAPS.”

At the time the Minister said the Ministry would use the work done by the Reference Group too:

“Turn around the image of the police and build public confidence in the service.”

Surprisingly the Reference Group was comprised of public officials and included state Advocate Raymond Mathenjwa from the NPA.

ADV PAUL JOSEPH PRETORIUS SC: Was IPID one of the institutions to be investigated in this respect by the Reference Group?

MR ROBERT JOHN McBRIDE: Indeed we had the two visits by the Reference Group or members of the Reference Group.

ADV PAUL JOSEPH PRETORIUS SC: Alright and you have given
10 extensive evidence in relation to the independence of IPID and who would have authority and who would not have authority. We need not revisit that.

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: If you could deal with paragraph
139 please?

MR ROBERT JOHN McBRIDE: Mathenjwa was one of the prosecutors involved in untoward decisions concerning IPID cases. Later he aggressively demanded the sight of the case file into the Renditions investigation.

20 **ADV PAUL JOSEPH PRETORIUS SC:** This was whilst he was now an advisor in the Reference Group?

MR ROBERT JOHN McBRIDE: I am not sure if he was moonlighting also I do not know.

ADV PAUL JOSEPH PRETORIUS SC: But you say later in his position of advisor on the Reference Group reporting to the Minister.

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: He then aggressively demanded sight of the case file in ...

MR ROBERT JOHN McBRIDE: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Into the Renditions investigation. Do you stand by that?

MR ROBERT JOHN McBRIDE: Yes that is correct yes.

ADV PAUL JOSEPH PRETORIUS SC: Okay carry on please?

MR ROBERT JOHN McBRIDE: Further this was an undesirable
10 situation as Mathenjwa was a senior prosecutor who was involved in
deciding other matters referred to the NPA by IPID. At the time IPID
had already referred the Rendition docket to the National Director of
Public Prosecutions for a decision that neither Mathenjwa nor the
Minister saw the clear conflict of interest which could compromise the
IPID's independence and suggest there was some ulterior purpose to
the establishment of the group.

ADV PAUL JOSEPH PRETORIUS SC: You then deal in paragraph 140
with your view in respect of the Portfolio Committee on Police and I
presume you referring to the Parliamentary Portfolio Committee?

20 **MR ROBERT JOHN McBRIDE:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You have a brief comment there
in paragraph 140 what is that?

MR ROBERT JOHN McBRIDE: During the period of my suspension
IPID staff were under attack by Kgamanyane directed correspondence
to the Portfolio Committee on Police reporting the wholesale transfer

and new appointments in IPID. No response was ever received. I too wrote to the Chairperson of the committee alerting him to these concerning events. I never received a response from him.

ADV PAUL JOSEPH PRETORIUS SC: And you have dealt with the Portfolio Committee in a different context?

MR ROBERT JOHN McBRIDE: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Mr McBride you have given lengthy evidence do you have any further comments to add before we conclude?

10 **MR ROBERT JOHN McBRIDE:** No Chair only it is the matter at the future convenient day for the commission if I can deal with the issue of the – the affidavit on the 10 December 2018 and also the matters related to classification just to assist the commission in understanding how classification and the abuse of power and resources was manifested especially in those two statements. The second one I referred to on the classification...

ADV PAUL JOSEPH PRETORIUS SC: Sorry before you go on. You referred earlier in your evidence to classification and refusal to declassify documents within Crime Intelligence.

20 **MR ROBERT JOHN McBRIDE:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And that this device was used you say improperly to impede your own investigations on serious matters relating to corruption?

MR ROBERT JOHN McBRIDE: Indeed and in the specific one it relates to attempted procurement purportedly of a device but with the request

for cash which was to be used for other purposes which interfered with the democratic processes in the country.

ADV PAUL JOSEPH PRETORIUS SC: Alright and you talking about surveillance equipment?

MR ROBERT JOHN McBRIDE: That is correct but the issue there was it is not – they really did not want equipment they wanted cash.

ADV PAUL JOSEPH PRETORIUS SC: Alright so you say you have further evidence to give in regard to those issues.

MR ROBERT JOHN McBRIDE: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Is there – I was going to pose a general request to you in relation to the analysis and addition done by yourself General Dramat and is it Mr Ivan Pillay which was referred to in that article.

MR ROBERT JOHN McBRIDE: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Which is now part of the bundle and I think you have undertaken to look at that analysis and if it is appropriate present it to the commission.

MR ROBERT JOHN McBRIDE: Definitely Chair I will assist to the best of my ability.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Is there anything else that you wish to mention at this stage?

MR ROBERT JOHN McBRIDE: No Chair I am covered.

ADV PAUL JOSEPH PRETORIUS SC: That is the evidence thank you Chair.

CHAIRPERSON: No thank you very much Mr McBride once again for

coming forward to assist the commission and to assist the country.

MR ROBERT JOHN McBRIDE: Thank you Chair.

CHAIRPERSON: I am grateful that you still have more information that you want to share with the commission that will be that you regard as useful and helpful for the commission's work. And so I – you will – we will be seeing you again.

MR ROBERT JOHN McBRIDE: Thank you Chair.

CHAIRPERSON: And it may be that quite apart from you coming back to give us more information there may well be implicated persons who
10 might apply to for leave to cross-examine. I am happy that you – you will always be there to assist whenever you can.

MR ROBERT JOHN McBRIDE: Thank you Chair.

CHAIRPERSON: Thank you very much once again for coming forward we appreciate it and you are excused.

MR ROBERT JOHN McBRIDE: Thank you Chair.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair I know it is only twenty past three there has been some uncertainty surrounding the timing of the next witness General Booyesen.

20 **CHAIRPERSON**: Yes, yes. **ADV PAUL JOSEPH PRETORIUS SC**: Arrangements have been made however for him to commence his evidence tomorrow.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: And to continue for at least two hours on Thursday when we then break for the Easter break.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: And he will resume on recommencement.

CHAIRPERSON: On the [indistinct].

ADV PAUL JOSEPH PRETORIUS SC: Of the commission's hearings on the 2 May. If that suits the Chair.

CHAIRPERSON: Ja, ja. We – I think we will – we should resume on the 2nd but I think we will announce before we break in case there should be a change but there should not – I do not think there should
10 be a change about the 2nd.

ADV PAUL JOSEPH PRETORIUS SC: Chair the background which perhaps I do not need to deal with here. There will be a change but that is being managed.

CHAIRPERSON: Oh is there a need? Or is there a need to have certainty now?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair there is.

CHAIRPERSON: Okay then...

ADV PAUL JOSEPH PRETORIUS SC: So if...

CHAIRPERSON: Then 2nd we will be here.

20 **ADV PAUL JOSEPH PRETORIUS SC**: 2nd we will be here Chair.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: With your leave Chair.

CHAIRPERSON: So tomorrow we can start at normal time ten o'clock?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair. Ten o'clock is appropriate.

CHAIRPERSON: Ten o'clock ja. Okay we will then adjourn for the day and tomorrow we will start at ten.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS