

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**19 AUGUST 2019**

**DAY 147**

**FINAL**

20



**PROCEEDINGS ON 19 AUGUST 2019**

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

**ADV PAUL JOSEPH PRETORIUS SC**: Morning Chair.

**CHAIRPERSON**: Are we ready?

**ADV PAUL JOSEPH PRETORIUS SC**: Yes Mr Nxasana will give evidence.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: He has returned to give evidence following the intervention of several weeks. May he be sworn?

10 **CHAIRPERSON**: Yes let him because there have been quite a number of weeks that have lapsed although it is a continuation of his evidence.

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

**MR MXOLISI SANDILE OLIVER NXASANA**: Mxolisi Sandile Oliver Nxasana.

**REGISTRAR**: Do you have any objection in taking the prescribed affirmation?

**MR MXOLISI SANDILE OLIVER NXASANA**: No I do not.

20 **REGISTRAR**: Do you solemnly affirm that the evidence you will give shall be the truth, the whole truth and nothing but the truth, if so please raise your right hand and say, I truly affirm.

**MR MXOLISI SANDILE OLIVER NXASANA**: I truly affirm.

**CHAIRPERSON**: Thank you. Thank you Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC**: We have taken the liberty Chair and if I may deal with two housekeeping matters?

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Of transforming your original file into a larger file which you have in front of you.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Originally we dealt with Exhibits EE1 and EE2.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** They have been taken from your original file and placed in that lever arch file.

**CHAIRPERSON:** Oh so everything is here?

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes. We have added further documents. EE3 is an affidavit of the former President which contents need to be commented on by Mr Nxasana during the course of his evidence today.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** EE4 is a timeline of events relevant to the evidence of Mr Nxasana covering the period towards the end of 2014 and the beginning of 2015. Attached to that timeline are documents relevant to items on the timeline. They are duplicates, they can be extracted from the file or one can go to the original  
20 documentation which is referenced in the timeline. And EE5 just for convenience is the transcript of Mr Nxasana's evidence when he was recently before the commission.

**CHAIRPERSON:** Yes. I wonder whether EE5 should not have been separate because it is just to remind – to remind us what is there but maybe that can be dealt with later.

**ADV PAUL JOSEPH PRETORIUS SC:** It can be separated.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** Quite conveniently.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** We can do that during the course of the day. It is not separately indexed or paginated.

**CHAIRPERSON:** Yes okay no that is fine. You might wish to consider whether if you do not already have in this bundle you should have – you should include a memorandum that I think Mr Nxasana sent to the  
10 Minister of Justice some time in I think July 2014 or August I am not sure where he was asking the former – the Minister of Justice and Constitutional Development or Correctional Services to ask the former – the President at the time to consider suspending Ms Jiba, Mr Mrwebi and Mr Mzinyathi and setting out in very great detail what the basis was in his view on which the President should consider acting. That is affidavit – that affidavit is something that is in the public domain. I mean that memorandum. It was part of the record in the Corruption  
20 Watch matter, CASAC Matter that went all the way from the high court to the constitutional court and then also there may be other documents but I think that might be important. So that is just for you – for you to consider.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** The memorandum that you have referred to is referred to in the evidence.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: But it is not attached.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: We shall get it.

**CHAIRPERSON**: Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: Perhaps today.

**CHAIRPERSON**: Okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Then there is a second matter  
Chair before we commence. On the 24 June a Rule 3.3 Notice was sent  
10 to attorneys whom in our understanding represented Mr Mrwebi,  
Advocate Mwebi and to a private email address. Then on the 30 July  
on the 31 July and again on the 8 August 3 notices were sent to  
Advocate Mrwebi informing him of the change of date and this  
appearance today on the 19 August. In correspondence at this time it  
emerged that it was Advocate Mrwebi's contention that he did not  
receive the original emails sent on 24 June with the 3.3 Notice. On  
discovering that I asked for the matter to be investigated. The 3.3  
Notice has now been sent. The question arises what we do in the  
circumstances but as I am assured by the investigators who have  
20 collated all the documentation that everything that is going to be said  
by Mr Nxasana is a matter of public record and therefore there should  
be no prejudice but insofar as there is we can hear from Mr Mrwebi and  
deal with it at that stage.

**CHAIRPERSON**: Yes. He knows that Mr Nxasana is giving evidence  
today?

**ADV PAUL JOSEPH PRETORIUS SC:** He does Chair.

**CHAIRPERSON:** Ja. And ...

**ADV PAUL JOSEPH PRETORIUS SC:** That has been confirmed three times.

**CHAIRPERSON:** Yes and Ms Jiba also knows?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** We – in respect of Ms Jiba you will remember that when Mr Nxasana came to give evidence last time Ms Jiba's council came and we – certain arrangements were made. I wonder whether in  
10 the meantime there has been any application for leave to cross-examine Mr Nxasana that has come from Ms Jiba. Do you know?

**ADV PAUL JOSEPH PRETORIUS SC:** No I am not aware of any such correspondence. This is simply the communication from Mr Ngalwana that he was not on record as representing but did it simply on request at the last hearing.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** To represent Advocate Jiba's represented by attorneys and communications have been made.

**CHAIRPERSON:** Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** To those attorneys.

**CHAIRPERSON:** Okay no that is fine. No that is fine.

**ADV PAUL JOSEPH PRETORIUS SC:** May we then proceed?

**CHAIRPERSON:** Yes but maybe before we do so Mr Nxasana you expressed a concern last time has it been sorted out in relation to being a sole practitioner?

**MR MXOLISI SANDILE OLIVER NXASANA:** Not yet Chair.

**CHAIRPERSON:** But were you informed of the legal provisions that make it possible for any witness appearing before the commission to get witness fees?

**MR MXOLISI SANDILE OLIVER NXASANA:** No I think I saw that when I think the Chair made a pronouncement after I had given testimony.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** During the subsequent proceedings. I do not know who was testifying on that day.

10 **CHAIRPERSON:** Oh but have you had time to put in a request for payment or claim or anything?

**MR MXOLISI SANDILE OLIVER NXASANA:** No I have not.

**CHAIRPERSON:** Oh.

**MR MXOLISI SANDILE OLIVER NXASANA:** I told myself I will do that after today.

**CHAIRPERSON:** Oh okay no – no I was just concerned because you raised that concern as a sole practitioner.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **CHAIRPERSON:** So – so – so that can be – you can pursue that in due course.

**MR MXOLISI SANDILE OLIVER NXASANA:** Thank you Chair.

**CHAIRPERSON:** Okay. Yes Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes our information is that the particular provision has been communicated to Mr Nxasana but ...

**CHAIRPERSON:** Yes okay.

**ADV PAUL JOSEPH PRETORIUS SC:** We can talk about that.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** If you...

**CHAIRPERSON:** I cannot remember how far we had gone last time but I know that it may be that certain paragraphs were being skipped because of the arrangement or whatever. I cannot remember.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes what we did at the last hearing.

**CHAIRPERSON:** Hm.

10 **ADV PAUL JOSEPH PRETORIUS SC:** And we will refer again to those matters briefly in course of evidence today was to halt just before the long adjournment at a stage where there was mention of a recording.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** And it was your instruction that we should listen to the recording to see if it was of any value and added significantly to the evidence. Our conclusion by the way has been that it does not and we do not have to put the recording before – before you. Although there has been a request for it and we will provide it.

20 **CHAIRPERSON:** Oh you say you have taken the view that it does not admit much?

**ADV PAUL JOSEPH PRETORIUS SC:** It does not add materially to the...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** To the actual evidence.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: Given because it is indirect.

**CHAIRPERSON**: Oh okay. Okay. But it is available?

**ADV PAUL JOSEPH PRETORIUS SC**: It is available if anyone wants to hear it.

**CHAIRPERSON**: Yes. Ja.

**ADV PAUL JOSEPH PRETORIUS SC**: And we have had a request and we will accede to that request.

**CHAIRPERSON**: Ja okay. Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC**: So that was the stage at which we halted evidence. Then there was the intervention on behalf of Advocate Jiba and at that stage what we did was we went to the constitutional court judgment and dealt with matters already in the public domain that were on affidavit and had been adjudicated by the constitutional court and we went through the judgment of the constitutional court in relation to issues relevant to the evidence and then we stopped.

**CHAIRPERSON**: Okay thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC**: So we are going to go back by your leave Chair to page 7 of your statement. Mr Nxasana would you put the microphone closer to you please and perhaps speak up a little.

**CHAIRPERSON**: Not too close I think move it back again. Ja I think then it should be fine.

**ADV PAUL JOSEPH PRETORIUS SC**: And if we could rewind a little and go to paragraph 33.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Where you said in evidence on the previous occasion you were here and you say in paragraph 33 that almost immediately after you were appointed you received information from two NPA officials that Advocates Jiba and Mrwebi were plotting to oust you, do you see that in paragraph 33?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair I see that.

**ADV PAUL JOSEPH PRETORIUS SC:** And you comment there that this information was volunteered to you by these persons of their own  
10 accord?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Would you tell the Chair please of the information given to you by Mr Terence Joubert?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair ...

**ADV PAUL JOSEPH PRETORIUS SC:** Who is he firstly and then what did he tell you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Mr Joubert is a risk specialist at NPA attached to that unit based in Durban at the NPA offices in Durban. I had not met him when he sent me an email. He  
20 sent me an affidavit via email. In that email he told me of the arrangement that he had where he was supposed to go and pick up Advocate Jiba from the airport.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright before you continue that affidavit would you look at Annexure MN1 at page 30 please of the EE1.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see it.

**ADV PAUL JOSEPH PRETORIUS SC:** Is that the affidavit that he sent to you?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Briefly what did he say in the affidavit?

**MR MXOLISI SANDILE OLIVER NXASANA:** Briefly Chair he said that he received a telephone call after arrangements were made for him to go and pick up Advocate Jiba from the airport. He said he got a call from Advocate Jiba's secretary that it was not going to be him Joubert  
10 who was going to pick up Advocate Jiba from the airport and the arrangement was that it was now going to be Colonel W S Mhlongo who was going to pick her up from the airport. Then the – in a nutshell the affidavit went on to say that Colonel Mhlongo told Joubert that Advocate Jiba had said to him that I am not a good person to be appointed as a – as a National Director at NPA and that they must try – he must try and get any dirt about me and then I think that was the whole plan if I may refresh my memory?

**CHAIRPERSON:** Yes you may do that.

**ADV PAUL JOSEPH PRETORIUS SC:** If you go to paragraph 36.3 it  
20 may not be clear on the record.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Who said what to whom according to the report made by Mr Joubert to you according to the report made by Mr Joubert to you?

**MR MXOLISI SANDILE OLIVER NXASANA:** He said Colonel Mhlongo

disclosed to – to Joubert that Advocate Jiba had told him that she did not think that I was the correct person for the job of the NDPP and according to Mhlongo Jiba said Colonel Mhlongo – he told Colonel Mhlongo that Advocate Jiba and Mrwebi should try – they told him that he should try to find some dirt on me as they had done it against Mr Stanley Gumede. Mr Stanley Gumede is a regional court magistrate based in Durban who was tipped for – to become the National Director of Public Prosecutions before a was appointed and this affidavit tells us that they – according to what Joubert said in the affidavit Jiba and

10 Mrwebi were instrumental in making sure that Mr Gumede did not – was not appointed at the National Director of Public Prosecutions because he was subsequently flooded with complaints and was then investigated by the Magistrates commission and the President as a result of that decided not to appoint him. Then the – it also went onto suggest that Mhlongo – Colonel Mhlongo disclosed to Joubert that they had apparently – they had to follow up to some information that I had embezzled or misappropriated clients trust monies which were paid by the Road Accident Fund and that information it surfaces during the conversation in the recording that the – Mr Pretorius has referred to.

20 **ADV PAUL JOSEPH PRETORIUS SC:** In any event this is what Mr Joubert says on oath in his affidavit annexed?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you have summarised it?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Am I correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** So what you have spoken about now is attested to on oath by Mr Joubert in Annexure MN1?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** And you just referred now to the recording.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** In the recording is it Mr Joubert and Colonel Mhlongo who were talking?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

10 **CHAIRPERSON:** And – and that – that is – that is also in Joubert's affidavit or it – does it – does the conversation go beyond?

**MR MXOLISI SANDILE OLIVER NXASANA:** No the conversation in the recording is that it is Advocate – it is Colonel Mhlongo talking to Joubert. He was not aware that Joubert was recording him.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Then Joubert sent me that recording.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** In the recording Mhlongo was telling him that Jiba wanted to become the – wanted me out of the – of my position and that they must work hard and – to get something on me.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** Especially the issue of the Road Accident Fund.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** And Joubert had promised him to hook him up with people from the Road Accident Fund who were going to give him information.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** About my misappropriation of trust funds which something that has never happened. I have never even had a complaint of misappropriation of trust monies arising from the Road Accident Fund.

10 **CHAIRPERSON:** Mr Pretorius you have told me what the view is that the legal team has taken of the recording. Unless – unless there is some requirement that has not been met procedural requirement in terms of people I would like to hear that – the recording.

**ADV JULIE ANN HOWARD:** Sure we have got it available.

**CHAIRPERSON:** Ja – yes.

**ADV PAUL JOSEPH PRETORIUS SC:** I asked for a transcript to be made.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** That should be available as well.

20 **CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** The recording is less direct.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** Though than the affidavit.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And we have chosen to rely on

the affidavit.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: But I – I understand that...

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: In the light of what has just been said perhaps it is advisable.

**CHAIRPERSON**: Ja.

**ADV PAUL JOSEPH PRETORIUS SC**: And we will make arrangements to do that.

10 **CHAIRPERSON**: Okay alright thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Let us then move on to your assumption or belief expressed in paragraph 38 concerning the intention that was attributed to you in regard to reinstating criminal charges against the former President. Would you tell the Chair about that and what you believe that Advocates Jiba and Mrwebi advised in that regard?

20 **MR MXOLISI SANDILE OLIVER NXASANA**: Chair my belief – I believed that Advocate Jiba and Mrwebi in running their campaign to get me removed from the NPA they also peddled some misinformation to the President that I intended to reinstate charges against him. That I say because every corner that I went to I was confronted by the same question. In Durban here in Gauteng everywhere people were asking me that they hear that the reason why the President wants me out it is because I – he was told that I intended to reinstate charges against him which is something that I had not even formulated the intention to do

because I had not even seen that docket itself. The docket at the time still remained with Advocate Jiba and she had not given the docket to me.

**CHAIRPERSON**: This is now what more than eight months since after you had started as NDPP you still had not been given that docket?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**CHAIRPERSON**: Ja. Had you asked for it or you did not – had not asked for it?

**MR MXOLISI SANDILE OLIVER NXASANA**: I never even asked for the  
10 docket.

**CHAIRPERSON**: Yes, yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: I did not even see the docket myself.

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: Because it was very strange because soon after I was appointed it was very strange of the President to behave in the manner that he behaved. Because all of a sudden he had an attitude against me he did not want to see me at all and I got that from reliable sources. People very close to him.  
20 Because everyone was now offering to hook me up with the President which I found it very strange and this is what I got from all those people who were offering to hook me up with the President. And some of the people were very close to the President. Ja. And that is also – also – is also evidence by the fact that we will see as we continue with our – with the evidence that the President was reluctant, he did not

want to see me up to the point that I had to bring an interdict when he wanted to suspend me and I insisted that I wanted to see him so that we can discuss before he can take this drastic step.

**CHAIRPERSON**: It is a – strange why – strange why people would want to hook you up with the President when you were appointed by the President.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: And if he needed to discuss anything with you he could ask you to see him anytime and if you wanted to discuss anything  
10 with him you could also request to meet him.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes Chair it was – it was very strange and it was a very trying moment for me because soon after I got this rumour that the President wanted to – that I wanted to reinstate charges against the President and that the President had this attitude. I contacted the person who – who was the legal advisor at the time Mr Hulley.

**CHAIRPERSON**: Hm.

**MR MXOLISI SANDILE OLIVER NXASANA**: And I remember I had to chase him also.

20 **CHAIRPERSON**: Hm.

**MR MXOLISI SANDILE OLIVER NXASANA**: At one point I even – because I live in Midrand I had to stop him at the – on the N1 that is where there is that restaurant the Bridge Restaurant. We had to stop – I stopped him there and I related to him that I am – I have a problem. The things that I am hearing that the President does not want to see me

and can you please arrange a meeting that – so that we can meet with the President and all the time even when I met him in Durban I would also meet him in Durban and I will tell him the same thing. And he will assure me that no the President is very comfortable with your work. There is nothing. Do not worry about those rumours. And strangely he was the same person who then approached me – I was hosting a delegation – African delegation of Prosecutors in – in Sandton and he was the one who then came that night to break the news that look the President has decided to institute commission of inquiry into your  
 10 fitness to hold office. Without having met the President at that time. Then I said well if he has decided – if he has taken a decision there is nothing then that I can say. And that meeting lasted not even more – not even more than 5 minutes then we parted ways.

**CHAIRPERSON**: Yes thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: In paragraph 39 Mr Nxasana you refer to a meeting between yourself and the President at a flat in Durban. Would you tell the Chair please what happened at that meeting?

**MR MXOLISI SANDILE OLIVER NXASANA**: It is not a meeting at a flat  
 20 in Durban but I am referring to a flat in Durban here. At the meeting that I had with the President one of the meetings after I subsequently had meetings with him that was after I had instituted that interdict. And we agreed to halt the interdict and we then started the negotiations. It is one of the meetings that we had – I had with him where he – after I explained myself to him that I am aware of all this campaign. I told him

of all this campaign. This campaign started before I even came to the office after he had made the announcement that I was appointed as the NDPP. Then I remember he said to me you know one of the things people have told him about me is that I was meeting Mr Ngcuka, Ngcuka – Bulelani Ngcuka who is the first National Director of Public Prosecutions and he said the information that he heard is that I was meeting Ngcuka at a certain flat in Durban and those people were even prepared to go and show him the flat where Ngcuka and I would meet. And he then said to me you know [African language] once a person  
10 mentions the name of that person – of Ngcuka I simply go crazy because that person referring to Mr Ngcuka he hates him – Ngcuka hates the President.

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

**CHAIRPERSON:** So – I am sorry Mr Pretorius. Are you saying that at that meeting ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** You actually told the President about the campaign which you came to know after assuming duty as NDPP that you say was being pursued by Ms Jiba and Mr Mrwebi?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Including - did you also tell him about what Mr Joubert's affidavit says ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Hm.

**CHAIRPERSON:** Or not in detail?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I would have told

him as well everything ...

**CHAIRPERSON:** Hm, hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** And because I - remember that I gave him also - the recording I gave him. The recording that we are talking about.

**CHAIRPERSON:** Oh you gave him a recording?

**MR MXOLISI SANDILE OLIVER NXASANA:** The - the - yes. The affidavit I gave him.

**CHAIRPERSON:** Mr Joubert's affidavit?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** I gave him a - a lever arch file.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And this meeting that you are talking about are you able to remember roundabout when it - it was?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I will not be in a position to remember that meeting.

20 **CHAIRPERSON:** To remember, *ja*.

**MR MXOLISI SANDILE OLIVER NXASANA:** Because - and I - I ...

**CHAIRPERSON:** But the - you brought the application to interdict your - I think your suspension?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes before I - before I (intervenes).

**CHAIRPERSON:** You - you brought that application sometime in 2014?  
Is it not?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. In 2014, yes.

**CHAIRPERSON:** In the second half of the year?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Yes. So your meeting with him would have been in the second half of 2014?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** *Ja.* Okay, alright. Thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So if we may just summarise for the record Mr Nxasana. During the latter months of 2014 you met with the former President?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** At that meeting you would have informed him of details of what you referred to as the campaign to have you removed or not appointed as National Director of Public Prosecutions?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Amongst those details would have been the information given to you by Mr Joubert to which you have just testified?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** One of the matters that was discussed at the meeting with the President is referred to in paragraph 39 of your affidavit ...

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And it is apparent that the President had been told that you had been meeting with the former Director of the NDPP - Advocate Bulelani Ngcuka?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you told the President correctly as I understand it that this was false information and the President was being misled by someone?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

10 Even more so because even to this date I have never even talked with Mr Ngcuka. We have never even met. We have never even exchanged - explain - pleasantries for that - for that matter.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. What did you conclude in relation to the conduct of Advocates Jiba and Mrwebi and your appointment or continued occupation of the post of NDPP?

**CHAIRPERSON:** I am sorry Mr Pretorius. I am interrupting you. Before we get there I am still interested in your meeting with the President ...

**MR MXOLISI SANDILE OLIVER NXASANA:** President.

20 **CHAIRPERSON:** At that time. You are tell him these things and - and he tells you that he had been told that you were meeting with Mr Ngcuka in a flat in Durban?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Now you - you said earlier on that you had heard rumours ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** That the President had been told that you were going to reinstate charges against him.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Now the information that the President told you at that meeting namely that he had been told that you were meeting with Mr Bulelani Ngcuka in a flat in Durban appears to me to suggest that he may have been told indeed that you were considering reinstating charges against him because remember that Mr Bulelani Ngcuka was  
10 the NDPP when - who had - was the first NDPP ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** And there had been judgments that deal with things relating to him and the former President and so on. So did he indicate whether he had also been told that you were considering reinstating charges against him or did he not go that far?

**MR MXOLISI SANDILE OLIVER NXASANA:** No he did not go that far  
Chair.

**CHAIRPERSON:** Yes. Yes. It seems to me that if you - if he - if he was told that you were meeting with Mr Ngcuka and if he did not like  
20 that it is possible that he might have thought that maybe you were considering something like that or it may be that as part of the story. Otherwise why would it be relevant that he be told that you were meeting with Ngcuka? Are you able to say anything?

**MR MXOLISI SANDILE OLIVER NXASANA:** That was my conclusion  
Chair.

**CHAIRPERSON:** That was your conclusion?

**MR MXOLISI SANDILE OLIVER NXASANA:** That - that was my conclusion Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** In fact to me when he said that to me it appeared as a confirmation of what I was telling him. That I was - I was aware of the - of the rumour that is making rounds because I told him that I am aware of the rumour that is making round and I know that it is Advocates Jiba and Mrwebi who told him that he  
10 would - that I intended to in - to reinstate charges against him.

**CHAIRPERSON:** So you did tell him that ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** One - part of the rumours that you had heard ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Was that he had been told that you were going to reinstate charges against him?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I did tell him.

**CHAIRPERSON:** *Ja* and what was his reaction to that part?

**MR MXOLISI SANDILE OLIVER NXASANA:** And one of the reactions  
20 was - was that he was told that - yes - that he was told that I am meeting with Mr Ngcuka - with Mr Ngcuka in a certain flat in Durban and those people are even prepared to - to go and show me. In fact Chair the whole scenario branded me as a person who was prepared to even do anything.

I remember when we tried to have a - another meeting - a

follow up meeting. I think some people picked up that we were meeting because the first meeting that we had we had the meeting in the King's house in Durban ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** And I think some people must have picked up or that information must have leaked that he acceded to meeting me and I got the impression that there were people who were putting presume on him that he should not meet with me.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** I remember at one point that when he was reluctant to meet with me I said to one of the persons that was close to him that he must not worry because he - he was told that the information that I was told - I was given is that I will come there wired and I would be ...

**CHAIRPERSON:** To record him?

**MR MXOLISI SANDILE OLIVER NXASANA:** To record him and I even joked and said to - to that person go and tell him that I do not mind meeting him naked because I will not have wires with me.

**CHAIRPERSON:** Okay. So - but when you said to him you had been  
20 told that he had been told or you heard a rumour that he had been told that you were going to reinstate charges against him. Did he deny having been told that?

**MR MXOLISI SANDILE OLIVER NXASANA:** He - he did - he neither denied nor admit it. He did not deny or (intervenes).

**CHAIRPERSON:** He neither denied nor admit it ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** But he responded by saying he had been told that you were meeting with Mr Ngcuka?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. I am meeting with Mr Ngcuka.

**CHAIRPERSON:** In a flat in Durban?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Okay, alright. Thank you. I interrupted you Mr Pretorius when you wanted to ...

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Talk about ...

**ADV PAUL JOSEPH PRETORIUS SC:** Clearly from the exchange now it appears clear that the misinformation concerning the reinstatement of criminal charges and the misinformation as alleged in relation to the meetings with the former NDPP are indeed related and consistent as in misinformation.

20 **CHAIRPERSON:** Maybe just to round this off I am not sure if I understood correctly. When you were speaking to him - that is the President - and telling him about the rumour/rumours that you had heard did you say - a few minutes ago did you say that you told him that you knew who was - who had told him that?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** What did - who did you say you knew had told him that?

**MR MXOLISI SANDILE OLIVER NXASANA:** I told him that I knew it

was Jiba and Mrwebi.

**CHAIRPERSON:** And what was his reaction to that part?

**MR MXOLISI SANDILE OLIVER NXASANA:** He - he did not - he did not deny ...

**CHAIRPERSON:** He did not say anything?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay, alright. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** You make some comments expressing your own views about these circumstances in paragraph 40.

10 Was there any reason you could not have worked together with Advocate Jiba in the NDPP?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair even now - and people that are very close to me I always tell them that my view was that - and I have told Jiba herself that there was no reason that Jiba and I could not work together professionally and I still hold the same view even to this day but the - I came to the conclusion that the reason why taking into consideration the affidavit deposed to by Joubert and the recordings it became very clear to me that Jiba was resentful because in that affidavit you will see that Colonel Mhlongo says that it  
20 is not - Jiba said it is not that he hates me or she hates me or she is against me because she did not know me and I always tell people that she had no reason to hate me.

I do not hate Jiba. She does not hate me because we did not know each other but the problem is that she was acting in that position for a long period. I think of a year and the hopes had been created and

I then got information that when I was appointed the Minister of Justice then Minister Radebe - Mr Radebe - Jeff Radebe - had promised her that she will - he was - she would be recommend - he was going to recommend her such that I was told that he had prepared a memorandum to the President.

In fact that information I was told by Mr Hulley himself that the reason why Jiba is acting the way she is acting is because Mr Radebe had prepared an affidavit. He was ...

**CHAIRPERSON:** A memorandum.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** A memorandum - sorry. A memorandum - a memorandum ...

**CHAIRPERSON:** Recommending.

**MR MXOLISI SANDILE OLIVER NXASANA:** Recommending Advocate Jiba for the position.

**CHAIRPERSON:** And you say this information you were given by Mr Hulley.

**MR MXOLISI SANDILE OLIVER NXASANA:** Mr Hulley himself yes.

**CHAIRPERSON:** Who was advisor to - legal advisor to the President?

**MR MXOLISI SANDILE OLIVER NXASANA:** To the President yes.

20 **CHAIRPERSON:** Yes. Huh-uh. So am I correct in understanding you to be saying that you do not think now and you did not think then that whatever Ms Jiba might have done against you in terms of the campaign that you say she was pursuing ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** You say it was not because she hated you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair. It - it ...

**CHAIRPERSON:** It was simply because she was - she wanted the position to which you had been appointed ...

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Which she had hoped would be given to her?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** That is what you are saying?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. It was not personal.

**CHAIRPERSON:** It was not personal?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** It was not personal.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** It was not personal at all.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** I think all that she was doing in - in fact in the affidavit if - if one reads the affidavit - the affidavit of - of Joubert. He says that Colonel Mhlongo told him that Jiba said they will do what they had done to - to Mr ...

**CHAIRPERSON:** Mr Stanley Gumede.

**MR MXOLISI SANDILE OLIVER NXASANA:** To Mr Gumede.

20 **CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** She did not know me. I did not know her. She had no reason really to ...

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** Dig. The only thing that she was interested in and the affidavits even say so that if I am - in

fact in the affidavit of Joubert he says Advocate Jiba said it was not her intention to embarrass me but to get to find dirt against me so that the President will take a decision to remove me and she will stand a chance to - to get appointed or to continue acting as the NDPP.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. We will come back to that after the short adjournment Chair. We have now a transcript of a portion of the - the relevant portion of the conversation ...

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** And we will play it ...

10 **CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** And come back to these issues ...

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** After the short adjournment.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** How in your mind did this campaign as you have referred to it culminate? In what event did this campaign culminate? You refer to that in paragraph 41.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** This whole campaign Chair culminated in the President taking a decision to establish a Commission of Inquiry to look into my fitness to hold office of the National Director of Public Prosecutions.

**ADV PAUL JOSEPH PRETORIUS SC:** And during your office - period of office - as NDPP what was the state of affairs within the organisation and what steps did you take to deal with what you found?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair as a result of all what was going on and this campaign I - I felt also that the - some staff - senior staff members or staff - NPA staff were being used to - to pursue this campaign which I - I found unacceptable and this was - I remember there was a - a time also where I listened on Radio 702 a guy who was employed at NPA.

His name was - I think it is Prince Mokotedi - who was then telling the - the world that there are two factions at NPA and he then said that he and others - I think Jiba and - and Mrwebi and others that I  
10 do not know - I - are regarded as the Zuma people and I - I found that distasteful because I have never belonged to any faction at NPA and I was not aware of any faction but what was happening when they were using - especially him also he was used.

Mr Mokotedi in - in my pursuit because at one stage he came up with information that he was investigating me of two murder charges. I - I did not even know what he was talking about. We asked him about that and I said to him I did not want to interfere with what he was doing because it was part of his investigations but I found - I felt - I expressed my concern that I do not think that he - he was suitable to  
20 conduct an investigation of that nature against me as the head of the institution but nevertheless I said to him I did not want to interfere with him.

**CHAIRPERSON:** I am sorry. Who was investigating?

**MR MXOLISI SANDILE OLIVER NXASANA:** It was Mr Prince Mokotedi.

**CHAIRPERSON:** Okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** Who was later on - I think - was later on - he later resigned at NPA when he was hauled before a disciplinary hearing. He resigned and was later on appointed as I saw - I read in the - the media that he was appointed as head of the Hawks in Gauteng. I do not know whether he is still the head of the Hawks there.

Then I - I became worried when members of the - the staff of the NPA were also used and I then decided to conduct investigations at - at NPA because I felt that this was interfering with the stability of the NPA. I especially at the senior management level. I then obtained the  
10 - the opinion from Senior Counsel, Patrick Ellis - regarding the various criticisms by the High Courts and the Supreme Court of Appeal against Advocate Jiba, Advocate Mrwebi and Advocate Mzinyathi.

I also then appointed the Fact Finding Commission headed by the retired Justice of the Constitutional Court Justice Yacoob to look into the instability and the leakage of information at NPA. I also prepared the memorandum that ...

**ADV PAUL JOSEPH PRETORIUS SC:** Before you go there.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** In relation to the Yacoob inquiry.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Did you give any instructions to Advocates Jiba and Mrwebi?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I gave instructions to everyone. I gave instructions to everyone to cooperate with the - that inquiry of Justice Yacoob even myself but we - Justice Yacoob found

resistance with Advocate Mrwebi and Advocate Jiba. They refused to participate despite my repeated calls that they should do so. They flatly refused.

**CHAIRPERSON:** The - the purpose of that inquiry did you say it was to establish what the causes of the instability and at the NPA were. Is that what you said?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair. There was some instability at the NPA at the time and there were media leakages at the time and I wanted the - Justice Yacoob to investigate who - who  
10 are behind all of this and also to come up with recommendations what should be - what should happen. Also including the criticisms obviously by the courts - what action had to be taken over and above the opinion that one had sourced from the - from senior counsel.

**CHAIRPERSON:** So you say there were certain judgments of High Courts and the Supreme Court of Appeal where the three advocates - namely Jiba, Mrwebi and Mzinyathi - different courts of the three had criticised some - some of them.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**CHAIRPERSON:** Each one criticising either where maybe one  
20 criticising all three or criticising two. Another one criticising another one and then the Supreme Court of Appeal and you took these judgments. You gave to senior counsel and asked for an opinion as to whether there is anything that should be done about that. Is that right?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** You got that opinion ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And then you asked Justice Yacoob to look at the instability at the NPA and the leaks in - of information that was happen - that were happening in the NPA and establish the cause there - causes thereof and make recommendations as to what should be done to deal with the instability and the leaks. Is that correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Then you were about to refer to  
10 a memorandum prepared by Advocate Nel?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** What position did Advocate Nel occupy at the time?

**MR MXOLISI SANDILE OLIVER NXASANA:** Advocate Gerhard Nel was a legal advisor in my office.

**ADV PAUL JOSEPH PRETORIUS SC:** Right and was that memorandum signed by someone else other than Advocate Nel?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. I had instructed -  
(background noise) sorry - I had instructed Mr - Advocate Gerhard Nel  
20 to prepare that memorandum on my behalf but shortly after he had prepared it I left. I took leave of office - I think - for two days. I appointed Mr Hofmeyr to act whilst I was on leave and Mr Hofmeyr signed off the memorandum and sent it to the Minister - Minister Masutha.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Is that memorandum

attached to your statement?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct.

**ADV PAUL JOSEPH PRETORIUS SC**: Would you look at page 34 please?

**CHAIRPERSON**: I see an affidavit on page 34 Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes. The memorandum that you referred to was that transposed into an affidavit?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair the - the affidavit that Mr Pretorius is referring me to is an affidavit that was deposed to  
10 by Mr Hofmeyr in the High Court Western Cape Division but it refers largely on the memorandum that he signed.

**CHAIRPERSON**: It contains the same information that was in ...

**MR MXOLISI SANDILE OLIVER NXASANA**: The same information in here.

**CHAIRPERSON**: In the memorandum?

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: You say in paragraph 43.3:

20                   “The affidavit Annexure MN2 which appears at page  
34 and following deals with circumstances relevant  
to the memorandum.”

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: So do I understand it correctly. The memorandum prepared by Advocate Nel contains certain information which was taken then by Mr Willie Hofmeyr and then put

into his affidavit?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Would you look at page 34? Is that the affidavit you are referring to?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. We will deal with excerpts from that to the extent necessary later. Did you have dealings with the General Council of the Bar concerning the conduct of Advocates Jiba, Mrwebi and also Mzinyathi?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair based on the opinion that I received from Senior Counsel, Patrick Ellis. Then I referred correspondence to the General Council of the Bar asking them to investigate the conduct of the - of its members - Advocates Jiba, Mrwebi and Advocate Mzinyathi based on the criticisms levelled by - against them by the various courts.

**ADV PAUL JOSEPH PRETORIUS SC:** And still enumerating the steps that you took to address the instability within the NPA as you describe it.

**MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.*

20 **ADV PAUL JOSEPH PRETORIUS SC:** Did you take any steps to improve the relationship between yourself and Advocates Jiba, Mrwebi and Ms Mzinyathi?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair. I - I did. I remember even at one stage I tried to - really to - to be open to them. I tried to reach out to them. Advocate Jiba at one stage I even

suggested to her that perhaps we -we just needed to go out just me and her. Out for - for tea or coffee and just discuss and have a frank discussion about ourselves and Advocate Mrwebi I tried my best to reach out. I ...

**CHAIRPERSON:** Well what - what was the response from Ms Jiba before you go to (intervenes)?

**MR MXOLISI SANDILE OLIVER NXASANA:** No she smiled.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** She just smiled Chair.

10 **CHAIRPERSON:** Oh.

**MR MXOLISI SANDILE OLIVER NXASANA:** She smiled and she ...

**CHAIRPERSON:** She - she did not ...

**MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.*

**CHAIRPERSON:** Say anything other than just smile?

**MR MXOLISI SANDILE OLIVER NXASANA:** She did not say anything. She just smiled, yes.

**CHAIRPERSON:** Yes. Okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.* Advocate - Advocate Mrwebi I - I remember we even had a - a trip to London.

20 There I would without fail every morning come to the breakfast, go and greet him personally. We would eat together with other members of - of the - that were ...

**CHAIRPERSON:** The delegation.

**MR MXOLISI SANDILE OLIVER NXASANA:** Of the delegation and he will sit alone. I will approach him. I will exchange pleasantries. I tried

to accommodate him but to my dismay I - I thought that things were - were okay - were getting on very well but then I subsequently learnt that he castigated one of the delegates - delegation who - who he had seen in my company around there.

He castigated him for sucking up to me and I - but I did not even taken an issue about - about that but I continued to treat him as a - as a professional and also as a colleague. At no stage did I shout at him.

**CHAIRPERSON:** When you approached him every morning while you were in London at breakfast and you would greet him and as you say  
10 exchange - I do not know - exchange pleasantries. Well that is how you put it but what was the response from him?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair - Chair Advocate Mrwebi is such a very nice person. Such that I would ask myself what would - what really would happen after I thought we were getting on very well and after I would hear some stories - things that he was doing together with Advocate Jiba because when he was with me he would be a very nice person.

Same as Jiba. They were the nicest persons ever and  
20 Advocate ...

**CHAIRPERSON:** In front of you?

**MR MXOLISI SANDILE OLIVER NXASANA:** In front of me.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** Well Advocate Mzinyathi is exceptional. He is such a nice person also and I - I remember I told

him that I - unfortunately this is what I - I have to do. We worked very well because ...

**CHAIRPERSON:** You mean Advocate Mzinyathi?

**MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.* With - with Advocate Mzinyathi. We get on very well with him. He is such a - a very humble very professional person. We had ...

**CHAIRPERSON:** Oh. I do not know why I thought Advocate Mzinyathi was a - a lady.

**MR MXOLISI SANDILE OLIVER NXASANA:** No, no. It is a - it is a ...

10 **CHAIRPERSON:** It is a male.

**MR MXOLISI SANDILE OLIVER NXASANA:** He is a - the Xhosa they - they are named Sibongile. It is a ...

**CHAIRPERSON:** Oh I think ...

**MR MXOLISI SANDILE OLIVER NXASANA:** A male. He is a male, *ja*.

**CHAIRPERSON:** No I - I think that must be ...

**MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.*

**CHAIRPERSON:** Because ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Because of the first name, *ja*.

20 **CHAIRPERSON:** Yes. I am ...

**MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.* People confuse. They think ...

**CHAIRPERSON:** Yes. No, no.

**MR MXOLISI SANDILE OLIVER NXASANA:** They think it is a female.

**CHAIRPERSON:** I think now I understand.

**MR MXOLISI SANDILE OLIVER NXASANA:** It is actually a male, *ja*.

**CHAIRPERSON:** Because you are right. With - I mean isiZulu and isiXhosa are very close ...

**MR MXOLISI SANDILE OLIVER NXASANA:** And isiXhosa that is where the problem *ja*.

**CHAIRPERSON:** And some of the names of people are the same ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** But you would find that a particular name ...

**MR MXOLISI SANDILE OLIVER NXASANA:** In isiXhosa.

10 **CHAIRPERSON:** Exist among the Zulus ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And exist among the AmaXhosa and but ...

**MR MXOLISI SANDILE OLIVER NXASANA:** And particularly Sibongile.

**CHAIRPERSON:** But with - with AmaXhosa that name would be for a female or would be used ...

**MR MXOLISI SANDILE OLIVER NXASANA:** And both ...

**CHAIRPERSON:** For both.

**MR MXOLISI SANDILE OLIVER NXASANA:** For females and females.

**CHAIRPERSON:** Whereas with AmaZulu ...

20 **MR MXOLISI SANDILE OLIVER NXASANA:** It is only for females.

**CHAIRPERSON:** It would only be for males.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Like Fikile ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And then Sibongile. For those two among AmaZulu

would always be female.

**MR MXOLISI SANDILE OLIVER NXASANA**: Female, yes.

**CHAIRPERSON**: *Ja*. Okay.

**MR MXOLISI SANDILE OLIVER NXASANA**: No it is a name ...

**CHAIRPERSON**: So I think that must be what also made me think ...

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: It was a female but ...

**MR MXOLISI SANDILE OLIVER NXASANA**: In fact ...

**CHAIRPERSON**: You said it is a man, *ja*.

10 **MR MXOLISI SANDILE OLIVER NXASANA**: In fact he is the Director of Public Prosecutions in the North Gauteng Division.

**CHAIRPERSON**: Hm.

**MR MXOLISI SANDILE OLIVER NXASANA**: Advocate Mzinyathi.

**CHAIRPERSON**: Yes, okay. Yes. So you say he was - he is a very nice person?

**MR MXOLISI SANDILE OLIVER NXASANA**: A very nice person. We had ...

**CHAIRPERSON**: And you got on very well?

20 **MR MXOLISI SANDILE OLIVER NXASANA**: We got on very well. Even to this day. We are getting - we get on very well.

**CHAIRPERSON**: Even today?

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: Yes, yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: *Ja*, but I think he understand - he understood that it is - it is the job that I had to do ...

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** And - and I do not pass any judgment ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** On any of them.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** I was merely doing my work. I think he understood that.

**CHAIRPERSON:** Yes, yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** At no stage did he feel that I - I was purging him in anyway.

**CHAIRPERSON:** Yes, yes but you - you say - you say Mr Mrwebi and Ms Jiba at least in your presence they were also very nice people?

**MR MXOLISI SANDILE OLIVER NXASANA:** They were very nice. They presented themselves ...

**CHAIRPERSON:** It is just that afterwards you would hear other things?

**MR MXOLISI SANDILE OLIVER NXASANA:** Other things, yes.

**CHAIRPERSON:** Okay, alright.

**ADV PAUL JOSEPH PRETORIUS SC:** Chair is this a convenient time?

20 We will ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Make preparations to play the recording.

**CHAIRPERSON:** Yes. Okay. We will take the short adjournment and resume - is it fine if we resume at half past or should we make more

time with the preparations that you are going to make at tea?

**ADV PAUL JOSEPH PRETORIUS SC:** I would like to look at the relevant extract again.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** So perhaps an extra five minutes.

**CHAIRPERSON:** Yes. So we will resume at 25 to 12.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn

10 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes, are you ready?

**ADV PAUL JOSEPH PRETORIUS SC:** DCJ we have – we engineered the bundle, EXHIBIT EE5 is no longer the transcript of the evidence given previously by Mr Nxasana.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** It is on your desk, or on your table in a separate folder.

20 **CHAIRPERSON:** Yes thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** EXHIBIT EE5 now is the transcript of the recording at page 197 and following, 197 is simply an affidavit of the person who did the transcription.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And the transcription I am

informed of the conversation there is other material which is irrelevant on the recording, it is at page 201 and following. I must say Chair that I have looked at it during the adjournment and for the life of me I do not follow the references but if Mr Nxasana can help then he can help.

**CHAIRPERSON:** That is in the transcript?

**ADV PAUL JOSEPH PRETORIUS SC:** In the transcript.

**CHAIRPERSON:** Oh okay.

**ADV PAUL JOSEPH PRETORIUS SC:** I haven't listened to the recording, but I am assured that the transcript accurately reflects what  
10 was said in more than one language on the recording.

**CHAIRPERSON:** Oh, okay.

**ADV PAUL JOSEPH PRETORIUS SC:** So in accordance with your request it is not long Chair, perhaps we can play the recording.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** You could indicate, or the witness could indicate where it needs to be stopped for commentary.

**CHAIRPERSON:** Yes, okay no that's alright, my inclination is I don't know how long – how long is the ...[intervenes]

**ADV PAUL JOSEPH PRETORIUS SC:** It is a few minutes, four  
20 minutes.

**CHAIRPERSON:** My inclination would be to listen to the whole of it, unless either you or Mr Nxasana wishes that we stop somewhere for some clarification to be given and then if we do not have that then the clarifications could be given afterwards.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes, well in the light of that

Chair it also is my own preference that we hear the whole thing and then ask Mr Nxasana to explain where the confirmation is that he attested to.

**CHAIRPERSON:** Yes, yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Because I – the references are obscure so I do not see it, maybe he will be able to explain that.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Nxasana have you followed what the Chair has now said.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** We are going to play the recording.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair, I was following.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** We are going to play the recording from beginning to end, that recording of the conversation between Mr Joubert and Colonel Mhlongo.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Once that has been concluded you can tell us where in that recording there is confirmation of the parts of the evidence that you gave.

**MR MXOLISI SANDILE OLIVER NXASANA:** Okay, I will do that.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Because quite frankly it is not immediately apparent from the transcript, okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Ja, and if in order to – if it would assist to later on play certain parts of the recording that can be done as well, okay alright.

**ADV PAUL JOSEPH PRETORIUS SC:** So in short we will play the whole recording, we will ask you to confirm what was said as you testified to earlier, or not said, as you testified to earlier, and then if you require certain portions to be replayed as the Chair indicates we can facilitate that.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** No problem Chair.

**CHAIRPERSON:** Thank you.

**AUDIO RECORDING PLAYED**

**CHAIRPERSON:** Sorry, yes because I could not hear earlier on and I am not sure if I can hear now the actual words, I just hear some noise and then somebody speaking but not the actual words.

**VIDEO RECORDING PLAYED**

**CHAIRPERSON:** Is that the conversation already with Mr Joubert? I seem to hear some Zulu, what appear to be Zulu words.

**ADV PAUL JOSEPH PRETORIUS SC:** The conversation yes.

20 **CHAIRPERSON:** Oh.

**AUDIO RECORDING PLAYED**

**CHAIRPERSON:** I'm sorry, just stop, just stop.

**ADV PAUL JOSEPH PRETORIUS SC:** Stop.

**CHAIRPERSON:** Stop. I cannot hear a word, I hear that there is somebody speaking, maybe more than one person. I do not know

whether it is the noise or what it is but the clarity that is supposed to be there so that I can hear the actual words being spoken is not there. I do not know whether it is because maybe I am at a certain distance away from the instrument or what. I do not know if other people are able to hear?

**ADV PAUL JOSEPH PRETORIUS SC:** Well certainly I cannot Chair.

**CHAIRPERSON:** Yes, Mr Nxasana are you able to hear from where you are, other than when you may have listened to it privately? Are you able to hear now?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** I can now hear, I do not know whether perhaps that is because I ...[intervenes]

**CHAIRPERSON:** Because you know ...[intervenes]

**MR MXOLISI SANDILE OLIVER NXASANA:** I know the – ja, but we have not come to the actual conversation relevant to the ...[intervenes]

**CHAIRPERSON:** Yes, do you think when we get there it might be clearer?

**MR MXOLISI SANDILE OLIVER NXASANA:** Perhaps, I do not know, that is why I was signalling to him that he must just fast forward it, and I will tell him where.

20 **CHAIRPERSON:** Yes, okay maybe let him fast forward to where the real conversations starts that we are interested in and let's see if one might be able to hear that, and the technician maybe will bear in mind what I have said, maybe there is something that needs to be done technically to make sure one can hear. I think we did have something like that when I was hearing evidence or a recording relating to the

Waterkloof landing, and I think I took five minutes adjournment and when I came back we would hear better, I could hear better. I don't know if that is the same problem. Let's start and let's see whether there is improvement.

**AUDIO RECORDING PLAYED**

**CHAIRPERSON:** Just stop. Are we already on the conversation?

**MR MXOLISI SANDILE OLIVER NXASANA:** No.

**ADV PAUL JOSEPH PRETORIUS SC:** Chair I am informed that the recording contains a portion where Colonel Mhlongo was speaking  
10 ...[intervenes]

**CHAIRPERSON:** To somebody else?

**ADV PAUL JOSEPH PRETORIUS SC:** In a different conversation.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Whilst Mr Joubert was as it were holding on.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** So perhaps we can get to that portion, it's not long and see if at that portion where the conversation takes place it is clearer.

20 **CHAIRPERSON:** Yes, let's get to the real conversation we are interested in.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you know where it is?

**AUDIO RECORDING PLAYED**

**ADV PAUL JOSEPH PRETORIUS SC:** Just stop. This portion Chair appears at page 203, in other words in the transcript on the

...[intervenes]

**CHAIRPERSON**: On the transcript, 2003.

**ADV PAUL JOSEPH PRETORIUS SC**: MSON2003 at line 15.

**CHAIRPERSON**: Okay. Yes okay.

**ADV PAUL JOSEPH PRETORIUS SC**: Carry on please.

**AUDIO RECORDING PLAYED**

**CHAIRPERSON**: Just stop. Just stop. There is very little improvement between what I was hearing earlier and what I am hearing now. I still cannot hear a full sentence. I don't know whether has your hearing  
10 improved Mr Pretorius?

**ADV PAUL JOSEPH PRETORIUS SC**: No, no better or worse than yours Chair.

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: But it may be the recording itself, which could be technically enhanced. It may be how the recording is being played.

**CHAIRPERSON**: Yes, yes.

**ADV PAUL JOSEPH PRETORIUS SC**: Because it is being played over speakers over there and I am not sure it is coming across on the  
20 speakers and perhaps over the long adjournment we can deal with that.

**CHAIRPERSON**: Ja, ja. And I wonder whether people at the back are hearing better than us, they shake heads. It looks like really nobody hears, so there is no point in continuing with it. Maybe either the current technician or whoever may assist can look at what needs to be done technically to make sure that we can hear.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes I suspect it may have something to do – may have something to do with how it is being broadcast from the recording, because I do not hear it over all these speakers.

**CHAIRPERSON:** Ja, maybe, so the technician can look at that and definitely maybe after lunch we can revert to it if he or she, I don't know, I can't see if it's a he or a she if he or she needs assistance from colleagues who are technicians perhaps you can do that, because it would be – I would love to hear it if it is at all possible.

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

**CHAIRPERSON:** Okay, I think we will have to continue and other people will try and look into that issue with a view that if possible after lunch we could try again.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Mr Nxasana can we go then back to page 10 of your affidavit?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** At paragraph 43.6.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** You have told the Chair what steps you took to address what you refer to as instability within the NPA.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you have told the Chair in

particular about your relationship with Advocates Jiba, Mrwebi and Mzinyathi in this regard?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Did you make any requests to hold a meeting with the President and what was – if so what was the purpose of those requests? You deal with that in paragraph 43.6

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair as I have indicated earlier I was more concerned about what I was hearing, the rumour that was going around and I wanted to see the President. I was  
10 not getting any joy, I made all attempts, including to contact Mr Hulley as I have indicated, which I managed on one instance I managed to meet him on N1 in Midrand and subsequently he then I think he wrote me letters to where he was telling me that he intended to institute an inquiry or maybe before that I think I received letters where I was asked to comment by certain particular dates the comments that are attributed to me, which are in the media amongst other things, my involvement in a matter where I was charged and acquitted of murder.

**ADV PAUL JOSEPH PRETORIUS SC:** If I may ask you to pause there  
20 Mr Nxasana, I think you are going ahead, and if you could go back please to paragraph 43.6. In other words before we deal with the charges that were contemplated against yourself I would like you just to first deal with the contents of paragraph 43.6 and following.

**MR MXOLISI SANDILE OLIVER NXASANA:** Oh, okay I understand. Yes I also made requests to the President as well, after I had to send him the memorandum I requested him to consider instituting

disciplinary action, to taking disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi.

**ADV PAUL JOSEPH PRETORIUS SC:** So your decision was to institute disciplinary action against Advocates Jiba, Mrwebi and Mzinyathi?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** You requested a meeting with the President to discuss this.

**CHAIRPERSON:** No, I'm sorry Mr Pretorius, I think the two of you got  
10 mixed up, you said his decision was to institute disciplinary action and he said yes but I think his decision was to request the President to institute not for him to institute himself.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** Because the power vested – was vested with the President, is it not Mr Nxasana?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** You could not institute any disciplinary action yourself?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes, no not myself, yes.

20 **CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** You are quite correct Chair, your decision was to initiate a process.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** As you say in paragraph 43.7

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Of course you could not make the final decision.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And you wished to discuss this with the President?

**MR MXOLISI SANDILE OLIVER NXASANA:** With the President yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Was there any response to your request?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair the response that I  
10 received if my memory serves me well I think I received a response from the Minister of Justice, Mr Masutha.

**ADV PAUL JOSEPH PRETORIUS SC:** What did he tell you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Basically he threw the ball back at me and asked me to explain what measures I had taken in addressing all those issues, and I wrote back to him and indicated that I had caused a memorandum to be submitted to him for onward transmission to the President and we are still waiting for the President to intervene and take a decision to institute the disciplinary action against the advocates.

20 **CHAIRPERSON:** I think it will be important, maybe after lunch Mr Pretorius, you know the sequence, the sequence and the actual correspondence dealing with those things is attached to either Mr Hathorn's affidavit or Naidoo in the Corruption Watch and CASACA application, they can be, I think they could be very useful in terms of the terms of the correspondence as well. So I think he can continue

and give evidence and then during the lunch break maybe he could look at that affidavit. I think those records are available that is something that was – that went up to Constitutional Court.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** And then – so he can give evidence about it and then later on we can go into the correspondence.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes we have the affidavit here.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** To put it to Mr Nxasana, but  
10 perhaps to get copies and speak to him about it over the long adjournment.

**CHAIRPERSON:** Yes, get copies, yes, yes and the annexures because the memorandum also is there, it is attached if I recall correctly.

**ADV PAUL JOSEPH PRETORIUS SC:** We now have that memorandum, and that can also be presented.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you recall a meeting at Emperor's Palace, a meeting of what you refer to in paragraph 43.8 as the NPA meeting?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Well did that meeting take place in March 2014 or March 2015? Or when did it take place? You say here it took place in March 2015.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I think it would have been in March 2014 if I am not mistaken.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**MR MXOLISI SANDILE OLIVER NXASANA:** I think that is an error.

**ADV PAUL JOSEPH PRETORIUS SC:** So ...[intervenes]

**CHAIRPERSON:** That is 43.8 is that where you are?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Oh, okay. So that 2015 you say must be an error Mr Nxasana?

**MR MXOLISI SANDILE OLIVER NXASANA:** It must be an error there.

If I look at paragraph 44 what follows thereafter it must have been  
10 2014.

**CHAIRPERSON:** Okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** But I stand to be corrected.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Did Minister Masutha say anything to you about your request to the President to intervene, as you have testified?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair, he told me that  
20 the President had agreed to intervene, and to intervene as I had requested, but he never did.

**CHAIRPERSON:** I'm sorry, if this is March 2014 am I correct in understanding that that meeting at Emperor's Palace that is referred to at paragraph 43.8 would have happened after you had requested the President to consider suspending Ms Jiba and Mr Mrwebi and sending

the memorandum which gave him the basis, or what you thought was the basis for him to act?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Okay so that was much earlier, I think earlier on I may have said July, August, so that was much earlier. It was much earlier than that, it was before March, the request for the President to do something?

**MR MXOLISI SANDILE OLIVER NXASANA:** I think Chair I can verify this information about the Emperor's Palace when was that meeting. I  
10 remember the meeting vividly but I cannot recall the date now but at that meeting ...[intervenes]

**CHAIRPERSON:** Yes but also it may be that because paragraph 43.8 talks about the President having, the Minister saying to you the President had agreed to intervene. Maybe did you at some stage simply request him to intervene and that request being separate from requesting him to consider suspending Ms Jiba and Mr Mrwebi and instituting disciplinary proceedings against them. Could those have been separate and different requests at different times?

**MR MXOLISI SANDILE OLIVER NXASANA:** It was at different times  
20 Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** The meeting at Emperor's Palace I think it was a workshop organised by the – I think it dealt with corruption, it was organised by NPA, I cannot remember which unit. I attended that meeting and Minister Masutha was also present at that

meeting but what he was confirming to me is that after I had submitted to him the memoranda and the – and everything the file wherein I had asked the President to consider taking disciplinary action against Advocates, Jiba, Mrwebi and Mzinyathi that was his response on that day, that the President has finally agreed to intervene and was considering my taking action against the Advocates.

**CHAIRPERSON:** So does that mean that you are clear in your own mind that the meeting at Emperor's Palace took place after you had requested the President to consider suspending Ms Jiba and Mr Mrwebi

10 ... (intervenes)

**MR MXOLISI SANDILE OLIVER NXASANA:** That I'm clear enough.

**CHAIRPERSON:** And after you had submitted a memorandum which you believed set out the basis for him to act?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Okay, alright, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes, let's just place your evidence now in context Mr Nxasana, as I understand your evidence in relation to the conduct of Advocates Jiba and Mrwebi and Advocate Mzinyathi you had to rely on information provided to you by other NPA  
20 officials, and that is why you obtained a memorandum from Advocate Nel and Mr Willie Hofmeyer?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Right, Chair insofar as it is necessary to deal with that detail that will be dealt with directly, it just seems to me that the purpose of what you are saying to the Chair now

is to say that based on information you had received, which we can place before the Chair in due course, you had taken a decision to at least initiate disciplinary proceedings against the Advocates involved.

**MR MOXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And you had requested a meeting with the Minister – with the President to deal with that?

**MR MOXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. And that is the background to the evidence which you are going to give now as to what  
10 happened to you at that stage?

**MR MOXOLISI SANDILE OLIVER NXASANA:** That is correct yes.

**ADV PAUL JOSEPH PRETORIUS SC:** So Chair insofar as the content of those memoranda and affidavits are concerned they are there, but the direct evidence should perhaps be given by others because it does implicate people quite seriously.

**CHAIRPERSON:** Well while you were asking questions I was thinking about the sequence of events that we talked about a few minutes ago and I see he on some of the things about the sequence he is not – his recollection might not be good that might be because he might refresh  
20 – need to look at documents to refresh his memory. I was wondering whether we should not break for lunch a little earlier than normal so that he gets a chance to look at the correspondence which is attached to Mr Hawthorne's affidavit and when we come back he can then deal with those very easily – there is correspondence that is important. It gives the dates of his attorneys writing to the Presidency and the

Presidency to the President's legal advisor writing to her. I think it is very important and usual sequence of events. As I say it is something that is already in court records in a matter that went up to the – corruption matter and the CASAC matter.

**ADV PAUL JOSEPH PRETORIUS SC**: We will do that.

**CHAIRPERSON**: So maybe we – maybe we should look at breaking at half past twelve to give more time for lunch and looking at the documents and then when we come back then we can just ...  
(intervenes)

10 **ADV PAUL JOSEPH PRETORIUS SC**: Just to establish the sequence?

**CHAIRPERSON**: The sequence and the...

**ADV PAUL JOSEPH PRETORIUS SC**: Yes it does not obviate the need to get the direct evidence from elsewhere

**CHAIRPERSON**: No, no it does not. It does not. It is just that it is important I think from the perspective that he made a certain request as the NDPP to the President that the President should consider taking certain action against certain people within the organisation. If he had the power I am sure he would have taken the decision himself. And what we then see is certain sequence of events and correspondence  
20 and then the timing can be important because if all of that happened before and then no action was taken against the two but instead action was taken against him.

**ADV PAUL JOSEPH PRETORIUS SC**: Correct.

**CHAIRPERSON**: That sequence is – can be very important. What did the President know about both him and about Ms Jiba and Mr Mrwebi

and – and when the President is given a chance to deal with this matter he may have to indicate, justify, taking action against the one and not the other and so on. So it is important that he can deal with it properly.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes what we know so far Chair is what is contained on pages 9 and 10 that memoranda, affidavit, documentation was prepared.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And transmitted to the Minister for...

10 **CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** For onward transmission to the President.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** That was accompanied by a request for meetings.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** And an expectation that it would be followed up.

**CHAIRPERSON:** Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And that the report we now presume is in March 2014 but it may be necessary to clarify that that the President had agreed to intervene – failure to intervene and then steps taken. That is the sequence.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** As I understand it but I

understand your concern is that there is further evidence in relation to that sequence in the affidavit of Attorney Hawthorne.

**CHAIRPERSON:** Ja.

**ADV PAUL JOSEPH PRETORIUS SC:** And we will put that to the witness.

**CHAIRPERSON:** Yes, no.

**ADV PAUL JOSEPH PRETORIUS SC:** Over the long adjournment.

**CHAIRPERSON:** Ja no that is fine. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. What happened then – let  
10 us assume for the moment and we will check this over the long  
adjournment Mr Nxasana. Let us assume that the Emperor’s Palace  
meeting took place in March 2014.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Where you were informed that  
the President had agreed to intervene as requested or proposed by  
yourself?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** You say that there was a failure  
to act in accordance with what you had been told would happen.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** But...

**CHAIRPERSON:** Maybe – maybe – sorry Mr Pretorius. In the – in your  
affidavit you have used the word intervene is that because that is what  
you were told by Mr – by the Minister that the President had agreed to  
intervene or did he tell you that the President agreed to initiate

disciplinary – a disciplinary process but you – in your affidavit you have simply said he agreed to intervene or is that the words that was used by the Minister? Because then if that is the words that the Minister used I want to understand what your understanding was of what intervening in that situation meant?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I – although I cannot recall precisely what the Minister said but my understanding during our discussion was that he – he said to me the President had acceded to my request and he was going to act. That is the [indistinct].

10 **CHAIRPERSON:** Oh that is what he said.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. What then happened a few months after March 2014 in July 2014 and this is now direct evidence from yourself?

**MR MXOLISI SANDILE OLIVER NXASANA:** I think in July 2014 I then received communication from the President. I remember it was very late at night. It came through my email. He was advising me that he had taken a decision to institute a commission of inquiry into – to  
20 determine my fitness to hold office as the National Director of Public Prosecutions.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. When you say you were informed; how were informed? Was it directly by the President or was it through his legal representatives?

**MR MXOLISI SANDILE OLIVER NXASANA:** No it was through his

personal assistant I cannot recall the name of the – of this young man – his personal assistant he sent me the email and I received it on my handset. I responded by acknowledging receipt of it and noted the contents.

**ADV PAUL JOSEPH PRETORIUS SC:** And in July that same month towards the end of the month did you receive another communication?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I did receive another communication from the President also from the same guy. I have forgotten his name but he was his personal assistant or he was aide –  
10 his aide advising me that the President intended suspending me pending the inquiry and that the terms and the dates and time and venue of the said inquiry was going to be communicated to me in due course. And I was then called upon to make submissions why I should not be suspended pending the said inquiry.

**CHAIRPERSON:** Now how – how long after the Emperors Palace meeting was this more or less when you were told that the President intends – was going to suspend you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I – I ...

**CHAIRPERSON:** You cannot remember?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** I cannot remember.

**CHAIRPERSON:** Ja okay maybe after lunch it should be possible after lunch because there is correspondence in the record about all of that.

**ADV PAUL JOSEPH PRETORIUS SC:** Would you go to page 135 please.

**CHAIRPERSON:** Did you say page 135?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** The top page of course. Not this – not the other one.

**ADV PAUL JOSEPH PRETORIUS SC:** I am sorry MSON046.

**CHAIRPERSON:** 46? Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** You have that? Top right hand corner Mr Nxasana there is some letters followed by numbers.

**MR MXOLISI SANDILE OLIVER NXASANA:** It is page?

**ADV PAUL JOSEPH PRETORIUS SC:** 46.

**MR MXOLISI SANDILE OLIVER NXASANA:** Oh page 46.

10 **ADV PAUL JOSEPH PRETORIUS SC:** It is Annexure MN3.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I have it with me.

**ADV PAUL JOSEPH PRETORIUS SC:** What is this document?

**MR MXOLISI SANDILE OLIVER NXASANA:** It is a – it is a letter dated the 4 July 2014 which I received from President Jacob Zuma. It is a notice of institution of inquiry.

**CHAIRPERSON:** And it is dated 4 July 2014 ne?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And then if you would go to page 48 please.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Page 48 is a letter I received from President Zuma dated the 30 July 2014 titled Notice of intention to suspend in terms of Section 12(6)A of the National Prosecuting Authority Act 32 of 1998.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. Paragraph 2 of that letter reads:

“You are no doubt aware that the National Prosecuting Authority is an important constitutional institution in the administration of justice and that maintaining public confidence in the institution is of necessity. In consideration of maintaining the integrity of the National Prosecuting Authority and in particular its good administration I am giving consideration to suspending you on full pay pending the finalisation of the inquiry to which I have referred.”

10

It reads further:

“The inquiry will examine your fitness to hold the office as National Director of Public Prosecutions having regard to whether.”

And what was contemplated by the President at that time in relation to the subject matter of the inquiry. You can read if you wish.

**MR MXOLISI SANDILE OLIVER NXASANA**: It was – he said:

“The inquiry will examine my fitness to hold the office as National Director of Public Prosecutions having regard to whether

20

1. The criminal convictions which I possess for violent conduct.
2. Reported comments in the media are unbecoming of a National Director of Public Prosecutions divisive and have the effect of bringing the National

Prosecuting Authority into disrepute. And lastly

3. The lack of disclosure of the facts and circumstances of prosecutions which I faced are consonant with the contentiousness and integrity of an incumbent to the office of National Director of Public Prosecutions as required by the Act.”

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**MR MXOLISI SANDILE OLIVER NXASANA:** Then I was required to furnish the President with written representations in this regard by no  
10 later than 1500 hours or 1600 hours on Friday 1 August 2014.

**ADV PAUL JOSEPH PRETORIUS SC:** That is a day or so later?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Two days later. But if you could go back please. It is not our intention to hold Trials-Within-A-Trial but did you have criminal convictions for violent conduct?

**MR MXOLISI SANDILE OLIVER NXASANA:** I had criminal convictions for assault common.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Had these been disclosed?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And then reported comments in the media. Do you know to what comments reference was here being made?

**MR MXOLISI SANDILE OLIVER NXASANA:** To this date Chair I do not know what the President was referring to as the media comments

because we – I personally wrote a letter asking him to furnish me with the particulars of what he meant about the media comments and he failed to do that.

**ADV PAUL JOSEPH PRETORIUS SC:** And the alleged lack of disclosure of facts and circumstances of prosecutions. And I presume that is something different from convictions which you faced. Do you know what was being referred to here?

**MR MXOLISI SANDILE OLIVER NXASANA:** In the same letter Chair before I applied for an interdict against the President we had made that  
10 request to the President to explain – to give me particular – particulars of what he meant about those matters which he did not do. And I still do not know what he was referring to. In his response I think he said I should know what he was referring to in a nutshell.

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

**CHAIRPERSON:** The assault that you – you talk about that you had a conviction for, is that right?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** When had that conviction happened or – and when had the incident that gave rise to it happened?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair it was in I think in 1986 at Nongoma.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** And I remember even when I – I applied to – to register for my articles of clerkship as an attorney.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** That was one of the requirements because I disclosed.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** But I even went to Nongoma charge office and Nongoma court and I could not find those records – the records because of the – the very ...

**CHAIRPERSON:** The lapse of time.

**MR MXOLISI SANDILE OLIVER NXASANA:** Because of the lapse of time yes.

10 **CHAIRPERSON:** So this was the reference to violent conduct insofar as it related to your conviction for assault. It related to something that had happened what more than 30 years ago or previously as at the time you were being asked about this.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is what one could only assume because the President was not forthcoming about what he meant about my violent conduct.

**CHAIRPERSON:** Oh so you never got information from the President.

**MR MXOLISI SANDILE OLIVER NXASANA:** What he...

20 **CHAIRPERSON:** Giving you full information whether what you were thinking he was talking about was exactly what he was talking about.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. That is correct Chair.

**CHAIRPERSON:** You speculated?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**CHAIRPERSON:** As to what it might refer to?

**MR MXOLISI SANDILE OLIVER NXASANA:** At one point he in the

same letter he referred to my previous convictions of assault and then in another point he referred to my violent – to my previous convictions involving violent conduct then I did not know what he meant.

**CHAIRPERSON:** He was talking about?

**MR MXOLISI SANDILE OLIVER NXASANA:** What he was talking about hence I wrote to him and asked him to give me full particularities of what he meant and he failed to do that.

**ADV PAUL JOSEPH PRETORIUS SC:** But I think what the Chair is asking about in your knowledge.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Was there any other conviction or prosecution other than the one that you recall?

**MR MXOLISI SANDILE OLIVER NXASANA:** Those are the only convictions that I – I knew and the prosecution of the murder charge for which I was acquitted in 1985 that is one that I know. And there was also reference to an incident where I was – which I disclosed as well which he also asked me about where I was stalked by police in – I was driving a car and they stopped me and they said I was driving inconsiderately and the matter was – I did not even appear in court it  
20 was not placed on the roll. That was in I think 2013 or 2012 before I was appointed.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright leave that one aside for the moment.

**MR MXOLISI SANDILE OLIVER NXASANA:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** And let us restrict ourselves to

convictions or prosecutions. Is it your evidence that the only incidents which could have formed – feasibly formed the subject matter of such an inquiry by the President or such a statement happened you say when?

**MR MXOLISI SANDILE OLIVER NXASANA:** In 1985.

**ADV PAUL JOSEPH PRETORIUS SC:** 1985.

**MR MXOLISI SANDILE OLIVER NXASANA:** 1984 and 1985 ja.

**ADV PAUL JOSEPH PRETORIUS SC:** Then let us go to paragraph 50 please. Under the head my right to a fair hearing you deal at length  
10 with your response to the notice of suspension.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Or the notice of intention to suspend or the notice to consider suspending you.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Well Mr Pretorius what page is that?

**ADV PAUL JOSEPH PRETORIUS SC:** 12.

**CHAIRPERSON:** Oh okay. I think maybe we should take the adjournment now.

**ADV PAUL JOSEPH PRETORIUS SC:** Ja we have dealt with 48.

20 **CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** By reference to the annexure.

**CHAIRPERSON:** Yes, no, no that is fine. I think we should take the adjournment now so that he can get a chance to look.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** At those affidavits and the correspondence and then

we can then resume at two.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. Chair if I may just raise one issue before we adjourn.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** On pages 12 through to page 17 the statement summarises procedural matters in relation to the suspension and the Cassim Inquiry. It is our view that as neither the suspension nor the inquiry ever took place.

**CHAIRPERSON:** Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** These are procedural matters that we can summarise very briefly.

**CHAIRPERSON:** You are asking if you can do that before we take the adjournment.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair. Yes.

**CHAIRPERSON:** Okay alright. Let us do that.

**ADV PAUL JOSEPH PRETORIUS SC:** No, no not before after.

**CHAIRPERSON:** Oh after.

**ADV PAUL JOSEPH PRETORIUS SC:** I have just...

20 **CHAIRPERSON:** Okay no that is fine. I mean if you wanted to do it now we could do it but then add more time after two before we resume.

**ADV PAUL JOSEPH PRETORIUS SC:** No Chair it will be very, very brief.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** With your leave.

**CHAIRPERSON:** No, no that is fine.

**ADV PAUL JOSEPH PRETORIUS SC:** I do not intend to go into any detail.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And then we will start at page 18 again.

**CHAIRPERSON:** Ja. Okay no that is fine. We will take the lunch adjournment then and we will resume at two o'clock.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

10 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready Mr Pretorius?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. To report back in relation to the recording. The engineers have tried their best to produce a better more audible version without success. The fault lies with the recording itself. There are ways of enhancing recordings but  
20 those must be done technically and we will try to do so.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Secondly Chair we have established that the date in paragraph 43.8 - as originally placed in that paragraph - March 2015 is the date at least intended by the witness Mr Nxasana but what we would like to do following your advice

and have recast is EXHIBIT EE4 which is the timeline ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And we have ...

**CHAIRPERSON:** Oh did you say in regard to 48 - 43.8 that is the date that he had intended?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** So okay. So it was not an error ...

**ADV PAUL JOSEPH PRETORIUS SC:** No.

**CHAIRPERSON:** In terms of what he intended to say?

10 **ADV PAUL JOSEPH PRETORIUS SC:** 2015 ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** He intended to say and he will ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Tell us about that in due course

...

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** In relation to the timeline.

**CHAIRPERSON:** Okay.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Mr Nxasana would you go to EXHIBIT EE4 which is after the EE4 divider in your file? Do you have that?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I have it.

**ADV PAUL JOSEPH PRETORIUS SC:** That is a timeline recast by the legal team during the long adjournment and we have attached relevant documentation from other sources. There are various sources for this

timeline and I will refer to them in due course including ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** The affidavit of Hawthorn ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** In the Corruption Watch matter.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Or is it the Freedom and the Law matter? If you could go to the timeline at the point where it says item 1 - do you see that?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see that Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** On 4 July you were informed by the former President that he had taken a decision to institute an inquiry into your fitness to hold office.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** That has been your evidence?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** On 7 July you obtained an opinion from Advocate Ellis SC. Is that correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right. That is - that is on page 37 of your papers. The source of that information - that date is the affidavit of Mr Hofmeyr. It is referred to on page 37. Do you see that?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Does that accord with your own memory?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And in that opinion Mr Ellis made certain recommendations including a recommendation that Ms Jiba be provisionally suspended pending an inquiry into her fitness to hold office. The recommendation continued that a criminal investigation for perjury be opened against Ms Jiba and finally a recommendation was that the findings against Ms Jiba should be referred to the General Council of the Bar for their consideration.

**MR MXOLISI SANDILE OLIVER NXASANA:** That - that is correct  
10 Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Then on 18 July 2014 the memorandum signed by Mr Hofmeyr was forwarded to Minister Masutha. That memorandum appears annexure - as an annexure to this timeline Chair at page 1-8-4.2-4. It is a memorandum dated 18 July 2014 from Mr W A Hofmeyr acting

**CHAIRPERSON:** Can you find it Mr Nxasana?

**ADV PAUL JOSEPH PRETORIUS SC:** As National Director of Public Prosecutions.

**CHAIRPERSON:** I am sorry.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Addressed to Mr Masutha.

**CHAIRPERSON:** I think he is still looking for the memorandum - I think.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay.

**CHAIRPERSON:** Page 1-8-4.2-4, at the top MSON1-8-4.24.

**ADV PAUL JOSEPH PRETORIUS SC:** Are you at the timeline? Go to

the timeline.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes. There is the timeline.

**ADV PAUL JOSEPH PRETORIUS SC**: It is just a few pages on from the timeline.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes, okay.

**CHAIRPERSON**: Yes. Can you find it? Page 1-8-4. You must not be confused with the bigger numbers where there is 5-8-8 which is bigger.

**MR MXOLISI SANDILE OLIVER NXASANA**: No I have got - I have got the timeline. I am battling to locate ...

10 **CHAIRPERSON**: Yes. It is a - it is a memorandum on the letterhead of the NPA. That page is also marked 5-8-8 in bigger numbers than 1-8-4.24. Maybe somebody should ...

**MR MXOLISI SANDILE OLIVER NXASANA**: I am on it, *ja*.

**CHAIRPERSON**: Go and assist him.

**MR MXOLISI SANDILE OLIVER NXASANA**: I found it.

**CHAIRPERSON**: Oh, okay.

**MR MXOLISI SANDILE OLIVER NXASANA**: I found the memorandum.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Chair is suggesting that you ignore the bold type clear numbering and you look for the other numbering.

**MR MXOLISI SANDILE OLIVER NXASANA**: *Ja*.

**CHAIRPERSON**: You have found it?

**MR MXOLISI SANDILE OLIVER NXASANA**: *Ja*, I found it.

**CHAIRPERSON**: *Ja*. Whenever there is any reference - whenever Mr Pretorius refers to page numbers and whenever I do the same we

will be using the MSON page numbers ...

**MR MXOLISI SANDILE OLIVER NXASANA**: Oh yes. I - I see ...

**CHAIRPERSON**: But we will not keep on saying MSON. We will just say 1-8-4 point whatever ...

**MR MXOLISI SANDILE OLIVER NXASANA**: 184.

**CHAIRPERSON**: Or 1-8-4. Okay. So ignore the bigger page numbers.

**MR MXOLISI SANDILE OLIVER NXASANA**: Okay Chair.

**CHAIRPERSON**: Okay, alright.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes I have - I have got it.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Right. You have it. The origins of that memorandum - firstly is that the memorandum forwarded by Mr Hofmeyr to Mr - to Minister Masutha on 18 July 2014?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: If you go back to page 37 - now we are back in the affidavit of William Andrew Hofmeyr which starts at page 34.

**MR MXOLISI SANDILE OLIVER NXASANA**: Page 37. Yes I am back at 37.

**ADV PAUL JOSEPH PRETORIUS SC**: You got that?

20 **MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: Paragraph 16 reads:

“It was on the basis of this opinion ...”

That is the Ellis SC opinion.

“...that the NDPP instructed his legal advice and Mr Gerhard Nel to draft the confidential ministerial

memorandum dated 18 July 2014.”

You have testified to that?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: “The memorandum was  
approved by the NDPP ...”

That is yourself?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct.

**ADV PAUL JOSEPH PRETORIUS SC**: “...shortly before he  
departed on leave for two days subject to a few  
10 minor changes that he required. Since he regarded  
the matter as urgent he requested me to sign the  
memorandum once the changes had been made as I  
would be acting as NDPP during his absence.”

Correct?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: And so that is how Mr Hofmeyr  
came to sign this memorandum as Acting NDPP but on your instruction?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: That memorandum may - and -  
20 and was it sent with your approval and on your instruction?

**MR MXOLISI SANDILE OLIVER NXASANA**: On my instruction yes.

**ADV PAUL JOSEPH PRETORIUS SC**: The memorandum on page 37  
paragraph 17 made a number of conclusions and recommendations:

“Namely that the NPA and the NDPP should report  
the adverse findings to the Minister and President.

Recommend that the President should consider to provisionally suspend Ms Jiba and Mr Mrwebi and Ms Mzinyathi pending an inquiry into their fitness to hold office.”

Over the page, page 38:

“Refer the matter and findings to the courts to open criminal investigations for perjury against the above mentioned members of the NPA and four, submit the findings of the courts against the three members of  
10 the NPA to the General Council of the Bar.”

So those were the recommendations made by your office, approved by you and instructed by you to be forwarded to - to the Minister of Justice at the time - Minister Masutha?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. So to go back to the timeline. On 30 July 2014 - and I am still on the first page of the timeline - you received a notice of intention to suspend from the former President. Do you see that?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is (intervenes).

20 **ADV PAUL JOSEPH PRETORIUS SC:** You have testified to that. The references are there.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see that.

**ADV PAUL JOSEPH PRETORIUS SC:** On 30 July item five over the page - Minister Masuthu - Masutha rather - acknowledged receipt to Mr Hofmeyr of his memorandum dated 18 July.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I - I recall that.

**ADV PAUL JOSEPH PRETORIUS SC:** And then on 31 July 2014 Constitutional Court Justice Yacoob was appointed to Chair a fact finding inquiry into allegations of unethical conduct by senior members of the NPA.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes it is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Then on 1 August 2014 - and we  
10 will come to this in due course - you made representations in reply to the notice of intention to suspend?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** Just to clear up something. I think earlier on before lunch I may have understood your evidence to be to the effect that you had communicated with the Minister - Minister Masutha and with the President or maybe only with the Minister with a view to him conveying that to the President your concerns about the conduct of Ms Jiba and  
20 Mr Mrwebi and that you had asked that the President should consider suspending them and initiating disciplinary processes and that instead the President instituted the inquiry against you and started considering the possibility of suspending you but when I look at this timeline it appears that actually I may have misunderstood and you might have not understood my question.

It appears that the President notified you of his decision to institute an inquiry and the - your approach to the Minister and to the President happened after and not before he initiated an inquiry. Is - is that - do you - do you see what I am talking about?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see what you are talking about Chair.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. I think Chair because of the lapse of time ...

10 **CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** But we have now verified as the Chair has - had - had requested ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** With the specific dates ...

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** But in a nutshell on - I think the - the conspectus of my evidence was that when I approached the President to institute disciplinary steps against these individuals what happened was the other way round. He instituted - he instituted  
20 the - the Commission of Inquiry against myself.

**CHAIRPERSON:** Yes but the - the point I am - I am trying to make and I just want to make sure that we understand each other is that whereas that was my understanding of what may have happened. It is clear from this timeline that on 4 July 2014 - that is item 1 ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** You say: the former - former President Zuma informed you that he had taken a decision to institute an inquiry in terms of Section 12(6) of the NPA Act.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**CHAIRPERSON:** Okay and 7 July there is an - there is the Ellis opinion.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** So - so I do not know whether the Ellis opinion had been requested prior to 4 July but this is when it seems to either have  
10 been received by yourself or have been signed by counsel - the 7<sup>th</sup> - 7 July after you had been informed that the President had decided to constitute an inquiry against you.

**MR MXOLISI SANDILE OLIVER NXASANA:** I think the - I think the opinion was signed on 7 July (intervenes).

**CHAIRPERSON:** Of July yes, yes. Did you recall when you had requested it? Was it prior to 4 July or was it after that? Is that something you can recall or not really?

**MR MXOLISI SANDILE OLIVER NXASANA:** I - I cannot recall ...

**CHAIRPERSON:** You cannot recall, okay.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Of that, yes.

**CHAIRPERSON:** So - and then the appointment of Justice Yacoob happens much later - end of July and so on.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**CHAIRPERSON:** So - so what I am saying is the impression I get now when I look at this timeline is different from the impression I had before

lunch.

**MR MXOLISI SANDILE OLIVER NXASANA:** (Intervenues).

**CHAIRPERSON:** The impression I had before lunch was that you had already approached the President asking him to take action or consider taking action against Ms Jiba and Mr Mrwebi ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And while you were waiting for him to actually do that what you got was that the President decided to take action against you as it were in terms of - by way of an inquiry and considering  
10 suspending you but I am - I am saying that it does appear that the President's decision to institute an inquiry came first before you asked him to take action against Ms Jiba.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair, yes.

**CHAIRPERSON:** Is that correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That - that is the position, yes.

**CHAIRPERSON:** Okay, okay. No I thought it is important to clear ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** It up.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** I think what was happening before this there were these communications by way of letters where the President called upon me to respond by a particular date ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** About the - the media ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** And the - and the allegations of (intervenes).

**CHAIRPERSON:** Security clearance?

**MR MXOLISI SANDILE OLIVER NXASANA:** Security clearance and - and the criminal cases (intervenes).

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Yes, okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** To place that in its proper  
10 context and perhaps to allow the Chair to consider the - the full context. Before 4 July had you any contemplation about taking action or initiating action against Ms Jiba and others?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair before then I would have contemplated getting legal opinion and also appointing the Fact Finding Committee headed by Justice Yacoob.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. In that regard what would you say to the suggestion that your decision to initiate action against Ms Jiba, Mrwebi and Mzinyathi was motivated and prompted by the receipt of the notice by you from the President of 4 July to institute an  
20 inquiry to your fitness to hold office?

**MR MXOLISI SANDILE OLIVER NXASANA:** That was not the position because that was a decision that was taken after a special Exco meeting arising from what was happening. Especially the matter involving the criticisms of these advocates. I came to learn about it in the media and we were very much concerned. I remember that we had

a special Exco to deal with these issues and as Exco we took a decision that this is the way to - to deal with these issues.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. We have not learnt of that Exco meeting. Do you know more or less when that would have taken place? We can get a minute of that Chair.

**MR MXOLISI SANDILE OLIVER NXASANA:** You can get a - a minute of that.

**ADV PAUL JOSEPH PRETORIUS SC:** Just make a note.

**CHAIRPERSON:** Well I think it may be important to - to have sight of  
10 when the brief was sent to counsel for an opinion on whether the criticisms of Ms Jiba and Mr Mrwebi in various judgments warranted disciplinary action. Partly for the point that Mr Pretorius is mentioning because it may be - we do not know - it may be that the position may be taken that when you realise that the President was contemplating or had decided to constitute an inquiry against you your response was then to effectively say well I cannot be the only one to be dealt with.

Let me ask him to also deal with Ms Jiba and Mr Mrwebi. There may - there may be nothing wrong with that but it - it might be different from a situation such as the one I thought was the case before  
20 lunch where you say to the President and to the Minister here is evidence of what I believe is misconduct by Ms Jiba and Mr Mrwebi. Take action and then no action is being taken against them.

Instead action is being taken against you. So that is - that is what we need to look at to - to understand but I think you may even after today need to refresh your memory on - on everything. So that

later on if there is anything you might wish to clear up in your evidence which you might have said because without the benefit of refreshing your memory on other things then you can clear up. Okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** I understand.

**CHAIRPERSON:** Is that alright?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** That is the only comment in relation to that that we now know is that ...

10 **CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** The opinion was received on the 7<sup>th</sup> ...

**CHAIRPERSON:** Of July.

**ADV PAUL JOSEPH PRETORIUS SC:** Of July ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And ...

**CHAIRPERSON:** No he said it was signed on the 7<sup>th</sup> - I do not know.

**ADV PAUL JOSEPH PRETORIUS SC:** Of - of July.

**CHAIRPERSON:** *Ja.*

20 **MR MXOLISI SANDILE OLIVER NXASANA:** I - I found - I found something here Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is on page 1-8-4.2-7.

**CHAIRPERSON:** 1-8-4.2-7? Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** In paragraph 12.

**CHAIRPERSON:** Oh, yes. You want to read that?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

10 “On 26 June 2014 the National Prosecuting Authority briefed Advocate Patrick Ellis SC to furnish a legal opinion on the following questions: a, the disciplinary procedures available respect of senior personnel at the NPA; b, whether disciplinary steps ought to be taken against Advocates Jiba, Mrwebi, Mzinyathi and Mboyni (?) primarily as a result of the findings made in the judgments referred to in paragraph 10 above and the judgment of Gorven J in **Booyesen vs Acting National Director of Public Prosecutions and Others.**”

**CHAIRPERSON:** Yes. At least that seems to indicate that at least asking for - briefing counsel for an opinion happened before you were informed of the President’s decision to institute disciplinary - an inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Okay.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Thank you for that Mr Nxasana. I was going to comment on the improbability of senior counsel furnishing an opinion in three days but I thought the better of it.

**CHAIRPERSON:** Well the - the one thing which I want to ask arising out of this is whether you are able to say Mr Nxasana who other than yourself and the state attorney involved in the matter and counsel may

have - who else may have known that you had sought counsel's opinion on this matter? Would there have been anybody else that knew before 4 July?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes because the request went under the - the hand of the CEO then Ms Karen - Advocate Karen Van Rensburg was the CEO of the NPA.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** That would be the only other person or was the matter  
10 handled in such a way that a lot of other people may have been aware?

**MR MXOLISI SANDILE OLIVER NXASANA:** And advocate - Mr Hofmeyr also was aware, Advocate Gerhard Nel was also aware.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** But as far as you know Ms Jiba and Mr Mrwebi did not know?

**MR MXOLISI SANDILE OLIVER NXASANA:** When?

**CHAIRPERSON:** Before 4 July?

**MR MXOLISI SANDILE OLIVER NXASANA:** I will not - I will not ...

20 **CHAIRPERSON:** You would not know?

**MR MXOLISI SANDILE OLIVER NXASANA:** No.

**CHAIRPERSON:** You have no basis to ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay, alright; but at that stage your communications with the - with the Minister or the President would they have included

you saying anything along the lines that you were contemplating seeking an opinion about disciplinary action against them or not really?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I also stand to be corrected. I cannot remember but I - I want to believe that the meetings that we subsequently - that I subsequently held with the President those meetings took place before the - before July or - or June.

I think it was around May if I am not mistaken and I want to believe that during our interaction I had informally told him - not in  
10 writing - that he has been misled and in fact it is the very people who are driving this agenda before I even sent the memorandum that I asked Gerhard Nel to send it to him.

**CHAIRPERSON:** Yes but my question was specifically about whether the President may have known from being told by you before 4 July 2014 that you could be - you could be wanting to have disciplinary action taken against Ms Jiba and Mr Mrwebi.

**MR MXOLISI SANDILE OLIVER NXASANA:** That - that is what I am saying Chair. That is what he could have known.

**CHAIRPERSON:** *Ja.*

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That during our interaction ...

**CHAIRPERSON:** *Ja* but - but how would he have known? Did you say so specifically to him? How would he have known that is what you were contemplating?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair although I cannot

recall now but I want to believe that I have reason to believe that I - I must have communicated that to him during our - during our engagements.

**CHAIRPERSON:** Okay. Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** If we could go back to item five on 30 July 2014 it appears that Minister Masutha told Mr Hofmeyr that he had received Mr Hofmeyr's signed memorandum of 18 July 2014. That is apparent from the documentation. We have not got a reference there yet but that is item five ...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** In the timeline. Item six reads - item six according to your own affidavit ...

**CHAIRPERSON:** I am sorry Mr Pretorius. I think I have lost the page for the timeline now.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. It is - it is behind divider EE4.

**CHAIRPERSON:** Oh okay, thank you. I have got it.

**ADV PAUL JOSEPH PRETORIUS SC:** Page 2.

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** If we could go to item 6 on 31 July Justice Yacoob was appointed to Chair a Fact Finding Inquiry - inquiry - according to your affidavit?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Then item 7 on 1 August 2014 it is apparent that you made representations in reply to the notice

contemplating your suspension?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Then on 8 August former President Zuma wrote to you to justify his refusal to provide particulars of the allegations against you?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And on 8 August in addition Minister Masuthu - Masutha rather - my apologies - acknowledge receipt of 18 July 2014 Hofmeyr memorandum in correspondence with  
10 you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** In other words he had already acknowledged receipt to Mr Hofmeyr himself on 30 July but in correspondence with you on 8 August ...

**MR MXOLISI SANDILE OLIVER NXASANA:** With me on - on 8 August. That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** He said he - he had received it.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Then on the 8<sup>th</sup> of August item  
20 10 you submitted a founding affidavit in an application in the High Court to compel the former president to provide you with further particulars pursuant to his intention to hold an inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** You deal with this in your affidavit, then on the 11<sup>th</sup> of August 2014 you replied to Minister

Masutha, now we should perhaps deal with that 18451.3. Chair I hesitate to make reference to the big bold numbers but there's a yellow or an orange ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I have got it.

**ADV PAUL JOSEPH PRETORIUS SC:** Marker in the documents following the timeline headed "letters".

**CHAIRPERSON:** (microphone not on)

**ADV PAUL JOSEPH PRETORIUS SC:** No, it's at EE4, just before EE5  
You'll see an orange sticker, is there no orange sticker in your file, oh  
10 dear. Let us deal with it in another way the ... (intervenes)

**CHAIRPERSON:** Have you got an orange sticker on your file Mr Nxasana?

**MR MXOLISI SANDILE OLIVER NXASANA:** I'm not sure which one is orange.

**ADV PAUL JOSEPH PRETORIUS SC:** The first one with letters written on it.

**MR MXOLISI SANDILE OLIVER NXASANA:** Sorry?

**ADV PAUL JOSEPH PRETORIUS SC:** Just go back.

**MR MXOLISI SANDILE OLIVER NXASANA:** I found the letter that you  
20 are referring me to.

**ADV PAUL JOSEPH PRETORIUS SC:** Have you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** 18451.4?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes with the bullet number 618.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** What is the page number, 184?

**ADV PAUL JOSEPH PRETORIUS SC:** 58.1, it's not in any sequence Chair because there are other documents intervening but if one goes to the 184 numbers...[intervenes].

**CHAIRPERSON:** I've got 184.51.1 without a yellow sticker.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes that is the one. That is the letter addressed to you by Mr Masutha, do you see that?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see that one.

10 **CHAIRPERSON:** The letter is signed by the Minister on 8 August 2014.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you see that?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see it.

**ADV PAUL JOSEPH PRETORIUS SC:** Now in that letter, Minister Masutha says to you, as I read it,

“I acknowledge receipt of your memorandum, or the memorandum of 18 July 2014 making certain recommendations to the President”.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **CHAIRPERSON:** Mr Pretorius when we have difficulty locating these documents better to read what is there otherwise the one who looks for it later on thinks it's the wrong one. My one says something like,

“I am in receipt of a memorandum”,  
That's the first sentence ... (intervenes)

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** Are we looking at the...[intervenes].

**ADV PAUL JOSEPH PRETORIUS SC:** We're looking at the same one.

**CHAIRPERSON:** It's just that you said, "I acknowledge" and I didn't see acknowledge and begin to think that well, later on somebody will say I'm looking at the wrong letter, it doesn't say.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes perhaps the description in the timeline is incorrect. Yes but in that letter dated the 8<sup>th</sup> of August 2014, Minister Masutha says that he has received the memorandum signed by Mr Willie Hofmeyer.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And he notes that, that memorandum recommends that he, that is the Minister approached the President with the recommendation or request to suspend Advocates Jiba, Mrwebi and Mzinyathi?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** But he says to that before he does that he wants certain information from you?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And you reply to that letter at 184.51.3 to say,

"We hadn't had an opportunity to met, let's meet".

**MR MXOLISI SANDILE OLIVER NXASANA:** That's correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And then over the page and on the 12<sup>th</sup> of August the Minister says on page 184.51.4,

"I note that you want to meet but give me the information

anyway”.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so.

**ADV PAUL JOSEPH PRETORIUS SC:** So that exchange of correspondence takes place between the 8<sup>th</sup> and the 12<sup>th</sup> of August 2014.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Then on the 17<sup>th</sup> of September 2014, you submit a memorandum to Minister Masutha?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes responding to what he  
10 had raised in his letter dated the 8<sup>th</sup> of August 2014.

**ADV PAUL JOSEPH PRETORIUS SC:** That memorandum is at 184.1.

**CHAIRPERSON:** There’s something wrong with that numbering isn’t it? Earlier we had 184.49 and so on and then much later we have 184.1. Mr Pretorius?

**ADV PAUL JOSEPH PRETORIUS SC:** These were all paginate and numbered in the break Chair but 184.1 is in fact towards the end of the bundle in EE4. It should have been marked with a – perhaps...[intervenes]

**CHAIRPERSON:** Ja if we don’t correct it now, then in the transcript if  
20 we refer it to - could cause confusion.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes it is number 184.1 – page 184.1 but it’s out of sequence and we can easily put it back in sequence.

**CHAIRPERSON:** But in the meantime how will you refer to it?

**ADV PAUL JOSEPH PRETORIUS SC:** By its page number which is

indelibly marked on the page.

**CHAIRPERSON:** 184.1?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** I think that is what will cause confusion, or you mean that you will take it back to the right place later?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** Would that work?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** I'm just trying to look whether...[intervenes].

10 **ADV PAUL JOSEPH PRETORIUS SC:** It should because anyone reading this bundle will go to 184.1.

**CHAIRPERSON:** Yes so it was just located in the wrong part of the bundle?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Well I'm sure the person who did it will say it's correct but...

**CHAIRPERSON:** Ja, no. Well if that will work then that's fine because then referring it to – it as page 184.1 would be fine, okay, alright it  
20 looks like that should be fine.

**ADV PAUL JOSEPH PRETORIUS SC:** I had hoped that the stickers would appear there but for some reason they didn't.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Anyway did you have 184.1?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you have it Chair?

**CHAIRPERSON:** Yes I have.

**ADV PAUL JOSEPH PRETORIUS SC:** It's immediately after this correspondence that we've just referred to.

**CHAIRPERSON:** I know I found it a long time ago.

**ADV PAUL JOSEPH PRETORIUS SC:** Good thank you Chair.

**CHAIRPERSON:** Ja it was just the page numbers that we would use that I was concerned whether it wouldn't cause more confusion using them. I think if it's just a.... [intervenes]

10 **ADV PAUL JOSEPH PRETORIUS SC:** I understand Chair, you're fairly more skilled and experienced at finding page numbers than our witnesses and myself.

**CHAIRPERSON:** Okay alright, let's continue.

**ADV PAUL JOSEPH PRETORIUS SC:** 184.1, you've got it

**MR MXOLISI SANDILE OLIVER NXASANA:** I've got it Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** That's the memorandum that you've just referred to dated 17 September 2014. How did – if we could just deal with it briefly, how did it come about that you then sent this memorandum to Minister Masutha?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That was because after Mr Hofmeyer – after the memorandum that was signed off by Mr Hofmeyer was delivered to the Minister. The Minister in his letter, in his response in his letter dated the 8<sup>th</sup> of August 2014 raised some issues then I wrote back to him on the 11<sup>th</sup> of August and said to him, I think it will be better for us to meet and discuss a lot of issues

pertaining to NPA because the Minister had been appointed for about – for a period of two months, he was in office for two months without – we had not met by then but the Minister then insisted, I think that, in principle understand that we had to meet but he nevertheless felt that I must respond, hence I then responded by way of that memorandum dated the 17<sup>th</sup> of September.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright and you then sent this memorandum?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes and in that  
10 memorandum I basically reiterated the contents of the memorandum that was sent off by Mr Hofmeyer.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay if we can continue with the timeline for the moment, we are going to come back to one or two of these issues in due course, on the 3<sup>rd</sup> of November 2014 against item number 14 you then, through your attorneys and Mr Hulley of your agreement to a mediation process.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Now, generally and as a  
20 matter of principle how do you understand mediation, does it involve any concession on a part of a – or admission on a part of a person entering into a mediation process?

**MR MXOLISI SANDILE OLIVER NXASANA:** Concession in...

**ADV PAUL JOSEPH PRETORIUS SC:** Well did you make – when you agreed to a mediation process, did you intend to concede anything?

**MR MXOLISI SANDILE OLIVER NXASANA:** No.

**ADV PAUL JOSEPH PRETORIUS SC:** What was the purpose of the mediation process?

**MR MXOLISI SANDILE OLIVER NXASANA:** If my memory serves me well I think there was a suggestion, I think it was – from the Presidency, I cannot remember if it was from Bonisile Makhene, one of the legal advisors after we'd had those meetings, that they'd suggested that there should be a mediation but I think in the tone of their letter suggested that the mediation should be confidential and we responded by saying I agree in principle that a mediation should – to avail myself  
10 for a mediation but that it should not be confidential because I do not understand it.

**ADV PAUL JOSEPH PRETORIUS SC:** The point is a somewhat different one, the issue which we will come to in a moment is whether you required or requested that you be allowed to vacate your office.

**MR MXOLISI SANDILE OLIVER NXASANA:** No I did not make that request.

**ADV PAUL JOSEPH PRETORIUS SC:** I'm not saying that you did, I'm saying that's an issue that we will look at in a moment, it's an issue of some controversy.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** By agreeing to settle, the dispute between yourself and whomever else, even on monetary terms can it not be implied that you were, in fact, requesting to leave?

**MR MXOLISI SANDILE OLIVER NXASANA:** Not at all.

**ADV PAUL JOSEPH PRETORIUS SC:** Why not?

**MR MXOLISI SANDILE OLIVER NXASANA:** Because I made it clear, I think you'll see in the correspondence also – the exchange of correspondence in our meetings I made it very clear because there was this attitude that I must leave office and I remain steadfast, saying that there's no reason for me to leave office because I still consider myself fit and proper to hold office, and during the exchange of the correspondence between my attorneys and the Presidency I made it very clear – we made it very clear that we have never, one, initiated the discussions, two, even the discussions around the settlement of  
10 whatever issue that was there and there was no way, we maintained that I still – there's no basis in law and in fact for me to relinquish my position as the National Director of Public Prosecution, but then with the right that if they want a soul, and I made it clear in that letter, I think the letter dated the 10<sup>th</sup> of December 2014, we made it clear that unless then I am paid the remainder of my contract then I will relinquish the position as the President would want me to vacate my office.

**CHAIRPERSON:** Let's go back to the mediation, who came up with the idea of mediation?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** It was – I would say the Presidency, I think the legal advisors.

**CHAIRPERSON:** It was the Presidency?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And you think it was the President's legal advisor?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes in one of the

correspondence.

**CHAIRPERSON:** Yes and you made reference to Ms Makhene ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Bonisile Makhene.

**CHAIRPERSON:** Bonisile Makhene, she was a - was she a legal advisor in the Presidency?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** And then of course we know you did refer earlier on to Mr Hulley, was he also a legal advisor to the Presidency?

**MR MXOLISI SANDILE OLIVER NXASANA:** He was also a legal  
10 advisor to the President.

**CHAIRPERSON:** Yes but as between the two legal advisors and maybe any others that there may have been there, are you clear as to which one came up with the idea of mediation or are you not sure?

**MR MXOLISI SANDILE OLIVER NXASANA:** The letters ...[intervenes]

**CHAIRPERSON:** Oh was it in a letter?

**MR MXOLISI SANDILE OLIVER NXASANA:** It was in a letter because we responded in a letter, we responded and referred to specifically the letter that he had sent to my attorneys.

**CHAIRPERSON:** Okay so I'm sure that letter I'm sure will be found.

20 **ADV PAUL JOSEPH PRETORIUS SC:** If you would go to page 185 in EE4. That is again towards the end of that bundle, page 185. You will see the letter of 3 November 2014 there.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Do you have it there?

**MR MXOLISI SANDILE OLIVER NXASANA:** I have it with me.

**ADV PAUL JOSEPH PRETORIUS SC:** It reads:

“We refer to the telephonic conversation between the writer  
hereof and yourself on the 30th of October 2014”,

And the writer is Mr Mabundo of your attorneys, correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**CHAIRPERSON:** And it is addressed to Mr ... (intervenes)

**ADV PAUL JOSEPH PRETORIUS SC:**

10 “We confirm that you have raised concerns about the  
inordinate time the matter is taking and that your view the  
delay is attributable to our client.”

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes and the letter is  
addressed to ...[intervenes]

**CHAIRPERSON:** To Mr Hulley.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes, and Mr Hulley is there  
acting on behalf of the President, I think we know that.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** The President at the time.  
You, Mr Mabundo says he was out of the country, he says further:

20 “We have however urgently and subsequent to our telephonic  
conversation consulted with client who has instructed us to  
respond as follows.”

It appears that this letter was written in response to issues raised in a  
telephone conversation of the 30<sup>th</sup> of October 2014, correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** Oh yes I see that here.

**ADV PAUL JOSEPH PRETORIUS SC:** And the response is as follows:

“Our client is willing to participate in the mediation process as your client has proposed.”

Is that a correct summation of events?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** It states here that ...[intervenes]

**CHAIRPERSON:** Well I’m – Mr Pretorius I mean you want him to confirm whether it was Mr Hulley’s client who had proposed the mediation because – you haven’t finished the summation, you wanted  
10 him to confirm whether that’s the correct summation.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright perhaps let me go through all four first. Point 2:

“Although client would have preferred to have the matter resolved by way of inquiry he is of the view that it is in the best interests of the NPA to have the matter finalised expeditiously by exploring the mediation route.”

Point 3:

“It should be put on record that our client does not in any way waive any rights he has in law by agreeing to explore the  
20 mediation process and as such the proposals of the mediator shall not be binding on him unless expressly agreed to in writing.”

And then the letter continues over the page with a request to initiate the mediation process. Now the Chair asked you directly whether the mediation idea or proposal emanated from you or from the side of the

President or the President's advisors and you responded as you did but does this assist you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes it does because it says that in paragraph 1 that I was willing to participate in the mediation process as proposed by the President.

**ADV PAUL JOSEPH PRETORIUS SC:** Independently of this letter do you recall where the proposal came from?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes, because I never proposed any mediation.

10 **CHAIRPERSON:** So you say it could only have come from the side of the Presidency?

**MR MXOLISI SANDILE OLIVER NXASANA:** Of the Presidency, yes.

**CHAIRPERSON:** Mmm, okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** In fact the letter is very clear that I would have loved to have the matter resolved by way of an inquiry.

**CHAIRPERSON:** Yes, is that later in the letter?

**MR MXOLISI SANDILE OLIVER NXASANA:** It is in paragraph 2 of the letter on the first page:

20           “Although client would have preferred to have the matter resolved by way of an inquiry he is of the view that it is in the best interests of the NPA to have the matter finalised expeditiously...”

**CHAIRPERSON:** Oh yes.

**MR MXOLISI SANDILE OLIVER NXASANA:**

“...by exploring the mediation route.”

**CHAIRPERSON:** So is that a suggestion that your first prize  
...[intervenes]

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Was that let's go to the inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** But because ...[intervenes]

**MR MXOLISI SANDILE OLIVER NXASANA:** They had proposed  
...[intervenes]

10 **CHAIRPERSON:** They proposed mediation.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** You were willing to participate in it.

**MR MXOLISI SANDILE OLIVER NXASANA:** As long as the process  
would be expeditious.

**CHAIRPERSON:** Ja, okay.

**ADV PAUL JOSEPH PRETORIUS SC:** The next letter which is an  
important letter apparently in the sequence of events is against item 9  
on the next page of the chronology and it appears at page 187  
immediately after the letter of the 3<sup>rd</sup> of November and that's the letter  
20 of 10 December 2014 and it's addressed by your attorney Mr Mabundo  
to Bonisiwe Makhene, who is that, Bonisiwe Makhene?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Is that the person you referred  
to earlier?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes as the legal advisor

to President Zuma at the time.

**ADV PAUL JOSEPH PRETORIUS SC:** Right, and it says:

“We refer to the above matter and particularly to the meeting we held on the 8<sup>th</sup> instant [that would have been the 8<sup>th</sup> of December] at the residence of the President, wherein it was discussed, advised and agreed as follows.”

Now before we go there were you at that meeting?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I was at that meeting.

**ADV PAUL JOSEPH PRETORIUS SC:** What happened at that meeting,  
10 briefly? Well firstly who attended?

**MR MOXOLISI SANDILE OLIVER NXASANA:** At the meeting was the President, myself, Mr Mabunda and the professional assistant was there, the attorney, Ms Shelley – I have the surname, Ntandani, something like that ja, at that meeting.

**CHAIRPERSON:** Yes, whose attorney was that?

**MR MOXOLISI SANDILE OLIVER NXASANA:** She worked in the office of Mr Mabunda and she was involved in this matter.

**CHAIRPERSON:** Mr Mabunda himself was not there?

**MR MOXOLISI SANDILE OLIVER NXASANA:** Mr Mabunda and herself.

20 **CHAIRPERSON:** Oh the two of them were there.

**MR MOXOLISI SANDILE OLIVER NXASANA:** Yes the two of them were there.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Now this ...[intervenes]

**CHAIRPERSON:** And what was discussed, I think that was the

question, briefly what was discussed at this meeting?

**MR MOXOLISI SANDILE OLIVER NXASANA:** Chair it was the same issue about the inquiry or not the inquiry, the same issue that if I put my foot down that if I – if they want me to leave because I still believed it was not necessary, there was no reason for me to leave, they must be prepared to pay me for the remainder of my contract, of my period which it was ten years, and then we started making some calculations and at that meeting I was then asked to provide Bonisiwe my leave ...[intervenes]

10 **CHAIRPERSON:** That's Ms Makhene?

**MR MOXOLISI SANDILE OLIVER NXASANA:** That's Ms Makhene yes. I was asked to provide – we were asked to provide them with my leave days and also I think my tax, something like that, my tax details and my salary details.

**ADV PAUL JOSEPH PRETORIUS SC:** This discussion that took place and the settlement proposal from whom did the settlement proposal come, this meeting was taking place at the residence of the former President.

20 **MR MOXOLISI SANDILE OLIVER NXASANA:** Chair I remember that by settlement proposal, a reference to the figures or that we settle if I may just get clarity.

**CHAIRPERSON:** Yes I think maybe Mr Pretorius you might wish to, I think you are talking about the fact that subsequently there was a settlement proposal made.

**ADV PAUL JOSEPH PRETORIUS SC:** Well I will tell you why I asked

the question.

**MR MOXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Because it is apparent from the contents of this letter that a settlement proposal was made to you based on certain legislative provisions in the NPA Act.

**MR MOXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** In other words it was made to – well you tell the Chair what was the basis of the settlement proposal made to you.

10 **MR MOXOLISI SANDILE OLIVER NXASANA:** Chair the ...[intervenes]

**ADV PAUL JOSEPH PRETORIUS SC:** Let me be fair to you, read the letter first and then answer the question for the benefit of the Chair please, because it goes to certain allegations that I still need to put to you emanating from the President himself.

**CHAIRPERSON:** Is that the same letter of the 10<sup>th</sup>?

**ADV PAUL JOSEPH PRETORIUS SC:** The letter of 10<sup>th</sup> of December.

**MR MOXOLISI SANDILE OLIVER NXASANA:** Yes thanks.

**ADV PAUL JOSEPH PRETORIUS SC:** Have you read the letter?

20 **CHAIRPERSON:** I'm sorry Mr Pretorius before Mr Pretorius ask you a question based on that letter let's go back to the meeting of the 8<sup>th</sup> of December and this letter seeks to confirm some things emanating from that meeting.

**MR MOXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Who had come up with the idea that there should be a meeting held on the 8<sup>th</sup>, or who came up with the idea of that meeting?

Do you remember or is that something you cannot remember?

**MR MOXOLISI SANDILE OLIVER NXASANA:** I think the idea of the meeting would have come up with I think it was communication between Mr Mabunda, my attorney, and Mr Hulley.

**CHAIRPERSON:** Okay, it may have been through discussions among them.

**MR MOXOLISI SANDILE OLIVER NXASANA:** Through discussions yes.

**CHAIRPERSON:** Yes, okay. What was the purpose of that meeting as  
10 you understood it? Why was that meeting called as you understand the position?

**MR MOXOLISI SANDILE OLIVER NXASANA:** Chair my understanding was that we were still going to discuss the issue of whether or not, because we are trying to convince, to persuade the President, that is our view, we are trying to persuade him that there is no need for him to hold the inquiry in the first place, and there was no need for me to vacate the office of the NDPP, whilst on the other hand it was clear from the meeting that they had already made up their mind that they wanted me to leave.

20 **CHAIRPERSON:** Now [excuse me] that – that – I was about to ask the question. Prior to this meeting had – did – had anybody from the Presidency either the President himself or those who were acting on his behalf had – had they said or anybody said they wanted you to leave your position of NDPP either in a letter or in discussions? In other words I am trying to see what was the – to the extent that these may

have been negotiations aimed at resolving something or some dispute.

What was the dispute that was sought to be resolved?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair.

**CHAIRPERSON**: If there was a dispute?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair except to say according to my recollection whenever I – I spoke to President Zuma we would speak and I would convince him I would put my side of the story to him informally and I would persuade him I will tell him that he was misled but at the end of the day he would seem to be getting to  
10 understanding me but then at the end would then come say something about [African language] I think but you – I think we must just settle this you have to leave and you have to sort out your issues. The issues with my legal – with my legal team of how you vacate the office.

**CHAIRPERSON**: Did that ever come from him?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**CHAIRPERSON**: And are you sure about that?

**MR MXOLISI SANDILE OLIVER NXASANA**: I am sure about it.

**CHAIRPERSON**: That he said he wanted you to leave?

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes Chair.

20 **CHAIRPERSON**: And how – in terms of the timeframe are you able to indicate roundabout when he may have said that for the first time to you?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair although I cannot remember the ...

**CHAIRPERSON**: Was it still 2014 or was it in 2015? Was it around mid

– was it after – was it after he had notified you that he was – there was going to be an inquiry or was it even before?

**MR MXOLISI SANDILE OLIVER NXASANA:** Even – even before Chair because in our engagements before he even sent that letter dated July 2014 where he indicated that he intended establishing a commission of inquiry. I was under the impression that he had changed his mind. He was no longer going to institute because of the interactions that we had together. Then it came as a surprise when he then somersaulted and changed his mind and sent me that letter that he – he – he intended to  
10 – to establish the commission of inquiry. Then when we engaged and there was these engagements with my attorneys and Mr Hulley and Bonsile and himself I think we tried even in those meetings to persuade them that there was nothing really that warranted me to leave the office and we pointed out that even at the inquiry I will – the inquiry will not even find that I was not fit and proper to continue holding office. But then I think the – the decision must have been taken because at the end we would talk and talk but at the end then he will say but you know I think you – you have to – to step aside and you must then formalise the issue of how you are getting paid and you will meet with the – with  
20 my legal team to discuss that.

**CHAIRPERSON:** So are you saying that discussions or the – either discussions in plural or the discussion singular where the former President said that happened before the – you received the letter saying there was going to be an inquiry into your fitness to hold office?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes in – in some of the

discussions before that and even after that Chair.

**CHAIRPERSON**: Hm.

**MR MXOLISI SANDILE OLIVER NXASANA**: Even after the letter.

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: So where he – he said you need to leave.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes Chair.

**CHAIRPERSON**: And what was your response?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair I – I remained  
10 steadfast and I remained – I always told him that there was no reason  
for me to leave and I told him that I kept on repeating myself that this  
was a campaign against me by these individuals and they misled him  
and there was no reason for me to leave and even at the inquiry I told  
him – I told the President that even the inquiry that they have – he had  
constituted I told him that that inquiry will not find anything against me.  
That...

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: It was not going to find  
that I am not fit and proper to continue holding the office. And there  
20 were negotiations also. We would meet even after he had issued these  
letters we also met. I remember we met again like we – I say we met at  
Mhlambandlovu that was after the – the 4 July.

**CHAIRPERSON**: You see the one scenario is that the discussions  
could have been at least at a certain stage been about whether or not  
you were fit to hold office.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** In order for the President to decide whether there was a need for an inquiry. That is the one scenario. Another scenario and that in terms of that scenario the President could have adopted the attitude that I do not know what the outcome of the inquiry will be if the inquiry is held but if you want to persuade me that you are fit and – to hold office and there is no need for an inquiry I am happy to listen and if you persuade me I will terminate the inquiry. That is one scenario. Another scenario may have been that he may have been saying I  
10 believe you are not fit and I believe that the inquiry will find that you are not fit to hold office in which case you will have to go. Rather than us reaching that point why do you not – why do we not find another way. That – maybe that is another one. Maybe there is a third one which may have been I want you to leave but let us rather agree on the basis on which you will leave. So are you able to say categorically which one of those fitted into his situation?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair what I am certain of during our discussions with President Zuma it became clear to him that the information that which he conceded to me that the information that  
20 he was given about me he was misled. But I do not know why then he decided because I do not know who he was talking to and who are these people that were pressurising him and to what extent he was being pressurised. I do not know because I got the impression that he was getting pressure somewhere to get me out of – of my office. Because when we spoke ultimately he conceded that he was misled and

the issue of my fitness or otherwise it did not feature. All that he was trying in a nutshell just to summarise although I cannot recall the details of the meetings on various dates but the conspectus of the meetings was to try and persuade me to resign which I remained steadfast and refused to do it. And I said because they are so content on seeing me out of the NPA then they must be prepared to pay me that is – that was the basis of those meetings.

**CHAIRPERSON:** So – so do you – did you say that he conceded that he had been misled about whether you were fit or not fit to hold office  
10 or in terms of the things that may have made him decide on the inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA:** The – that is – that is my view Chair. Because he conceded. Because one of the things when he said you know these people the things that these people were telling him one of the things that people were telling him that I meet Mr Ngcuka for instance which he conceded I told him that was a blue lie. The other thing is the one that I referred to earlier on before tea break that after we had met – I had met with him at Kings House in Durban. I think some people picked up or the information leaked that we are meeting we are now talking because initially he was reluctant to even  
20 meet with me. He did not want to meet with me. I think my – I – these people when they found out that we are now talking they were not happy such that they started – they tried to block our meeting; the meeting that I had without my attorneys, with him at Mahlambandlovu.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** Ones – at one stage that is

where I even – I had even said to the person who said the President was scared that I might be recording him. Then I said no I would come there naked if it needs be. All of those things I – it – all of those things they convinced me that he was now – he had conceded that he was misled in – by being – by being given all the information, the wrong information about me and that he should not have taken this decision. But I do not under – I do not know for some strange reasons there was – that is my – my view there was some pressure somewhere that he - he has to take this decision.

10 **CHAIRPERSON**: Yes. Okay. Thank you. Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC**: The legal basis of the settlement proposal that was made to you on the 8 December 2014 did you understand what that was?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair I understood what it was. It was based on the fact that because they wanted me to resign they were talking that I should leave. Then I had said I will only leave if I am paid the full amount of my contract.

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

20 **MR MXOLISI SANDILE OLIVER NXASANA**: And then the settlement that – proposal that was made by Ms Makhene he then – she then referred to the prescripts of the Public Service Act and the NPA Act and calculated it according to those prescripts then we disagreed there. Because our view and my view was that I was – if I was leaving I was not leaving NPA in terms of Section 12(8) of the NPA Act. That was our argument. The argument was that...

**ADV PAUL JOSEPH PRETORIUS SC:** Was that your consistent view throughout?

**MR MXOLISI SANDILE OLIVER NXASANA:** That was my consistent view throughout. Because in terms of that provision the NDPP makes a request to the President. Then we are saying and remember there was litigation that I had initiated against the President. Based on the litigation for me not continue with the litigation and now we say we are settling and I am not leaving in terms of Section 12(8). You want me to leave then you must be prepared to pay. It is a breach of contract. It is constructive dismissal in other words.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Can I just take this opportunity to read onto the record the provisions of Section 12(8) of the NPA Act? It reads:

“The President may allow the National Director or a Deputy National Director at his or her request to vacate his or her office.

- i. On account of continued ill health.
- ii. For any other reason which the President deems sufficient.”

20 Sub-Section B reads:

“The request in terms of paragraph A2 shall be addressed to the President at least six calendar months prior to the date on which he or she wishes to vacate his or her office unless the President grants a shorter period in a specific case.”

Arising out of the provisions of that section did you ever request or intend to request of the President to permit you to vacate office?

**MR MXOLISI SANDILE OLIVER NXASANA:** No Chair I never.

**ADV PAUL JOSEPH PRETORIUS SC:** And is it your understanding that the settlement proposal made to you was made on the basis of that section that it would be then taken that you had requested your termination?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV JULIE ANN HOWARD:** Alright then you deal with that in...

10 **CHAIRPERSON:** I am sorry would – can you just repeat Mr Pretorius the question. I want to understand the answer correctly. I think I may have missed something.

**ADV PAUL JOSEPH PRETORIUS SC:** Did you understand that the settlement proposal made to you was let me put it slightly differently intended to be an implementation of the provisions of Section 12(8).

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** In other words you are requesting your termination asking the President to allow your termination in terms of that section?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Sir Chair and this why we rejected it.

**ADV PAUL JOSEPH PRETORIUS SC:** Right and your rejection is explained...

**CHAIRPERSON:** Now that is...

**ADV PAUL JOSEPH PRETORIUS SC:** In the letter [indistinct].

**CHAIRPERSON:** That is what I do not understand. Mr Pretorius has just read to you Section 12(8).

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** And it contemplates that the NDPP may request the President to permit him or her to leave office you understand that?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**CHAIRPERSON:** Now Mr Pretorius asked you earlier on did you ever request the President to permit you to leave office as NDPP and I understood you to say no you never made such a request. Did I  
10 understand you correctly?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Now my understanding of this last question that Mr Pretorius put to you and he is going to tell me if I misunderstood it and you are going to tell me if you had the same understanding – a different understanding. My understanding of what he put to you is whether your understanding was that the settlement agreement was an implementation or the settlement proposal was an implementation of Section 12(8) and I understood you to say yes that is correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I understood Mr  
20 Pretorius to be saying – his last question was that the proposed settlement I understood the proposed settlement to be in terms of Section 12(8).

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Then I said yes I – that is how I understood and that is why...

**CHAIRPERSON**: The proposed – the proposal?

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes proposed that is the...

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: That is the – that is the word. That is why we rejected it because...

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: We of the view that I have not requested – I had not made a request to leave NPA.

**CHAIRPERSON**: Okay. No maybe I am – I then mis – or maybe it is  
10 when we go to the documents that I would understand.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes we will come to the document in a moment.

**CHAIRPERSON**: Ja, ja.

**ADV PAUL JOSEPH PRETORIUS SC**: This is just by way of introduction.

**CHAIRPERSON**: Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: To what is made very clear in the letter. My question was intended to focus on the intention of the proposal rather than the intention of any subsequent agreement and I  
20 think Mr Nxasana understood it that way.

**CHAIRPERSON**: Understood ja. Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: What did you understand the intention behind the proposal made to you to be...

**CHAIRPERSON**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: And so perhaps that is a bit

clearer.

**CHAIRPERSON**: Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: Let us go to paragraph 2 then on page 187. This is your attorney's statement to the Presidency in regard to the proposal made to you.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: It states:

10                   “Following our discussions of the 8<sup>th</sup> instance and the subsequent instructions from client regarding the proposed settlement we would like to place the following on record.

2.1 We are of the firm view that the prescripts which you sought to rely on pertaining to settlement are not applicable in the present case for the following reasons.”

Was that letter sent with your knowledge? I think you say elsewhere in your statement that you helped draft this letter?

20                   **MR MXOLISI SANDILE OLIVER NXASANA**: Yes Chair. That is why I know these provisions because I helped – I was involved in drafting this letter.

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

“2.1.1 The provisions of the NPA Act which you seek to rely on deal with the scenario where the NDPP is removed from office in terms of Section 12(6)A. The procedure thereof is succinctly spelt out in Section

12(6, 7, 8 and 9) of the NPA Act.”

Then continues to read:

“We would consequently like to draw the following to your attention.

3.1 That it has never been the NDPP’s intention to resign from his position since he considers himself to be a fit and proper person to hold this position.”

That is what is stated was that your view at the time?

**MR MXOLISI SANDILE OLIVER NXASANA:** That was my view at the  
10 time.

**ADV PAUL JOSEPH PRETORIUS SC:**

“4. The proposed settlement was triggered by the discussions which the NDPP had with the President following the latter’s’ announcement of his decision to hold an inquiry into the NDPP’s fitness to hold office and the possible suspension pending the inquiry.”

5. Our instructions further are that the meeting between the NDPP and the President only took place  
20 after numerous attempts by the NDPP to seek audience with the President without success.”

The allegations in those two paragraphs are they correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 6.

“It must be remembered that the only time the

President agreed to meet the NDPP was after the latter had lodged a court application inter alia interdicting the President from suspending the NDPP before the President provided further and sufficient particularity to enable the NDPP to respond or to show cause why he should not be suspended.”

Is that a correct allegation and fact?

**MR MXOLISI SANDILE OLIVER NXASANA:** It is a correct allegation.

**ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 7.

10            “We are advised that during the discussions the NDPP had with the President the NDPP made it very clear that he will only consider stepping down from office if he is fully compensated for the remainder of his entire contract as head of the National Prosecuting Authority.”

You did make that clear? You have said already.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** It may be a fine legal point but your statement to the President saying yes I will step down, will vacate  
20 office, will voluntarily leave office if you pay me for the rest of my contract. Is that not akin to a resignation in terms of Section 12(8)?

**MR MXOLISI SANDILE OLIVER NXASANA:** No it is not.

**ADV PAUL JOSEPH PRETORIUS SC:** Why do you say that? And I understand there may be legal argument about this and I am sure the constitutional court judgment considered that.

**MR MXOLISI SANDILE OLIVER NXASANA:** I am sure that will – if you continue reading the letter paragraph 10 there will be the answer to your question Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright let us go then to 8 and 9. You say in paragraph 8:

“We reiterate or your attorney says in paragraph 8 we reiterate that there is no factual or legal basis for our client to step down from his position.”

Paragraph 9:

10 “It is our considered view in the light of the above that the provisions of the NPA Act read with the provisions of the Public Service Act which you have alluded to do not apply to this proposed settlement.”

And then paragraph 10 to which you have now referred:

“In the circumstances our client will only consider the option of leaving office as the President would want him to if he was – is fully compensated for the remainder of his contract.”

20 Now that is what was said and it was your view that you – the provisions of the NPA Act particularly the one which we have just read did not apply to this.

**MR MXOLISI SANDILE OLIVER NXASANA:** That was my ...

**ADV PAUL JOSEPH PRETORIUS SC:** Process.

**MR MXOLISI SANDILE OLIVER NXASANA:** That was my view at the time Chair yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Based on what reasoning?

**MR MXOLISI SANDILE OLIVER NXASANA:** Based on the reasoning that my leaving the office was not at my instance – at my request. It was the President who wanted me to leave.

**CHAIRPERSON:** And I see that exactly on the issue of who – whether the President wanted you to leave which I asked you about earlier on and you said that indeed he had said that he wanted you to leave.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And you said he had said that even before you  
10 received the letter from him saying that – or the letter saying there would be an inquiry into your fitness to hold office. I see that in paragraph 10 of this letter dated 10 December 2014 from your attorneys to Mr Hulley it does say

“As the President would want him to.”

It says:

“In the circumstances our client will only consider the option of leaving office as the President would want him to if he is fully compensated.”

It seems that this is in some way placed on record that it is the  
20 President who wanted you to leave.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**CHAIRPERSON:** And your attorneys were placing on record that you would only accede to that wish on his part if you were fully compensated for the remainder of the period of your contract?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair. And –

Chair I can even say that this paragraph was inserted specifically at my insistence because I was part and parcel of drafting this letter.

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: You – you helped draft some of the correspondence from your attorneys?

**MR MXOLISI SANDILE OLIVER NXASANA**: That is – that is correct Chair.

**CHAIRPERSON**: Of course you are an attorney yourself.

10 **MR MXOLISI SANDILE OLIVER NXASANA**: Yes, yes.

**CHAIRPERSON**: Ja.

**MR MXOLISI SANDILE OLIVER NXASANA**: And that is how I was trained that whatever discussion you may have had you follow it up with a written confirmation.

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: Which is exactly what we did.

**CHAIRPERSON**: And I am sure Mr Pretorius will still take you to any subsequent correspondence. Did Mr Hulley to whom this letter was  
20 addressed did he ever say subsequent to this letter no, no, no, what are you people talking about? The President has never wanted – said he wants Ms Nxasana to leave it is not his position that Mr – he wants Mr Nxasana to leave? Did they deny this part of the letter?

**MR MXOLISI SANDILE OLIVER NXASANA**: Chair the letter was addressed to Ms Bonisiwe Makhene not Mr Hulley.

**CHAIRPERSON:** Alright, okay I am – it was addressed to the Presidency.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** For the attention of Ms Bonisiwe Makhene?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And Ms Makhene was as you said legal advisor to the President?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Or in the Presidency?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes. She responded Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** By way of a letter dated the 12<sup>th</sup> December 2014 which is Annexure – page 192.

**CHAIRPERSON:** I am sorry Mr Pretorius I realise that I am – I am jumping the gun but maybe we will deal with that and then you can continue now that ...

**ADV PAUL JOSEPH PRETORIUS SC:** There is a letter of 12 December 2014.

20 **CHAIRPERSON:** Yes. Do you want to say anything on it in regard to this particular point Mr Nxasana?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair there is no denial in her response except to say – to refer to the correspondence – to this letter and she says it is not her intention to traverse each and every allegation or averment contained in her correspondence

notwithstanding certain glaring inaccuracies and misstatements of fact. Then he said he reserves – she reserves her right to do so in the event that it becomes either necessary or appropriate but she did not vehemently deny.

**CHAIRPERSON**: Okay so – so she – she said she did not intend this letter to be a response to each and everything that had been written in the letter of the 10<sup>th</sup> December.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: And reserved the right ...

10 **MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: To do so later but pointed out that according to her there were glaring inaccuracies ...

**MR MXOLISI SANDILE OLIVER NXASANA**: *Ja*.

**CHAIRPERSON**: And misstatements of fact but did not go to say which ones ...

**MR MXOLISI SANDILE OLIVER NXASANA**: She did not ...

**CHAIRPERSON**: Those were.

**MR MXOLISI SANDILE OLIVER NXASANA**: She - she did not ...

**CHAIRPERSON**: Yes.

20 **MR MXOLISI SANDILE OLIVER NXASANA**: Extrapolate them ...

**CHAIRPERSON**: *Ja*.

**MR MXOLISI SANDILE OLIVER NXASANA**: And then ...

**CHAIRPERSON**: And as far as you know did anybody either Ms Makhene or the President or Mr Hulley subsequently come back to the issue of this statement that you said your attorney said the

President wanted you to leave? Did they come back to say actually that is - was not the case?

**MR MXOLISI SANDILE OLIVER NXASANA:** It was not the case Chair except for the President's affidavit which he filed in the High Court ...

**CHAIRPERSON:** In the High Court, *ja*.

**MR MXOLISI SANDILE OLIVER NXASANA:** And - and subsequently in the Constitutional Court ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Where he maintained that I  
10 made a request but specifically dealing with this letter now.

**CHAIRPERSON:** Yes, okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** I cannot recall where he specifically disputed the contents of this letter. That is why this letter even in the - in the High Court and in the Constitutional Court the Judges the - the court found that my version based on this letter ...

**CHAIRPERSON:** *Ja*.

**MR MXOLISI SANDILE OLIVER NXASANA:** Was the most plausible one.

**CHAIRPERSON:** Hm. Thank you. I am sorry. I - I interrupted you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Just to place this correspondence in its context. You have told the Chair that you had discussions with the President about your holding office as NDPP?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Did some of these discussions take place before 4 July 2014?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is ...

**ADV PAUL JOSEPH PRETORIUS SC:** The notice of the inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Or the notice of the intention to consider suspension?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you have told the Chair that at these meetings the President expressed a view that you should leave office. Is that correct?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you have also told the Chair that your response was there is no need to do so because there is a campaign and it is being fed with misinformation about you.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Is that correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** The subsequent events show that during July the President acted on what you told the Chair had been his intimation earlier in regard to the termination of your services in whatever manner?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. On the - yes, by his letter.

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

**MR MXOLISI SANDILE OLIVER NXASANA:** Dated 4 July 2014.

**ADV PAUL JOSEPH PRETORIUS SC:** Was there ever any occasion on

which the termination of services or the termination of your holding of office was at your instance?

**MR MXOLISI SANDILE OLIVER NXASANA:** Not at any stage Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Did you ever come to the conclusion that despite your attempts to persuade the President to abandon this idea that you should leave office - which you say you did. There was no point in continuing that avenue because he seemed unwilling to change his mind. Did you ever come to that realisation?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** No. To abandon the idea ...

**ADV PAUL JOSEPH PRETORIUS SC:** That you should leave office.

**MR MXOLISI SANDILE OLIVER NXASANA:** It is - at a particular point I then agreed to - to enter into a settlement agreement because they were now willing to pay me the remainder of my contract.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes but at whose instance would that termination had been - have been yours or the President?

**MR MXOLISI SANDILE OLIVER NXASANA:** No it was - it was the President's instance.

20 **CHAIRPERSON:** That will - that - that letter of 10 December that we talked about a little earlier referred to the settlement agreement that came from - *ja*, paragraph 2.

“Following our discussions of the 8<sup>th</sup> and the subsequent instructions from the client regarding the proposed settlement ...”

The proposed settlement that is - that the - your attorney is

talking about there, did it come to them in written form? Was there a letter that came from the Presidency saying here is our settlement proposal or is he talking about the - the discussions at the meeting of the 8<sup>th</sup>?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I must have perhaps misplaced that letter. There was at that meeting Ms Makhene produced a - a document which was a settlement proposal proposing a settlement amount of about R6 million and some sorts.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** I remember we had that - that letter - that letter but the problem Chair is that when - when the matter went for litigation and I wanted to respond to all these issues when the President said that I had made a request my files at my - at - at my attorney's offices had disappeared. That was a strange thing that happened.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Unfortunately I had rely on - because I used to insist that whatever that they send out they must send ...

20 **CHAIRPERSON:** Give you a copy.

**MR MXOLISI SANDILE OLIVER NXASANA:** Give me a copy. Then I had put the - the copies aside. I managed to reconstruct the - the evidence. So to enable - which enabled me to respond adequately to - to the President's allegations that I made a request.

**CHAIRPERSON:** You see Mr Pretorius asked you some questions and

you answered in relation to whether the settlement was in terms of the NPA Act.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Now if there had been a letter that preceded - that came with the settlement agreement I would have loved to see that because there is this issue of whether or not you made a request to the President and here in this letter of the 10<sup>th</sup> it is made quite clear that as far as you and your attorney are concerned what you are looking at is not something in terms of the NPA Act ...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** But it - the NP - what they may have written maybe might have - if what they were looking at was in terms of the Act it probably would have been in terms of Section 12(8) which necessarily requires a request from your side ...

**MR MXOLISI SANDILE OLIVER NXASANA:** That is it.

**CHAIRPERSON:** And if what they had sent to you or your attorney was a letter which contemplated that their understanding was that the two parties were engaged in a process that requires your request. Then the fact that in this letter you and your attorney are saying look what we  
20 are talking about is something that is not in terms of the Act.

It might make it quite clear that you definitely rejected any concept of any - concept of a request that you may have made and it would be important to look at their reaction to that. You - you cannot remember whether the letter that may have come from them with a settlement agreement if - if it was a letter made any reference to the

request?

**MR MXOLISI SANDILE OLIVER NXASANA:** No Chair it - it did not - it did not talk about the request. I - I remember it vividly. It was a settlement proposal that I relinquished the - my position and I will be paid this - so much money.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** That was it. Then we rejected it outright by this letter of the 10<sup>th</sup>.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** *Ja.*

**CHAIRPERSON:** Did it refer to the Act itself? To - it might have referred expressly to the request but did it refer to Section 12(8) by any chance if you are able to remember?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I am - I am not able to ...

**CHAIRPERSON:** You cannot remember?

**MR MXOLISI SANDILE OLIVER NXASANA:** No I am not able to remember ...

**CHAIRPERSON:** Okay. No that is fine.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** The contents of the letter.

**CHAIRPERSON:** Okay. That is fine. Thank you. Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. The situation is clarified a little further in the next letter of 12 December 2014 at page 1-9-2. If you would go there. The intervening letters are just monetary calculations. I am not sure that those are relevant for present

purposes. If we could go to that letter addressed to you by Advocate Bonisiwe Makhene legal advisor to the President to Mabunda Incorporated. It reads:

10 “I refer to your correspondence dated 10 December 2014 addressed to the Presidency and respond thereto as follows: one, it is not my intention to traverse each and every allegation or averment contained in your correspondence. Notwithstanding certain glaring inaccuracies and misstatements of fact. I reserve the right to do so in the event that it becomes either necessary or appropriate.”

Then there is a - an interesting comment which follows:

20 “Two, whilst any negotiated settlement pertaining to your client’s employment as NDPP ought properly to be had with the Minister of Justice and Correctional Services the President assumed this role mindful as he was of certain reservations which had been expressed regarding the Minister.”

That statement is fairly clear that what is now being said is that a negotiated settlement is the job of the Minister.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Correct; but we know that Section 12(8) is not the function of the Minister but of the President.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** So this seems to be an acknowledgement of the fact that if there is to be a negotiated settlement it should not be then in terms of Section 12(8) but simply a negotiated settlement.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so - that was my view Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And that you had pointed out in your letter of 10 December?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** And so on this basis it appears what is said in paragraph 3 or perhaps I first should go to the last paragraph and paragraph 2.

“Notwithstanding such intervention the President is not at liberty to depart from accepted prescripts which regulate Government conduct.”

Paragraph 3:

20 “What now appears apparent is that the parties are incapable of resolving the matter alone and I must therefore to this - the initial suggestion of making use of the services of an independent mediator in order to find a settlement to the matter.”

Do you see that?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see it.

**ADV PAUL JOSEPH PRETORIUS SC:** Then a request is made again. Then on 15 January ...

**CHAIRPERSON:** I am sorry. Before that Mr Pretorius if you look at the last sentence on paragraph 2 Mr Nxasana ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Of the letter of 12 December 2014 from Advocate Bonisiwe Makhene it says that:

“...the President is not at liberty to depart from accepted prescripts which regulate Government conduct.”

You see that?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes I see that Chair.

**CHAIRPERSON:** Within the context it seems to be saying that they are taking the view that whatever is done must be in terms of the - of - of the NPA Act. Was that your understanding as well? Is that your understanding of what they are saying?

**MR MXOLISI SANDILE OLIVER NXASANA:** That was their argument Chair.

**CHAIRPERSON:** Yes but then the following paragraph or the following two or the last paragraph or the following two paragraphs they then talk about going to mediation to settle the matter. Does the National  
20 Prosecuting Authority Act make provision for mediations in such a case?

**MR MXOLISI SANDILE OLIVER NXASANA:** No Chair.

**CHAIRPERSON:** So to the extent that they proposed mediation they themselves were proposing something that was outside of the ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Outside of the Act.

**CHAIRPERSON:** Of the - of the Act.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Yes. Okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Well as the Chair has pointed out you are an attorney ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And you obviously and as you have said to the Chair we are aware of all the relevant provisions governing any termination or ending of your services as NDPP ...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you were careful to have regard to those when drafting or attending to correspondence drafted on your behalf?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Perhaps you can help us then because paragraph 2 and paragraph 3 seem to be a little confusing at - at first glance because on the one hand they are saying a negotiated settlement must involve the Minister of Justice and Correctional Services and not the President ...

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And on the other hand they are saying that the President can only act in terms of accepted prescripts whatever those might be. We know that Section 12(8) involves the President directly. It is he that must exercise his discretion in terms of Section 12(8) at your request ...

**MR MXOLISI SANDILE OLIVER NXASANA:** That is ...

**ADV PAUL JOSEPH PRETORIUS SC:** Or at the request of the NDPP wishing to resign. Nevertheless there is a statement here that a negotiated settlement pertaining to your employment should not be at the hands of the President but at the hands of the Minister.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Can you explain what is going on here?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I understood this  
10 paragraph to be saying that whilst it was the responsibility of the Minister to deal with this - with the issue of - of my issue the - the President assumed unto himself to deal with this issue. It - it was confusing to me.

I - I must - I must admit but I thought she was just saying that it was the responsibility of the Minister to deal with this not the President and the Minister must after dealing with any issues then the Minister as the Member of Parliament responsible for who exercise final responsibility of our NPA should then communicate it to the President and the - for the president to take a decision.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes because we know that Section 12 of the NPA Act you may recall says that:

“No termination of service may take place other than in accordance with the prescripts of Section 12.”

**MR MXOLISI SANDILE OLIVER NXASANA:** That - that is so.

**CHAIRPERSON:** Had you expressed any reservations about the Minister to the President? I ask that because they - they refer to something along those lines. It seems that what they are saying is the President was aware that you had expressed certain reservations about the Minister of Justice.

I do not know in regard to what but you had expressed certain reservations and that is why he therefore played this role himself which they seem to suggest ought to have been played by the Minister of Justice.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** You had?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I had Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I had verbally expressed my - my dissatisfaction at the manner in which the Minister of Justice handled my matter especially ...

**CHAIRPERSON:** That is Minister Masutha or ...?

**MR MXOLISI SANDILE OLIVER NXASANA:** Firstly - firstly it was Minister Radebe.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** I also - I am on record. I wrote a letter and expressed my discomfort and dissatisfaction in the manner in which he - he treated me ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Because he is the first

person who told me about the fact that he was going to advise the President to institute the ...

**CHAIRPERSON:** An inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA:** The inquiry. What - what does not appear in these papers Chair - just briefly.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Is that before Minister Radebe was removed or reshuffled from this position of Minister of Justice he called me to a meeting in Pretoria in his office.

10 Present there was himself and the DG then Ms Sindane and at that meeting he then confronted me with all these allegations of my previous convictions, of my matters that were - the complaints that were laid against me in the - in the KwaZulu-Natal Law Society and that I did not declare all of those which was not correct and I told him at that meeting that I know the campaign and that was the first person I told that the campaign - I am aware of the campaign waged by Advocates Jiba and Mrwebi against me.

I tried to explain myself. He dismissed me by saying that that was a figment of my own imagination - imagination and then he  
20 suggested to me and that I must resign because of all of these. I - in fact his trump card was that - but now you do not have the security clearance certificate and I found it odd because I am the one that applied for the security clearance certificate and I had not been told by the state security agents that my security clearance has been declined and which was - which I subsequently learnt it was not even the case

and I refused ...

**CHAIRPERSON:** You mean that - that it had not been declined. You say it not the case.

**MR MXOLISI SANDILE OLIVER NXASANA:** It was not the case. It was not the case. It has never been - it was never declined ...

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** But that is what Minister Radebe told me. It was not the case. That was the initial push. They tried to push me then I refused and then he said to me I  
10 must resign and they agreed with the DG Sindane. I told them that I was not going to do that. Then he said to me then that the President will have to appoint the Commission of Inquiry.

Then I left the meeting and the following day I addressed the letter to him.

**CHAIRPERSON:** I am sorry. Before the following day are you able to indicate roundabout when this was? There was an election in 2014 ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I ...

**CHAIRPERSON:** And I think that maybe when he might have ceased to be Minister of Justice ...

20 **MR MXOLISI SANDILE OLIVER NXASANA:** I remember ...

**CHAIRPERSON:** And then Mr Masutha came in.

**MR MXOLISI SANDILE OLIVER NXASANA:** I remember he was going - was it - was it in December or January 2014. December 2013/January (intervenes).

**CHAIRPERSON:** Well he - he - I think he - he was not Minister of

Justice after the election of 2014.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes, yes.

**CHAIRPERSON:** So if you had a meeting with him while he was Minister of Justice it could only have been before the election ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Before the elections.

**CHAIRPERSON:** Or - or at least before the inauguration of the President because Ministers continued to operate as Ministers even after the election as long as the President has not been inaugurated yet.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair I know that he was coming from the - he was the - Parliament was sitting.

**CHAIRPERSON:** The election would have been around May I think more or less - 2014.

**MR MXOLISI SANDILE OLIVER NXASANA:** 2014, but I know that he was coming from Cape Town ...

**CHAIRPERSON:** *Ja.*

**MR MXOLISI SANDILE OLIVER NXASANA:** And immediately after our meeting I think - immediately after - thereafter he was then removed from that position and he ...

20 **CHAIRPERSON:** Oh.

**MR MXOLISI SANDILE OLIVER NXASANA:** He went to the Presidency.

**CHAIRPERSON:** So if he is - his departure from the Ministry of Justice was because of - was after the election then your meeting with him must have been close to the election or between the election and the inauguration.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I - I do - I do have the - I do have the - the date at home because ...

**CHAIRPERSON:** Okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** I - I have the copy of that letter ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** That I - I wrote to him confirming what had happened on that day.

**CHAIRPERSON:** Okay. No I think then what can happen is that later  
10 on you could do a supplementary affidavit and/or statement and attach the letter and indicate that you are able to say what date the meeting took place.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes, but ...

**CHAIRPERSON:** So - but you were saying that ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** The following day you wrote a letter?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Confirming - confirming  
20 what - what transpired ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** The previous night, yes and I did not get any response.

**CHAIRPERSON:** And what did you say - the gist of what you said in your letter what you recorded or what you said? What did you convey

to him?

**MR MXOLISI SANDILE OLIVER NXASANA:** I confirmed that he - he called me to a meeting and that this is what happened at the meeting.

**CHAIRPERSON:** As you have testified to me now?

**MR MXOLISI SANDILE OLIVER NXASANA:** As I have testified and I called the - the - I called Exco and I explained to Exco what had happened.

**CHAIRPERSON:** Yes, okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** It is - it is minuted. It is  
10 there ...

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** At NPA.

**CHAIRPERSON:** Okay, thank you.

**MR MXOLISI SANDILE OLIVER NXASANA:** And then I think the - the comments - the - the remarks that he - that she might be referring to here is I - I also made remarks - verbal remarks about Minister Masutha at - I think at the meeting of the 8<sup>th</sup>.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **CHAIRPERSON:** At the meeting of 8 December?

**MR MXOLISI SANDILE OLIVER NXASANA:** Of December.

**CHAIRPERSON:** Huh-uh.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I was - when - you would understand that after I had had that interaction with Minister Radebe - you would understand my attitude. Then when it was

announced that we - we were going - we were having a new Minister.  
To me - I said to me it is a relief.

Then I am having a new Minister with fresh ideas and he will  
be able to - not to play all these NPA politics as I perceived  
Minister Radebe was doing but strangely Minister Masutha - I then saw  
him on the news talking about the issue - my issue without even having  
had the decency of meeting me and even finding out from me or getting  
my version of the events and he was already making statements about  
me in the media and I told him - himself at the meeting that I had with  
10 him at the - at the hotel in ...

**CHAIRPERSON:** The first meeting you had with him?

**MR MXOLISI SANDILE OLIVER NXASANA:** With - with Masutha and  
remember.

**CHAIRPERSON:** With Minister Masutha?

**MR MXOLISI SANDILE OLIVER NXASANA:** Masutha. We had a  
meeting - there was an evening meeting also that I had with him at the  
Sheraton Hotel and I told him that I am very concerned in the manner in  
which he was behaving because I got the impression - I told him that he  
was taking sides because - and then he assured me that he did not  
20 know either Jiba or myself.

That is what he - but I think in this letter that is the remark  
that Ms Bonisiwe Makhene is referring to because I said I had some  
reservations about the - the impartiality of the Minister -  
Minister Masutha in - in this whole matter.

**CHAIRPERSON:** But this is - this letter is dated 12 December 2014 or

is that the - *ja* 2014 ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And it responds to a letter that recorded what had transpired at the meeting of 8 December?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so.

**CHAIRPERSON:** So my question is prior to 8 December - prior to that meeting - had you conveyed to the President or anybody acting on the President your reservations about Minister Masutha?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair my - Chair my  
10 response is that at the meeting of 8 December before they responded on the 12<sup>th</sup> I must have conveyed my - my reservations about Minister Masutha at that meeting or even before that.

**CHAIRPERSON:** Yes, but - but you see the President had interacted with you ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Prior to 8 December if I understand the position correctly.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** And Ms Makhene is trying to justify why the President  
20 preformed functions that she says should have been performed by the Minister of Justice. Namely negotiating with you as I understand the position.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** So what he may have done prior to 8 December cannot be used to justify him handling this matter himself if he only got

to know about your reservations on the 8<sup>th</sup> or after. So my question is whether you had conveyed to the President or through to people representing him much earlier that you had reservations about Minister Masutha.

**MR MXOLISI SANDILE OLIVER NXASANA:** That - that is the position Chair. To - to the President and to Mr Hulley as well.

**CHAIRPERSON:** You had?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay. No, thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Chair it is 10 past four. Mr Nxasana is due to fly subject to what you say at five past eight. We could attempt to finish by 6 o' clock when I think Mr Nxasana should leave at the latest ...

**CHAIRPERSON:** Huh-uh.

**ADV PAUL JOSEPH PRETORIUS SC:** But I cannot guarantee we will finish in that time ...

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** At the rapid pace at which we are going. Even that might not - although we are - once we finish the  
20 timeline we will go quite quickly.

**CHAIRPERSON:** Hm. Well we - we said - we certainly can go up to five. Whether we can go beyond that maybe we can deal with that close to five or around 5 o' clock. So let us - let us see how it goes.

**ADV PAUL JOSEPH PRETORIUS SC:** Let us see how far we can get ...

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** By 5 o' clock.

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** Let us see then ...

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** What happens? Okay.

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** Okay, it's probably necessary to place it on record because you did mention an issue concerning the security clearance certificate.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** That is dealt with on page 189 in the letter of your attorneys to the Presidency of 10 December 2014.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** If I can just read paragraphs 11 to 13 onto the record and you can confirm whether that's correct or not.

20 "We confirm, [says Mr Mabundu on your behalf], that the President advised us that the Minister of the State Security Agency, the Minister, has confirmed that he has upheld the NDPP's appeal against the refusal to grant him the security clearance and he has already issued but he is waiting to hand it over to the NDPP upon finalisation of the settlement between the parties."

Paragraph 12:

"While we do appreciate and welcome the Minister's decision to uphold the NDPP's appeal it is our respectful view that the

granting of the security clearance certificate to the NDPP is and/or should not be a condition for any proposed settlement.”

Paragraph 13:

“We are accordingly bringing it to your attention that we are despatching a letter to the Minister to release the security clearance certificate to the NDPP.”

Now I don't think it is necessary to go into whether it's a valid reason for withholding the certificate that there is no settlement between the parties, I think the answer to that question is fairly obvious, but are the  
10 facts here correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** The facts are correct  
Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright then let's go then to the letter of the 12<sup>th</sup> of December 2014 which is the Presidency's response to the letter we have just dealt with, that's the letter of the 10<sup>th</sup> of December addressed by your attorneys to the Presidency. The first paragraph and it is signed by ...[intervenes]

**CHAIRPERSON:** I thought we have dealt with that letter, I remember, I think I remember you reading the first paragraph and we have certainly  
20 dealt with the paragraph that says it is not my intention to traverse each and every allegation, and then we dealt with the one that says whilst any negotiated settlement pertaining to our client's employment, I think we have dealt with all of it.

**ADV PAUL JOSEPH PRETORIUS SC:** My recollection is we dealt with another letter Chair, but ...[intervenes]

**CHAIRPERSON:** No it was this one, but there may be one or other point that you want to make but I think we – you remember in regard to paragraph – the last two paragraphs we looked at the last sentence of paragraph 2.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes we did.

**CHAIRPERSON:** Yes and ...[intervenes]

**ADV PAUL JOSEPH PRETORIUS SC:** I want to get to paragraph 3 however.

**CHAIRPERSON:** Ja, okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 3 reads:

“What now appears apparent is that the parties are incapable of resolving the matter alone and I must therefore revert to the initial suggestion of making the use of services of an independent mediator.”

I think that’s where we left the letter.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes, correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And then on the 15<sup>th</sup> of January your attorneys once more enter the fray.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And firstly you acknowledge receipt of a letter dated 9 December 2014 and received by our office on the 9<sup>th</sup> of January 2015. Now that may be a mistake, it may be referring to the letter of 10 December, or it may be referring to a letter that we could not find and you have mentioned that’s the letter setting out a settlement proposal, can you help us there? Do you know of any

letter of 9 December 2014, as opposed to the letter of 10 December 2014.

**MR MXOLISI SANDILE OLIVER NXASANA:** I cannot recall Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright, well we don't have any letter of 9 December and it may be that they are actually referring to your letter of 10 December.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I think there must have been a letter of the 9<sup>th</sup> December because the letter that of the 10<sup>th</sup> of December is a letter from ourselves.

10 **CHAIRPERSON:** Yes, that may have been the one that brought the settlement proposal.

**MR MXOLISI SANDILE OLIVER NXASANA:** Perhaps Chair. It is the letter that was coming from them.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright, well perhaps in the fullness of time we can find that letter, but let's go to paragraph 2;

"we place on record that we have been liaising and corresponding with Mr Michael Hulley before you were introduced to us as the legal advisor to the President."

Paragraph 3:

20 "At all material times Mr Hulley has always represented to us which we accept that he was the legal representative of the President. It was at his instance and request that the formal engagement which bears reference was initiated."

The formal engagement referred to there do you know what it is? Perhaps a mediation?

**MR MXOLISI SANDILE OLIVER NXASANA:** I think the formal engagements that we had between the engagements that we had on the 8<sup>th</sup>, 8<sup>th</sup> of December, when Ms McKenna was available.

**ADV PAUL JOSEPH PRETORIUS SC:** Right, paragraph 4 reads:

10 “We are noting the tone of your letter which is somewhat unsavoury and un-reconciliatory. We would like to bring to your attention that our communication to Mr Hulley dated the 3<sup>rd</sup> of November 2014 is still of relevance in this case and equally remains on record. We enclose herewith a copy of the said letter received and read by Mr Hulley for the ease of your reference.”

And then paragraph 5:

“You will note from the said letter that our client had always been, and still remains amenable to the proposed mediation. It is however apposite that you attend to the proposed terms of reference for the mediation for consideration and acceptance by our client.”

We can leave the rest. Paragraph 6 on page 194:

20 “We must record that our client is amenable to a proposed independent mediation and not a confidential one you seem to be proposing.”

Then paragraph 7:

“We further wish to record that our client has at no stage initiated the discussions regarding settlement proposal. In terms of paragraph 2 of your letter you seem to be creating an

impression that the Minister, and not the President, should have been the one liaising with our client regarding the issue in question. We venture not to express an opinion in this regard. We are equally unaware of any formal meeting between the Minister and our client.

Trusting you find the above in order.”

That is the letter you sent then to the Presidency.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Where you placed yourself  
10 clearly on record. Now there was a space of time between the 10<sup>th</sup> of  
December and the 15<sup>th</sup> of January 2015.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** It seems from the letter of 15  
January 2015 that there was some hiatus in correspondence in that  
period.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** During that period did you ever  
meet personally with the President, or well let me first ask, is there any  
other correspondence of which you might be aware that would alter  
20 what is clearly set out in the letter, your letter of 10 December 2014  
and 15 January 2015, did that ever change in the interim period?

**MR MXOLISI SANDILE OLIVER NXASANA:** No Chair there was  
nothing.

**ADV PAUL JOSEPH PRETORIUS SC:** Were there any meetings  
between you and the President in that intervening period?

**MR MXOLISI SANDILE OLIVER NXASANA:** Although I cannot recall but I would say – no I cannot recall having a meeting with him, I cannot.

**ADV PAUL JOSEPH PRETORIUS SC:** In any meeting with the President or the President's legal advisor at any stage or even with Mr Hulley for that matter, did you ever abandon or qualify the position that you were not a fit and proper person, or that you were indeed a fit and proper person to continue holding office.

**MR MXOLISI SANDILE OLIVER NXASANA:** At no stage Chair did I  
10 abandon my view.

**ADV PAUL JOSEPH PRETORIUS SC:** Did you ever communicate to anybody in the Presidency, the President or representing the Presidency that you wished at your instance to vacate office?

**MR MXOLISI SANDILE OLIVER NXASANA:** No Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** You did however say that if you were fully compensated for the remainder of your term of office you would leave?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair because they were pushing me to leave and I could see they had taken a decision.

**ADV PAUL JOSEPH PRETORIUS SC:** Had you left at whose instance  
20 would your departure have been?

**MR MXOLISI SANDILE OLIVER NXASANA:** Had I left?

**ADV PAUL JOSEPH PRETORIUS SC:** Yes had you – well you did leave eventually.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I did.

**ADV PAUL JOSEPH PRETORIUS SC:** But at the stage in December, because we're going to deal with what happened afterwards now.

**MR MXOLISI SANDILE OLIVER NXASANA:** I would have left at the instance of the President.

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

**CHAIRPERSON:** It is going to be important that you try and remember whether in December or January you did have a meeting personally with the President, because in the Corruption Watch CASAC matter I think there is an affidavit in his answering affidavit or one of the  
10 affidavits by the President, he says it was between the end of December and the beginning of 2015, he says between the end of December and the beginning of 2015 there were discussions and he says it was during maybe one of those discussions that you made the request. Now we know that there was a meeting which involved both of you and other people on the 8<sup>th</sup> of December 2014, and we know that on the 10<sup>th</sup> of December your attorneys wrote a letter which you drafted yourself to record what had been discussed at the meeting of the 8<sup>th</sup> of December.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **CHAIRPERSON:** We know that Ms Makhene wrote a letter on the 12<sup>th</sup> of December responding to the letter of the 10<sup>th</sup> of December if I recall correctly, but we – and I think then there was another letter if I am not mistaken from your attorneys, or maybe your attorneys then wrote in January, now so therefore it seems that the request that the former President says you made to him if ever it was made was made between

the end of December and the beginning of January, so it will be important for you to remember, not necessarily now if you cannot remember, if there are other documents that might assist at home to remember whether you did have such a meeting to be able to prepare a supplementary affidavit that deals with whether you had any meeting or telephone discussion or any discussion at all with him during that time.

**ADV PAUL JOSEPH PRETORIUS SC:** I understand Chair that the ...[indistinct – microphone off] you referring to is now in the bundle.

**CHAIRPERSON:** Oh it is in the bundle, okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** It is now in the bundle and Mr Nxasana has been given a copy to consider and I had intended to ask him about it.

**CHAIRPERSON:** Yes, okay, okay. So you – if you want to respond to what I have just said you may do so, if you want to go and check certain documents and try and remember that's fine.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I was going to respond in this way, my response is that in as much as I would not – I cannot recall whether we had any interaction, be it a meeting or telephone discussion or otherwise but the fact I think what Mr Pretorius  
20 wants to know is that did I at any stage make a request and my answer is a big no, I never made a request.

**CHAIRPERSON:** Well no I understand that, but you see if indeed there was a meeting between yourself and the former President during that time that might give a certain flavour maybe to the issue but if the position is there was no meeting at all, or any discussion at all it might

give a different flavour, you understand what I mean, so you might say yes whatever meeting I had with him if I did have a meeting what I do know is that I never made such a request, that is fine, but he says there were discussions during that time and if the position is there were no discussions that might be important as well, you understand that?

**MR MXOLISI SANDILE OLIVER NXASANA:** I understand Chair.

**CHAIRPERSON:** Yes, okay alright, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Of course the possible scenario that there was such a meeting at which resignation was requested in terms of Section 82 would beg the question of why  
10 negotiations fell through at that stage, but that's a matter that we can deal with in submissions Chair, but if we may then go to paragraph 2 and 3 of page 195 which is a letter of the 23<sup>rd</sup> of January 2015 ...[intervenes]

**CHAIRPERSON:** I'm sorry Mr Pretorius I wanted to say something at paragraph one, at page 194, Mr Nxasana I see that in this letter of 15 January, paragraph seven thereof says we further wish to record that our client has at no stage initiated the discussions regarding settlement proposals. This seems to suggest that the settlement proposals or  
20 settlement negotiations that were taking place were initiated by the Presidency and not by yourself, is that right?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Yes, you never initiated any negotiations?

**MR MXOLISI SANDILE OLIVER NXASANA:** I never initiated any negotiations.

**CHAIRPERSON:** Yes, okay, thank you. And as far as you know this was never denied in any correspondence that they were the ones who initiated, or that you never initiated the settlement discussions?

**MR MXOLISI SANDILE OLIVER NXASANA:** No because in the letter of the 23<sup>rd</sup> of January, ja the next page.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Advocate Bonisiwe Makhene does not even refer, she does not dispute that, save to say that Chair there has been insufficient progress in resolving the matter.

10 **CHAIRPERSON:** Yes, yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** And paragraph 2 is very important because it talks about there has been – she says it appears apparent that insufficient progress has been made in respect of resolving your client’s current status as National Director of Public Prosecutions. That is why I was saying the discussions were around everything about – not just about the settlement proposals in terms of the money, it was about everything.

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

20 **CHAIRPERSON:** What did you understand that part to be “resolving your client’s current status as National Director of Public Prosecutions”? What did you understand them to be talking about in regard to that?

**MR MXOLISI SANDILE OLIVER NXASANA:** I understood it to mean that there was insufficient progress in resolving the matter whether or

not I remain in office or that I am leaving.

**CHAIRPERSON:** Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Let's deal with paragraphs – my apologies – let's deal with paragraphs 2 and 3 of the letter, it says, well and paragraph 1 in fact, paragraph 1 reads:

“I [and that's the legal advisor to the President] refer to your recent correspondence in respect of this matter and reserve our rights to deal with certain aspects contained therein.”

10 Notably there's no reference to any meeting that has taken place in this period.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Let alone a meeting at which you request to resign?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 2 reads:

“It appears apparent that insufficient progress has been made in respect of resolving your client's current status as National Director of Public Prosecutions.”

You have answered the Chair's question in that regard?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Paragraph 3:

“I must accordingly advise that after consideration of the matter President Zuma has taken a decision to proceed with the inquiry into Mr Nxasana's fitness to hold office.”

And then over the page on the 26<sup>th</sup> of January your attorneys address a

letter to the Presidency saying:

“We note the President’s intention to proceed with the inquiry into our client’s fitness to hold office. Kindly advise us when we can expect to receive the terms of reference for the inquiry.”

If we can then go back, that’s pretty self-explanatory, is there any comment that you wish to make?

**MR MXOLISI SANDILE OLIVER NXASANA:** I think it explains the – this exchange of correspondence explains, it clearly explains that there was no progress reached and my attitude and the attitude was that the Presidency then decided to proceed with the inquiry and I said bring it on. That is exactly what I said.

**ADV PAUL JOSEPH PRETORIUS SC:** Perhaps had there been a request for you to resign made directly to the President in terms of Section 12(8) of the NPA Act, and the only question then remaining was the financial consequences of the President accepting your request to resign, would that have been progress in the context of what happened in – progress in the sense of getting closer to finalisation, not progress in respect of being satisfactory to you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Surely if I had made a request Chair in fact if I had made a request to resign it does not make any sense that I will make a request to resign and at the same time expect to be paid the full amount of the contract. I mean it does not take a rocket scientist that it is nonsensical, it does not make sense at all.

**ADV PAUL JOSEPH PRETORIUS SC:** You have made that point yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Is the point you are making this that if you yourself made the decision that you want to request the President to allow you to leave.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And then it would be – it would not be expected that you having decided that you want to be allowed to leave that you would then want to be paid for the full remainder of the full contract, the full remaining period of your contract. What is consistent with that demand that you be paid for the full remaining period of your contract is if the other side wanted you to leave against your will ...[intervenes]

**MR MXOLISI SANDILE OLIVER NXASANA:** Against my will.

**CHAIRPERSON:** And then you say ...[intervenes]

**MR MXOLISI SANDILE OLIVER NXASANA:** Pay me.

**CHAIRPERSON:** Since I am not the one who wants to leave, you are the ones who want me to leave then pay me, because I have been prepared to stay on up to the end of my period of contract.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is the position Chair.

20 **CHAIRPERSON:** And the point you are making is that the fact that they acceded to that you are saying means that or shows that they – it was the other side that wanted you to leave and not you?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**CHAIRPERSON:** That is the point you are making.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is the point I am

making Chair.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** If we could go back Mr Nxasana to the timeline, we have dealt with all the items up to item 14, the further items are dealt with in your evidence and we will deal with them briefly but it appears that on the 5<sup>th</sup> of February 2015 you were informed that Advocate Cassim, assisted by Advocate Nkosi Thomas and S K D Madlala would chair the inquiry.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

10 **CHAIRPERSON:** That is Mdladla not Madlala Mr Pretorius.

**ADV PAUL JOSEPH PRETORIUS SC:** What should it be?

**CHAIRPERSON:** Mdladla not Madlala.

**ADV PAUL JOSEPH PRETORIUS SC:** Oh Mdladla. Then item 16 is a reference to a publication in the Government Gazette of the terms of reference in the inquiry and then item 17 March 2015 the NPA workshop at Emperors Palace at which you were apparently told by the Minister that the former President would attend to your advice or requests in relation to Advocates Jiba and others.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You then filed submissions or sorry submissions on behalf of the President and the Minister were filed on the 4<sup>th</sup> of May, you also filed submissions did you?

**MR MXOLISI SANDILE OLIVER NXASANA:** I did not file submissions  
...[intervenes]

**ADV PAUL JOSEPH PRETORIUS SC:** Or you prepared submissions.

**MR MXOLISI SANDILE OLIVER NXASANA:** I prepared the submissions but before filing them then we reached settlement and I did not, I ended up not filing them.

**ADV PAUL JOSEPH PRETORIUS SC:** And that settlement was concluded in May 2015, signed by yourself on the 9<sup>th</sup> of May and signed by the former President on the 14<sup>th</sup> of May together with the Minister?

**MR MXOLISI SANDILE OLIVER NXASANA:** I think signed by the Minister on behalf of the President on the 14<sup>th</sup> of May if I am not mistaken.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Is that how it occurred?

**MR MXOLISI SANDILE OLIVER NXASANA:** That if I am not mistaken yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright, well we can have a look at that, we don't have the settlement agreement attached, but is there anything significant in the fact that the settlement agreement was signed by you first and only later on behalf of the former President?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair because if you look at the settlement agreement I signed it at Umhlanga, it is dated at Umhlanga in Durban, at the offices of Mr  
20 Hulley.

**ADV PAUL JOSEPH PRETORIUS SC:** I see, who prepared the document?

**MR MXOLISI SANDILE OLIVER NXASANA:** I suppose it was Mr Hulley.

**ADV PAUL JOSEPH PRETORIUS SC:** But not you?

**MR MXOLISI SANDILE OLIVER NXASANA:** Not me. In fact just to clarify there was the – he sent me I think it also it is there in the bundle of documents that came up before the Concourt, I think then the High Court and the Concourt that he initially sent me a proposed settlement of a certain amount of money and then I rejected it, then he sent me another settlement without any amount and he asked me to insert the amount. Then I calculated the salary that I was earning at the time, and multiplied it by the number of months that were remaining.

**CHAIRPERSON:** Mr Pretorius I think that we – I will be agreeable to  
10 going beyond five o'clock if – in order to try and help us to finish but I think we must then take an adjournment now, because I had a meeting planned for five o'clock and I need to change that, but in any event it might be good to have a break now.

Is that fine, so in other words from my side you mentioned six o'clock, we could go up to six o'clock if we don't finish before that from my side. You are fine with that? How long do you think we might still be? Or maybe you must tell me that when we come back from the break. Mr Nxasana ...[intervenes]

**ADV PAUL JOSEPH PRETORIUS SC:** We may finish because there  
20 are sections that we can summarise and we have dealt already with the contents of the Constitutional Court judgment and the confirmation by Mr Nxasana of what was said there.

**CHAIRPERSON:** Ja, no that is fine, but we will take a break now and when I come back we continue. Obviously if we finish before six o'clock all the better. I take it that is fine with you Mr Nxasana?

**MR MXOLISI SANDILE OLIVER NXASANA:** It is fine with me Chair.

**CHAIRPERSON:** Ja. Okay, let's take a ten minute break, we will resume at ten to five, or should we take fifteen minutes?

**ADV PAUL JOSEPH PRETORIUS SC:** In your hands Chair, perhaps fifteen.

**CHAIRPERSON:** Ja, maybe fifteen, okay, we will resume at five to five.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us proceed.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** My apologies Chair. You have told the Chair that by letter dated for July 2014 you were informed that a decision had been taken to institute an inquiry into your fitness to hold office. Correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You also told the Chair that you received a notice that the President was considering suspending you on full pay and that was on the 30 July 2014?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** You took certain steps in regard to the suspension issue?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** The upshot of it all was that you were never suspended?

**MR MXOLISI SANDILE OLIVER NXASANA:** I was never suspended that is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** In paragraph 50 and following you deal with your rights to a fair hearing and your statement in paragraphs 52, 53 and 54 focus on the point that really your rights to a fair hearing were prejudiced because you were not given sufficient  
10 particulars of what this inquiry was to be about?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** So for example you say in paragraph 52 that you were not given particulars of criminal convictions. You say in paragraph 53 you were not given details of the alleged comments in the media which were divisive and had the effect of bringing the NPA into disrepute?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you were not given details of the alleged prosecution which you had failed to disclose at the time  
20 of your employment, correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And your view was as placed on record in paragraph 55 that it was not for you to speculate about these matters details should be provided?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you – you took action in terms of these contentions of yours, correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** Well ...

**ADV PAUL JOSEPH PRETORIUS SC:** Well not formal action you – you communicated these?

**CHAIRPERSON:** You – you say you were not given clarity with regard to the media comments to which reference was made, is that right?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

10 **CHAIRPERSON:** But I did read somewhere I do not know whether – I think it was a letter that you did send to the Presidency which would be maybe in the record relating to the Corruption Watch Matter or CASAC Matter where at some stage you say if I recall correctly although you say you do not know what media the President may have been referring to you say but what was said was accurate – was correct. My understanding of what you said it is either in a letter or in an affidavit is where you were saying effectively I have not seen maybe the newspaper if it was a newspaper where I am alleged to have said – made those remarks or whatever the source or the medium was. But  
20 you say but that is actually correct. Does that ring a bell at all?

**MR MXOLISI SANDILE OLIVER NXASANA:** It does not ring a bell Chair.

**CHAIRPERSON:** It does not.

**MR MXOLISI SANDILE OLIVER NXASANA:** Ja but Chair I – I know that what then happened is in this – in the letter that I sent to the

President or in this affidavit I said that I ended up speculating because I was required to – to respond. But to be precise – to say precisely that this is the media comment that I made which the President is referring to as the media comment that is divisive and brings the NPA into disrepute I expected the President to tell me which of the media reports he was referring to.

**CHAIRPERSON**: Mr Pretorius is the letter that Mr Nxasana or his attorneys I think representations that he made is it here because it might be the one where my recollections or understanding at least is  
10 that he was saying in effect what is alleged is correct. I might not know whether this was in this or that media but it is true.

**ADV PAUL JOSEPH PRETORIUS SC**: What is annexed as MN5 is the draft submissions made by the NDPP to the Cassim Inquiry and a number of these matters are dealt with in those submissions. But the letter ...

**CHAIRPERSON**: No, no, no this would be ...

**ADV PAUL JOSEPH PRETORIUS SC**: But the letter as I understand it is not..

**CHAIRPERSON**: It would have been...

20 **ADV PAUL JOSEPH PRETORIUS SC**: In other words the response to the letter at page 48 the letter of 30 July 2014 is not included in the bundle.

**CHAIRPERSON**: It is not included?

**ADV PAUL JOSEPH PRETORIUS SC**: No.

**CHAIRPERSON**: Ja. It is – it...

**ADV PAUL JOSEPH PRETORIUS SC:** We could attempt to obtain it of course.

**CHAIRPERSON:** I think you were – Mr Nxasana making representations.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** To the President as to why you should not be suspended.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** I think – I think the – I think that that is the letter  
10 because in regard to the establishment of the inquiry you were not  
asked to make representations whether there should be an inquiry or  
not. But in regard to whether you should or should not be suspended  
you were asked to make representations.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**CHAIRPERSON:** And I think in response you then asked for particulars.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Sir.

**CHAIRPERSON:** Then – but you – you were not given particulars and I  
cannot remember whether you responded when you made your  
20 representations to the President whether you had already been told that  
you were not going to be given particulars or whether because there  
seemed to be no response from the President to you asking for more  
time or whatever you then decided to make representations anyway.  
But I think it is in your representations on why you should not be  
suspended where I saw what I am talking about. So if we do not have

those here then – but I think there is somewhere where on my reading you seem to say what is alleged is true. But you were querying I think maybe the medium where it might have been reported. You cannot remember?

**MR MXOLISI SANDILE OLIVER NXASANA:** I cannot remember Chair.

**CHAIRPERSON:** Ja.

**MR MXOLISI SANDILE OLIVER NXASANA:** But in the same spirit here I think the point I was making here is that that did not take away the responsibility of the President to give me particulars of what he was  
10 alleging. I may have made mention of media reports speculating but precisely which media comment that he was referring to it remained a – he was expected to tell me which one was it.

**CHAIRPERSON:** Yes. I think...

**MR MXOLISI SANDILE OLIVER NXASANA:** [Indistinct] considered divisive and bring the NPA into disrepute.

**CHAIRPERSON:** I think you may wish as I indicated earlier on after today to just go back to the record of that CASAC and – and Corruption Watch.

**MR MXOLISI SANDILE OLIVER NXASANA:** Corruption Watch.

20 **CHAIRPERSON:** Matter because there is a lot of material there. You know and you were not – you – your participation in those proceedings was limited.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** Other parties participated very fully.

**MR MXOLISI SANDILE OLIVER NXASANA:** [Indistinct] [mumbling].

**CHAIRPERSON**: But – and they attached to their affidavits some of the correspondence that the parties exchanged and at a certain stage the Presidency submitted to the court the record of the decisions that sought – was sought to be reviewed and then they got more correspondence that had been exchanged between yourself and the Presidency and then there was a supplementary affidavit. So – so I am raising that partly because you out of not remembering you might say one thing but when you refresh your memory you will – you might have a better recollection of what the position was.

10 **ADV PAUL JOSEPH PRETORIUS SC**: [Not speaking into the microphone].

**CHAIRPERSON**: Ja. Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: In any event Mr Nxasana you say in paragraph 56

20 “Because I did not have the essential particulars of the allegations against me I could not say whether they were true or whether they were sufficiently serious to warrant suspension or whether they were such that it is not possible for me to interfere with an investigation into them or with witnesses who made them.”

Perhaps I am leading you unfairly but does that correctly reflect your position?

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes Chair. Yes Chair it reflects my position. I think it is – it is saying exactly what I – because

I – I firmly believed that I was not getting a fair hearing if I was not informed precisely of what the President was referring to.

**ADV PAUL JOSEPH PRETORIUS SC:** It appears that the response to your complaints by the President were to the effect that it appears apparent from your initial response that you were aware of the matters to which the President was referring and that you had sufficient information in order to enable you to make representations. That was the position of the President.

**MR MXOLISI SANDILE OLIVER NXASANA:** That was the position of  
10 the President yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And we will look at the response to the notice when we get it. Over the page you deal with the Cassim Inquiry. Chair I am not sure that the fact that the President's complaints in the terms of reference differed from the complaints in the submissions needs to be dealt with in any detail. The fact is that that inquiry did not commence. What is of more concern is whether you require Mr Nxasana to go through his draft submissions because those deal in detail with many of the issues that have been discussed in evidence. Because if that is so and if we cannot just have it as a  
20 matter of record we will take considerable amount of time to complete that.

**CHAIRPERSON:** Well the – if the submissions are here it is not necessary to go into too much detail. It might be important to just deal with the main fissures and to confirm that the – the submissions reflect what he – his views.

**ADV PAUL JOSEPH PRETORIUS SC:** Let us first deal with the complaints you raised on page 14 and 15 of your statement. Essentially what you are saying here is that the President's complaint as expressed in the terms of reference differed fundamentally from the complaints that were put up to Advocate Cassim in the course of the inquiry.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** If you can highlight for the Chair the essential differences between the two. I am not sure that that is a fair question to you but in what respect did they differ fundamentally as opposed to in formal detail?

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair the complaints that he had – the President had mentioned in his terms of reference some of them when he instituted – when he appointed the Cassim Inquiry he did not put them as the – as the complaints. I think that is the point that I was making and then I make reference to – to the – to those here in – from paragraph – from page 14 to page 15. I think also page 16 as well.

**CHAIRPERSON:** Well you can mention one or two – two or three fundamental differences and then – then we can move on.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair the complaint ...

**CHAIRPERSON:** What was what the inquiry was required to do is to determine whether you were fit to continue in office as the NDPP.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** And was the factual basis on which it was supposed

to determine that issue or were the factual basis the issue of the assault conviction and the murder acquittal and the absence of a clearance certificate. What was the context of that – of that – that function, that brief on the part of the inquiry?

**MR MXOLISI SANDILE OLIVER NXASANA**: Okay. Chair the letter that I received from the President or the minutes dated the 30 July 2014.

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: It is on page 48.

**ADV PAUL JOSEPH PRETORIUS SC**: Page what?

10 **MR MXOLISI SANDILE OLIVER NXASANA**: 48.

**CHAIRPERSON**: 48.

**ADV PAUL JOSEPH PRETORIUS SC**: 48.

**CHAIRPERSON**: Yes.

**MR MXOLISI SANDILE OLIVER NXASANA**: And the last paragraph.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes but that is the notice of intention to suspend. Here we are looking at the terms of reference as opposed to the submissions.

20 **CHAIRPERSON**: No, no. It says the inquiry will examine your fitness to hold the office as National Director of Public Prosecutions having regard to whether – so it is exactly what we are looking for.

1. The criminal conviction which you possess for violent conduct.
2. Reported comments in the media are unbecoming of a National Director of Public Prosecutions divisive and have the effect of bringing the National Prosecuting Authority into disrepute.
3. The lack of disclosure of the facts and circumstances of

prosecutions which you faced are consonant with the conscientiousness and integrity of an incumbent to the office of NDPP.”

So the factual basis for the establishment of the inquiry.

**MR MXOLISI SANDILE OLIVER NXASANA**: Were these three.

**CHAIRPERSON**: Was the – it was these three grounds.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes Chair.

**CHAIRPERSON**: Ja okay alright.

**ADV PAUL JOSEPH PRETORIUS SC**: So if I might just clarify Chair.

10 In paragraph 60 and 61 what the – what Mr Nxasana is saying here is that the terms of reference published on the 9 February 2015 deal with the issues in paragraph 61 and in contrast to that the submissions on behalf of the President the Minister filed on Monday for May 2015 were different to the complaints in the terms of reference. So he is comparing two different things. And perhaps if we just look at paragraph 61.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**ADV PAUL JOSEPH PRETORIUS SC**: Because the letter to which we have referred was the letter inviting him to make representations in  
20 regard to suspension. And maybe that is a third difference but not the differences referred to here.

**CHAIRPERSON**: Yes but – well for me it is helpful insofar as it tells me what the President thought as at 30 July 2014.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes.

**CHAIRPERSON**: The inquiry would look into and on what grounds but

of course to the extent that the same issue is dealt with elsewhere we must look – look at other – other documents as well.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. So is it correct that the terms of reference in summary referred to two previous separate convictions on charges of assault referred to complaints of profession misconduct laid against you with the KwaZulu Natal Law Society. Referred to you having faced criminal charges for acts of violence. Referred to your arrest and detention on criminal charges albeit unspecified and referred to the media statements bringing the NDPP  
10 and NPA into disrepute, is that correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes and any other matter yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes that is important. And the terms of reference also referred to any other matter as might be relevant to the abovementioned issues and your fitness and propriety to hold office.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** So that is an open door for further allegations.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct.

**ADV PAUL JOSEPH PRETORIUS SC:** The complaints in paragraph 63 you summarise the complaints in the submission and you say that what was complained of in the submissions against you was firstly that before your appointment you had failed to disclose to the President or his advisors that you had two previous convictions for assault, correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** That secondly you had failed to take steps to expedite the finalisation of a complaint to the Law Society by Mr Jabulani Mtshali against you in 2008.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** A slightly different emphasis from what had been raised earlier.

**MR MXOLISI SANDILE OLIVER NXASANA:** From what – yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And thirdly that in your security  
10 clearance application you failed to disclose that during 1985 you had been acquitted on a charge of murder and that during October 2012 you had been arrested but not charged for inconsiderate driving.

**MR MXOLISI SANDILE OLIVER NXASANA:** But Chair I think most importantly what you have omitted to read that in that security clearance application questionnaire in answers to the following question.

**CHAIRPERSON:** **ADV JULIE ANN HOWARD:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** “Have you ever been  
20 convicted or are there any pending cases for a criminal or department case?”

**CHAIRPERSON:** Yes.

**MR MXOLISI SANDILE OLIVER NXASANA:** Departmental case. Then – because this is very important. This is what the ...

**CHAIRPERSON:** Ja it is important. You are right.

**MR MXOLISI SANDILE OLIVER NXASANA:** It is very important

because the security clearance is written in this fashion.

**CHAIRPERSON**: Hm.

**MR MXOLISI SANDILE OLIVER NXASANA**: And he says that I failed to disclose this. But if you look at it, it is not the – it is not...

**CHAIRPERSON**: It is you failed to disclose an acquittal.

**MR MXOLISI SANDILE OLIVER NXASANA**: An acquittal which is not – which is not what is asked.

**CHAIRPERSON**: Actually – actually you – you – if you – if you had said I was acquitted bla, bla, bla anybody reading that would have said what  
10 is this person talking about. The question was about conviction.

**MR MXOLISI SANDILE OLIVER NXASANA**: It is – that is it Chair.

**CHAIRPERSON**: Ja.

**ADV PAUL JOSEPH PRETORIUS SC**: And secondly the same logic applies to the fact that you were arrested but not charged for inconsiderate driving during October 2012.

**MR MXOLISI SANDILE OLIVER NXASANA**: Exactly. But I think in simple layman's term if you are arrested not charged you as good as you are not convicted you are not prosecuted.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes.

20 **MR MXOLISI SANDILE OLIVER NXASANA**: I mean the – there is no issue. I do not know why they [indistinct].

**CHAIRPERSON**: It would be different if the question was have you ever been arrested.

**MR MXOLISI SANDILE OLIVER NXASANA**: Arrested yes.

**CHAIRPERSON**: Ja.

**MR MXOLISI SANDILE OLIVER NXASANA:** It would have been different.

**ADV PAUL JOSEPH PRETORIUS SC:** And then you were also charged here with failing to disclose whether you had taken any steps to resolve your complaint against the two police officers who arrested you unlawfully during October 2012 for inconsiderate driving. I am not sure that that is covered by the security clearance question either?

**MR MXOLISI SANDILE OLIVER NXASANA:** No it is not.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Not at all.

**ADV PAUL JOSEPH PRETORIUS SC:** In any event there does appear to be a difference in detail and emphasis.

**MR MXOLISI SANDILE OLIVER NXASANA:** In detail and emphasis yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** You point out in paragraph 64 on page 16 that certain complaints did not fall within the terms of reference. That is an analysis that one could do in due course with reference to what you say here.

**MR MXOLISI SANDILE OLIVER NXASANA:** That is so Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** My concern Chair is in relation to the preparation of the submission for the Cassim Inquiry. In that submission Mr Nxasana sets out in some details the merits of the complaints against him. Now the merits of the complaint against him may be relevant to a different inquiry as to whether there was merit. In relying on these allegations as they were with the time lapse and for

that reason I have taken a slightly different view from the view I had earlier that one could just simply place them on record. So my view subject to what you say Chair is that we should deal with them albeit by highlighting. Otherwise we can take them as read if Mr Nxasana simply confirms but I do suspect that if we are to go through them in any detail in fact I more than suspect I am quite certain we will not finish by six.

**CHAIRPERSON**: On the terms of reference of the inquiry whereas – did you say were such that anything could be added as the inquiry was going on?

10 **MR MXOLISI SANDILE OLIVER NXASANA**: That is so.

**CHAIRPERSON**: That is how it – the terms of reference read?

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: The – any other matter?

**MR MXOLISI SANDILE OLIVER NXASANA**: Any other matter as might be relevant but to the abovementioned issues.

**CHAIRPERSON**: Ja.

**MR MXOLISI SANDILE OLIVER NXASANA**: To the issues that were mentioned.

**CHAIRPERSON**: We – which ...

20 **MR MXOLISI SANDILE OLIVER NXASANA**: The one two previous convictions, complaints of professional misconduct. My having faced criminal charges for acts of violence. My arrest and detention on criminal charges, media statements either issued by me or on my instruction that undermined or brought the office of the NDPP or the NPA into disrepute.

**CHAIRPERSON:** Well there may be allegations that were made which have never been substantiated by anybody in any forum. Allegations made – there may be allegations that were included in the submissions against Mr Nxasana which were never substantiated by anybody or by any evidence because the Cassim Inquiry did not proceed. And it may well be that and then of course there is the issue of the settlement agreement. The terms of the settlement agreement where the President as I recall the terms thereof specifically acknowledges that Mr Nxasana was suitable to hold as I recall any senior public service  
10 position. I think at some stage I thought it says specifically to hold the position of NDPP.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

**CHAIRPERSON:** But I think – I think that might be Mr Vusi Pikoli's settlement agreement because there was some similarity between the two settlement agreements. I think Mr Nxasana's one says any senior position in the public service. Mr Nxasana is that your recollection as well?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is my recollection  
Chair.

20 **CHAIRPERSON:** Ja.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair it is there on page – on paragraph 82.1.

**CHAIRPERSON:** Paragraph 82.1?

**MR MXOLISI SANDILE OLIVER NXASANA:** 82.1 that is the last paragraph on page 22. The last sentence.

**CHAIRPERSON:** The source of the dispute was effect...

**MR MXOLISI SANDILE OLIVER NXASANA:** The last sentence I said.  
The last from the bottom line.

“My fitness and proprietary was agreed to and recorded by the President and Minister in the settlement agreement and did not contend otherwise before court.”

**CHAIRPERSON:** Yes, but what I am saying is I seem to have - my understanding is that in your settlement agreement what was said was  
10 that they considered that you were fit to hold any senior position in the Public Service and maybe there can be an argument that any senior position in the Public Service would include the position of NDPP.

**ADV PAUL JOSEPH PRETORIUS SC:** May I read it Chair?

**CHAIRPERSON:** Yes please, *ja*.

**ADV PAUL JOSEPH PRETORIUS SC:** Although it is not before you. Mr Nxasana may recall the wording.

**CHAIRPERSON:** That is fine, *ja*.

**ADV PAUL JOSEPH PRETORIUS SC:** The wording that we have on record Mr Nxasana which you may recall and comment on now is the  
20 following:

“The President recognises that the NDPP is professionally competent, sufficiently experienced and conscientious and has the requisite integrity to hold a senior public position both in the public and private sector.”

Is that the recollection?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is - that is the recollection.

**ADV PAUL JOSEPH PRETORIUS SC:** Does that accord with your recollection?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes, yes Chair. That does.

**CHAIRPERSON:** Yes and the reference to conscientiousness and integrity is that taken from the ...

**MR MXOLISI SANDILE OLIVER NXASANA:** From ...

10 **CHAIRPERSON:** National Prosecuting Authority Act as requirements to be made by an NDPP?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes. It is - it is actually taken from Section 179 of the Constitution.

**CHAIRPERSON:** Of the Constitution?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay. I think that needs to

**MR MXOLISI SANDILE OLIVER NXASANA:** Read together with - I think - Section 22 of the NPA Act.

20 **CHAIRPERSON:** I think that - that may be relevant to the question you were raising Mr Pretorius because if at the time of settlement the President effectively acknowledged that Mr Nxasana was - had all that was required for him to be and continue to be the NDPP.

Then maybe whatever he may have said or may have been said in submissions on his behalf might be neither here nor there because it may reflect that at the time of the submissions he may have

been thinking in a certain way but at the time of the settlement he had a certain view and that view was that he meets the requirements.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** It just depends whether the terms which you have read capture the requirements in the Act for - for somebody who is NDPP.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair we can extract those now from the National Prosecuting Authority Act. What are their requirements for appointment? We can deal with that briefly. If Chair  
10 the assessment that you ultimately will make of all these facts is determined by the ultimate concession that there were indeed no grounds as conceded by the President in the settlement agreement that is one approach but it may be of interest to determine whether the grounds raised in the inquiry were at the outset spurious or ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Advised ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And that this was merely ...

**CHAIRPERSON:** Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** (Indistinct) (microphone off)

**CHAIRPERSON:** *Ja*, maybe it is better to deal - to be on the safe side. I do not know.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** I am - I am not ruling. I am ...

**ADV PAUL JOSEPH PRETORIUS SC:** Chair as long as I can lay it at

your door. No Chair I ...

**CHAIRPERSON:** Well the fact of the matter is why would the - why would the inquiry be terminated if there were grounds for it to continue and make a determination?

**ADV PAUL JOSEPH PRETORIUS SC:** Precisely.

**CHAIRPERSON:** Because - well of course I think the settlement agreement says the parties recognise that protracted litigation was not in the interest of anybody and all of that. So ...

**ADV PAUL JOSEPH PRETORIUS SC:** But is it a matter on principle  
10 that should be settled in that manner ...

**CHAIRPERSON:** You see ...

**ADV PAUL JOSEPH PRETORIUS SC:** I think that is something that ...

**CHAIRPERSON:** You see. *Ja* that maybe another question.

**ADV PAUL JOSEPH PRETORIUS SC:** That was considered by the Constitutional Court. Can you settle these matters ...

**CHAIRPERSON:** I - I ...

**ADV PAUL JOSEPH PRETORIUS SC:** Of principle?

**CHAIRPERSON:** I think it might be safer to let him deal to a limit - to  
20 some extent with the merits on a basis that if anybody does come and give evidence he might have to be brought back, give evidence because if - if anybody comes and gives details to the complaints.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes.

**CHAIRPERSON:** *Ja*.

**ADV PAUL JOSEPH PRETORIUS SC:** Indeed.

**CHAIRPERSON:** *Ja*.

**ADV PAUL JOSEPH PRETORIUS SC:** So if we may then go to Annexure MN5 that is at page 51.

**MR MXOLISI SANDILE OLIVER NXASANA:** I have it here. Yes I have it.

**ADV PAUL JOSEPH PRETORIUS SC:** And if we could go to page 57 paragraph 20.

**CHAIRPERSON:** I am sorry Mr Pretorius. I see at page 51 what may have caused you to refer to Mr Mdladla as Mlala. I see there is - there is a misplacing of the surname here. So probably that is where you got  
10 that from but it is Mdladla but I think this is where you got it from.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** If you could then go to page 57.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Here you deal with the merits of the issues raised either in the terms of reference or in the complaint as submitted to Advocate Cassim. Correct?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes I do.

**ADV PAUL JOSEPH PRETORIUS SC:** And briefly in relation to the two  
20 convictions for assault meaning that you are not fit and proper to be the NDPP. What was your submission briefly?

**CHAIRPERSON:** I think you said earlier on that you had disclosed the conviction for assault ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Assault *ja*.

**CHAIRPERSON:** When you applied for admission as an attorney to the

Law Society.

**MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair.

**CHAIRPERSON**: Yes. Do you want to deal with that?

**MR MXOLISI SANDILE OLIVER NXASANA**: That ...

**CHAIRPERSON**: You - you - I think you made that point ...

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: But I am - I do not think that is the complete point that you made.

**MR MXOLISI SANDILE OLIVER NXASANA**: Perhaps if that can be  
10 explained Chair.

**CHAIRPERSON**: Okay. Okay. The conviction of assault was the - was ...

**ADV PAUL JOSEPH PRETORIUS SC**: Deal with the allegations in paragraph 24.

**CHAIRPERSON**: I am sorry. Was the fact that ...

**ADV PAUL JOSEPH PRETORIUS SC**: Sorry.

**CHAIRPERSON**: You had been convicted of assault in 19 - is it 85?

**MR MXOLISI SANDILE OLIVER NXASANA**: 85.

**CHAIRPERSON**: 1985, was that a ground to render you unfit to hold  
20 office as NDPP?

**MR MXOLISI SANDILE OLIVER NXASANA**: I think Chair I - I made the submission that my - my view was that it - it was not a ground - a ground to render me unfit. I say that I was very young. I think I was about 17 or 18 years old when I was convicted of those assaults and the - the convictions occurred almost more than 30 years before my

appointment.

**ADV PAUL JOSEPH PRETORIUS SC:** When you were 17 and 18?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

**CHAIRPERSON:** And you disclosed this to - when you applied for - for admission as an attorney?

**MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair and I disclosed also - firstly I disclosed when I registered my articles.

**CHAIRPERSON:** Yes to the Law Society.

**MR MXOLISI SANDILE OLIVER NXASANA:** To the Law Society and I  
10 also disclosed it when I applied ...

**CHAIRPERSON:** *Ja.*

**MR MXOLISI SANDILE OLIVER NXASANA:** To be - to be admitted as an attorney.

**CHAIRPERSON:** Hm. Was it held to be something that rendered you unfit to be an attorney?

**MR MXOLISI SANDILE OLIVER NXASANA:** No Chair.

**CHAIRPERSON:** No?

**MR MXOLISI SANDILE OLIVER NXASANA:** No. I was ...

**CHAIRPERSON:** The High Court admitted you as an attorney ...

20 **MR MXOLISI SANDILE OLIVER NXASANA:** The High Court admitted ...

**CHAIRPERSON:** Even though it was aware you had a common assault ...

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Conviction that had happened some time before?

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

**CHAIRPERSON:** Okay.

**MR MXOLISI SANDILE OLIVER NXASANA:** Chair I think I must pause here and mention that the - the way these previous convictions were so old ...

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** I - I could not even remember the details of the ...

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** Previous convictions and  
10 when I applied to the Law Society - in fact how I also came to know that there were two convictions is when a lady at NPA. She was at the - I think she was at the risk and what-what unit. She then asked to conduct some vetting and then she came back to me and said I have two previous convictions of assault and in my mind I - I only knew one and then I was worried which was - which one was she talking about and it was - it was there on my record and it assisted me a lot because when I completed the security clearance certificate I mentioned it and I said although I cannot remember what - what it was about but because of the passage of - of age and yes those were - because I remember  
20 that I think the - the record says in - the one that I know very well was the conviction at Ngengoma where I - I was sentenced to pay I think a fine of R50,00 or 30 days imprisonment.

Then I paid a fine. I cannot remember whether it - it was 30 days, it was R30,00 or 50 but that is what I - I - the recollection that I have. Then the other one said I was convicted in Durban for assault

common in 1984 or 85. I cannot remember what - what was that about but it said I was cautioned and discharged.

**CHAIRPERSON:** Even today you do not remember?

**MR MXOLISI SANDILE OLIVER NXASANA:** I cannot remember.

**CHAIRPERSON:** Hm.

**MR MXOLISI SANDILE OLIVER NXASANA:** I cannot remember.

**CHAIRPERSON:** It looks like to me we cannot finish by six.

**ADV PAUL JOSEPH PRETORIUS SC:** There is a little way to go.

**CHAIRPERSON:** *Ja.* Must you go back to Durban this evening

10 Mr Nxasana?

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

**CHAIRPERSON:** Yes. *Ja* no. We - we cannot finish.

**ADV PAUL JOSEPH PRETORIUS SC:** In fairness to all parties.

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** Including those who wish to justify the inquiry.

**CHAIRPERSON:** Yes, yes. So I think that therefore we may as well adjourn now but also adjourning might be important from the point of view of affording Mr Nxasana time to get those documents that he may wish to use to refresh his memory on some of the things. You know do you have - do you remember whether you have got a full set of the papers that were involved in the CASAC and Corruption Watch matter?

20

**ADV PAUL JOSEPH PRETORIUS SC:** We can provide Chair.

**CHAIRPERSON:** *Ja,* because you might wish - some of the things we - we might be taking long about some of the things because you have to

try and remember.

**MR MXOLISI SANDILE OLIVER NXASANA**: And remember.

**CHAIRPERSON**: Whereas if you have had a chance to go through most of those - some of those things it will be easier. Well we - one, we can - we can adjourn but whatever is left I do not imagine we would need more than two hours?

**ADV PAUL JOSEPH PRETORIUS SC**: No Chair. Two hours would do it.

**CHAIRPERSON**: *Ja*. In which case we can arrange to continue on the  
10 day on which we continue we could start earlier than normal - earlier than 10 o' clock. If we start for example at nine then we would - hopefully we would be done by 11 and the witness for the day who would have started at 10 will just be delayed by one hour. That is one option.

Another option is that we - we could even do the days witness and then maybe start late after that witness. Maybe the morning one might be better.

**ADV PAUL JOSEPH PRETORIUS SC**: It sounds so, yes.

**CHAIRPERSON**: It sounds better. So - so but it - it should if possible  
20 not be too far from now. Mr Nxasana do - do you know when you might have that two hours in the morning - when next you might have that time? Of course coming from Durban it will not be two hours for you.

**MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

**CHAIRPERSON**: It - it would - it would mean half a day with the travelling.

**MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair. I - I will have to confer with my - I did not bring my diary with me.

**CHAIRPERSON:** Yes, okay. Alright. I think let us leave it on the basis that Mr Nxasana will - you will talk to each other.

**ADV PAUL JOSEPH PRETORIUS SC:** To a date to be arranged.

**CHAIRPERSON:** Yes, but ...

**ADV PAUL JOSEPH PRETORIUS SC:** Chair can I - may I just read for completion of today ...

**CHAIRPERSON:** *Ja.*

10 **ADV PAUL JOSEPH PRETORIUS SC:** Section 9 to which reference was made earlier of the NPA Act ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Regarding the qualifications for office?

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** Section 9.1 reads:

20 "Any person to be appointed as National Director, Deputy National Director or Director must a, possess legal qualifications that would entitle him or her to practice in all courts in the Republic and b, be a fit and proper person with due regard to his or her experience, conscientiousness and integrity to be entrusted with the responsibilities of the office concerned."

So there is a coincidence in language.

**CHAIRPERSON:** Yes, *ja*. *Ja*. No that is fine. Okay. I think we - we must adjourn and then another date should be arranged. I hope it will not be beyond next week if possible but it is subject to Mr Nxasana's practice as well and what he has in his diary but let us try and see whether by end of this week the date has been finalised. Okay. Mr Nxasana so we will adjourn on - on that understanding.

**MR MXOLISI SANDILE OLIVER NXASANA:** On that understanding, yes.

**CHAIRPERSON:** Yes, okay. Mr Pretorius we will adjourn then on that  
10 basis.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

**CHAIRPERSON:** Yes. Tomorrow we will be starting at half past eight and we will be resuming the evidence of Mr Thabethe, the Head of Department - of the Department of Agriculture in the Free State in regard to the Vrede Dairy matter. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 20 AUGUST 2019**

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**TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE  
CAPTURE  
HELD AT  
PARKTOWN, JOHANNESBURG**

DATE HELD : 2019-08-19

DAY: : 147

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