

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

22 MARCH 2021

DAY 365



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, ***in as far as it is audible***, the foregoing is a ***VERBATIM*** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

22 MARCH 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 22 MARCH 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

MS BROWN: Good morning Chair

CHAIRPERSON: Good morning Ms Brown.

MS BROWN: Good morning Sir.

CHAIRPERSON: Thank you. Good morning to your legal team, good morning to everybody. I must just once again
10 thank you Ms Brown for making yourself available on a public holiday. I must thank your legal team for their cooperation so that we could have this session on a public holiday. I must thank Mr Seleka and his team, the technicians, the commission's staff, everybody for making it possible for us to sit even on a public holiday. Thank you very much.

Okay Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Ms Brown the oath you took on Friday
20 will continue to apply today. Is that alright?

MS BROWN: Okay.

CHAIRPERSON: Okay alright.

MS BROWN: That is fine.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay Mr Seleka.

ADV SELEKA SC: Thank you Chair. Ms Brown we were – when we adjourned last time dealing with the composition of the sub-committees I will back to a particular aspect of it in due course but I wish to ask you this. You are aware that the Fundudzi Report – the Fundudzi has made an investigation into some of the emails exchanged between infoportal email address and Ms Kim Davids. You are aware of it?

10 **MS BROWN:** Yes I am aware of it.

ADV SELEKA SC: Yes. And they have produced a report that shows extensive exchange of emails between Ms Davids and infoportal in regard to CV's of persons that ultimately became appointed either to the board or including in this case Mr Richard Seleke who gets to be appointed at the DPE as a DG. I – I understand you have seen that report?

MS BROWN: Yes I have answered the questions and I also put in an affidavit on that matter.

20 **ADV SELEKA SC:** Yes. I have read your affidavit. I see that your response in regard to denying knowledge that Ms Davids was acting on – either on your instruction or with your knowledge in exchange in those emails.

MS BROWN: I – I said that in my affidavit yes.

ADV SELEKA SC: Yes. But I think what is not dealt with

in your affidavit is the very fact of her having communicated and received CV's from this email address of infoportal which is presumed to be the email address of Mr Salim Essa. What is your comment on that?

MS BROWN: My comment on any emails received by Ms Davids would have to go to the Legal and Governance Unit. So she would not set – she would not send the emails to me she will send it directly to the Legal and Governance Unit. And the Legal and Governance Unit will then sift
10 through those emails.

Now we have had many walk-ins and people phoning to say can we apply and all I have ever – well personally I said just contact number on the – the advert or contact my office.

ADV SELEKA SC: Are you saying to the Chairperson you would not have been aware that she was receiving CV's of would be board members from this email address infoportal?

MS BROWN: Yes.

20 **ADV SELEKA SC:** There is one email which one also finds in info – in the Fundudzi Report in which she writes – and this in regard to...

CHAIRPERSON: Do you want to tell me where to find that first?

ADV SELEKA SC: Yes Chair. That you will find Ms Brown

in Eskom Bundle 7 for hardcopies Chairperson is 7(b) on page 1140.

MS BROWN: Is that 1140?

ADV SELEKA SC: 1140 yes in Eskom Bundle 7. Are you there?

MS BROWN: Yes. Maybe we should contact the infoportal – ja I am here.

ADV SELEKA SC: Ja that will be under 14 – paragraph 14.9 with a heading Appointment of Giovanni Leonardi at
10 Eskom.

MS BROWN: Yes.

ADV SELEKA SC: So the report says:

“We determine that on 16 April 2015 Davids forwarded an email titled CV for DPE Data Base from kimdavids@dpe.gov.za to anc – they give the full email address. Attached to the email was Giovanni Leonardi’s CV. We further determine that on the same day 16 April 2016 Davids sent an email to
20 infoportal1@zoho.com stating FYI below. Send me please – send me please an answer for Ma’am to revert to this below. Much appreciated kind regards Kim Davids.”

MS BROWN: Hm.

ADV SELEKA SC: Then paragraph 14.9.3 says:

“We noted that infoportal1@zoho.com responded to Davids’ email by stating that will do please give me till noon. Davids responded to the email by stating okay thanks very much. Kim Davids.”

The report carries on.

“We determined that Giovanni Leonardi was appointed onto the Eskom board during Minister Brown’s tenure as DPE Minister.”

10 Then they refer to an exchange within the department and
14.9.6 says:

“In the email Davids indicated that as discussed with Minister Brown and her direction the following was the Eskom board nominations for cabinet memorandum.”

MS BROWN: And Miriam Cassiem and Leonardi Giovanne is included there.

ADV SELEKA SC: Yes that is correct. But what appears from the report is that the discussion with you which she
20 says she had in this email follows after the exchange of emails between her and infoportal in regard to the composition of in this case certain boards. SA Express, Denel and Eskom. The question is, did she come to you with a list of proposals for composition of these boards?

MS BROWN: There was a fellow – the Giovanni issue I

remember quite clearly. When she said how would you feel about having a foreign person on the board? So I said no well it is not excluded.

And I for all intents and purpose thought that CV was given to her by the Chair of Transnet and even though it was given to her by the Chair of Transnet it is had to go through the process of Legal and Governance.

And so in my mind her bringing me that board I do not remember Miriam Cassiem in that – in the way you
10 putting it as if Miriam Cassiem and Leonardi Giovanni were brought at the same time.

But I do remember that Leonardi Giovanni was an Electrical Engineering with International experience which – which I was very happy with. But I do not remember her bringing me a list of any – anybody. Because I do not really take a page from anyone.

You have got to bring me a decision memo then that is the only time I actually really consider it. You must – as I said to you before I – I firstly let me also just say I do not
20 know who infoportal is.

ADV SELEKA SC: Yes.

MS BROWN: When I – when I heard about infoportal and at some point it was linked to my former DG I went to him and I asked him is infoportal your address and he said no. I never considered that anybody else was having any

contact with infoportal or portal at the time.

And for – I cannot remember much about the Fundudzi Report because they asked me a number of questions and the answers I gave them to the questions were that I did not know which names and who – I mean because they – they mention particular names of particular incidents and I do not re – I do not have any knowledge of that.

ADV SELEKA SC: Yes. Could you please explain to the
10 Chairperson how would you have gathered that the CV was obtained from the Chairperson of Transnet – the CV of Mr Giovanni?

MS BROWN: Because that is the one CV she did bring to me and she told – Ms Davids told me that the Chairperson of Transnet her name escapes me now – Mabaso – Ms Mabaso gave her – gave her that email.

ADV SELEKA SC: I see but you would have seen from the Fundudzi Report that the findings are different.

MS BROWN: Well from the Fundudzi Report I saw post my
20 departure from the department I did not see the Fundudzi Report before that. In fact I did not – when I read through the report the fact that it was not a signed off report, the fact that it – the report made assumptions based on – a whole number of assumptions without asking me specifically about those because they had access to me.

They sent me a list of questions and I answered the list of questions and that was the first time that I saw infoportal within my – my ministry.

ADV SELEKA SC: Yes.

MS BROWN: It was the first time that I actually saw it.

ADV SELEKA SC: Hm. Yes. What I am – what I am only saying is – I am not suggesting that you would have seen it at the time but I am saying insofar as the aspect of where the CV of Mr Giovanni came from just that aspect you
10 would have seen from the Fundudzi Report that the finding is different. They make a finding that the CV came from infoportal.

MS BROWN: I did not know that.

ADV SELEKA SC: Yes.

MS BROWN: I – the Fundudzi Report was quite a long report and I must be very frank when I did not see a – a signature on the report I did not – I did not read the detail of the report I looked for my stuff and I responded to my stuff in your affidavit I put to you.

20 **ADV SELEKA SC:** Hm. The report goes further to say in regard to Mr Giovanni that there is no evidence that he was subjected to a shortlisting, screening and vetting process as required by the department What is your comment on that?

MS BROWN: Oh I – it is untrue. Unless the department

said that they did not feel that they should vet – no not vetting but in my mind I believe that everybody who goes through the process gets vetted because I get a decision memo that says the following people this has happened – you know they have been vetted and these are the people who will go through the process.

I have to say that the only ever time where somebody was not vetted before they were appointed was when I appointed the 2018 board. Prior to that the
10 decision memo did not bring me a list of people who were not vetted or they did not tell me that those people were not vetted.

And people were vetted to such an extent that there were really good candidates who had and I remember this one very well without remembering the person's name who had car fines – speeding fines outstanding and they could not get onto the board. So I am – I am – I do not believe that they were not vetted unless somebody says so.

ADV SELEKA SC: Well the Fundudzi Report says so.

20 **MS BROWN:** Well I do not know if I – look I think the Fundudzi Report is an interesting report. It makes a whole rank of assumptions without actually giving factual information about it. I am – I must be – I did not think I was reading the Fundudzi Report this morning because I would have prepared differently for it but just off the top of

my head it intended – the Fundudzi Report makes assumptions like the emails they say this email went to Kim Davids from this number and therefore the Minister was supposed to know that.

They make a lot of 00:17:58 of those comments. The assumption is that I checked Ms Davids' email every day and check who she gets emails from. I do not and I did not. I had no reason at that time to believe I should.

ADV SELEKA SC: Yes. Well putting aside ...

10 **CHAIRPERSON:** I am sorry Mr Seleka. Ms Brown you have said that you did not understand that you would be questioned on the Fundudzi Report today and if you knew you would have prepared.

Now I do not know what Mr Seleka has to say but if that is the position and if it did not fall within what was arranged as the issues that you would be questioned on from – from Friday then maybe what we would do it is say answer as far as you are able to but where you are not able to answer without having refreshed your memory then
20 we can take it from there. Mr Seleka.

MS BROWN: Okay

CHAIRPERSON: You would like to say something about what Ms Brown said?

ADV SELEKA SC: Yes Chair. I – these are issues arising from the questions that were sent to Ms Brown.

CHAIRPERSON: Ja.

ADV SELEKA SC: She has dealt with them in her affidavit in a particular way.

CHAIRPERSON: Yes.

ADV SELEKA SC: For instance like I – we pointed out and she says what she has denied in her affidavit is her knowledge of Ms Kim Davids communicating with her.

CHAIRPERSON: Ja.

ADV SELEKA SC: But she does not deal with the fact that
10 there is that communication.

CHAIRPERSON: Hm

ADV SELEKA SC: And it is only to the extent that I am trying to bring to her attention and hear what her comment is.

CHAIRPERSON: Does that mean that questions on the Fundudzi Report as far as you are concerned fall within the scope of what she was to be asked about from Friday?

ADV SELEKA SC: Well on the Eskom work stream Chair.

CHAIRPERSON: On the Eskom.

20 **ADV SELEKA SC:** In it – insofar as the composition of the Eskom board is concerned and the sub-committees.

CHAIRPERSON: Ja. Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Ms Brown Mr Seleka says he believes that insofar as the Fundudzi Report refers to the

composition of the Eskom board he believes that fell within the scope of what you were to deal with from Friday. Is that – is that your understanding as well?

MS BROWN: That is not – I do not mind answering the questions Chair.

CHAIRPERSON: Yes.

MS BROWN: Because I have put it in the affidavit.

CHAIRPERSON: Okay.

MS BROWN: The issue is that today in my mind.

10 **CHAIRPERSON:** Ja.

MS BROWN: We would probably end off somewhere with the suspension of the executives even though I think I have clarified the matter.

CHAIRPERSON: Yes. Ja.

MS BROWN: The removal of Tsotsi.

CHAIRPERSON: Ja.

MS BROWN: And the Baloyi. The secondment of Molefe and Anoj Singh.

CHAIRPERSON: Ja.

20 **MS BROWN:** And then being questioned on the affidavits.

CHAIRPERSON: Yes.

MS BROWN: Now in my mind the affidavit is the – the supplementary affidavit.

CHAIRPERSON: Ja.

MS BROWN: That I have to answer on.

CHAIRPERSON: Hm.

MS BROWN: And where issues arising from it. I do not mind answering the questions.

CHAIRPERSON: Yes.

MS BROWN: As long as Mr Seleka accepts my answer to the questions as well.

CHAIRPERSON: Well accepts the – except your answer is another thing but I think the – what we will do is you – you will answer as much as possible and to the best of your
10 ability depending on when we finish and depending whether – how far we have gone on this issue we might see what can be done because.

MS BROWN: Perfect.

CHAIRPERSON: It would be good if we could use today's time as much as possible.

MS BROWN: Yes.

CHAIRPERSON: But let us see how it goes. Okay alright. Mr Seleka.

ADV SELEKA SC: Yes. Thank – thank you Chair. What –
20 you – Ms Davids what the Fundudzi Reports of Investigation Report shows and this is really what one seeks to bring to your attention is that apparent from the emails exchanged with Ms Kim Davids it would appear that an outside third party outside of government, outside of SOE's had a hand in – in influencing who gets to be

appointed on committees of SOE's. Your comment on that?

MS BROWN: You mean – you mean on board or do you mean on committees?

ADV SELEKA SC: On – on both the boards and the committees because if you tie it – if you tie this report with Mr Tsotsi's version of and I am putting that to you not because I am saying that is what happened but I am just saying Mr Tsotsi's version of Salim Essa's sending him a list so you have his version and you have what you see
10 here in the Fundudzi Report of emails exchanged between infoportal and Ms Kim Davids the picture emerges that an outside person is influencing decision making of who sits on the boards and who sits on sub-committees. Your comment?

MS BROWN: My – as I told you before unless proven differently.

ADV SELEKA SC: Hm.

MS BROWN: By yourself Mr Seleka – Advocate Seleka unless proven differently my recollection of what happens
20 in the appointment of boards is very simple.

Now for some odd reason somebody said that they had a data base and – and I am – I am taking you through so that I can answer your questions.

They had a data base but I insisted that the data base must be opened. Now I would only know that the

data base can be reopened if I knew that that was something that was viably possible.

So the data base is – rarely gets opened because I try to work it why you were asking the question you were asking me yesterday or the day before.

And so whatever CV even if it comes from the President that CV still has to go through to the Legal and Governance Unit. The Legal and Governance Unit looks at it. It then has a separate body – a separate company
10 vetting all of the candidates and the list of people who eventually come to me are all part of the list.

ADV SELEKA SC: Yes.

MS BROWN: And they then become part of the list. So it does not matter who sends the email or sends the CV or sends the name the issue is it has to go through the Legal and Governance Unit.

Not once did the Legal and Governance Unit tell me that they did not vet anyone. It was one day in 2018 that I phoned the Legal and Governance Unit person Ms Ruthman
20 and I said to her we are adding these three names because that came from another meeting with the President and Deputy President.

That was the only time ever I processed the board without it being vetted before by the – by the Legal and Governance Unit. So in my mind the Legal and

Governance Unit has almost the final say on it.

ADV SELEKA SC: Just – just bear in mind that the commission is investigating so these questions are meant to help us determine where the truth lies. Ja.

MS BROWN: Yes.

ADV SELEKA SC: Insofar as Ms Davids' would have said to you the CV came from the Chairperson of Transnet can you recall who was the Chairperson of Transnet at the time?

10 **MS BROWN:** I said Ms Mabaso.

ADV SELEKA SC: Mabaso. Did you confirm with her that she sent that CV?

MS BROWN: No.

ADV SELEKA SC: No.

MS BROWN: I did not at all because Chair Mr – Advocate Seleka.

ADV SELEKA SC: Yes.

MS BROWN: The point is those CV's had to go through a process it did not matter who the people were. The still
20 had to go through the Legal and Governance Unit process.

ADV SELEKA SC: Okay.

MS BROWN: And this process took a long time that is what is – what I – nobody – nobody in my four years as a Minister came and told me that they were some – what you telling me today that Giovanni Leonardi – Leonardi

Giovanni was not vetted or did not go through the process.

ADV SELEKA SC: Let us move on.

CHAIRPERSON: So – so as I understand the position Ms Brown what you are saying is you gave instructions that the pool or data base be opened up so that more people could have the opportunity of being considered for appointments to various boards, is that correct?

MS BROWN: Yes.

CHAIRPERSON: Yes. And the process was – or the pool
10 was then opened up and once that had happened anybody and everybody could send his or her CV or someone else's CV to the department for consideration to be included in some or other board. Is that correct?

MS BROWN: That is correct.

CHAIRPERSON: And our evidence is that it was the responsibility of the Legal and Governance Unit within the department to vet everyone whose name or CV was to be send to you to ensure that by the time such a person's name was send to you to consider to a point, they would
20 have been vetted. Is that right?

MS BROWN: I am not sure if everybody who comes through the process... Look, Chair, I am not meaning – I am not meaning to demean any profession but people who are hairdressers also applied.

CHAIRPERSON: H'm.

MS BROWN: So very often they were not... This is my assumption ...[intervenes]

CHAIRPERSON: They did not go beyond a certain stage?

MS BROWN: Do not... They go beyond what criteria has been set up ...[intervenes]

CHAIRPERSON: H'm.

MS BROWN: by... I signed off on the criteria.

CHAIRPERSON: H'm.

MS BROWN: So I signed off on the criteria. There are
10 thousands and thousands of people who come. If my
memory serves me well, too, Chair. I also remember them
saying that the database is old and stale. That it is people
– and that other ministers before me have also advertised.

So the advertising, I also got to know about in
the department but that just on the side. So the people
who had been vetted, I think and I really do think they
would only be the people who actually met the criteria for
any of the six or that were in my ...[intervenes]

CHAIRPERSON: Your portfolio.

20 **MS BROWN:** Yes, in my portfolio.

CHAIRPERSON: H'm. Yes. But I think what you are
saying is in line with what I was saying.

MS BROWN: Yes.

CHAIRPERSON: Namely, on your understanding that the
Legal and Governance Unit of the department had a duty to

make sure that nobody – nobody's name was sent to you who had not been vetted.

MS BROWN: Yes, that is true.

CHAIRPERSON: Ja. There may be people whose CV's they received that they might not have vetted. You might not have issues with that as long as they do not send them to you without vetting them.

MS BROWN: Yes.

CHAIRPERSON: So that is the point you are – that is part
10 of the point you are making. And if you appointed anybody who had not been vetted, you are saying that you would have assumed that they had been vetted because that is what the Legal and Governance Unit in your department was supposed to have done.

And if they did not vet somebody for any particular reason, you would have expected them to bring that to your attention before you could appoint that person. Is that right?

MS BROWN: Absolutely.

20 **CHAIRPERSON**: H'm.

MS BROWN: Absolutely, Chair.

CHAIRPERSON: H'm. Okay. Mr Seleka.

ADV SELEKA SC: Thank you, Chair. And then, Ms Davids(sic) on – we see that it is not only in respect of the board and sub-committees that infoportal features but

also in respect of the appointment of Mr Richard Seleke. And that, just for reference purposes, is on page 1143 of Bundle 7.

MS BROWN: Is that the bundle we are still on?

ADV SELEKA SC: That is correct. Page 1143, you will see there is paragraph 14.12 which is appointment of board members at Alexkor and below that big paragraph, you have appointment of Richard Seleke at DPE.

MS BROWN: It is actually quite totally, I have to say to
10 you that – because I – if you would like me to, I can tell you how Richard Seleke was appointed.

ADV SELEKA SC: Yes, please, we want you to tell the Chairperson.

MS BROWN: So Fundu – that Fundudzi report say that I – and I think that – I cannot remember but they say I postponed two meetings until Richard Seleke's CV arrives.

ADV SELEKA SC: Okay.

MS BROWN: And I mean ...[intervenes]

ADV SELEKA SC: Can I assist you there?

20 **MS BROWN**: You can correct me saying the wrong – because I have not read it for a while.

ADV SELEKA SC: Yes. It is about the advert. The position of DG in the DPE was advertised. It was for the first time around. The advert did not – or the appointment was not made and it was said that there was non-

compliance with the Department of Public Services' guidelines or requirements. Ms Makholo testified about this as well.

MS BROWN: Let me tell you what happened ...[intervenes]

ADV SELEKA SC: Yes.

MS BROWN: ...besides who was there.

ADV SELEKA SC: H'm?

MS BROWN: There was a meeting on a Friday, late
10 afternoon, and the composition of the people who make the appointment, they are two Ministers, your Deputy Minister, a DG and the full complement of the HR Department. On that Friday, the Ministers who were supposed to come, did not attend. So I postponed the meeting and it was actually only one meeting that I postponed. They say I postponed two meetings until the third meeting.

My preferred choice as DG was the person who was acting DG. He worked very closely with me. He was, I thought, was very close to understanding the issues
20 around state-owned companies in the way that I understood. So she was my preferred choice.

However, she fell out of the first advert that was placed because she did not meet all the criteria. And if my memory serves me well, then the criteria that she did not meet was that she still had to do a module or two modules.

I do not know how many modules but she still had to do a module.

And I remember still asking her: Can you not get to do that module before the appointment? And I can tell you the reason why I felt so strongly about her was because she understood the portfolio that we were in. She was there for a very a long time.

Then I re-advertised and there were two people who got shortlisted and I did not know that Seleke's CV
10 came through that email address. I still do not know that.

ADV SELEKA SC: H'm.

MS BROWN: So I do not know whose email address that it. You must remember, I said earlier, that I asked him when he became my DG: Were you – is that your email address? And he said no. So I got the then Minister Oliphant, Mildred Oliphant and he is still a Minister now, Thulas Nxesi.

And it was some – I cannot remember who the DG was and I cannot remember if my Deputy Minister was
20 present. And we had two applicants. We had many applicants for the job but there were no natural fit or, even not natural fit, even close enough fit for us to appoint a DG for the department.

And it had largely to do with things, like, no understanding of the Public Service, no understanding of

state-owned companies, not an economic – a developmental economist. It was those kinds of areas. Even a lawyer, I think, would have helped but we did not get people like that to apply and then the advert went out for a second time and then two people were...

At this time, Ms Makholo actually was to her nomination and we made a decision – we then met as that group of Ministers and we made the decision for Richard Seleke. So that is my recollection of the whole event. And
10 it was to do with an advert that went out and a response to the advert. That is how I understood it.

ADV SELEKA SC: Yes. So ...[intervenes]

CHAIRPERSON: Was the... I am sorry, Mr Seleka.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Was the – was one of the requirements in the first advert, maybe also in the second advert, in terms of academic qualifications that the candidates needed to have a senior degree or a masters? In other words, a junior degree not enough or what was the
20 position? If you can recall ...[intervenes]

MS BROWN: I cannot actually remember Chair but I think that you had to have at least a probably a ...[intervenes]

CHAIRPERSON: Postgraduate?

MS BROWN: A post degree.

CHAIRPERSON: Ja. Ja, I think it ...[intervenes]

MS BROWN: You know, I think – it was quite – it is quite a high-end job and so you had to have a post ...[intervenes]

CHAIRPERSON: [Indistinct]

MS BROWN: ...maybe not ...[intervenes]

CHAIRPERSON: I think Mr Seleka has got ...[intervenes]

MS BROWN: ...a speculation – speculating on what I think.

CHAIRPERSON: No, no ...[intervenes]

10 **MS BROWN:** This is just what I think would be.
[Parties inventing each other – unclear.]

CHAIRPERSON: No, I think Mr Seleka has got the relevant document. What were the requirements?

ADV SELEKA SC: That is correct Chair. This advert is of 13 – the closing date is 13 February 2015.

20 :The requirements for the job is an appropriate postgraduate qualification, at least ten years of experience in relevant senior management positions preferable in the Public Sector, an appropriate postgraduate qualification...”

CHAIRPERSON: H’m.

ADV SELEKA SC: Then there is the second one. If I may, Chair?

CHAIRPERSON: [No audible reply]

ADV SELEKA SC: The one – the second one, the closing

date is the 23rd of September 2015.

“The requirements are a relevant degree, an appropriate postgraduate qualification will be an added advantage plus minimum ten years’ experience in relevant senior management positions preferable in the Public Sector...”

That is the distinction between the two.

CHAIRPERSON: So is my understanding correct that in terms of the first advert, a postgraduate degree was an
10 essential requirement in regard to the second advert, a postgraduate degree was a recommendation?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: It was no longer an essential requirement?

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: H’m.

ADV SELEKA SC: It would have been an added advantage.

CHAIRPERSON: Yes. Does that accord with your
20 recollection Ms Brown?

MS BROWN: It does not but it could have mean. I mean, I do not see why it should change.

CHAIRPERSON: H’m.

MS BROWN: But it could be that we had so few applicants who actually – and I remember I have had

actually in DG and the Public Services Commissioner was on my back on this one, that after a year, I mean, she should be appointed but then she does not have the requisite qualification for it. So in some respects, and I know that the candidates may – the person involved actually spoke quite much about it.

And so, I did not realise that she was hurt to such an extent by the fact that she did not make it. But let me get back to the qualifications. I do not actually have a
10 recollection of that but I am kind of thinking that it might be that we were not able to have – we are not getting the requisite people to apply.

So a post grade would be of benefit – would be beneficial and but the, you know, a degree is what we are expecting from you. So that might be so but I cannot – I really cannot – I cannot say that I can stand on my head here and tell you that this is my – this is just my view.

CHAIRPERSON: No, no. That is fine. It is just that if the second advert relaxed the academic qualifications a bit
20 compared to the first one and therefore no longer made a postgraduate degree an essential requirement. It would mean that even if your preferred candidate did not have the – not completed her postgraduate degree, she would be eligible to be considered.

And of course, I would imagine that if somebody

else had a postgraduate degree and which she did not have, maybe she was left with only one module but taken together with her experience in the department and her acting streak of about a year, I think you said, she might well have been considered to be, you know, the most suitable candidate despite not having a postgraduate degree.

Now I mention that, being alive to the fact that you said she withdrew her application. So I am alive to
10 that. But I am just saying, it is interesting that, first, a postgraduate degree was required and then in the second advert she withdrew even though the requirements had been relaxed.

But I do not know now whether she withdrew before the second advert went out or after but she was no longer a candidate. But she would have been eligible to be considered, at least. If ...[intervenes]

MS BROWN: No, I do not think so Chair.

CHAIRPERSON: Ja.

20 **MS BROWN**: I think, if my memory serves me well and you know, I would really like – I am saying my memory must serve me well, but I think she was also in the Public Service for eight years and not ten. I think if I faltered in anything is that I wrote – I – if I were to have a hand in writing that second advert, then – because the Seleke has

a post grade.

CHAIRPERSON: Yes.

MS BROWN: But if I had a hand in – I could have said: But why do we not relax? We now have an expert. The only problem with this expert is that she does not meet criteria. And that the criteria, actually, is more a barrier to us having a good candidate than it is a barrier to us having a poor candidate. She is a good candidate and I might have – I do not know. I do like interfering in the writing of
10 that ...[intervenes]

CHAIRPERSON: Second advert.

MS BROWN: ...advert but I – I must tell you, honest, she was my preferred candidate. I still think she is one of the best people who understands state-owned companies. And so I still think that but I think she did not qualify for it. And then the other fellow. Within that meeting that we were in with the two Ministers, the DG and so on, Seleke actually performed much better than the other candidate and a number of issues but, I mean, just on that alone.

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

ADV SELEKA SC: Thank you, Chair. Ms Brown, when we go back to this report where you talk about the CV of Mr Seleke being exchanged with Ms Kim Davids. Paragraph 17.48 – well, I can start at 17.47 which reads:

“We determined that on 21 June 2015,

blueberries.sok [a Gmail] sent an email sent an email to infoportal, titled: Richard CV, stating the following:

Evening, sir. Please find attached my CV and supporting documents. Regards Richard...”

And 17.48 says:

“We determined that on the same date, 21 June 2015, infoportal1@zoho.com forwarded Richard Seleke’s CV to Davids on email address anckimwc@gmail stating:

10

Hi, Madam. As per sir, this is the candidate for DG. Is it possible to for him to meet Madam on Tuesday?...”

Now this is in June 2015. The closing date for the advert has long closed in February 2015. You are yet to advertise in September 2015, the CV is sent in the middle of the year and there is a request. Well, an indication, this is the candidate for DG and a request to meet with Madam on Tuesday. Could the meeting with Madam be a reference to yourself?

20

MS BROWN: I do not know. I received a request from Mr Seleke himself and it asked if he could have a word – if he could speak to me about it and I took off a long, you know... I do not know if an official, an advisor to have a conversation with me. I did not get that – all that stuff that

you are speaking about now.

ADV SELEKA SC: Yes.

MS BROWN: I received a letter from him. Well, not a letter. Yes, a letter, actually from him, asking to meet with me.

ADV SELEKA SC: H'm.

MS BROWN: I took it all – it took a long before I did because there were lots and lots of requests like that and other requests but I did eventually meet him. And it was
10 out of my head until the issue came to me having to appoint candidates for – or having to approve candidates for the appointment of DG.

ADV SELEKA SC: H'm. Can you recall, when was the meeting?

MS BROWN: Oh, I ...[intervenes]

ADV SELEKA SC: I mean, which ...[intervenes]

MS BROWN: I do not ...[intervenes]

ADV SELEKA SC: Which year? Which time ...[intervenes]

MS BROWN: I cannot tell you. It is 2015.

20 **ADV SELEKA SC:** H'm.

MS BROWN: I am sure it is in 2015 somewhere. That is at least six years ago.

CHAIRPERSON: You ...[intervenes]

MS BROWN: And it was a very short meeting

CHAIRPERSON: H'm.

MS BROWN: I met him, had a coffee, said to him please, put in your CV. You know, you sound fantastic. With any – what I will say to anybody else as well.

CHAIRPERSON: H'm.

MS BROWN: Put in your CV and then I had forgotten about it until I saw it in the questions of Fundudzi.

CHAIRPERSON: Was – do you recall whether the reason why he wanted to meet with you was to indicate that he was considering making himself available for consideration
10 as a candidate for DG?

MS BROWN: Yes, I think that could be the reason.

CHAIRPERSON: Yes.

MS BROWN: I think that is the logical – for me that would be a logical explanation.

CHAIRPERSON: Yes.

MS BROWN: I might not and he might not have a conversation with me to say: Look, I really want to be the DG of this and that and so on. In a short while after I have met – and I think this surprise most people. After I met
20 somebody, I sort of assess what it is that they want to talk about because often say: I would like to speak to you about the economy. Or: I would like to speak to you about my relationship with Eskom. Or something.

CHAIRPERSON: H'm.

MS BROWN: But some of the people I meet and I call

them into the office. Numerous meetings happened in my office.

CHAIRPERSON: H'm.

MS BROWN: But I remember that he – he came downstairs and could not get into the building for some odd reason and I said just meet me at the coffee shop. I am walking down.

CHAIRPERSON: H'm.

MS BROWN: And I did that.

10 **CHAIRPERSON:** H'm.

MS BROWN: I think that is what I did because it is a long time ago.

CHAIRPERSON: H'm, h'm.

MS BROWN: But I did not go alone.

CHAIRPERSON: H'm.

MS BROWN: I, actually, went with – I think with an advisor because it was in Cape Town. So my officials at that time were not necessarily in Cape Town with me. So I went with an advisor.

20 **CHAIRPERSON:** Well, I guess, you are probably right that he must have wanted to talk to you about the possibility of him making himself available because you say you told him to put in his application or CV. So that seems to tie in with a discussion about ...[intervenes]

MS BROWN: Yes.

CHAIRPERSON: ...the position. Would you actually accept that?

MS BROWN: But not the central part of the discussion. The central part of the discussion, I – and that is why I am saying to you that it probably led to that.

CHAIRPERSON: H'm.

MS BROWN: And I say: Put your application in.

CHAIRPERSON: H'm. So you ...[intervenes]

MS BROWN: But I agree... Chair, I am agreeing with you.

10 **CHAIRPERSON:** Yes, but is the point you are making that the purpose of the meeting might have been something else and the issue of him making himself available for the position of DG might have come in at the end of the discussion ...[intervenes]

MS BROWN: Yes. Yes, it was something like that. It was not as straightforward as: I would like to be the new DG.

CHAIRPERSON: Ja. So. But you cannot remember what the main point was that he wanted to canvas with you?

MS BROWN: No, I do remember that I liked the idea that
20 he was a development... I do remember this very specifically.

CHAIRPERSON: Yes.

MS BROWN: That he was a developmental expert in the area of Land and Agriculture and so forth and that he managed big companies. Not big companies, big

parastatals. So I remember that part of it and talking a bit about the economy and so on but, you know, that could have also been in the conversation that we actually had.

CHAIRPERSON: Ja, ja.

MS BROWN: I do not know, Chair, it was a long time ago.

CHAIRPERSON: Ja, no, no, no. And is your recollection that that meeting that you had with him took place at some stage after the first advert had gone out and before the closing date in terms of the second advert?

10 **MS BROWN:** I think it makes sense.

CHAIRPERSON: Yes.

MS BROWN: I cannot tell you that that is my actual answer but it makes sense that it could have been like that. It was not for the first adverts.

CHAIRPERSON: Yes, okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you. Just to – Ms Brown, just to finish off on this, has it surprised you to see the level to which emails were being exchanged between Infoportal and Ms Kim Davids?

20 **MS BROWN:** I am always very unsure why you want to ask whether I – the emotional part of the question but I was very surprised.

ADV SELEKA SC: Yes. Okay. I would like to deal with, Chair, if I may ...[intervenes]

CHAIRPERSON: But I am sorry, Ms Brown – well if what

the Fundudzi report says is correct in terms of lot of communications between Ms Davids and this Infoportal email address, if the emails that they say were exchanged between the Inforportal address and Ms Davids and the content of at least some of those emails, if that is true, it seems to be that it could be concerning, it should be concerning at least in regard to some of the emails because without going to any specific one some of the emails seem to involve an outside person quite a lot so I
10 am wondering whether that is part of what, you know, surprises you or it is something else?

MS BROWN: No, it does surprise me, Chair.

CHAIRPERSON: As you see I am saying if all of that is true, you know?

MS BROWN: That is part of the dilemma I have, Chair, part of dilemma I have and, you know, at one state when the Fundudzi report came out – or not – I never saw it until the Commission gave it to me. The Department of Public Enterprises Minister set up this investigation when he was
20 Finance Minister into the Department of Public Enterprises. So it did not bother me at all that there was this investigation and then there were all these questions and I sat down and the late Simmy Lebala was my advocate and he said to me do you want help with it? I said no, I can answer these questions myself and I said – in about twenty

minutes I sent him all the answers and then he said look, I have got to put it into a particular format and so on.

Around the time when I received it from the Commission as a fixed report, I actually wanted to take the matter on review, now because – mostly because it makes so many assumptions based on particular wording or a particular this or that and it kind of also used the newspaper stuff as ways of getting it. So I was – I must be honest with you, my lawyers then said to me we will hold
 10 back the Commission because then they still have to rule on that and I did not think – I actually did not think too much about it, I thought well, the Commissioner will see, you will see that it has not been a signed document and so on and then they will make a decision about how, how it will be dealt with.

So, in some respects, there is a part of me that wish I did take it on review. At other respects, yes of course I am surprised, I am shocked about some things and so on, if it is true, but that is just the point I wanted to
 20 make about the Fundudzi report because the Fundudzi report goes further to say that I gave some land to somebody who – and then I sent a CV of somebody's to UWC. They go further to say all those kind of things and I, you know, frankly, did I commit fraud, corruption in it? No. I think it is just to nothing else but to put – did I give land

– did I give Transnet land to anyone? No, I did not.

So I feel like that about it but I am in your hands with it and I am happy to answer the questions that you ask and I think it is important to get to the bottom of all these things.

Yes, no, no, no, that is fine, as you hear I said if it is true because some of the things we – the Commission needs to look into much more deeper to see what the facts are then take it from there. Okay.

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

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you. Ms Brown, I want to deal with a slightly different aspect. The executives that were suspended, let us look at their position. Mr Matona had just been appointed effective 1 October 2015. He was in that position for about five months before his suspension on 11 March – sorry, appointed 2014, I beg your pardon, 1 October 2014, about eleven months into that position he gets suspended on 11 March 2015.

20 **CHAIRPERSON:** You did not say about eleven months into his position.

ADV SELEKA SC: About five months into his position.

CHAIRPERSON: Five months, ja.

ADV SELEKA SC: I am looking at my notes, seeing the 11 March, Chairperson, sorry. Okay, so 1 October 2014 to 11

March 2015 he gets suspended. On the day of his suspension in the morning prior to you joining the board, Ms Brown, he was busy presenting his turnaround strategy which he reports to the board that he had shared with the Deputy President beforehand. Why was he ...[intervenes]

MS BROWN: Where are you on? Sorry, Advocate Seleka, I do not know where you are now. We were just on one thing and you have moved to something else, can you send me to the page you are on?

10 **CHAIRPERSON:** Ja, I think you need to ...[intervenes]

MS BROWN: Or are we just going to jump around?

CHAIRPERSON: You need to tell us whether you are still on the Fundudzi report or we can take that away.

MS BROWN: Because I would like to go for – Chair, I would like a two minute break.

CHAIRPERSON: Oh, yes, no, no, no. Shall we make it ...[intervenes]

MS BROWN: Just a two minute break quickly. I had too much water.

20 **CHAIRPERSON:** Okay, no, no, let us make more than that, let us make it ten minutes and then we will come back.

MS BROWN: Oh, okay.

CHAIRPERSON: Ja, okay.

MS BROWN: Thank you.

CHAIRPERSON: Let us take an adjournment.

MS BROWN: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue, but maybe I should just mention something that I think everybody should know about today in case it has not been communicated. My expectation for today is that we should
10 be able to finish with Ms Brown's evidence before lunch but at the latest by lunchtime. I thought I must just mention that so that everybody is aware at least of what my estimation is. Mr Seleka, what is your own estimation?

ADV SELEKA SC: I have the same idea in mind, Chairperson, that we should be finished before lunchtime.

CHAIRPERSON: Ja, okay alright. Okay, let us continue then.

ADV SELEKA SC: Thank you. Thank you, Chair. Ms Brown, I did indicate I want to deal with something slightly
20 different. Please then turn to Eskom bundle 7, Chair.

CHAIRPERSON: Yes.

ADV SELEKA SC: Page 512.

MS BROWN: Is that on mine as well?

ADV SELEKA SC: Yes, it is.

CHAIRPERSON: What is it, that must be A? You said

there is A and B?

ADV SELEKA SC: For us it is (A), Chair.

CHAIRPERSON: This one can go away or you will still come back to it?

ADV SELEKA SC: It can be put away.

CHAIRPERSON: Okay. Good day, Ms Brown.

MS BROWN: Good day, Advocate Seleka.

ADV SELEKA SC: Are you there?

MS BROWN: I am.

10 **ADV SELEKA SC:** Yes.

MS BROWN: I am trying to sit so that I can be – my family is telling me I am not sitting in the middle and so on and my hair is not good and so on, but so be it. Okay, am I right now?

CHAIRPERSON: Ja, well, I do not see anything wrong with your hair.

MS BROWN: But you do not have, Chair, so you do not know the problems we have with hair. Sorry.

CHAIRPERSON: Yes, Mr Seleka?

20 **ADV SELEKA SC:** I would like us to look at the individual positions of the executives prior to them – or at the time that they are suspended. You will see from paragraph 15 on page 512, this is the affidavit of Mr Dan Marokane. He writes about himself, he explains that he became appointed in the position of DG Group Capital and the build

programme with effect from 1 November 2014. I will start with that first.

MS BROWN: And the build programme?

ADV SELEKA SC: Yes. And he goes on to talk about what he was able to achieve after being appointed permanently on this position. I see you are smiling, Ms Brown. He writes in paragraph 16, he says:

“Within a period of a month...”

Well, let me read his paragraph 15.

10 “I would remind you that I was appointed to the role
of Group Executive Group Capital from 1 November
2014 after holding the Acting position for the period
of a year. I was asked to act in that position after
the departure of the then responsible executive,
Paul O’Flaherty in August 2013 which followed the
announcement that the target date of December
2013 for bringing the first unit of Medupi power
station online was not going to be met due to slow
project execution. Within a period of a month I
20 reverted to the board committee that oversees mega
projects and clearly articulated three areas that
needed to be resolved.”

Please go the next page, page 513. He will talk about the solutions that he has introduced and put in place certain measures in paragraph 18, 19, 20 and 21 and then in

paragraph 22 he says:

“All of the above elements were identified as crucial by a number of independent reviews conducted by external parties which reviews were done on behalf of the board. During my tenure as Group Capital executive I created meaningful and tangible progress in the execution of various projects which saw in particular the delivery of the first unit of Medupi, achieved one week prior my suspension.”

10 And that ...[intervenes]

MS BROWN: Can I ask you, Advocate, are you saying that Medupi – I am just trying to find it, that Medupi unit 1 came on line in his period or you are saying that it came on line after his period?

ADV SELEKA SC: In his period, he said he brought it – he brought it on line.

MS BROWN: Oh.

ADV SELEKA SC: One week prior to his suspension.

20 **MS BROWN:** Okay, so that – he brought it online on the 7th.

ADV SELEKA SC: Well, one week, he does not give a date, prior to his suspension but this, this was reported or recorded in the minutes of 11 March 2015 just before you arrived and the board says the minister would like to be invited to such events such as this because it was an

important event and on that day a decision was made to have him suspended and he had been there permanently appointed for about four months. Did you know that, Ms Brown?

MS BROWN: Well, the only thing I do know, Sir, is that I went to what is called the synchronisation of the Medupi Unit 1 about – I think it was in 2016 and synchronisation does not mean that you get megawatts out of it yet, synchronisation only means that you are starting to pump it
 10 up so that in about six months time it will become a fully functioning unit and I am doing something that seems quite academic because in essence I did not make the decision to suspend four executives.

I attended what I call an informal meeting and I told him what my problems were and let me tell you, Sir, that Medupi and Kusile, they were – the start of their build programme was 2007 with cost overruns that now is now creeping up to R100 billion, nothing to do with Mr Dan Marokane but we were running behind time, we were –
 20 Eskom was spending fortunes on it. So they had both cost overruns as well as build overruns. So nothing was coming on line.

So we did not have 4 800 megawatts to add to – I cannot remember the words anymore, but to add to Eskom's disposable electricity. I do not know, that was my

problem. My problem was in fact that the build programme was way too late, it was costing way too much. It was over R100 billion already and since 2009 it is still not where it is supposed to be. It is not even being synchronised yet.

ADV SELEKA SC: Right, yes.

MS BROWN: And I am saying that it is an issue - comment that I making to you but that area was an area that – it did not matter who the person was, the area was an area that I felt could have curtailed our load sheddings
10 if only we had that plant online already.

ADV SELEKA SC: Yes, the statement you have made is the very point of my question to you because he makes that statement in the next paragraph that the problems that you are highlighting and referring to had nothing to do with him. Paragraph 23 he says:

“It is for *inter alia* the above reasons that I had of the opinion that I will valuable insight in assisting the inquiry to establish and identify where Eskom is with regard to various project delays and cost
20 overruns. After all, I was specifically engaged to resolve these problems which were pre-existing and pre-dated my appointment and were obviously not of my making.”

And that is exactly the point you are making, that the problems had nothing to do with him, he has been there for

about four months and the question is, why is he targeted for suspension?

MS BROWN: But I told you before, Advocate Seleka, I wanted the inquiry because that is exactly the question that I wanted answered, I mean, the build programme question. That is why I supported the inquiry. Whether the executives remained for three months or not, remember it was a three month step aside, it was not – and a step aside, it was not a firing of them, it was a three months
10 stepping aside. So, ja, I will leave it there. I am very longwinded, I also want to go at lunchtime.

ADV SELEKA SC: Yes, I think you get the point that whether it is three months or two months or in this case ultimately they got rid of them, a man who has been in the position for about four months and he says these problems predate me, I did not cause them, I am trying to resolve them.

MS BROWN: Yes, but Advocate Seleka – and I do not want to be argumentative now ...[intervenes]

20 **CHAIRPERSON:** Hang on, Ms Brown ...[intervenes]

MS BROWN: You said they got rid of him.

CHAIRPERSON: Hang on, hang on, hang on.

MS BROWN: Oh, sorry, Chair.

CHAIRPERSON: Hang on, let him finish what he is putting to you first.

ADV SELEKA SC: Ja, I am not saying you are trying to get rid of him, I am saying whether he is suspended for three months or two months or one month and we know in this case they ultimately got rid of him. The point he is making was, that I have nothing to do with the problems you have highlighted, you have in fact appointed me just for the past four months and I have been able to bring the Medupi unit on line, why are you targeting me for suspension? That is the point I was raising with you, but
10 you have answered it. If you want – can I get through to Mr Matona?

CHAIRPERSON: Well, let her answer now.

ADV SELEKA SC: Okay.

CHAIRPERSON: Because I did not – I stopped her. Ja, answer now, Mr Brown.

MS BROWN: Very shortly, Chair. I think your use of the words ultimately, and you are not saying I did, you are saying ultimately they got rid of him. Now I am not sure what the process is between – was between the board and
20 the suspended executives. Remember I wrote that letter to them because I did not know what the process was. So in a way you are asking me a question that I think – ja, I think it is a bit of an unfair question, but I am answering your questions, Advocate Seleka.

ADV SELEKA SC: Okay Mr Matona, he is appointed on

the 1 October 2014. He comes from your department, he goes to Eskom. He is there about five months. The same fate befalls him as Mr Marokane. The question is, why?

MS BROWN: The answer to your question is it was a three month suspension. It was not firing him. I think Mr Matona went to the Labour Court and then the Labour Court sent him to the CCMA and I do not - I cannot remember the detail but eventually he took the option of getting out.

10 **ADV SELEKA SC:** But you know ...[intervenes]

MS BROWN: My issue remains, my issue, whether you raise any of the other people's names, my issue remains. By December 2015 I actually read this morning in the early hours that we did not even have diesel to keep the lights on. There was chaos in government. So you are saying that all of them were doing their jobs and actually they were all putting in place the processes that were going to give us less load shedding. If you look at the speech that I made in the house, I made the same speech that the now
20 Acting CE – or I think he is the CE Eskom made that we will have load shedding for five years, people were suing me because I said they were going to have load shedding for five years. We did not see light at the end of the tunnel and for some reason I think the Commission is not understanding that.

The Commission is not understanding that - you know, people and they rightly so, I did not go out because people were saying we bought generators because you said we are going to have load shedding for the next five years. Where did I get that information from? From Eskom executives. So I did not see a way clear, I did not see a way clear, I did not want them to go, I just wanted an unadulterated inquiry and at the end of that enquiry we will know what we should do because even though Mr Matona
10 makes the point to all of you, to the Commission, he makes the point to the Labour Court, he makes the point everywhere that he had a plan. The only thing I know is that the answer to his plan that we should be the R23 billion from National Treasury and that was going to take a long time still.

There was opposition in government to giving Eskom or bailing Eskom out. There was opposition in the public sphere to giving Eskom or bailing Eskom out. And who was the face of that Eskom? Me. So I had to find a
20 solution and I found that nobody had a plan. The war room was going to do a technical investigation. Nobody is going to fix load shedding, nobody is going to fix the fact that Eskom cannot pay its workers. That is what I wanted to have fixed.

So, I mean, I hear what you are saying about Mr

Dan Marokane and when I have a bit more time or when I have – when all of this is done, I will read through all of it but there could have been a plan. I only went to launch the synchronisation – and it takes six months after Medupi is – unit 1 is synchronised before it actually comes on line and then it does not come on line with a large amount of megawatts, it comes online slowly, these are huge plants. I have never seen such huge plants in my life, but they come on line slowly, so it is still not going to help us with

10 load shedding and all of those executives were there for all the period of load shedding. I did not mind either way whether the board, the executives remained or whether they went. I said this yesterday as well. I wanted to know what we were going to do, what must happen for us to get out of this position.

ADV SELEKA SC: Okay. Ms Molefe, as you say, the same thing will apply to her and you have read her supplementary affidavit where she also deals with historic financial issues and what caused these financial issues but

20 over and above that, the board, as the Chairperson had indicated to you, was in fact – or some of the board members, were in fact not in favour of having her suspended. Do you have any comment on that before I move on?

MS BROWN: No, I have said everything I wanted to say

about the executives. The removal of Mr Tsotsi – but before I do that, let me tell you what Ms Molefe believes. She was appointed in January 2014 as the FD, the CFO of Eskom. She was 14 months into the job when she got suspended. In that year 2014, around April, she was told that the corporate plan, funding plan she was presenting to the board was not robust enough and Mr Colin Matjila said I will get somebody to help Eskom and lo and behold, that person was Mr Salim Essa and Mr Salim Essa said I will

10 give you Regiments to do the job for you. Regiments teams up with McKinsey when they were asked whether they – when Regiments was asked whether they have the capacity to provide the job.

They were asked to provide a proposal within five days as per their undertaking, they did not do so, they gave a proposed agreement after 14 days. She refused to sign that agreement and she went into loggerheads with Mr Matjila, to some extent the board defended her but Regiments was still appointed but only to do a high level

20 desktop exercise.

She thinks because of her refusal to sign that agreement for Regiments she must have been targeted by Mr Salim Essa and ultimately removed from her position. You ...[intervenes]

MS BROWN: I was not there in April 2014 so I do not

know and, I mean, you know, I feel lots of things, it does not mean it is true. I think it must all be tested. I really think all of this must be tested because I was not there in April 2014, I actually only came in May 2014, in fact at the end of May, the 26 May 2014.

ADV SELEKA SC: No, I appreciate that.

MS BROWN: So I do not know about it. You know, I also feel people are attacking me and doing things to me and so on but I have to test it, I have got to report it somewhere, I
10 have got to tell people this is happening, I have to have it investigated. If I have money, I must take it to court. We all have to test this. I do not know.

ADV SELEKA SC: Yes.

MS BROWN: I am very sorry, I cannot answer – because Regiments is the frontrunner to Trillian and I got very badly burnt by that one when I was supposed to have inadvertently lied to parliament. So I do not know, I was not there.

ADV SELEKA SC: Yes, no I appreciate in April 2014 you
20 were not there but have reprisal – apparent reprisal is experienced in March 2011 and thereafter and what we see – can I take it further? She gets ultimately replaced by Mr Anoj Singh and on his watch Regiments get a contract at Eskom and ultimately Trillian, they get to be engaged at Eskom and paid huge amounts of money but under the

watch of Mr Anoj Singh.

MS BROWN: I do not have a view on that.

ADV SELEKA SC: No comment on that.

MS BROWN: I think it something that must be tested.

ADV SELEKA SC: Then I can – but what we see again is that one person, that one person who seems permeate whatever is happening there, Mr Salim Essa, because you will recall also about the meeting on the 10 March 2015 that he said the executives will be suspended in the
10 manner that it turned out to be. But we have done that, I am just painting this picture to you so that you can see what apparently it is an external influence bringing its muscles to bear on Eskom.

Then Mr Tsotsi's removal, if I may move there. Now Mr Tsotsi talks about a meeting he had with you or you called him to a meeting just before the SONA in 2014. Remember where you tell him about him interfering with management?

MS BROWN: Yes, I do remember.

20 **ADV SELEKA SC:** Yes and that if he does not stop you will get somebody else to do his job. I see you are smiling.

MS BROWN: I smile because I think it is absolute nonsense. Chair, I am smiling at – I am trying to get it on my – because I have been writing on my page because I

am absolutely astounded that Mr Tsotsi over such a long period of time actually without a recorder, without taking a recording of my words and he puts it in inverted commas as exact words that I used. I have told you that we did not have an easy relationship. I do not think I had easy relationships with a lot of people. I am very forthright and so – and it is not always very easy to accept.

ADV SELEKA SC: But may I ask you this, are you ...[intervenes]

10 **CHAIRPERSON:** Do you want to let her see if she gets the page she is looking for.

ADV SELEKA SC: Oh.

CHAIRPERSON: I think she is looking for a page where she made comments that are relevant to her answer to your question.

ADV SELEKA SC: Okay, thank you Chair.

MS BROWN: I have the page Chair, and I see that Mr Tsotsi says that I tell him that we're going to part ways and that he must do his job otherwise "I'll replace him with
20 somebody else", absolute direct words that he says I said, I absolutely deny that I don't think anyone should be threatened verbally with their job, I think that is a process that has to happen. If there's any relationship breakdown between the person in charge and some – the person that accounts to them, there should be – so, I absolutely deny

that. The issue about that weekend, it was the day before SONA, the issue is that I ticked him off for interfering in an operational matter. Now, I don't care who wrote the letter the letter does not belong in the non-Executive Committees Division and the Chair for that matter and I make a mistake in my – because it was a very vague issue for me but it was Mr Matona, and that's why I took it up with him, because – I took it up with him because the CE came to me and told me, look at this letter, this is the letter Mr Tsotsi
 10 has written and many of these things happen all the time.

I think the South African public should be grateful that I don't want the non-Executive Directors to be interfering in an operational matter especially procurement and of course there's lot of explanations as to why he did it, but the point is, that must not happen. You don't procure as – in your personal capacity in that way.

ADV SELEKA SC: Ms Brown...[intervenes].

MS BROWN: So that was the argument I had with him.

ADV SELEKA SC: Ms Brown...[intervenes].

20 **CHAIRPERSON:** I'm sorry Mr Seleka, so is the position that you admit that on that day, a meeting did take place between – which involved you and Mr Tsotsi. What you do not accept is what he says you said to him in terms of, effectively, threatening to get rid of him immediately if he was not doing his job, you say, the discussion was about

something else, namely, you were saying to him, he should stop interfering in operational matters, is that correct?

MS BROWN: I called him to that meeting, Chair, because just before he was in – before I called him, I knew they were all up in Cape Town because it was SONA. So, I called him after Mr Matona brought me the letter – and I know one thing for sure, that it was a Japanese company, 102, it's not buying oil or fuel, it was parts, I mean, that's an incorrect issue there and then Mr Matona said that was
10 the specific issue that he raised with me and I – but I think this thing with Mr Tsotsi and I came a little bit earlier already because the Directors of the State owned companies are – and the Chairs are not Executive Chairs, so they're not allowed excess or excessive use of resources. So, you might have a....[intervenes].

CHAIRPERSON: Yes, but my question is, whether I'm correct in understanding, that you say, a meeting did take place involving you and him...[intervenes].

MS BROWN: It did.

20 **CHAIRPERSON:** And it took place on the day that he says it did, the difference is that you say, the meeting was to discuss his alleged interference in operational matters, he says, you said to him you would find somebody else if he didn't do his job or something to that effect. That's the only difference between the two of you about what

happened in that meeting, is that correct?

MS BROWN: Only the first – the other difference is that you can't put mine in inverted commas because mine is not verbatim, his is verbatim.

CHAIRPERSON: Yes, okay, Mr Seleka.

ADV SELEKA SC: Thank you. Ms Brown isn't it, with respect to you, ironic that the Minister at the time, also engaged in operational matters at Eskom?

MS BROWN: In which operational matters?

10 **ADV SELEKA SC:** The one of the 11th of March with the Board discussions about the stepping aside of the Executives and an inquiry to be conducted.

MS BROWN: Yes, but I said to the Board, the Board – nobody has given you a verbatim report from all the Board members that says that I did not – I said I'm not allowed to instruct you to do anything, but I would like the inquiry to happen, they could have said no I don't want to do it. I did not get involved in procurement matters, it's very different.

ADV SELEKA SC: Yes, now, if we forget...[intervenes].

20 **MS BROWN:** I served – it is a very, very different matter. If I said, go and give the building of Madupi Unit 6 to the Jackson Fives, that would be a direct operational interference in – I was assigned to get the company out of its mess.

ADV SELEKA SC: Yes,[intervenes].

CHAIRPERSON: Well of course, Ms Brown it may well be that the situation was – lots of people were interfering in matters in which they should not be interfering. They might not have been procurement matters if the evidence of the Board members who gave evidence is true, you didn't want, on the 11th of March to say, I'm instructing you to suspend the Executives but they say it was quite clear that that's what you wanted and of course if the evidence by Mr Tsotsi and the acting DG at the time is
10 correct, the former President was interfering in when the Eskom Board should have a meeting and when it should not have a meeting and then it may well be that Mr Tsotsi was also getting involved in procurement matters. So, I'm just mentioning that I'm not saying that to the extent that he may have got involved in procurement matters when he shouldn't have, I'm not saying that you should not have raised the issues, I'm just saying, it may well be that that's, ultimately the position that may be emerging and you might be able to say something, or you might not be
20 able to say anything about that?

ADV SELEKA SC: No, I think Chair, I've already clarified my position on the issues.

CHAIRPERSON: Ja, okay, Mr Seleka.

ADV SELEKA SC: Thank you Chair, because Mr Tsotsi has also sought to – well let me not use the word, sought,

but has also explained to the Chairperson how the letter came about. Let's go back, you see for Mr Tsotsi what he's striking about – what he says was your conversation with him is that, he says, on the same day, a few hours later, Mr Tony Gupta has a meeting with him and he calls him to – he calls Mr Tsotsi to his residence in Constantia and there he tells the Chairperson, Mr Tsotsi, the Chairmen, we are the ones who put you in this position and we are the ones who can take you out and he says, it was striking to him
 10 because it was a few hours after my encounter with the Minister who, for all intents and purposes, said the same thing to me, referring to himself.

MS BROWN: I couldn't be saying the same things to him, because remember he – what he says I said was actually verbatim, in fact, he has it in inverted commas, quotation marks because he says, that's what I said to him which is very different to what he says the Gupta's told him.

ADV SELEKA SC: Yes, I suppose that's why he uses the phrase, for all intents and purposes.

20 **MS BROWN:** Well, and I use the phrase for, if you are using my verbatim comments, then somebody else had to use my verbatim comments for it to be, for all intents and purposes, the same. That's my only comment to you, I also don't know – how do I know we went there, I don't know Chair, I can't help you with that, I would like to help

the Commission where I can but I can't help on something that – it's so vague and so – I mean, I think I'm a little younger than Mr Tsotsi but maybe we're the same age but I don't think I would ever remember anything anyone said verbatim seven years ago, so – ja...[intervenes].

CHAIRPERSON: Well, it depends, I mean it depends, Ms Brown...[intervenes].

MS BROWN: Maybe you can Chair?

CHAIRPERSON: No, it depends, Ms Brown I'm sure, 1) if
10 it's not a long story, it it's a few words that somebody said to somebody or to you, on a certain occasion, they could remain embedded in your mind to say, he said something, she said or he said you never set your foot in my house again, that could remain in your mind for many years, you know, it just depends, you know. So – and of course if you are directly involved and maybe you are being threatened you might be more likely to remember all of that because of what may have been at stake for you than somebody else who may have listened to the same conversation but wasn't
20 directly involved or the person who uttered the words, you know, because there might not have been much as stake there might not have been anything at stake for them it just depends, you know, so all of those things will need to be taken into account. Okay, alright, Mr Seleka?

ADV SELEKA SC: Well, Mr Tsotsi seems to have had

fallen out of favour with the Gupta's Ms Brown. He goes on to talk about incidents, I mean, it doesn't pertain to you but just to give you a picture that the Gupta's – or Tony Gupta wanted them – wanted him to secure a contract for them at Eskom in respect of the open cycle gas turbine plant and when it transpired that there was a different company, already negotiating with Eskom in respect of a MOU, a memorandum of understanding, he says Mr Tony Gupta was very upset and he said to him that you are
10 working with baba's enemies, referring to Mr Jacob Zuma, you wouldn't know about that?

MS BROWN: No.

CHAIRPERSON: Well, you – Mr Seleka, you might need to, in terms of time.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Focus more on the matters where Ms Brown is directly involved.

ADV SELEKA SC: Yes.

CHAIRPERSON: Because as far as Mr Tsotsi's removal is
20 concerned, it's the Board that, by its own admission, was pushing for that and ultimately, he resigned. There is no suggestion, as far as I'm aware, that Ms Brown had any particular hand in the Board pushing for Mr Tsotsi's removal. If, in the end, you want to draw to her attention, various features of the evidence relating to Eskom from

different witnesses which maybe seem to involve the Gupta's in one way or the other, that could be done later but also, it's the kind of thing where she could be told to go and consider A, B, C, D, those features.

ADV SELEKA SC: Yes.

CHAIRPERSON: And then give us her comment by way of supplementary affidavit because those are the features that are there or may be there but certainly with regard to Mr Tsotsi, she doesn't appear to have been part of the
10 push for Mr Tsotsi's removal.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, I'm just mentioning that you might consider that ja.

ADV SELEKA SC: Yes, I think I can paint the picture in the end.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ms Brown, then, I would like to move on to the removal of Mr Baloyi. Mr Baloyi seems to have been, as I've mentioned to the Board members, a
20 problematic child for them but they came to you with a matter for his removal and he – you called him and Dr Ngubane to a meeting you said they could come with the company secretary and that meeting took place in Cape Town. His impression of the meeting was that he couldn't present everything to you but he testified here that he

walked away from the meeting on the understanding that, what he had been accused of, which was to have contact with one of the suspended Executives was not, at that stage, a rule that prohibited Board members to do so and you expressed regret that you had not laid down a rule, to say Board members should not contact the suspended Executives and he walked away understanding that, it was your intention to do so, so that in the future, contact doesn't happen but he was surprised to receive a letter
10 from you that you have accepted the Board's recommendation to have him removed as a Director, are you able ...[intervenes].

MS BROWN: I was very excited to have Mr Baloyi onboard because my officials told me that – because I was always lobbied by the union members to have the union representative but there are so many unions but – and there's been an experience of having unions on the Board and for some – I'm not going to say it didn't work but my officials were saying it's not something that we could do.
20 So, I was always very excited to have Mr Baloyi onboard, even though he was representing a union, any specific union, he was a union member which means, in the same way that I have businesspeople I also have union members – union people in. So, I can't – I didn't listen to Mr Baloyi's testimony at all, but I remember writing to him that

I was removing him in terms of Section 78(2) and that was of the Companies Act. That he may not use his position to obtain information to knowingly cause harm to the company, that's what I remember. I also remember – because I think it's the people in governance committee, they – and I might be – well let me just stick to what I know absolutely. I wrote him a letter where – and I don't – and I only have this letter on my own documents because he didn't write directly to me, he wrote to the staff and
10 threatened them and all sorts of stuff, but I wrote to him, I said, following my decision I have – I'll send this to the Commission as well,

“I have been receiving electronic emails from you on a daily basis demanding that I reconsider my decision. I am concerned that the content of the electronic mail also appears to be a threatening action by yourself. Emphatically I wish to state that my decision to remove you from Eskom Board of Directors was exercised within the ambit of my
20 powers in terms of the MOI read together with the Companies Act of 2008 and it is final”,

And then I skip, and I say,

“You are at liberty to pursue whatever legal avenues open to you. More importantly I must remind you that you remain bound by the confidentiality

required in terms of Section 76(2) of the Companies Act”.

I had to reiterate, I actually gave Mr Baloyi an opportunity to come and speak to me and I had my officials present, I had the legal department present, I had Dr Ben and I said he’s supposed to bring some committee, I can’t remember, I think there were two or three Board members present as well. Mr Baloyi made us wait three hours, I cancelled meetings for other people’s appointments so that

10 I could see Mr Baloyi because I thought I should give him an opportunity to redeem himself and after three hours of waiting he arrives, no apology, and when the officials put the issues to him and he argues about it and they argue and so on and eventually he says he’s taking us all to court, he was very threatening and I thought, maybe it is – it’s not the side issue but I have so much – we had, as a company and as officials and as – we have so much on our plates, I just thought, you know, I used my Executive authority to get rid of Mr Baloyi to just agree with the

20 Board and say, yes, it’s fine we’ll not have Mr Baloyi on the Board. Now, I might not have done – it might not have been the right thing to do, and I mean, the Chair will adjudicate that, but I did give – I feel I gave Mr Baloyi – I spoke with him on the telephone because my officials refused to write letters to Mr Baloyi because Mr Baloyi was

just so – it was so difficult, he wrote every day. So, I – that's what I did.

ADV SELEKA SC: Yes, well...[intervenes].

CHAIRPERSON: Well, remember to pace yourself appropriately.

ADV SELEKA SC: Yes.

CHAIRPERSON: You still have quite a few matters to deal with.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** I'm looking at the time.

ADV SELEKA SC: Yes, Ms Brown, thank you Chair. I hope you gave me the powers to – Ms Brown just two things, Mr Baloyi in his revised submission to you, I was going through his file yesterday, his Bundle rather, in his revised submission to you after you met – after the meeting he does say, first and foremost he wanted to apologise for arriving late,

20 “yesterday, 14 April 2015 at your Cape Town offices, the problem was that I did not receive the change of time from 13h00 to 12h00”,

So, if you say he didn't apologise, that's really unlike him.

MS BROWN: I'm sure.

ADV SELEKA SC: But number two, I wanted you to comment on, before your decision, on his version that he

understood you to be going to lay down a rule that there should not be contact as opposed to you accepting the decision to have his membership of the Board terminated, that's really what I wanted...[intervenes].

MS BROWN: There is a MOI and there's a Companies Act and both of it says, that you are not to distribute confidential matters that will bring the company into disrepute and maybe, I wanted to add, another harsher word in it, but that's – I don't think it's true and whether he
10 arrived an hour late, I mean, he still – he arrived three hours late, I cancelled three meetings. I don't have a meeting an hour – I don't have three meetings in one hour.

ADV SELEKA SC: Okay, but...[intervenes].

MS BROWN: And so, it's his view it's my view, I have a different view on it, but I don't know – ja I'm – I don't understand why he says I have to have a new – anything new that I add in. I already have a Companies Act, I have the MOI it talks to matters of confidentiality it says that even after you are, as Board member, you have to retain
20 that confidentiality. You can't speak out of a Board decision there's a majority decision that get's taken in the Board, that doesn't mean you can go and negotiate other matters with other people outside unless we all – I mean it will just be chaos.

ADV SELEKA SC: Yes, no I understand what you're

saying Ms Brown, what I'm only putting to you is, his impression after having met with you, that a rule was going to be laid, that's his impression, are you saying that impression was incorrect?

MS BROWN: I don't know, I mean I don't think I need another impression other than the Companies Act and the MOI and I think everybody needs to behave in a congenial way so that the Board can function.

ADV SELEKA SC: I would – okay – well I would like to deal
10 with something else which and I want to – I want to trim it to your particular relevance. This has to do with Dentons investigation.

Now Dentons which is the inquiry you have said that the board should have and that inquiry was as it was decided – decided to be for three months. Dentons was appointed on 20 April 2015 to do an investigation.

We have seen from the evidence that Dentons Investigation which was intended to be a deep dive as you have used those words was cut short somewhere in June
20 2015. So they did not do an investigation for three months and a presentation was made to you on the 9th of July 2015 which was draft interim report of Dentons.

Dentons says on that very day they received a call from a board member saying the Minister wants the draft to be made final.

So it would seem that on that evidence you would have played a role in bringing to an end an investigation which you had wanted it to be deep dive. According to Dentons Report they say:

“The investigation lasted only for about seven weeks.”

On my calculation it is actually about six weeks because the first week they spent time having meetings in order to understand the scope of what they were required to do. Now firstly did you tell the board to ask Dentons to finalise what was a draft report on 9 July 2015?

MS BROWN: I – why would I even say they must finalise the report?

ADV SELEKA SC: Now remember I do not know. I am only telling you the version.

MS BROWN: Yes I do not know that – I do not know that version either. They had three months in which to do the report. They presented to me on the 9th of July and other than – no I do not know. I actually do not know Chair.

20 **ADV SELEKA SC:** Okay. Okay. Because Dr Ngubane writes you a letter but that is only in August where he says:

“The board has decided to terminate the investigation because there is nothing unfamiliar from its investigation.”

And so they question the investigation going forward

because of the finances. This investigation – okay comment on that?

MS BROWN: Yes but Dr Ngubane in his statement also says that by the time he left 16 of the 18 areas were covered. I mean I do not think – you know Chair I do not think the investigation would have – and I am really talking off the top of my head now.

I do not think the investigation would have been any different. I think what the investigation did was to narrow
10 down what – what was supposed to be happening in Eskom which was not happening for the past couple of years.

And I think that is what the investigation did. It actually narrowed it down – it – I means because out of that 9th of July meeting the board had a responsibility to have oversight over all – I think it was 18 or 20 indicators I am not sure but all those indicators that they set out the board to have monthly indicators that they could check against and a committee – I am not sure if it is the build committee or what who check it on a weekly basis.

20 So they had like a dashboard to check what the outcome is. The point is lots of people say the Minister made me do it. I have had lots of people saying you have got to do this because the Minister said so. And where I know who it is I can take action; where I do not know who it is I cannot take action.

ADV SELEKA SC: Well let me also just say two things about this investigation or I might add the third one and the third one is Dentons itself saying:

“Their report was a snapshot of the investigation at the midpoint of the investigation period.”

And they say about 18 June 2015.

10 “And it is provided to Eskom on the specific request of Eskom. The findings, views, conclusions and recommendations set out in this report are accordingly subject to verification and testing provided to Eskom as a record of the investigation as at the midpoint of the investigation period and largely they say do not constitute definitive findings, views, conclusions and recommendations.”

20 Because they were not able to complete their investigation. But I want you – let me give you two more aspects.

1. This investigation it seems it was not budgeted for.
2. It appears to have been used as a disguise to have the executives step out – step aside and the board pushes for them to have settlement agreements of the board. When the board had said you will come back after three

months but what you see in the interim period is the board saying you are not coming back. Your coming back is off the table. Some of these executives are told.

And then there are these settlement agreements and they are paid hush money to go away and it seems to coincide with this time of the investigation being brought to an end. So once you have from the board's side the executives settled and went away, paid huge amount of
10 money the investigation is brought to an end. That is the picture emerging I do not know whether you have a comment on that?

MS BROWN: No I do not have a comment on that. I think it is a picture emerging in a head – someone's head but I do not have a – I mean you telling me that I approved a – a report an inquiry wanted an inquiry even, approved an inquiry.

I knew there was no money I can say that up – I knew there was no money and I said please find ways to
20 reprioritise. I also know that Eskom like all the other state owned companies for a bottle of 500 ml water where we pay R6.00 or R4.00 they would pay R30.00 or R35.00. So I said go and find ways to – to get the money.

But what you are saying is a view that you hold or you coming to a conclusion that that is what it is. I do not

think that that is so. I think we actually – I mean the board is actually holding the Dentons indicators accountable the KPI's accountable to – to themselves and to the executives. So it – I do not hold that view but I – I am not – maybe you have read something somewhere else and you have pieced together this whole story but it is not a very – it is not a dissimilar story to the one I hear in the public domain. I must be very frank with you about that.

ADV SELEKA SC: Yes.

10 **MS BROWN:** It is not a dissimilar story.

ADV SELEKA SC: Yes. No I or the commission can only go according to the affidavits that are provided to it. So that is what you see from the affidavits?

But here is another aspect relevant to you Ms Brown even before Dentons is appointed on 28 April 2015 you made an announcement on the 17 April 2015 for the secondment of Mr Molefe to Eskom with immediate effect.

And you conveyed in your press conference that even though he is seconded for three months you would actually
20 like him to be there for twelve months. Mr Matona is telling us.

MS BROWN: Did I say that – did I say that publicly or did I say that in the press statement?

ADV SELEKA SC: It is in the media – in your press conference.

MS BROWN: Release

ADV SELEKA SC: Ja, no it is...

MS BROWN: Is it in the media release?

ADV SELEKA SC: No it is a press conference. It is – there is a video – there is YouTube ...

MS BROWN: So I say that?

ADV SELEKA SC: Yes.

MS BROWN: Oh I must just be my run of mouth. But yes I – what are you asking me Advocate?

10 **ADV SELEKA SC:** Yes what I am asking you is this when Mr Matona was still on suspension and you were already entertaining a thought that Mr Molefe would be there for twelve months what would have been your reason for it when Mr Matona was intended to come back in three months?

MS BROWN: I – it might have been – you know there was a lot of excitement around Mr – firstly let me say why I appointed Mr Molefe on the 17th – I made the press statement on the 17th because by that time the executives already told me that there has been a negotiation with Mr
20 Matona and that it – it looks like he is hovering on staying or going. I – so there was nothing clarified.

After three months and in the meantime we had Mr Khoza standing in and that was not going so well. I mean Mr Khoza cannot be expected to do the job of a CE but he was standing in and he was doing an excellent job standing in.

So I also heard someone say that they did not know what the meeting was about that they had to go to but I had a meeting between the two Chairs of Transnet and Eskom.

And I would never – I will take legal opinion to see whether it is possible to move for three – to second for three months somebody from one state owned company to another. It has happened before and it has happened afterwards. Having said that after three months appointment the board wanted me to appoint Mr Molefe for twelve months. I said
10 no.

When they wanted a permanency already I said no. Because he has only been there for three months, he is only supposed to be there for three months. There has got to be a much better re – and the point is the markets applauded, the public applauded, the media applauded it was the one good thing that I did in many, many years.

So – and I think it is in that space that I probably said oh I mean I do not know where – I do not know if I said it in a press statement I did not see it in the press statement
20 but I could have said oh maybe he stays for twelve months.

But when I was in the formal setting where the board writes to me and asks me to appoint Mr Molefe for – I cannot remember if they wanted to appoint him permanently or not I think it might be something you should ask the investigators to look at.

ADV SELEKA SC: It was permanent.

MS BROWN: But I do –

ADV SELEKA SC: It was permanent.

MS BROWN: I do remember.

ADV SELEKA SC: Permanently.

MS BROWN: That I said – sorry.

ADV SELEKA SC: It was permanently.

MS BROWN: Yes I said now he must wait – like every other person they – it should not happen yet. They should give Mr
10 Molefe six months and I – and six months was just off the top of my head because I was just thinking that look give him six months then give him another three months and then let us see how it will – works out. Within the six months of Mr Molefe coming in I cannot remember by which month but by August the company already turned around in terms of load shedding – in terms of staff morale.

I mean I visited a couple of festival of maintenance gatherings that Mr Molefe had it was just everyone at Eskom helping with maintenance on weekends, overnight, during –
20 you know it was just – there was just an incredible energy within the company.

So no I did not want to appoint him for twelve months I said it in a – I said it – it was an off the cuff comment that I made.

ADV SELEKA SC: Were you the one...

MS BROWN: And ...

ADV SELEKA SC: Okay carry on.

MS BROWN: And I am only – I am only saying it is an off the cuff comment that I made because you telling me that I have made that comment. Because it is not a comment that I would naturally – I mean ...

ADV SELEKA SC: I will...

MS BROWN: I do naturally – I do make comments. I do make side comments all the time.

10 **ADV SELEKA SC:** Yes. I will get the video – video clip for you. But tell me was it – was it you who came up with Mr Molefe's name? Was it at your initiative that he was seconded?

MS BROWN: When he was seconded to Eskom?

ADV SELEKA SC: Yes.

MS BROWN: No I did not actually know Mr Molefe. I think it was in – there was – there was an occasion where I went to the Presidency and there was real issue with the fact – and I mean with the fact that we were still having load shedding
20 and that the possibility of us going into darkness – no blackouts which would kill the economy and will take too long a period for the economy to be – to be rebuilt.

And there seemed to be a very serious exercise that has been done that I had – I could – I had access to. Now I am not sure if it is an intelligence exercise that was done but

Gauteng was going to go into blackout and that I should act on it.

And the one thing I could not act on that was with the – a non-executive director being in charge. And I think in my conversation with the President and I could have said it the President could have said it, I do not know but Mr Molefe's name came up.

ADV SELEKA SC: Okay.

MS BROWN: Now I have heard you say to other people that
10 some man called Mr Herb said that Salim Essa said that Mr ...

ADV SELEKA SC: Yes they have decided who will be the next boss of Eskom.

MS BROWN: Yes I heard that so why would I then go and appoint Mr Matona. I am a new Minister I thought about this a lot. I am a new Minister, I was going to lose my DG, I have never been a Minister – a National Minister before, I was going to lose my DG, why would I appoint him if I was only listening to some instructions that some strange people
20 concoct things outside of Eskom? Why do I not just appoint him, Mr Molefe in the first instance and not appoint Mr Matona?

CHAIRPERSON: Well...

MS BROWN: And keep with my Matona in as a DG.

CHAIRPERSON: Well Ms Brown you could have done that if

you did not listen in the first place and that is why Mr Matona had to be removed and then Mr Molefe put in. Maybe you did not listen.

MS BROWN: Because I did not – because I did not listen in the first place?

CHAIRPERSON: Yes.

MS BROWN: Well nobody told me in the first place. So anyway but that – that is how it happened.

CHAIRPERSON: But your – your...

10 **MS BROWN:** And then of course I spoke with the Deputy President at the time the President today on the telephone and I remember the conversation because we were throwing a lot of names – lots of other people as well.

And then the one person that was the same as the Deputy President and the President was Mr Molefe and I then went to a function of Transnet and I am – Mr Molefe says it and it jogged my memory. I remember that I used to go to all Transnet's functions and it jogged my memory and Mr Molefe said it and I – and I thought oh that is actually a
20 viable option – a viable position and I then said – I asked him if he would be willing to be seconded to Eskom.

Chair if there was anything that I did right in that period of my life in the public space I mean even my family hated me for load shedding. Nobody believed – everybody believed that I was the person who was shedding the load.

So that was actually – for all intents and purposes it was a very positive stance that I took that day and people were very – the markets were rejoicing. There was an upsurge in the markets on that day with Mr Molefe. So that is the only thing I can say.

ADV SELEKA SC: Hm. But remember there was a downgrade of Eskom as a result of the suspension of the executives.

MS BROWN: Yes and there was a downgrade of Eskom just
10 a few months before that as well.

ADV SELEKA SC: Hm.

MS BROWN: So there – Eskom had many downgrades and many downgrades after that. In fact I am not sure – maybe I should not express myself on it but I think they still have downgrades.

ADV SELEKA SC: But this specific one was particularly linked to the decision in regard to the suspensions and I wonder whether it concerned you.

MS BROWN: It did. A downgrade always concerns me
20 because every downgrade means that the bonds that Eskom sells are much, much – it is a – it becomes of less and less value and the company itself become of less and less value.

ADV SELEKA SC: Ja. But you know what – what I ...

MS BROWN: And I do not want to start a conspiracy theory. I do not want to you know and then this one did that and that

but I also a conspiracy theory around it. I may be write you down and then the Chair his last moments I – he – of writing the report he will see my conspiracy theory.

ADV SELEKA SC: Ms Brown the secondment of Mr Singh. Mr Singh says you approached him in June 2015 to be seconded to Eskom, is that correct?

MS BROWN: You know I – no I do not think Mr Singh's right with that. I think I got a board meeting – a board memo because I knew of Mr Molefe I did not know Mr Singh really.
10 But the board sent me – and I am almost absolutely certain of this the board sent me a letter requesting the – Mr Singh to be seconded and giving it to my DDG of Energy and the DDG of Transport and they were coming back with a memo saying that it is – would be a right kind of decision to make.

But I – I approved that decision but I did not make the – I really did not make – I did not say Mr Singh please come and help us. I said – I said – I went to speak to Mr Molefe and said he must come and help.

So I am not sure if Mr Singh or who said that but that
20 is not – I did not. I might have spoken with him and said you know something about finances and so but I do not think I – I do not – I did not actually ask him to come over.

ADV SELEKA SC: Hm. Well let me then just conclude by showing you this and I am sure to some extent you will have been watching the evidence before the commission.

And once Mr Molefe and Mr Anoj Singh come to Eskom we see as I – I think I said this on the first day the way they deal with the transactions pertaining to the Gupta's and that is specifically Tegeta on the one hand and on the other hand the way they deal with transactions pertaining to Regiments and later Trillian which is owned by Mr Salim Essa and Dr Eric Wood.

So it would appear from the evidence that ultimately the execu – those two executives who are moved to Eskom –
10 seconded to Eskom ultimately appointed at Eskom would have went there with a particular purpose looking at what they do immediately after they are at Eskom.

The transactions in regard to Tegeta, the terminating the cooperation agreement with Optimum Coal Mine which was owned by Glencore and there is a 30 – over R30.6 million payment to Trillian when services were rendered by a different entity Regiments.

This would have happened during your time as a Minister and I wonder whether did you observe these things
20 taking place? Did they come to your attention and what your view was?

MS BROWN: No it did not come to my attention because it was not a section – a PFMA Section 54 Application to me. A lot of it came out in the media, a couple of months after the process. But let me – let me put something to you.

ADV SELEKA SC: Yes.

MS BROWN: Advocate Seleka – Chair you see I understood that Glencore sold Optimum Mine to the Gupta's and that was a direct sale of the company. In my mind, Glencore was pushing for a higher amount. Now I do not care of the amount of coal anywhere. I care that when you increase Glencore's coal price, who pay for that increase? Even though Eskom pays for it through NERSA the general public pays the higher cost of coal. That is my lay
10 person's understanding of it.

So Tegeta charges at the beginning R150 per coal – per ton of coal or R100. I cannot remember what they charged but they were under R 200 per ton of coal. So I do not...

I see it in the newspaper and I... Look, in this country of factions and connecting dots and all of that. Other people connect dots differently. Some people connect dots one way. Other people connect dots in another way.

20 So I was very happy that the price that will be passed through to our people – to people in our – the citizens of South Africa will be lower than what it would have been if it was increasing to R 540 per ton. So that is on the one hand.

On the other hand I also hold a view that if there

is any wrongdoing and I - after almost negotiating with the SIU for six to seven months because the issue of procurement in Eskom is a very complex matter and so is the issue of procurement in Transnet and Denel and it was...

I will always be struck by the fact that I negotiated with the SIU for almost seven months because they did not want to include any of the cost loss mines. They only wanted to deal where there are issues that were
10 in the present environment.

And I do not know why but it is – it must be interesting and maybe it becomes some students' doctoral dissertation one day because not everyone wants to look at the total picture of coal. I mean, nobody looks at the total picture of coal and the price that eventually is in our people's pockets.

And when I say our people, I mean the whole South Africa, all of us who live here who makes South Africa our home. So I do feel that on the balance of
20 fairness it might be a little but more useful and I am doing the – I am not saying what the – I am, actually – and it might be useful to look at the way business gets done in the country.

I mean, you know, there are companies that you cannot – if you go to an airport, it does not matter if you

eat at that place or if you go to the bathroom or you wash your hands or you use the café in the area, it all belongs to one company.

So it might be interesting – I think it is interesting and I think we are a young democracy and these – this – these – this phenomena is going to show its head often and many people will get hurt in the process but it will show its head. I am not making it as a thread. I am just saying that that is what happened – that is what I felt
10 about it.

ADV SELEKA SC: Which ...[intervenes]

MS BROWN: But it is not as simple as you think it is.

ADV SELEKA SC: Ja. Which phenomena are you referring to Ms Brown?

MS BROWN: I think the phenomena is new entrance to any of the big four or five's, whether it is in the financial sector.

ADV SELEKA SC: Ja.

MS BROWN: Whether it is in the coal sector, whether it is
20 in the tourism sector. We have only four or five big companies.

ADV SELEKA SC: Okay.

MS BROWN: They are all white owned and they all have all of our, you know, the *well-kneaded*(?) who serve in that directorship and I think has happened for a long time.

ADV SELEKA SC: Okay, okay. Thank you very much.
Chairperson, thank you. I have reached the end,
Chairperson, of my questioning.

MS BROWN: No...

ADV SELEKA SC: [laughs]

MS BROWN: [laughs]

CHAIRPERSON: Ja.

ADV SELEKA SC: There are, obviously, aspects that the
board says about the Minister which accrued, as the
10 Chairperson had suggested, *raised them(?)* of the Minister
to obtain her affidavit on that.

CHAIRPERSON: Well, you still have about 28-minutes
before it is one.

ADV SELEKA SC: Ja.

CHAIRPERSON: One o'clock. If you want to deal with
that now.

ADV SELEKA SC: Yes, let me do that.

MS BROWN: Yes.

CHAIRPERSON: Let me ask you something Ms Brown.

20 **MS BROWN:** Yes, Chair.

CHAIRPERSON: I have understood from other evidence in
relation to Transnet that your predecessor in the Ministry
of Public Enterprises, Mr Gigaba, had approved certain
guidelines which SOE's under Public Enterprises, I guess,
were suppose to follow in the appointment of CEO's. I take

it that when you arrived at the ministry, you became aware of those guidelines?

MS BROWN: I do not know who drew up those guidelines.

CHAIRPERSON: Yes.

MS BROWN: But I use... When I came to the ministry, I was quite new.

CHAIRPERSON: Yes.

MS BROWN: So I used what was present in the ministry ...[intervenes]

10 **CHAIRPERSON:** Okay.

MS BROWN: Until I... So it might be those guidelines.

CHAIRPERSON: Oh, okay. So I guess what you mean is. There are certain guidelines that you were – you became aware of when you came to the ministry but as to who had ...[intervenes]

MS BROWN: Yes.

CHAIRPERSON: ...who had established them or had, you know, approved them, you might not know about that.

MS BROWN: No.

20 **CHAIRPERSON:** Now, if I recall correctly and – ja, if I recall correctly. They contemplated that the board of an SOE should follow a process when they want to appoint a CEO.

A process which would involve having other candidates or not having more than one candidate. I

cannot remember whether they contemplated that there should be an advertisement as such but I seem to recall that, in the end, the board was, in terms of those guidelines, required to give to the Minister three names. Maybe it is that. At least three names I am not sure but three names.

And they were supposed to then give – to identify their preferred candidates. Does that accord with your recollection of what the guidelines you used,
10 provided?

MS BROWN: That does. That does.

CHAIRPERSON: Yes, yes.

MS BROWN: I do recall that now.

CHAIRPERSON: Now were those guidelines followed in the case of the permanent appointment of Mr Molefe as Group CEO of Eskom?

MS BROWN: I do not – I must be very honest. I have not looked specifically to that.

CHAIRPERSON: H'm.

20 **MS BROWN**: But if my memory serves me, that did not happen.

CHAIRPERSON: H'm.

MS BROWN: But... Yes, that did not happen because I cannot remember who – how that... I cannot remember Chair. Let me say that.

CHAIRPERSON: Ja, ja.

MS BROWN: Because I only... You see, I come in at the part where they write the three names in their first preference, their second preference and their preference. So the board will write the three names. Now I do not remember seeing it like that, to me.

I do remember the board writing to say that they would like to appoint Mr Molefe and Mr Singh and I approved that. I took it to the ANC Deployment Committee
10 and they approved it and I took it to the Cabinet Committee and they approved it. I mean, sorry. Not Cabinet Committee. I took it to Cabinet and they approved it.

CHAIRPERSON: Yes.

MS BROWN: But I am saying to you, I do not remember having three names.

CHAIRPERSON: Yes.

MS BROWN: I have – I remember having only one name.

CHAIRPERSON: Yes.

MS BROWN: But, I mean, I could be wrong.

20 **CHAIRPERSON:** No, no. That is fine. And after today, if you get a chance to refresh your memory and wish to supplement your answer, arrangements can be made for you to do that.

But let me tell you that Mr or Dr Ngubane, I think was asked about this if I am not mistaken. And his answer

was to confirm that no process was followed that involved other candidates. And when he was asked ...[intervenes]

MS BROWN: H'm?

CHAIRPERSON: And when he was asked why and I think there might have been no references to those guidelines in – when he was questioned but he may have been asked in general terms. When he was asked why, his answer was: We have got our countries. And I think he may have gone on to praise Mr Molefe, how good he was and so on and so

10 on.

And said the board's attitude was: We have got our candidate and so to speak, why should we be looking for other people? We have got the right person that we are looking for in terms of somebody who we believe can do the job.

Those are not necessarily his verbatim word as he was saying about Mr Tsotsi but that was the effect or the gist of what he told the Commission as I recall it.

Would you remember why that – the guidelines
20 would not have been followed if in fact they were not followed?

MS BROWN: I do not know.

CHAIRPERSON: Ja.

MS BROWN: I do not remember Chair. If – I am trying to think about it while I am sitting here while you are asking

me the questions because I am trying to think of a plausible response to you.

Look, the guidelines for both executives and even boards and committees and all of that, then there are only a few departments that actually abide by any conventional way of dealing with this matter and I think DPE is one such department.

So you cannot take people out of your back pocket to be on the board and you cannot take people just
10 one – get one person because there are – even though the law, the Companies Act and the MOI and all of that, they all give you the right to do so.

There are conventions that have been developed within DPE how those processes will happen. So maybe in another department this is how it happens but in Eskom, generally, it happens...

I will look – I will try to check the recesses of my brain again but I have a sense that it is – you are right, there was only one candidate.

20 **CHAIRPERSON:** Well, I do not know whether you – what you think of the reason that Mr or Dr Ngubane gave, whether you would have regarded it as a good reason not to follow the guidelines. Are you able to say anything on that or...?

MS BROWN: Look, Chair, we were all in – you must

remember, we came – we come thought a very dark period of – well, literally and figuratively, a dark period. So Mr Molefe overwhelmed all of us.

CHAIRPERSON: H'm.

MS BROWN: I mean, I still feel that in terms of what he did in the company in those first few months was actually remarkable. There are 42 000 people who work for Eskom. And for the first time they have seen their CEO. It was within a few weeks. And then he got them all to, you know,
10 like rugby scrummed up to be part of this festival of maintenance.

And then he got them all... So I think we were probably all swept up by Mr Molefe's ability by August to have load-shedding under control. I mean...

So I was just fascinated. In the control room, there was this thing called, I do not know, it is Thesaurus or ... Tetris. Tetris. And he said to me: I am using Tetris to solve our crisis.

And Tetris is a computer game and he had these
20 young engineers dealing with this and we would know in the control room by when a – or when – immediately when something happens with a transformer or a power station or whatever.

So I – we were all very swept up by Mr Molefe. Molefe really got things going and things working in the

company. So I can almost understand why the board did not have another process.

CHAIRPERSON: But, you see, I have some difficulty with the reason given by the board and I do have difficulty with what you say too because I would think that the fact that there is a particular candidate that fascinates those who have to recommend or appoint, it cannot be a good reason not to follow process and it cannot be a good reason to exclude other possible candidates. What do you say to

10 that?

MS BROWN: I agree with you Chair.

CHAIRPERSON: Yes.

MS BROWN: Because, I mean, I even think, how come my Legal and Governance Unit did not stop us?

CHAIRPERSON: H'm.

MS BROWN: I mean, I take the blame. I am the head of... I am the Executive Authority. I am not saying somebody else has to stop us.

CHAIRPERSON: H'm, h'm.

20 **MS BROWN:** But how come the process people did not stop? Not... The board is not – they are not politicians. I am a politician.

CHAIRPERSON: H'm, h'm.

MS BROWN: Or I was. But the board does not stop – but at least why – you know, they did not stop us. But I think it

is because it is not illegal or unlawful. And I am using it very, very widely. I think it is not illegal or unlawful. But Chair, I think it is something that I must think about.

CHAIRPERSON: Ja.

MS BROWN: I must think about.

CHAIRPERSON: Ja, ja.

MS BROWN: And if I think more about it, I will...

CHAIRPERSON: Ja.

MS BROWN: Because it is a fascinating question.

10 **CHAIRPERSON:** Ja. You see, I may have said this to Dr Ngubane but I might not have said it. If you think you have got a good candidate. The fact that there might be – you might go through a process where there are other candidates should not make you feel at risk that you might lose this candidate.

Particularly, in the context of what we are talking about because Mr Molefe was there at Eskom. His acting term could be extended while the process was being followed. There would be nothing wrong with that, I would
20 imagine.

And then he would complete with whoever else and if he was so – if he was that good, he would still come tops, you know. So there is no – there should be no – have been no ground to fear that: Oh, we might lose this wonderful candidate if we follow the process. You know.

But the beauty of following the process is that, one, you would have followed the department's own guidelines. Two, from the point of your perceptions, you know, he would have been appointed after a competitive process.

And when he is not appointed after a competitive process, when he is appointed in breach of the department's own guidelines and you then have Mr Henk Bester saying he was told by Mr Salim Essa, the
10 previous year, that they had decided, whoever they were, that the next boss of Eskom would be Mr Molefe.

And then he is approached, he is seconded and then he is appointed in breach of the department's own guidelines. It does, certainly, in the public – in terms of public perception raise some question, to say how...

The department has got its own guidelines which it must have had a good reason to say they must be used. Here they were not used.

And of course, the board says we have such a
20 good candidate and maybe some people say: Well, a good candidate is a good reason to not to follow processes. But others would say: No, no. Do follow processes because process is very important. You understand?

MS BROWN: Chair, what if I suspend? What if I say I suspended all informal protocols?

CHAIRPERSON: H'm?

MS BROWN: I do not know if I did say – I do not think I have said that. [laughs]

CHAIRPERSON: [laughs]

MS BROWN: I am just saying. What if I said, I suspend – in my – the memo, I suspend informal protocols that governance the processes of appointments and only stick with what is – what... I mean, I do not want to use the word lawfully or legally ...[intervenes]

10 **CHAIRPERSON:** Ja.

MS BROWN: ...with so many lawyers around and attorneys around but I mean... You know what I am saying? What if I had suspended the informal convention or the convention?

CHAIRPERSON: I think what you want to say is. Maybe the point you want to make is: Well, guidelines are guidelines. The Companies Act is law and whatever else.

MS BROWN: Yes.

20 **CHAIRPERSON:** And you are thinking: Well, what if I follow the Companies Act and the MOI but I did not follow the guidelines. Is it a big deal? Is that what you want to say?

MS BROWN: I think you are right Chair...[intervenes]

CHAIRPERSON: [Indistinct]

MS BROWN: That is what I – but that is not what I have

done. I hope I have not done... No, I do not think...
[laughs]

CHAIRPERSON: Ja. No, I think you need to have a look.

MS BROWN: Yes.

CHAIRPERSON: To refresh your memory of what happened because it is an important issue. Certainly from my point of view but also, and this might not have anything to do with you, maybe, because maybe it is the board which made the decision as opposed to you making the
10 decision in regard to the Group CEO, namely, with Mr Singh. My understanding is that he was also appointed without following any competitive process. Are you able to say anything on that?

MS BROWN: H'm. I hear what you saying Chair.

CHAIRPERSON: H'm, h'm. You ...[intervenes]

MS BROWN: No, I think you are right. You are right in asking the questions that you are asking because we could – the argument is not going to be – the argument that anyone will oppose you with is not an argument that if it is
20 true that it has happened that way. I cannot be an argument that is outside of the process.

CHAIRPERSON: H'm, h'm.

MS BROWN: And that is the only argument I have. And the argument I have is outside of the process. It is not inside the process that you have just outlines.

CHAIRPERSON: H'm. Ja, ja. Mr Seleka, am I – is my recollection correct about Mr Singh's appointment to Eskom?

ADV SELEKA SC: Ja, Mr Singh ...[intervenes]

CHAIRPERSON: There was no competitive process either with him?

ADV SELEKA SC: No.

CHAIRPERSON: Ja.

ADV SELEKA SC: Mr Singh says the Minister approached
10 him.

CHAIRPERSON: Ja.

ADV SELEKA SC: And asked him, whether he will be seconded. Or... But you are talking, Chairperson, about ...[intervenes]

CHAIRPERSON: [Indistinct]

ADV SELEKA SC: No, there was not.

CHAIRPERSON: Ja.

ADV SELEKA SC: Ja.

[Parties intervening each other – unclear.]

20 **CHAIRPERSON:** No process thereto ...[intervenes]

ADV SELEKA SC: There was no process.

CHAIRPERSON: Ja.

ADV SELEKA SC: But I wanted to say, Chairperson.

CHAIRPERSON: H'm?

ADV SELEKA SC: The MOI over and above the

guidelines, actually requires a shortlist to be made to the Minister.

CHAIRPERSON: Yes. Yes. Oh.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay. Do you want to just mention that?

ADV SELEKA SC: Yes.

CHAIRPERSON: So that the Minister can hear.

ADV SELEKA SC: So that is clause – under Clause 13.3 of the MOI. 13.3.1 says:

10 “The board shall identify, nominate and
 evaluate potential candidates for appointment
 as the CE in accordance with the guidelines...”

And 13.3.2 says:

 “The shareholder shall appoint the CE from the
 shortlist of candidates provided by the board
 in accordance with the guidelines...”

CHAIRPERSON: H’m. I guess to the extent that
Mr Seleka may have got the right clause of the MOI, I
guess that if the appointment was in breach of the MOI,
20 that would be unlawful. Ms Brown, would it not?

MS BROWN: But then the part – that is why I need to
read the MOI.

CHAIRPERSON: Ja, ja.

MS BROWN: And not commit myself at this stage.

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

MS BROWN: But the issue... There is a part that is missing there.

CHAIRPERSON: Ja.

MS BROWN: And that is the part that says that – and I listened just briefly. And that is the part that says that the only employers of DG's or HOD's are not – they are actually employing – they are – their employment is approved or rejected by Cabinet.

CHAIRPERSON: H'm.

10 **MS BROWN:** So there is also that part that is missing.

CHAIRPERSON: H'm. No, that is fine. So I think that the arrangements, therefore, is that you will refresh your memory on the issue of processes that may or may not have been followed or the process that may or may not have been followed in regard to the permanent appointment of Mr Molefe to Eskom.

And what reasons there existed, if any, why no process was followed and saying no process in the context of either the guidelines or, if Mr Seleka is right, whatever
20 the MOI contemplates as well. And maybe we could then have a supplementary affidavit which deals with that from you. Maybe we could – if there is a chance that we could have that affidavit before the Easter weekend that would be appreciated. If there are challenges then maybe you would in the first week – within the week of Easter Monday

so that we could have a look and take it from there. Mr Seleka?

ADV SELEKA SC: Chair, ja, shall I...?

CHAIRPERSON: Oh.

ADV SELEKA SC: If I have anything to add I can add to your list.

CHAIRPERSON: Ja, okay. Okay, you want to do that?

MS BROWN: No, Chair ...[intervenes]

CHAIRPERSON: No, he is not threatening to ask you
10 questions, he is threatening to give you more homework.

ADV SELEKA SC: Yes [inaudible – speaking simultaneously]

CHAIRPERSON: Well – or you could send something to her lawyers.

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: Which highlights various features.

ADV SELEKA SC: Yes, just two points.

CHAIRPERSON: And I think maybe I could say this, Ms Brown, part of what I have to look at is if some of the
20 things that I have been told happened which connected or involved the Guptas or their associates, if indeed they did happen, what do I make of what was happening at Eskom during your term, your tenure, you know? And in this regard there are a number of things. You do not have to note them down now but I just mention you have Mr Henk

Bester's evidence that in 2014 he was told by Mr Salim Essa that Mr Molefe was going to be the next boss of Eskom. He was meeting with Mr Salim Essa about something else at Transnet and Mr Salim Essa, according to Mr Henk Bester, was trying to push Mr Henk Bester to include his company into a certain business that they had got a Eskom and Mr Henk Bester was resisting this and Mr Essa sought to show Mr Bester that, you know, they are very powerful, they had already made a decision that the
10 next boss of Eskom would be Mr Brian Molefe. At that time Mr Brian Molefe was Group CEO of Transnet and so there is that.

And then Mr Matona gets appointed in October as Group CEO but within a few months of him he gets suspended, he gets out, Mr Brian Molefe happens to be the person who is brought in, who is seconded and then later he gets appointed permanently and maybe depending on what you will come back with in your supplementary affidavit, maybe he gets appointed even in breach of the
20 department's own guidelines as to how CEOs should be appointed.

Then Mr Singh follows him from Transnet, follows him to Eskom, maybe he too gets appointed permanently as CFO without the following of any competitive process and then if Ms Daniels' evidence is true and if Mr Abram

Masango's evidence is true – or no, let me first say then on the 8 March 2015 a meeting takes place in Durban at which, according to Mr Tsotsi and Mr Linnell, the President takes part where the idea of the suspension of three executives of Eskom is discussed.

And then if Mr Abram Masango's evidence is true and if Ms Daniels' is true, on the 10 March before board members other than Mr Tsotsi had to know that there is a suggestion that certain executives be suspended, then on 10 that day Mr Salim Essa meets with Ms Daniels and with Mr Koko and meets with Mr Masango and they get told in separate meetings that four executives would be suspended. Now at the Durban meeting it was three executives, not four, and now there are four and then – and one of them is told, either Masango or Daniels, I cannot remember, gets told that these four would be suspended, they include Mr Koko but Mr Koko will come back after the suspension, the others will not come back, I think.

ADV SELEKA SC: That is the evidence.

20 **CHAIRPERSON:** And ultimately that is what happens but on the 11th the meeting takes place, you come to address the meeting, you have four areas that you are concerned with and on the evidence that has been given, you speak on the basis that though the executives who had those four areas should be suspended, but you say I cannot instruct

you, the board, what to do. And then they get suspended and then, of course, in due course they get paid out. The board says well, we had not problems with them coming back but they paid out to leave. All of these things.

And then you have, on the evidence that has been given, if it is true, you have the President giving instructions that a board meeting, which was quite important, to deal with I think the corporate plan or whatever, gets cancelled and nobody is told what the
10 reasons were, the minister responsible seems to have also not been told about that.

So you have a lot of things that happened and part of my job will be to try and make sense of all of this but, as I say, it all depends on what is found to have actually happened, what is true, what are the facts. But some of these, if they are found to have happened, would require me to try and make sense exactly what was going on and, of course, Mr Tsotsi gets – the board says they have confidence in him, he says he had not cooperated with the
20 Guptas and now he was being pushed out. He resigns.

So I am just mentioning these things for what it is worth but you can obviously only say what you know.

MS BROWN: Chair, can I ask a question?

CHAIRPERSON: Yes, yes.

MS BROWN: And it is not to go against what you are

saying.

CHAIRPERSON: Yes.

MS BROWN: I just have – you know, there are some difficulties I have with so and so and so and so saying that and – so, I mean, when Mr Henk Bester says so Salim Essa says that he will be the CEO, so he will never be a CEO for the rest of his life because Mr Essa says he will be a CEO. I just do not understand what – I deal with the issue of Brian Molefe and his appointment. We will look – I think

10 we will look into that.

CHAIRPERSON: Ja.

MS BROWN: I have not spoken to my legal people.

CHAIRPERSON: Ja, ja.

MS BROWN: We will look into that because that is something we – that is something concrete that we can deal with.

CHAIRPERSON: That you can deal with, ja, ja.

MS BROWN: And I wanted to – I do not know if I am ever coming back here again, but I want to say just one thing, if
20 you do not mind, Chair. It has got nothing to do with implicating anybody.

CHAIRPERSON: Yes.

MS BROWN: I, a couple of months ago, it was a Saturday morning, a lady on SA Express said that she was supposed to give me R10 million and I do not think you probably

remember it, she [inaudible – speaking simultaneously]

CHAIRPERSON: No, I remember it because – okay, no, I just want to say I remember it because I think I saw it in your affidavit recently, in one of your affidavits ...[intervenes]

MS BROWN: Can I just ...[intervenes]

CHAIRPERSON: But I do recall that some witness had said something along those lines about you in regard to a different work stream.

10 **MS BROWN:** Oh. So might that still come up? Or can I say it?

CHAIRPERSON: Well, you – well let me say first it is not last time that you have to give evidence because certainly in regard to Denel we still would like you to deal with Denel issues. With regard to that particular work stream, I think if you would like to say something, do say it because it may be that there might not be another chance. But if you say look, apart from what you will say now you would like to deal with it more comprehensively, let the
20 Commission know.

MS BROWN: Okay. I just want to say that that is an absolute untruth. It has never happened, I have never asked any R10 million and never ever received R10 million from anybody for anything including the lady in question and I do not think she is to blame for it, I think somebody

else told her that he was supposed to give me R10 million.

CHAIRPERSON: Yes.

MS BROWN: This might just stop the people from trying to borrow money from me, I do not have R10 million.

CHAIRPERSON: Ja, no, I think she said it was Mr van Wyk who had said that, if I am not mistaken.

MS BROWN: Yes.

CHAIRPERSON: Ja, ja.

MS BROWN: Thank you, Chair.

10 **CHAIRPERSON:** Okay, that is alright. We are going to adjourn. Thank you very much, Ms Brown, I think arrangements for further assistance from you have been made but you will come back to deal with matters relating to Denel. Arrangements will be made for that but thank you very much for availing yourself and for availing yourself on a public holiday once again and thank you to everybody. We will now adjourn. I can just mention for the benefit of the public that tomorrow I will be hearing evidence relating to SARS, so that will be tomorrow,
20 Wednesday and Thursday. We adjourn.

ADV SELEKA SC: Thank you, Chair.

MS BROWN: Thank you, Chair.

INQUIRY ADJOURNS TO 23 MARCH 2021