

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

03 MARCH 2021

DAY 354



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 03 MARCH 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Mr Masuku had you completed your discussion with your client or did you wish to have some time?

ADV MASUKU: No we have completed. We have completed.

10 **CHAIRPERSON:** Okay, okay alright. Good morning Mr Molefe.

MR MOLEFE: Good morning Sir.

CHAIRPERSON: Thank you.

ADV SELEKA SC: Yes.

CHAIRPERSON: It looks like the technicians have done something to make sure nobody complains that they cannot hear me.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay alright. The oath you took
20 yesterday Mr Molefe will continue to apply today.

MR MOLEFE: Thank you.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Okay.

ADV SELEKA SC: Just – just before resumption this

morning Chairperson my learned friend for Mr Molefe had a discussion with me which we raised with – we brought to your attention in chambers. It relates to the statement of Mr Ephron – Clinton Ephron which is in the Tegeta Reference Bundle – Eskom Bundle 18 on page 352. The point being raised is that this statement is not under oath. I should however confirm that it is signed by Mr Ephron but it is not under oath. My learned friend was concerned that whereas his client is testifying under oath and has given
10 an affidavit he might be found to perjure himself if he does not tell the truth whereas Mr Ephron who simply submits a statement not under oath a similar find or same finding can be made against him. So we have given my learned friend an undertaking that we will ask Mr Ephron to re-submit the statement under oath.

CHAIRPERSON: Okay no that is fine.

ADV MASUKU: Sorry I think the extent of our – of my understanding is that it is not just a submission of the statement under oath but that he might come and testify in
20 which case we would be – we would consider whether or not to – to cross-examine him on what his statement under oath contains.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay no that is fine based on you will exercise whatever options you might have.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja. Okay.

ADV SELEKA SC: Thank you Chair. Do you...

MR MOLEFE: Yes Chairperson yesterday as I was giving evidence I said that Mr Ramaphosa was I think Chairman of Optimum and my reference was a magazine article.

CHAIRPERSON: Yes.

MR MOLEFE: But ...

CHAIRPERSON: Just raise your voice a bit.

10 **MR MOLEFE:** My reference was a magazine article.

CHAIRPERSON: Yes.

MR MOLEFE: In my footnotes.

CHAIRPERSON: Yes.

MR MOLEFE: And Mr Seleka pointed out that Mr Ephron disputes this and says that Mr Ramaphosa was never Chairman of the – of Optimum.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** But last night I was able to print a 00:03:51 announcement from Optimum which is a JSC announcement when a listed company makes changes and it lists Mr Ramaphosa as being appointed as a non-executive director and chairman of the company – Optimum.

CHAIRPERSON: Yes.

MR MOLEFE: It is dated the 25th of March 2017.

CHAIRPERSON: 2017?

MR MOLEFE: The 26th of March 2012.

CHAIRPERSON: Oh 12.

MR MOLEFE: 12 yes. And the following day three other publications ran with the announcement over and above the one that I quoted yesterday which was independent on line, Engineering News and Mining MX. So in my opinion I think that there is sufficient evidence to show that Mr Ramaphosa was indeed chairman. It is just convenient
10 that Mr Clinton Ephron did not say what he was saying under oath. In fact I note that even his first statement to the commission was not under oath which is very strange.

CHAIRPERSON: I am...

MR MOLEFE: Sorry the statement was not under oath. He did not make an affidavit.

CHAIRPERSON: Mr Ephron.

MR MOLEFE: Ephron yes – Optimum. Optimum never made an affidavit to this commission they just gave their ...

CHAIRPERSON: I am not aware. Well Mr Seleka you did
20 not lead Mr Ephron's evidence but you...

ADV SELEKA SC: No I did not.

CHAIRPERSON: But you would have read his earlier statement.

ADV SELEKA SC: I have indeed read it.

CHAIRPERSON: Well they – your junior could check.

ADV SELEKA SC: Yes it is – it is a statement I can confirm that.

CHAIRPERSON: Yes.

ADV SELEKA SC: But I know he was called. I do not know whether he testified in person or...

CHAIRPERSON: He did testify in person.

ADV SELEKA SC: Yes.

MR MOLEFE: But his – the statement that he submitted was not ...

10 **CHAIRPERSON:** Was not under oath.

MR MOLEFE: Was not – was not an affidavit.

CHAIRPERSON: Yes. Okay what – what your junior could check on you were continuing I would imagine that if he – if his statement was not under oath I would have imagined that when he started his evidence he would have been asked to confirm under oath that what was in his statement was true and correct so – so that if he said that that would take care of that statement.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** But if he did not confirm it then it would – it would be 00:06:23 that but your junior can check for us and in due course maybe I can be told what the position is.

ADV SELEKA SC: Yes.

CHAIRPERSON: But certainly in regard to the one – the most recent one you have indicated that you will ask him

to...

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: He will be asked to re-submit it under oath.

ADV SELEKA SC: Correct Chairperson.,

CHAIRPERSON: Ja. And I think that Mr Molefe the publications to which you have just referred those could be submitted to the legal team and ultimately – no, no they will come to you – Mr Seleka's junior will come to you and
10 – and take those. So there will be evidence. So at a certain stage then they should be submitted as exhibits at some stage.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Ja okay alright.

ADV SELEKA SC: Thank you. Chairperson similarly the opening statement of Mr Molefe which he read from the last time on his appearance should also be admitted as an exhibit.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** I ...

CHAIRPERSON: If it was not done last time it must still be done.

ADV SELEKA SC: Ja I do not think it was because he needed to make corrections on it.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: Ja I was speaking to my learned friend so that we can get the corrected ...

CHAIRPERSON: Version.

ADV SELEKA SC: Version of that.

CHAIRPERSON: Ja.

MR MOLEFE: The corrected versions was submitted the following day.

ADV SELEKA SC: Well my learned friend was saying they have not.

10 **MR MOLEFE:** No, no.

ADV MASUKU: So my instructing attorney they will have sent it the commission. I did not know that but. The Malaba Attorneys.

CHAIRPERSON: Okay can you just say – can Mr Molefe's instructing attorneys just electronically send it to the legal team.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja okay alright.

20 **ADV SELEKA SC:** Thank you Chair. What I am going to do during the course of the evidence I will make a copy of the – well depending on when we get it because I want to go through Mr Molefe's statement.

CHAIRPERSON: Ja okay.

ADV SELEKA SC: During the course.

CHAIRPERSON: That is okay.

ADV SELEKA SC: Thank you. Yes Mr Molefe let us proceed when – when you – when we ended yesterday I went to listen to the recording you were talking about the President being the Chairperson of the War Room and that they required too much details in the War Room.

There were two aspects. There was the cooling off period, a lot of details required and ...

CHAIRPERSON: I am sorry Mr Seleka.

ADV SELEKA SC: Yes Chair.

10 **CHAIRPERSON:** Was there not something you wanted to also inform me about with regard to...

ADV SELEKA SC: Oh yes.

CHAIRPERSON: The President.

ADV SELEKA SC: Yes. Thank you Chair. That is in relation to Mr Molefe's statement. As the Chairperson had directed we provided the President with your statement Mr Molefe together with your affidavits. The Chairperson – then you asked me yesterday whether Mr President has responded. I did not know at that stage but I now I know
20 that he actually has not. I got a message from his office that they have decided to wait until the – Mr Molefe has fully testified in order to file a written response or affidavit. So that is the position. We have not received anything from the President yet.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Alright.

MR MOLEFE: But Chairperson if it was a 3.3 were they not required to say even before I testify whether they will like to cross-examine or is it done after I have testified?

CHAIRPERSON: Well the – the rules of the commission are to the effect that if you have been served with a Rule 3.3 Notice to say somebody has submitted a statement or affidavit that implicates you or may implicate you you have
10 certain rights which you must decide whether you exercise them or not. One of which is whether you are going to apply for leave to cross-examine that person. You must do that within fourteen days after receiving the – the 3.3 Notice but there is provision for condonation if you are late and you provide an explanation why you were late and the Chairperson can condone or not condone after hearing what the explanation is. But it is not – you are not obliged by virtue of receiving a Rule 3.3 Notice. What you are obliged – when – the time when you are obliged to file an
20 affidavit is when you receive a Regulation 10.6 Directive from the Chairperson.

MR MOLEFE: Yes.

CHAIRPERSON: So under Rule 3.3 it is up to you if you want to respond. But the commission may decide that even if you did not want to respond it wants an affidavit from

you. In that case it can ask you to provide an affidavit if you cooperate and respond and provide it then no 10.6 Directive needs to be issued. If you do not provide it then you can be compelled. But at this stage it is a 3.3 Notice situation.

MR MOLEFE: So will it be correct to say that the – in terms of the Rule 3.3 I do not know what they call it 00:13:13 the days which is fourteen days

CHAIRPERSON: Yes the fourteen days.

10 **MR MOLEFE**: Those have lapsed.

CHAIRPERSON: Yes.

MR MOLEFE: Because it was the 15th January.

CHAIRPERSON: Yes.

MR MOLEFE: So they have to apply for condonation.

CHAIRPERSON: If you...

MR MOLEFE: If they decide.

CHAIRPERSON: If they decide ja.

MR MOLEFE: Yes.

CHAIRPERSON: Ja. Okay. Mr Seleka.

20 **ADV SELEKA SC**: Thank you Chair. Ja just to recap and you will assist me Mr Molefe yesterday about the War Room and the President being the Chairperson of the War Room I think one of the aspects you raised was that you were and I am paraphrasing either surprised by the amount of detailed information that they required. Is that – is that

correct? That they required a lot of detail.

MR MOLEFE: Yes.

ADV SELEKA SC: And you did not know why they required so much detail? Did you or did you not?

MR MOLEFE: Did I what?

ADV SELEKA SC: Did you know why they required that much detail?

MR MOLEFE: No.

ADV SELEKA SC: Did you seek to engage to find out why
10 they required so much detail?

MR MOLEFE: No the amount of detail that was required was in fact not even my evidence here. There are people who came here that talked about the War Room – that spoke about a lot of detailed things required all the time. I think one of them may have been Ms [?] Mkholo and one or two other people from the board who were talking about the War Room and the fact that they were not being told what is happening at the War Room. They are the people that talked about details. So I – I did attend once and I
20 made a presentation where the President was present about our strategy to eliminate load shedding and that was a very detailed presentation.

ADV SELEKA SC: Yes. Okay. Well that is important to know because you see yesterday when you testified it sounded like this is information that you knew firsthand

about that they wanted so much details. So we went away yesterday after the adjournment with the impression that this you knew yourself that that is what was being required. But I think it is important now that you clarify in fact you are simply relying on what you heard other witnesses testimony.

MR MOLEFE: And I did go to a meeting where we made a presentation that was very detailed on our strategy to eliminate load shedding.

10 **ADV SELEKA SC:** Yes but that is one thing because you are not complaining about that.

MR MOLEFE: No that was a typical detail that was required.

CHAIRPERSON: Well I do not know whether we should bother ...

ADV SELEKA SC: About details.

CHAIRPERSON: About details until somebody says the amount of detail they required means XYZ.

ADV SELEKA SC: Yes Chair.

20 **CHAIRPERSON:** Or this is the conclusion to be drawn from that. So otherwise if Mr Molefe simply says I was surprised by the amount of detail they wanted and does not go beyond that.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am not sure that we need to spend more

time on it.

ADV SELEKA SC: But the point is this Chairperson whereas Mr Molefe appears to be complaining about the details required Minister Lynne Brown says in her affidavit that she met with President Zuma who was raising concerns with her that the executives were not supplying sufficient or accurate information to the War Room. So it was according to Minister Lynne Brown a very specific complaint of President Zuma at the time. So what the War
10 Room then was doing in its request for information it would have been in compliance with what the President had required as communicated by the Minister or at least to address that concern which the President had raised with her.

MR MOLEFE: Chairperson.

CHAIRPERSON: Well to the extent that you are saying that the issue relates to whether there was – there were justifications for any complaints about the adequacy or otherwise of the information provided to the War Room
20 maybe there might be something.

ADV SELEKA SC: Ja.

CHAIRPERSON: But I just want us to make sure that we use the time with – that we have for important issues.

ADV SELEKA SC: Yes.

MR MOLEFE: But Chairperson my understanding is that I

am here to help the commission.

CHAIRPERSON: Ja. Ja.

MR MOLEFE: And to assist the commission.

CHAIRPERSON: Hm.

MR MOLEFE: And the investigating team.

CHAIRPERSON: Hm.

MR MOLEFE: If there is an interest in the amount of detail that was required and the amount of detail that was submitted because there has been evidence here that
10 meetings were held every Friday morning at seven o'clock and in those meetings Eskom officials were required to submit reports. Perhaps the investigating team can go to Eskom and ask for those reports and the requests for information and see exactly what was in there rather than to seek to ask of me to give evidence about those reports and what was in them and what was the amount of detail that was in them.

CHAIRPERSON: Yes.

MR MOLEFE: The information is at Eskom.

20 **CHAIRPERSON:** Ja you see one of the things we have got to as a commission guard against is following up everything.

MR MOLEFE: Yes.

CHAIRPERSON: When we have very limited time.

MR MOLEFE: Yes.

CHAIRPERSON: We have got to use our time optimally.

MR MOLEFE: Yes.

CHAIRPERSON: We must not waste time following things that – whose relevance or importance is not clear you know when there may be things that are clear.

MR MOLEFE: Ja.

CHAIRPERSON: So that is why I am saying to Mr Seleka what is this about the amount of detail so I am – I am wanting to be satisfied that we are spending time on
10 important issues. If somebody demonstrates to me that to – for the commission to look for those reports you know is important in terms of the Terms of Reference of the commission in terms of what we are looking for then by all means but I must just be satisfied that we use our time that is left optimally. Ja.

ADV SELEKA SC: Ja. That is correct Chair.

MR MOLEFE: On the other hand Chairperson

CHAIRPERSON: Yes.

MR MOLEFE: It might be interesting to find out if the
20 issue of coal supply and Glencore did come up during those meetings.

CHAIRPERSON: Ja.

MR MOLEFE: That might be interesting for the commission.

CHAIRPERSON: Ja.

MR MOLEFE: I am not saying that it is.

CHAIRPERSON: Yes.

MR MOLEFE: I am just saying that this is what happened.

CHAIRPERSON: Yes.

MR MOLEFE: And if you really, really want to get to the truth.

CHAIRPERSON: Ja.

MR MOLEFE: This is the route that you can take and it is up to you to decide whether it is important or relevant.

10 **CHAIRPERSON**: Ja okay. No that is fine.

ADV SELEKA SC: Yes. You know I do not make too much about the information itself that was required Mr Molefe all I am trying to show is that you see the War Room had a mandate. The War Room was phased with issues pertaining to Eskom and the President has – had established it, put the Deputy President there and the President had raised concerns according to the Minister that we must get information sufficient for the War Room. So when the War Room required information as it did it did
20 it on the mandate of the President. So I am contrasting that with your complaint that they required a lot of details. Because I do not know what you make of that request which is a request in compliance with the President at the time and that is all I wanted to show you nothing more – there is nothing more than that.

MR MOLEFE: Mr Seleka during the existence of the War Room all they wanted was information. I cannot recall that they did anything meaningful to stop load shedding from the information that was submitted on those Friday mornings. That is what frustrated me as an incoming Chief Executive that we had a challenge which was load shedding. Load shedding required positive action and not just endless meetings where we just request information all the time. My feeling and this was my evidence – my
10 feeling was that the War Room was just requesting information and it was not clear for what purpose and what it is that they were going to do with it and I could not see specific, positive, decisive interventions that were being made to stop load shedding which is why I went and just focussed on load shedding until we got it right.

CHAIRPERSON: How long did the – for how long was the War Room there – do you remember more or less?

MR MOLEFE: I do not remember but it ...

CHAIRPERSON: A year; two years?

20 **MR MOLEFE:** I cannot remember it started before I got there.

CHAIRPERSON: Ja.

MR MOLEFE: And while I was there it was there for another two months. Load shedding ended in August 2015 it was long after the War Room had been closed down.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: And just to finalise on this because you say in your opening statement you did say you – you then stopped attending the meetings of the War Room.

MR MOLEFE: To go and focus on the issue at hand.

ADV SELEKA SC: Yes. So the answer is yes. What – what I am trying to say to you is this in – look at – look at the treatment you received visa vie the suspended executives. Prior to their suspension Minister Lynne Brown
10 goes to the meeting of the board and one of the issues is exactly that the executives are not giving sufficient information. It is an allegation. Not giving sufficient information to the War Room or inaccurate information has been given. And it is one of the issues she articulates as issues of her concern board members says she is not going to protect anybody anymore and identifies areas of – of functions where the four executives has to step down. They get suspended three never come back but you stop attending the board – the War Room meetings and you do
20 so with complete impunity. So what – what makes this change of attitude towards you visa vie people like Mr Matona and the FD Ms Molefe, Mr Dan Marokane?

MR MOLEFE: Maybe.

ADV SELEKA SC: But that is – that is what you know it is intriguing.

MR MOLEFE: Maybe they should have stopped attending the War Room.

ADV SELEKA SC: Maybe what?

MR MOLEFE: Maybe they should have stopped attending the War Room. But ...

ADV SELEKA SC: But they were being compelled to go – compelled to give information.

MR MOLEFE: Chairperson I do not think that I can comment on the suspension of the executives. I was not
10 there, I was not involved. In fact some of them I have never even met and I sought deliberately not to involve myself in the issue of the suspended executives.

ADV SELEKA SC: But can I explain my question to you?

MR MOLEFE: I also do not – would not...

CHAIRPERSON: Let him finish.

MR MOLEFE: Would prefer not to compare my approach to their approach. I deliberately when I got to Eskom said that I would like to view this problem with a fresh eye without the baggage of what had happened or had just
20 happened. So the issue of the suspended executives did not feature at all in my strategy.

CHAIRPERSON: Ja.

MR MOLEFE: To try and eliminate load shedding.

CHAIRPERSON: Ja.

MR MOLEFE: That was my priority number 1 to eliminate

load shedding and that did not involve going back to what my predecessors did, the privileges they enjoyed or did not enjoy or what the fight between them and the board had been. So I am afraid Chairperson I cannot comment on the issue of the suspension of the executives.

ADV SELEKA SC: Yes. Yes but I was asking you to comment on a different aspect.

CHAIRPERSON: You were asking to?

ADV SELEKA SC: For him to comment on a different
10 aspect. I am saying the differences in the treatment that you receive and they receive is what calls for comment. You stop attending the meetings with impunity nothing happens to you. They are trying hard to assist the War Room to give information. There is a complaint that no you are not giving us correct information, you are not giving us adequate information you are giving us inaccurate information and it is one of the Minister's concern when he comes – when she comes to the meeting on the 11th.

MR MOLEFE: Yes.

20 **ADV SELEKA SC:** Ultimately leads to their suspension. It is not the suspension you need to comment on it is the differences in the treatment meted out to you and them.

CHAIRPERSON: Treatment by whom?

MR MOLEFE: Yes.

ADV SELEKA SC: Chairperson?

CHAIRPERSON: Treatment by whom?

ADV SELEKA SC: Treatment meted out by the shareholder representative and the board.

MR MOLEFE: Yes.

CHAIRPERSON: Yes.

ADV SELEKA SC: Because it is the board and the Minister.

CHAIRPERSON: But if – but are you comparing the same things? Would you not have to say if you want to check
10 whether the board and the Minister treated them the same way they – they suspended executives and him would you not have to say if you are comparing the fact that according to the knowledge of the Minister well – or and the board they were accused of not giving correct information to the War Room or they were accused of giving sometimes giving conflicting information about for example the financial position of the company I think that was one of the things that was mentioned.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Would you not have to say – to say he did the same and he got different treatment? But I do not hear you saying he was accused of supplying incorrect information and so on. Would you not need to be dealing with that situation in order to compare properly?

ADV SELEKA SC: Yes Chair – Chair we do not – well

there is no – I hear what the Chairperson is saying there is no allegation in regard to – I mean an allegation made either by the Minister or the board to that effect.

CHAIRPERSON: Hm.

ADV SELEKA SC: But at the level of inadequate information the executives were alleged to have provided.

CHAIRPERSON: H'm.

ADV SELEKA SC: And this is an allegation because they have come here to deny those things too. You see an
10 effort, at least on their evidence on their part, to cooperate with the War Room. And it is at that level that I am pitching it. But then you hear Mr Molefe said: Well, I stopped going to the War Room. So it is only at that level that ...[intervenes]

CHAIRPERSON: Ja, but ...[intervenes]

ADV SELEKA SC: ...I am pitching this.

CHAIRPERSON: It is not the same. They did not stop. He stopped.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** And there is no accusation that he provided the War Room with incorrect information or conflicting information.

ADV SELEKA SC: Yes. No, correct. Because is it not that there are two aspects Chair?

CHAIRPERSON: H'm.

ADV SELEKA SC: As the Chair is saying, they did not stop but they were accused, amongst others, of not providing sufficient information.

CHAIRPERSON: H'm.

ADV SELEKA SC: In the case of Mr Molefe. When he stopped to participate, that means he will not provide any information to the War Room.

CHAIRPERSON: H'm.

ADV SELEKA SC: He said ...[intervenes]

10 **CHAIRPERSON:** Well, you can provide information without attending meetings.

ADV SELEKA SC: Ja, he will have to answer that Chair.

CHAIRPERSON: Yes, but I am not sure that it comes across the way you really want.

ADV SELEKA SC: Ja.

CHAIRPERSON: I mean ...[intervenes]

ADV SELEKA SC: I see the Chair has ...[intervenes]

CHAIRPERSON: There is no... They were accused of providing incorrect information or conflicting information or
20 are not providing adequate information.

ADV SELEKA SC: Yes.

CHAIRPERSON: I cannot remember ...[intervenes]

ADV SELEKA SC: Yes, yes.

CHAIRPERSON: ...if that was all of the above.

ADV SELEKA SC: Yes.

CHAIRPERSON: There is no such an accusation, that we know, was levelled against him but he says he stopped attending the War Room.

ADV SELEKA SC: Yes.

CHAIRPERSON: And also, from the board's side, remember that from the board's side, as far as the suspension of the executives are concerned, they have all made the point, those who have testified, that the suspension was not based on any wrongdoing on the part
10 of the executives but they wanted that the inquiry, once it started its work, they should not be there because their presence could indeed – the inquiry.

But what is true is that when the Minister spoke to the board room the morning of 11th of March 2015, she did, among other things, raised a complaint that the War Room was being provided with either inadequate or incorrect or conflicting information by the management.

ADV SELEKA SC: H'm. Yes. Okay. So I was taking just one aspect of that Chair.

20 **MR MOLEFE:** But...but ...[intervenes]

ADV SELEKA SC: That deals with...

MR MOLEFE: [Indistinct]

ADV SELEKA SC: ...Mr Molefe...

[Parties intervening each other – unclear.]

MR MOLEFE: If I may?

ADV SELEKA SC: Ja.

MR MOLEFE: The treatment by the Minister
...[intervenes]

ADV SELEKA SC: Yes.

MR MOLEFE: ...by the Minister ...[intervenes]

ADV SELEKA SC: Or the board?

MR MOLEFE: ...action ...[intervenes]

ADV SELEKA SC: Or the board?

MR MOLEFE: ...action or inaction ...[intervenes]

10 **ADV SELEKA SC:** Yes.

MR MOLEFE: ...by the Minister or the board.

ADV SELEKA SC: Yes.

MR MOLEFE: I would not be in a position to speculate or
to say why they acted or not acted.

ADV SELEKA SC: Ja, that is fair.

MR MOLEFE: Ja.

ADV SELEKA SC: That is fair. Because we are looking at
that against the background Mr Molefe of what has been
presented here as evidence before the Commission, that
20 essentially, and the essence of the evidence that you were
earmarked to come – to be placed at Eskom, at the
essence of it, even before the Minister's decision
announced on the 17th of April 20215. So I am putting that
to you in the context of that information. So but if you say
you cannot remember, that is fair enough.

MR MOLEFE: Yes.

ADV SELEKA SC: Ja.

CHAIRPERSON: So in a... Mr Molefe, the question is. Do you know anything about you having been earmarked even prior to... Is it prior to the secondment Mr Seleka?

ADV SELEKA SC: Prior to the secondment been announced.

CHAIRPERSON: Oh, oh. Ja. Or maybe you want to indicate, more or less, from when the earmarking is said to
10 have happened.

ADV SELEKA SC: Yes. Well, if we take it from ...[intervenes]

CHAIRPERSON: Obviously before the announcement at some stage.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: That decision had been taken that he was the right person.

ADV SELEKA SC: Correct Chair.

MR MOLEFE: I do not know whether that is earmarking
20 but he would have been identified.

ADV SELEKA SC: Yes. If we take it from by who? If we take it from the evidence from Mr Henk Bester ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...who is told by Mr Salim Essa in

2014.

MR MOLEFE: And then earmark by Mr Salim Essa?

ADV SELEKA SC: No, I am using the word to convey the message of the evidence.

MR MOLEFE: Yes.

ADV SELEKA SC: That we will show you how powerful we are. We have decided who is the next board of Eskom.

CHAIRPERSON: Okay I think you need to ask it directly Mr Seleka.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: And I think last time it was raised.

ADV SELEKA SC: Yes.

CHAIRPERSON: And I think Mr Molefe did not have any comments on it.

ADV SELEKA SC: Yes.

CHAIRPERSON: It was raised that the evidence placed before the Commission by... What is the name of the witness Mr Seleka?

ADV SELEKA SC: Henk Bester.

20 **CHAIRPERSON:** Mr Henk Bester, is that he had the meeting in – at some stage in 2014 with Mr Salim Essa.

MR MOLEFE: Yes.

CHAIRPERSON: In relation to some job that his company had obtained from Transnet and Mr Salim Essa wanted and Mr Henk ...[intervenes]

ADV SELEKA SC: [Indistinct]

CHAIRPERSON: H'm?

ADV SELEKA SC: Yes, so he wanted Mr Henk Bester
...[intervenes]

CHAIRPERSON: Ja, to agree that Mr Essa's company
...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...be involved in that job and he was
resisting that approach and he said Mr Salim Essa said to
10 him something to the effect that, we are – and it is
speculation who we was referring to – are very powerful. I
can tell you that we have already decided that the next
boss of will be Mr Brian Molefe.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is that correct Mr Seleka?

ADV SELEKA SC: That is the ...[intervenes]

CHAIRPERSON: So you may – you might say: I know
nothing about that. You might say: I know about it. It is
because they had talked to me and they said they think I
20 will be the right person to take Eskom forward because
there are challenges at Eskom and I said I would have no
problem or, you might say: I know nothing about that.
Mr Salim Essa never spoke to me about that. Or... Ja.

MR MOLEFE: I know nothing about it Chair.

CHAIRPERSON: Ja, thank you.

MR MOLEFE: Furthermore, I do not know Mr Salim Essa.

CHAIRPERSON: Yes.

ADV SELEKA SC: Yes.

MR MOLEFE: And I have never met him.

ADV SELEKA SC: Yes.

CHAIRPERSON: Yes, yes.

MR MOLEFE: I do not even know what he looks like.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ja.

10 **CHAIRPERSON:** Yes.

ADV SELEKA SC: Mr Molefe, let us ...[intervenes]

CHAIRPERSON: Or maybe to complete it.

MR MOLEFE: Yes, Chair.

CHAIRPERSON: You do not know Mr Salim Essa. Is there anybody, whether in government or outside of government, who had spoken to you about their wish or their desire for you to go and be the CEO at Eskom?

MR MOLEFE: As I said it was the Minister.

CHAIRPERSON: Yes.

20 **MR MOLEFE:** And only the Minister ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...during a function at the...

CHAIRPERSON: Was that 2014 or 2015?

MR MOLEFE: No ...[intervenes]

CHAIRPERSON: I am talking about 2014?

MR MOLEFE: ...it was just before.

CHAIRPERSON: Sorry? Just before ...[intervenes]

MR MOLEFE: Just before. Maybe ten days or so before ...[intervenes]

CHAIRPERSON: Before the announcement.

MR MOLEFE: Yes.

CHAIRPERSON: So ...[intervenes]

MR MOLEFE: Or even less than that.

CHAIRPERSON: ...that is 2014... 2015, April.

10 **MR MOLEFE:** 2015, ja. You see, this is what she said:
We have a very serious problem at Eskom. They will not
be even able to pay salaries. I am concerned about what
is going on there.

CHAIRPERSON: Ja.

MR MOLEFE: Would you agree ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...if we seconded you ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: ...to Eskom to just assist us ...[intervenes]

20 **CHAIRPERSON:** Ja.

MR MOLEFE: ...out of this crisis.

CHAIRPERSON: Ja.

MR MOLEFE: And I said: Minister, if that is what yourself
and the government would like to do, that is fine.

CHAIRPERSON: Ja.

MR MOLEFE: Ja.

CHAIRPERSON: Ja, you did testify about that the last time.

MR MOLEFE: Yes. And that is the only ...[intervenes]

CHAIRPERSON: That is the only person.

MR MOLEFE: Yes.

CHAIRPERSON: And it was not 2014, it was 2015?

MR MOLEFE: Yes.

CHAIRPERSON: Ja. Okay.

10 **ADV SELEKA SC:** Chair, can we just carry on that?

CHAIRPERSON: Ja, ja.

ADV SELEKA SC: Because – but then you only stayed for a year then Mr Molefe at Eskom?

MR MOLEFE: I was?

ADV SELEKA SC: You only stayed for a year at Eskom.

MR MOLEFE: I stayed for a year. Or it is over – it was over a year.

ADV SELEKA SC: To December 2016?

MR MOLEFE: Yes.

20 **ADV SELEKA SC:** Why?

CHAIRPERSON: Well, it was one and a half years?

MR MOLEFE: Yes.

ADV SELEKA SC: Yes. Why?

MR MOLEFE: Well, the... Firstly, the load-shedding was under control, number one. And number two, while I was

seconded to Eskom ...[intervenes]

ADV SELEKA SC: Now why did you only stay until December 2016?

MR MOLEFE: Come again?

ADV SELEKA SC: Why did you only stay until December 2016?

MR MOLEFE: I am trying to explain.

ADV SELEKA SC: Okay.

CHAIRPERSON: Yes, okay. No, explain Mr Molefe.

10 Come closer to the mic or put it closer to you.

MR MOLEFE: When I was appointed, it was on an understanding that it will be for permanent employment so which is no fixed term of my contract and we concluded the – we – that – so that was the agreement that we would like to employ you.

You will be employed as the Group Chief Executive and here in Eskom the Group Chief Executive not on a fixed term contract. My fixed term contract at Transnet had actually been renewed for another five years
20 at the time. And I agreed, we exchanged letters and I was appointed.

I believe that after I had been acting for six months, the board or the Minister could make a decision to confirm me into the position and that is what happened.

Soon after I was appointed and received the

letter and the contract, we got the message from the Minister's office that says that the: No, in fact, we wish to change your term to five years.

And I said, but I have just signed a permanent employment contract... the terms of my employment. And there was an exchange toing and froing between the chairman and the Minister's office about that situation.

Because I was saying: No, I do not think this is fair because I am permanently employed and now you
10 converting my employment contract for five years. Then the board came with a solution that says that: Well, when you leave we will regard you as having worked until the age of 63 or...

CHAIRPERSON: You are swallowing some of your words. I do not think they ...[intervenes]

MR MOLEFE: No, they said: When you leave, you will have been regarded as having completed ...[intervenes]

CHAIRPERSON: As having worked up to age 60.

MR MOLEFE: Ja, at 60 retirement.

20 **CHAIRPERSON:** Ja.

MR MOLEFE: And in fact, they took a resolution to that affect and then they prepared the five year contract which I signed. And then in November 2016, Ms Madonsela released her State of Capture Report which I say I was not consulted... I was... not asking...

And which State of Capture Report I thought was very unfair and had a lot of things I thought I could explain but did not have the opportunity to explain but I was nevertheless tainted

So I decided ...[intervenes]

CHAIRPERSON: Sorry. You were, nevertheless...? Oh, tainted?

MR MOLEFE: Tainted, ja.

CHAIRPERSON: Okay.

10 **MR MOLEFE:** I mean, the media was going on and on about it.

CHAIRPERSON: H'm.

MR MOLEFE: Phone calls and so on and so forth. And so I decided that perhaps it is best to leave. Perhaps it is best to leave. And then when I had to leave, I had to choose a vehicle by which I leave. And then I activated that – an agreement that when I leave I will be regarded as having been leaving at 63. So I applied for it. And the board approved it and put me on pension. So I left
20 because I felt with these allegations it is not good to be at Eskom.

CHAIRPERSON: It is not good...?

MR MOLEFE: To be at Eskom.

CHAIRPERSON: Yes, okay.

MR MOLEFE: Yes. So that is why I left.

CHAIRPERSON: H'm.

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

CHAIRPERSON: Maybe before that. Why would it not be good to remain at Eskom in that situation?

MR MOLEFE: Chairperson, when you are the CEO and you are accused of corruption and all sorts of things, even when they have not proved, how do you face your employees every day because they will think that this guy is our CEO but there is a Public Protector Report.

10 So in the Public Protector's report it said that: Well, these allegations must be investigated. A commission of inquiry must be set up and you must report within 18-months.

 So even when I left I thought, okay, these allegations we will deal with them. It will take about 18-months to deal with that but those 18-months as CEO is anyway a greater part of my contract. It will not be worth staying at Eskom for, for during that period.

 So I took early retirement as have been agreed
20 with the board much earlier in February when there was a dispute about converting my fixed – my permanent employment into five years and that was offered as a – I do not know... to get me to sign the five year contract.

 So, ja, I did not consider it sustainable. In anyway, as I said in my statement, it is good governance to

step away when you are being accused of the things she was insinuating in her report.

CHAIRPERSON: Well, I, on a lighter note, I just want to say, you know, the English language is rich with words. I just heard that you said – you said step away. You did not say step aside. And there is also step down. Step down, step away, step aside. [laughs]

MR MOLEFE: Ja, ja. I did not say it consciously with a ...[intervenes]

10 **CHAIRPERSON:** Ja.

MR MOLEFE: Ja. But taking retirement would mean that I do not return.

CHAIRPERSON: Sorry, just repeat that.

MR MOLEFE: Going on early retirement would mean that I will not return.

CHAIRPERSON: Yes, yes, yes.

MR MOLEFE: Ja, that was early retirement.

CHAIRPERSON: Yes.

MR MOLEFE: Ja.

20 **CHAIRPERSON:** Just to make sure that my understanding is correct. Is the position that the arrangement that had been reached between yourself and the board in terms of your employment after the Minister had said your appointment should be for five years.

Is the position that the board – is the position

that when you left or when you would be leaving at the end of the five years, you were going to be deemed who have worked with Eskom until age 60 and therefore obtain benefits, pension benefits that you would have obtained or would have been entitled to if you have worked up to that age? Is that understanding correct?

MR MOLEFE: Yes, it says that when I left.

CHAIRPERSON: It says when you leave.

MR MOLEFE: When I leave, yes.

10 **CHAIRPERSON**: Yes.

MR MOLEFE: Ja.

CHAIRPERSON: And then – well, I do not know whether in mitigation there was any issue about whether when you leave meant when you leave at the – when you would leave at the end of five years ...[intervenes]

MR MOLEFE: Ja, yes.

CHAIRPERSON: ...or anytime.

MR MOLEFE: I cannot remember how it was addressed.

CHAIRPERSON: Yes.

20 **MR MOLEFE**: ...what was in the...

CHAIRPERSON: Yes.

MR MOLEFE: But the fact of the matter is that, when the time came – I wrote a letter that says: I hereby apply for early retirement as per our earlier agreement and as per the rules of the pension.

CHAIRPERSON: H'm, h'm.

MR MOLEFE: And that was – it is the sum total of my letter.

CHAIRPERSON: Ja, ja.

MR MOLEFE: And then I got a letter back that says: Your early retirement is approved.

CHAIRPERSON: Ja.

MR MOLEFE: So, ja, the other technicalities...

CHAIRPERSON: H'm.

10 **MR MOLEFE:** So my early retirement was approved which was why I was adamant that I had actually never resigned. I never put in a resignation letter. I just said I would like to apply for early retirement. I was under the impression that it was possible to do so.

CHAIRPERSON: It was what?

MR MOLEFE: Possible.

CHAIRPERSON: Ja.

MR MOLEFE: To do so, to just apply for early retirement.

CHAIRPERSON: Yes, ja.

20 **MR MOLEFE:** It was a time of great confusion because it was on the back of Thule Madonsela's report. And I – now I was feeling a lot of things Chairperson. My permanent contract has been reduced to five years.

And now here is a report from a Chapter 9 institution which... and violated the rules of natural justice

and the Constitution itself. What do you do when a Chapter 9 institution violates your right to be heard?

I felt very, very frustrated and angry at the whole thing and then I said, you know what, I am just going to early retirement. They offered it to me anyway and I applied for it and it was approved.

CHAIRPERSON: Yes.

MR MOLEFE: H'm.

CHAIRPERSON: Okay Mr Seleka.

10 **ADV SELEKA SC:** And after you took the early retirement Mr Molefe because you say your name was tainted, it was not good to stay at Eskom anymore. Where did you go after that?

MR MOLEFE: I went home.

ADV SELEKA SC: And was there another job after that?

MR MOLEFE: Yes, then I was later on, I think maybe a couple of months later, approached by the North West ANC.

ADV SELEKA SC: About how many months later?

20 **MR MOLEFE:** About two or three months later.

ADV SELEKA SC: Two or three months?

MR MOLEFE: Ja, around March I think.

ADV SELEKA SC: Yes.

MR MOLEFE: Ja. Asking if I would be prepared to be a member of the National Legislature of the North West.

CHAIRPERSON: Yes, I must ask you again to speak up
mister ...[intervenes]

MR MOLEFE: Yes, if I would be ...[intervenes]

CHAIRPERSON: Your voice is going down more.

MR MOLEFE: If I would be prepared to be a member of
the National Assembly. They – well, they have asked if I
would prepared to be a member of the National Assembly.
And then I considered it and I said I would be. It sounds
like a good place to retire to, to just raise a point of order
10 and so on. So I agreed and they facilitated that I become
a member of the National Assembly for the North West
Province.

ADV SELEKA SC: So you, by virtue of that, you became
a member of Parliament?

MR MOLEFE: Then I became a member of Parliament.

ADV SELEKA SC: H'm. Were you not similarly concerned
about the report – I mean the taint of your reputation,
assuming that role?

MR MOLEFE: No, I came to Eskom and my role as the
20 Chief Executive of Eskom. So I saw it – and I thought that
we will deal with those issues at the right time in the
Commission and so on which would be established within
18-months.

But it would not be right to be at Eskom... to
Eskom. So my problem was not taking up any other

employment. My problem was just at Eskom because the Public Protector's report was about Eskom.

ADV SELEKA SC: Yes. So for how long were you in that position for the National Assembly?

MR MOLEFE: I think it was about two months.

ADV SELEKA SC: I see. And why two months?

MR MOLEFE: So while I was at the National Assembly, Ms Suzanne Daniels in fact came to see me in Parliament.

CHAIRPERSON: Came to see you in Parliament?

10 **MR MOLEFE:** Yes.

CHAIRPERSON: H'm?

MR MOLEFE: And she said ...[intervenes]

CHAIRPERSON: Ja, just to get the timeframe correct. As I understand the position. You were sworn in as a member of Parliament in February 2017. Is that correct?

MR MOLEFE: I cannot remember if it was February or March but thereabout.

CHAIRPERSON: But thereabout?

MR MOLEFE: Ja.

20 **CHAIRPERSON:** Ja, okay.

MR MOLEFE: Ja. And she came to see me and said that the Minister is very concern but ...[intervenes]

CHAIRPERSON: Is very?

MR MOLEFE: Concerned.

CHAIRPERSON: Concerned, ja.

MR MOLEFE: Ja. About the board giving you early retirement when you have only worked for 18-months and the board ...[intervenes]

CHAIRPERSON: 18-months you said?

MR MOLEFE: Ja, about 18-months.

CHAIRPERSON: Ja, okay.

MR MOLEFE: Yes. And she would like to reverse that decision. And I said to her, how is she going to reverse the decision because the egg is scrambled ...[intervenes]

10 **CHAIRPERSON:** I am sorry. I think there is something.

ADV SELEKA SC: Ja, they are asking him to stay close to the microphone.

MR MOLEFE: Oh, okay.

CHAIRPERSON: H'm.

ADV SELEKA SC: Yes.

CHAIRPERSON: Is it possible to pull it closer or it is not moveable?

MR MOLEFE: No, I can do that.

CHAIRPERSON: Ja, okay.

20 **MR MOLEFE:** I said: How is she going to reverse that decision because the egg is scrambled. How do you unscramble a scrambled egg? I have taken early retirement, it has been approved, it has been approved at the Pension fund and now I am here. So how do we reverse all of this? And she said: If it can be done, will

you be amenable to doing it?

CHAIRPERSON: And the reversal that she was talking about, which she was saying the Minister was talking about, was going to entail what as you were speaking to her?

MR MOLEFE: That is what I was asking: What does that mean?

CHAIRPERSON: H'm?

MR MOLEFE: How do we unscramble this egg?

10 **CHAIRPERSON:** H'm.

MR MOLEFE: And then she went there away and then came back again. We had meetings, lot of meetings in Cape Town and in Pretoria to talk about this.

CHAIRPERSON: H'm?

MR MOLEFE: And eventually, the proposal was, the legal opinion is that it was a mistake to approve my pension in the first place. Early retirement can only be taken when you are 55. I was 50.

20 The board's advise had been that it is possible to take a little time... The reasons that mistake happened is because it is in the rules of the pension fund that early retirement can only be taken at 55 with the approval of the board but the pension fund's guidelines, which is a guideline for members, say 50.

The person who were giving us advise or were

giving the board advise, was – had the guideline and was referring to the guideline and had said to the board, at the time about the – because at the time it was...

Well, if somebody goes before he is 55, would you be able to implement this resolution that you have and the answer was, yes, anytime above 50 or so.

CHAIRPERSON: H'm.

MR MOLEFE: Ja. So she says that was a mistake. It was a mistake to have approved your early retirement.
10 And then I said: Well, if it was a mistake to have approved my early retirement, it means I was also mistaken to have applied for it because if I had known that the rules do not allow for it, I would not have applied for it in the first place.

But in my head – my mistake, okay, my mistake would have seemingly fixed by official who knew that it could not be done, they should have not approved but they did but then I had applied for it.

So we had laboured under a common mistake
20 that I could apply for early retirement and that the board could approve it. And we had done that and it had been done.

And then she said the legal advice was if a mistake is common to both parties, the legal solution is to revert to status quo... which means revert to what the

situation was before the mistake happened which means
...[intervenes]

COUNSEL: Chair, can I? I am sorry to interrupt the witness.

CHAIRPERSON: Yes?

COUNSEL: My instructing attorney informs me that the issue of the pension is before the – is still before the Court. It is a matter pending before the court.

CHAIRPERSON: H'm?

10 **COUNSEL:** And Mr Molefe is referring to legal opinions for which there is no waiver of confidentiality to the extent that the Commission may take note of that. We would want to advise our client on the right he has to speak about a matter that is pending before a court and what the implications are for implicating that the legal opinions led him to the pension of which he is talking about. Can we have five minutes or ten minutes to just speak to him so that we – we are holding on page(?) ...[intervenes]

CHAIRPERSON: Ja.

20 **COUNSEL:** ..in relation to the evidence he seeks to give.

CHAIRPERSON: No, that is... I think that is fine. Mr Seleka, we could use this as a tea-break. We are closing the tea-break.

ADV SELEKA SC: Indeed Chair.

CHAIRPERSON: Ja. Okay let us take this as a tea-break.

It is nine minutes past. We will resume at twenty-five past.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue. There is nothing to follow up, Mr Masuku, on – well ...[intervenes]

MR MASUKU: Chair, I thought I would leave it to Mr Molefe to convey what our advice is to you rather than
10 get...

CHAIRPERSON: Yes, no that is alright, Okay, Mr Seleka?

ADV SELEKA SC: Yes, thank you, Chair. Mr Molefe, do you want to go first?

MR MASUKU: Yes, Chair, my legal advice is that the matter is still pending before the court and that it is better to not deal with it here because it is still before the court.

CHAIRPERSON: Well, what I can say is that I think you – when the issue arose you were busy giving an explanation of why you state only four – I think you said two months in
20 parliament.

MR MASUKU: Yes.

CHAIRPERSON: I think that is what you were dealing with.

MR MASUKU: Yes.

CHAIRPERSON: There is some importance in

understanding why. If you are able for present purposes to give me that explanation without talking about a legal opinion if you have been advised not to be talk about it, that would be fine.

MR MOLEFE: Ja, as I have just said there was a desire to unscramble the egg and they thought we could return the situation to *status quo ante* but then that whole returning the situation to *status quo ante* became the subject of a legal dispute.

10 **CHAIRPERSON**: Yes, okay. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. So Mr Molefe as the outcome of – the outcome of that exercise was that you returned to Eskom.

MR MOLEFE: Yes, I did return.

ADV SELEKA SC: You did. So that is what, four months down the line?

MR MOLEFE: Five. Four, five, yes.

ADV SELEKA SC: Ja. So the report of the Public Protector is still fresh at the time and I want to know from you were
20 those concerns of the tainted reputation not good for you to stay at Eskom, the problem was Eskom, how will you look at the employees in the eyes when the Public Protector has made these allegations against you? Were you not there still?

MR MOLEFE: Well, Chairperson, at the time – firstly time

had passed and I have had time to come down and reflect on the issues and I was confident that there is nothing in the Public Protector that is sustainable. Secondly ...[intervenes]

CHAIRPERSON: Sorry, you were – just repeat that sentence about the Public Protector?

MR MOLEFE: I was confident that there is nothing in the Public Protector's report that can be sustained as an allegation against me. Secondly, the Public Protector had
10 said within a short space of time a Commission of Inquiry would be established and that in 18 months it would report back. At that time a Commission of Inquiry was not in sight. She had left the Commission, so she made ruling that somebody else must establish the Commission and ...[intervenes]

CHAIRPERSON: She said the President should establish the Commission.

MR MOLEFE: Yes, somebody else, the President should establish the Commission. So she said something that she
20 herself was not going to do, said the President must establish – and then there was controversy around the establishment of the – there was to'ing and fro'ing and it was just not happening. I thought it looks like here we are going to wait for coming back of Nxele.

CHAIRPERSON: I am sorry, for the coming back of?

MR MOLEFE: Of Nxele.

CHAIRPERSON: Nxele?

MR MOLEFE: Yes, the left handed one.

CHAIRPERSON: Okay.

MR MOLEFE: He is the guy who escaped from Robben Island and said he would return and never returned.

who escaped from Robben Island and said he would return.

CHAIRPERSON: Maybe for the sake of the transcriber, it is N-x-e-l-e. Ja, okay?

10 **MR MOLEFE**: Yes. So after six months of the Public Protector's report nothing really was happening. I think, ja, the Commission was being established. I mean, they said 18 months, according to the Public Protector's report. It is now I think five years and so I had to decide what to do. And then they also said that you could not have taken the – sorry, there is no action that happened because of the common mistake, so you should go back. So after thinking about ...[intervenes]

CHAIRPERSON: Who was saying that?

20 **MR MOLEFE**: Ja, so now we are getting into the legal opinion.

CHAIRPERSON: Sorry?

MR MOLEFE: So now we are getting into the legal opinion.

CHAIRPERSON: Oh, okay. Ja, you see, you cannot just

say to me “they” I want to who.

MR MOLEFE: Yes. So that was the situation, so after weighing the situation at that time I decided okay, maybe let us unscramble egg in the way that they are proposing that I go back. Yes.

CHAIRPERSON: Yes. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. Ja, you said five years but it was five months I think you meant to say?

MR MOLEFE: Five months.

10 **ADV SELEKA SC**: Five months, ja.

MR MOLEFE: Five months.

CHAIRPERSON: No, I think he was saying it is five years now.

MR MOLEFE: It is five years since the Public Protector’s report which recommended – six years, say for six years.

CHAIRPERSON: Well, I have not done the calculation but it is a number of years, ja.

MR MOLEFE: It will be six years in November, Chair.

ADV SELEKA SC: I am not going to attempt it, Chair. So

20 ...[intervenes]

CHAIRPERSON: Of course there was a whole year that – 2017 when there was litigation and – then that is why nothing was happening because there was litigation, ja.

MR MOLEFE: And so, Chair, the thing that needs to be appreciated is that during that period our names were

being maligned, they had no opportunity explain in an appropriate forum what really happened and the advice that I got is that please try not to explain outside a forum that would be appropriate. These things of – you cannot – what we were dealing with yesterday could never explained in a sound byte to the media, we needed to sit down like this and explain properly, so that was frustrating because I had this thing to explain and there was no proper forum.

Of course there was a parliament forum but
 10 unfortunately that parliament forum, it was a political, parliament is a political thing, so it was more about the politics of the thing rather than getting to the truth in a manner that I think you are trying to get to the truth.

So my life had come to a standstill in a sense and has been on standstill for going on six years because of the Public Protector report which she wrote without having heard my side of the story.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes. Let me put this to you and hear
 20 your comment and it is in the context of your explanation that the early retirement arrangement, you had made it with the board already in February 2016. There is an allegation that you were in fact not meant to stay long at Eskom, it was a passage for you to go to parliament, earmarked to become the Minister of Finance. You comment on that?

MR MOLEFE: Who made the allegation?

ADV SELEKA SC: It has been publicly reported.

MR MOLEFE: No, I cannot comment on that, Chair.

ADV SELEKA SC: You cannot comment on it.

MR MOLEFE: I did not know anything about that, Chair.

ADV SELEKA SC: Okay. So on your coming back to Eskom, how long did you stay?

MR MOLEFE: Two weeks.

ADV SELEKA SC: Two weeks?

10 **MR MOLEFE**: Yes. Ja, only two weeks.

ADV SELEKA SC: And what happened?

MR MOLEFE: The DA and Solidarity and I think the EFF launched a court application to have me removed from Eskom. As soon as they launched the court application to have me removed from Eskom the Minister of Public Enterprises wrote a letter to the board to say that she is giving them an instruction to remove me. So that I thought was unfair labour practice, there was no hearing, there was nothing that I had done, there was no process and she had
20 been party to an agreement to unscramble the egg by saying we are reverting to the *status quo ante* and now she was reneging on that agreement without any recourse. So I went to the Labour Court. Chairperson, something strange happened at the Labour Court, they refused to hear the matter in which I was the applicant until the

matter in which I was respondent in the Pretoria High Court had been heard. I do not know, I am not a – maybe, Chairperson, they were correct but I thought that if you approach a court one of the rights that you have is a right to an outcome of the proceedings whether the court agrees with you or does not but not to say go to another forum. In fact where you are not the applicant, another case. So the Labour Court was never heard about my removal as CEO in a manner by the [indistinct – dropping voice]. That was
 10 never heard.

ADV SELEKA SC: Okay.

MR MOLEFE: I also felt let down by the judicial system as well at the time, rightly or wrongly. Maybe I was wrong.

ADV SELEKA SC: Okay. Chairperson, quickly I want to hand up for the document to be admitted as an exhibit which is Mr Molefe's opening speech which he gave on his first appearance. I need to refer to certain paragraphs in it, that is the reason why I wish to have it handed up. This is the corrected one, Mr Molefe. It is a document titled:
 20 "Statement by Brian Molefe dated 14 January 2021."
 It has nine pages. Mr Molefe, you go to the end of it, you will see there is a signature there above your name Brian Molefe.

MR MOLEFE: Yes.

ADV SELEKA SC: Dated 14 February 2021.

MR MOLEFE: Yes.

ADV SELEKA SC: You confirm this to be ...[intervenes]

MR MOLEFE: Yes, that is my signature.

ADV SELEKA SC: Thank you, Chair, I beg leave to have it admitted as EXHIBIT U38.2, Chairperson.

CHAIRPERSON: The statement by Mr Brian Molefe dated 15 January 2021 on the last page it was signed on the 14 January 2021, is admitted and will be marked as EXHIBIT 38.2.

10 **BRIAN MOLEFE'S STATEMENT DATED 14 JANUARY 2021
HANDED IN AS EXHIBIT U38.2**

ADV SELEKA SC: Yes, thank you, Chair. Mr Molefe, just certain things to clarify from this. Please turn to page 6 of EXHIBIT U38.2, the statement, paragraph 25. It reads:

“Mr Matshela Koko who I interrogated at length about this agreement told me that the board had not sanctioned it. He also ...[intervenes]

CHAIRPERSON: I am sorry, what paragraph?

ADV SELEKA SC: 25.

20 **CHAIRPERSON**: Okay.

ADV SELEKA SC: so the context to this – well, let me read:

“Mr Matshela Koko I who interrogated at length about this agreement told me that the board had not sanctioned it. He also told me that the official who

had signed it had no authority to do so. But this is hearsay evidence that I shall not burden you with. I hope that Mr Koko will shed more light on this aspect when the Commission ends its fascination with the suspensions of the executives in the hearing of his evidence.”

It is correct that you are referring here to the cooperation agreement.

MR MOLEFE: Yes.

10 **ADV SELEKA SC:** So because yesterday you were questioning whether the person – well, I think you were making the allegation or questioning, I am not sure, that the person who signed it does not have – did not have the authority to sign that agreement.

MR MOLEFE: Yes.

ADV SELEKA SC: But I think this statement clarifies that you do not know that.

MR MOLEFE: I do not know that.

ADV SELEKA SC: You do not know that the person did
20 not have – did or did not have the authority to sign.

MR MOLEFE: As I say here, this is what I was told.

ADV SELEKA SC: Yes. So the answer suggests that you do not know.

MR MOLEFE: This is what I was told, yes. It says ...[intervenes]

CHAIRPERSON: Yes. No, what Mr Seleka seeks to establish ...[intervenes]

MR MOLEFE: Yes, I do not know.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Ja, ja, I think yesterday there was a time in your evidence where my understanding was that you were raising questions as to whether the person had authority without definitely saying he did not have but I do not know whether at any stage yesterday you might have
10 gone beyond simply raising questions whether he did have authority, he or she did have authority. I am just saying I do recall that at a certain stage you were not saying he did not have or she did not have but you seem to be raising questions about whether the person had authority and I think you referred to the amounts involved as being amounts that should [inaudible – speaking simultaneously] board or something.

MR MOLEFE: Yes.

CHAIRPERSON: Ja. Is my recollection correct?

20 **MR MOLEFE:** That is correct, Chair, from what I know and have been told and from what I – it actually makes sense that it may well be so.

CHAIRPERSON: Ja, so the position as it stands is you are not sure that he or she did not have authority but you have question marks whether he or she ...[intervenes]

MR MOLEFE: Yes, yes, I have question marks.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you, Chair. The next paragraph, paragraph 26 in EXHIBIT U38.2 it says:

“Dr Ben Ngubane and members of his board understood the situation perfectly well. From them I received a blessing to do what was right and for that I am thankful.”

The first line or sentence:

10 “Dr Ben Ngubane and members of his board understood the situation perfectly well.”

Well, what do you mean by that?

MR MOLEFE: Well, they understood that Glencore was trying to extort money from us, they did and they have given evidence to that effect. Dr Ben Ngubane came here and he talked about people who come from overseas to try and keep us like little boys here. Dr Naidoo also talked about the fact that Glencore could not have it that way. You know? So they have already confirmed what I am
20 saying here but they understood that this request for an increase from 150 to 400 and something - my recollection is 530. The initial amount was 530. It is just not sustainable and from them they said the CEO should deal with the matter and do what is right.

ADV SELEKA SC: Can I – let us first deal with the issue

of what you say is their evidence about extortion. Dr Ngubane did testify to that effect, I do not think Dr Pat Naidoo testified to that effect.

CHAIRPERSON: Hang on, Mr Seleka. Before the adjournment I think you were dealing with a certain line of inquiry relating to Mr Molefe, his departure from Eskom, him going to parliament and leaving parliament and you are now asking him about what is in his – I am getting the impression that it is a different line of inquiry.

10 **ADV SELEKA SC:** It is.

CHAIRPERSON: Is it because you are done with the other line because if you are not done should you not finish that and then this statement is not going to go away, it is here, you can always come back to it.

ADV SELEKA SC: Yes, Chair. Let us see. I thought I had ...[intervenes]

CHAIRPERSON: Or you are close to finishing with [inaudible – speaking simultaneously] questions?

ADV SELEKA SC: Not.

20 **CHAIRPERSON:** I would prefer that we ...[intervenes]

ADV SELEKA SC: We finish the...

CHAIRPERSON: We finish one line of inquiry unless what you are looking for is – what you have said, it is not [inaudible – speaking simultaneously]

ADV SELEKA SC: It is unrelated, it is unrelated.

CHAIRPERSON: Ja.

ADV SELEKA SC: It is unrelated.

CHAIRPERSON: I think let us try and finish the earlier line.

ADV SELEKA SC: Did Chair have any specific questions there? Because I have exhausted, I could not go any further on the pension issue or into the pension issue, I could not.

CHAIRPERSON: No, I mean, the pension issue has been
10 decided by the courts, is it not?

ADV SELEKA SC: I asked him my last question, Chair, and he said he cannot comment. I think if Chair has follow-up questions, Chair might raise it with him.

CHAIRPERSON: Okay, alright. Mr Molefe, when you were in parliament and you were approached by you said Ms Daniels to say the minister wanted to ...[intervenes]

MR MOLEFE: Unscramble the egg.

CHAIRPERSON: Ja, unscramble the egg. You were already a member of parliament.

20 **MR MOLEFE:** I was a member.

CHAIRPERSON: And you could continue as a member of parliament .

MR MOLEFE: I could have continued.

CHAIRPERSON: Yes. Was there any particular reason why you chose to go back to Eskom as opposed to saying

look, I have now come to parliament, I have been asked to represent the people, to be one of the people's representatives, I am going to focus on being a member of parliament, I do not want to go back to Eskom because that is a place which is connected with the [indistinct] that I got from the Public Protector's report and I had left because I did not want – I thought it was untenable to continue as Group CEO of Eskom given that situation and it is only a few months since I left Eskom. Why did you not adopt that

10 approach because it was not like you were going to be unemployed, you had a job in parliament.

MR MOLEFE: I think, Chair, maybe the fault is in my upbringing that when people in authority say go to Eskom or we think you should go to Eskom, would you go to Eskom to help and I believe that I can help, I readily agree to do so. When the North West came and said would you consider going to parliament I readily agreed and said okay, if you think that is a good thing to do, I will do it. Minister comes and says look, the situation is very bad and

20 we need to revert to *status quo ante*, would you consider going back? I said yes. Well, after thinking about a little bit I said yes. So I have hardly ever in my life stand down an instruction from authority that I consider to be leading me, that I consider to be my leadership. So when people that are leading us are saying we think you will be better

used here, I hardly ever argue, I just go there and do my best. Yes. And that is the context.

CHAIRPERSON: Is it correct to take that answer as meaning you yourself were not the one pushing to be allowed to go back to Eskom at that time, you responded to requests to say you should go back.

MR MOLEFE: No, I did not initiate.

CHAIRPERSON: You did not initiate your going back.

MR MOLEFE: I did not initiate it.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: Ja, it came in as a request and the request came in and then look, we are in trouble and in any way, the risk – the risk is that the good work done to stop [indistinct] may be undone so maybe you need to go back and then I considered that, that that would be a shame and then I agreed to go back.

CHAIRPERSON: Now I think I may have said this last time when you were here.

MR MOLEFE: Yes.

20 **CHAIRPERSON:** But if I did not say it, I must say it now to give you a chance to deal with it.

MR MOLEFE: Yes.

CHAIRPERSON: That the Commission heard I think from Mr Gordhan, if I am not mistaken, that he had been told – I do not know whether the day before he was dismissed as

Minister of Finance in March 2017 or after, I cannot remember, by one of the leaders of the ANC. I think he may have said it was Mr Mantashe, I may be mistaken, that when the then President Zuma spoke to the top six or spoke to the top five because he would be the sixth, about his intention to remove Minister Gordhan as Minister of Finance, one of the things he told them was that he either intended to make you Minister of Finance or he was proposing that you should be the next Minister of Finance.

10 As a result of that evidence, if I recall correctly, the Commission approached Mr Gwede Mantashe and Ms Jessie Duarte and Dr Zweli Mkhize, some of the people who would have been part of the top six at the time and asked them to give an account in an affidavit, in affidavits of any discussions that they may have had with President Zuma at the time concerning the removal of Mr Gordhan and they all filed affidavits in response, and one of the things that they said was that indeed – or was that Mr Zuma had said that he wanted to appoint you as the
20 Minister of Finance to replace Mr Gordhan. So that is the affidavits that they filed and they all said the response from the Top Five was the fact no, no that was not – they objected to that.

MR MOLEFE: H'm.

CHAIRPERSON: And we do know of course that Mr

Gordhan's replacement was ultimately Mr Kekana. Now the question is whether either Mr Zuma or anybody had ever spoken to you at any stage about whether you would be prepared to accept an appoint as Minister of Finance, whether it was President Zuma or anybody that might have spoken to you?

MR MOLEFE: No Chairperson.

CHAIRPERSON: Nobody ever spoke to you about that?

MR MOLEFE: Nobody.

10 **CHAIRPERSON**: Yes, yes.

MR MOLEFE: I do not think it would have been appropriate to speak to me before the Top Five but Top Six has approved and so the Top Six never approved, so there is nothing to talk about.

CHAIRPERSON: Okay, no, no, well, I do not know how the ANC operates but I was thinking that he may have that is President Zuma...[intervene]

MR MOLEFE: No.

20 **CHAIRPERSON**: ...or those who advise him might have thought it is futile to raise the name before the Top Six, if the person is not interested at all in the first place and therefore, you might just want to find out whether if approached, he would be prepared, then you raise it. So I do not know how it works but you say, as far as you know, it would not be raised with whoever is sought to be

appointed before, it is raised with the Top Six.

MR MOLEFE: Well, that is what I think.

CHAIRPERSON: Ja, okay.

MR MOLEFE: Ja, that is what I think.

CHAIRPERSON: But you say no one has ever spoken to you about it.

MR MOLEFE: Ja, and I am not surprised that it was not raised with me, because it was never approved as you said.

10 **CHAIRPERSON**: Yes, yes. Now, part of what I think I said last time, but I want to make sure that I say it so that you can deal with it because it would be unfair not to let you deal with it if you have not dealt with it.

Is this, that there are a number of things that the Commission has heard, which in the eyes of some people may seem to give some credence to the suggestion that there was, there may have been a plan from to have you as Minister of Finance that may be was there for quite some time. One, Mr Jonas's evidence before the Commission
20 was that at the meeting that he had with one of the Gupta brothers, which it seems, may have been Tony Gupta because he was not sure himself, but the evidence has established that the Gupta brother who was in the residence, the Gupta residence on the day when Mr Jonas was there, it was Tony Gupta.

He says the Gupta brother that he had a discussion with on the 23rd of October 2015 said that the Minister of Finance, Mr Nene was going to be dismissed because as I recall the evidence, he was not working with them, which was understood to be with the Gupta's and they wanted him to indicate whether he could accept an appointment as Minister of Finance, in which case, as I understand it, he would have to work with them.

They offered him what he says they offered him in
 10 terms of money, but he says one of the things they said was there are a number of people that they were working with and he says they have mentioned your name. They mentioned Minister Lynn Browns name, I cannot remember if there was another name and in regard to you, Mr Jonas says the Gupta brother said something along the lines that your career is well taken care of that is - I am using my own words.

So you have that and then now we have Mr Hank Bester...[intervene]

20 **ADV SELEKA SC:** Yes, that is right.

CHAIRPERSON: ...who testified here that in 2014, at some stage in 2014, in that meeting with Mr Salim Essa, Salim Essa said they decided that you would be the next boss of Eskom and of course, there is that publication, the New Age, we talked about that thing last time, which in

December 2010, had an article which was maybe suggesting because maybe it was not definite, suggesting that you were going to be the next Group CEO of Transnet.

And we do know that you did become the next Group CEO of Transnet. We do know that you did become Group CEO of Eskom and unfortunately, Mr Zuma has so far not been able to come to the Commission, and deal with the question whether the evidence on affidavit given by Mr Mantashe, Ms Jessie Duarte and Dr Zweli Mkhize that he
10 mentioned your name as the person that he wanted to replace Mr Gordhan with, whether that is true, but that is what they have said.

So you then think well, if Mr Jonas's evidence of his meeting with the Gupta brother on the 23rd of October 2015 is correct. It looks like the Gupta's were looking for a Minister that would work with them and Minister Nene was dismissed on December 9th, Mr Van Rooyen was appointed. Now, Mr Jonas says that at that meeting one of the things that the Gupta brother told him was if - when you become
20 Minister of Finance, if you need advisors, we will provide you with advisors. Now Mr Van Rooyen gets appointed as Minister of Finance and he allegedly to have come to the National Treasury with advisors that he allegedly did not know, the issue of you know what he knew and how it came about is still being looked into by the Commission.

And then Minister Gordhan gets dismissed or then you are put in Parliament, you take your seat in Parliament and then Minister Gordhan gets dismissed, but if the evidence on affidavit by Dr Zweli Mkhize, Ms Duarte and Mantashe is true. We then know that President Zuma wanted to replace Mr Gordhan with you as Minister of Finance, and then you then leave, I think you leave after Mr Gordhan has left and Mr Gigaba has been appointed to go back to Eskom.

10 So I am just saying there are these things and it is only fair that you should get a chance to say what you can say you might be able to say, look, I do not know anything about what people think or what they said or what they talk about in whatever corners. I do not, I cannot comment or you might say no, I can comment and this is what I have to say...[intervene]

MR MOLEFE: No, I want to the first one.

CHAIRPERSON: The first one.

MR MOLEFE: Yes. [laughing], the first one.

20 **CHAIRPERSON:** Okay, the first one, which is you do not want to...[intervene]

MR MOLEFE: I do not want to comment, all of the things that you mentioned, I do not feature anywhere.

CHAIRPERSON: Yes.

MR MOLEFE: I was not there, I never said anything, I

was not present. Some of the people I have not even met like Salim Essa.

CHAIRPERSON: Yes, yes.

MR MOLEFE: So those things happened without my knowledge about it, and this great plan I was never aware of it and I had nothing to do with it, I cannot recall it.

My career, Chair I can comment about my career. Chairperson, I have a Bachelor of Commerce from the University of South Africa, Masters of Business Leadership
10 and Post Graduate Diploma in Economics from the University of London. I have attended courses on executive management all over the world, like Harvard and several other universities.

And I have worked at the National Treasury as a senior manager, as the Deputy Director General, was CEO of the PIC, where we grew the assets from R300billion to R950billion under my management, and I went to Transnet, I worked at Transnet we implemented the market demand strategy, we saw Transnet becoming a profitable company
20 and actually turning around while I was there, I went to Eskom and dealt with load shedding.

I do not need anybody who meets Mr Jonas in a corridor somewhere who is dealing with my career. I do not need; my career does not need exogenous factors. I can quite well take care of myself and I think that with the

experience and with the training and education that I have, I can survive anyway, and I can be up to any task that I am given.

So I do not agree that I require as Mr Jonas alleges somebody from the Gupta family to do that.

CHAIRPERSON: But he did not say you required, he says what he says he was told, ja. He did not say you required that.

MR MOLEFE: Yes, so he does not have personal
10 knowledge.

CHAIRPERSON: No, no, he was just saying, what the conversation was, ja, Mr Seleka.

ADV SELEKA SC: Thank you, Chair. Mr Molefe did you then have to resign at Parliament?

MR MOLEFE: Yes, I resigned.

ADV SELEKA SC: And you got a pension pay out?

MR MOLEFE: I actually did not even pursue it; I think I was entitled to it but I did not pursue it. I did not pursue it, I...[intervene]

20 **CHAIRPERSON:** I mean it could have too much.

MR MOLEFE: ...for the two months that I was there I made contributions both technically speaking, I could have asked for it.

ADV SELEKA SC: Okay, that is alright. Let us go back if Chair is finished on that.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you, Chair. You can go back to that Exhibit U38.2 we were on page 7, paragraph 26, and you had said that Dr Ngubane and the Board knew that Glencoe was extorting money.

MR MOLEFE: Yes.

ADV SELEKA SC: So Dr Ngubane did testify to that effect but then he was confronted with the pre-payment decision that the Board made on the 9th of December 2015,
10 that pre-payment of R1.68billion.

MR MOLEFE: Dr Ngubane was confronted.

ADV SELEKA SC: Yes, with the evidence in regard to that because the Board members who came here and have filled affidavits, they say, they understood the submission for that pre-payment to motivate for a pre-payment to Glencoe/OCM and not to Tegeta.

So I had to say how do you reconcile your view that Glencoe was extorting money when OCM proposed an increase of the coal and yet a couple of months later, you
20 give them a – you make a decision, which you understood to be a decision for a pre-payment to Glencoe of R1.6billion.

MR MOLEFE: And what did he say?

ADV SELEKA SC: I do not think he could give an answer to that because he kept on saying, well, that is how he

understood the submission to be that it was a pre-payment to Glencoe. Dr Pat Naidoo even has a note written out to the Board supporting the pre-payment to Glencoe and says that Glencoe CEO, as well as the Eskom CEO must make a joint statement.

MR MOLEFE: I cannot comment on that.

ADV SELEKA SC: Your comment, you cannot comment.

MR MOLEFE: I have no comment on that, ja it was in my absence, they were giving evidence...[intervene]

10 **CHAIRPERSON:** Mr Molefe.

MR MOLEFE: No, I think it was in my absence, they were giving evidence here. I think that if Mr Seleka requires any clarification, they should deal with it.

ADV SELEKA SC: But did you know about the Board decision?

MR MOLEFE: Actually, no, as I was explaining yesterday, on the 1st of December, I went for an operation to repair my throat[?], and I did not come back from the operation for 30 hours I was there, and I was in hospital two days
20 thereafter. But then I was released to go home, but I indisposed, I was at home for the whole of December and most of January. So, and that decision was on the 5th of December, so on the 5th of December, I was actually very ill, I was not at Eskom.

ADV SELEKA SC: It was on the 9th of December.

MR MOLEFE: Ja, on the 9th of December.

ADV SELEKA SC: Ja, but on your return, did you not learn about the Board's decision?

MR MOLEFE: Ja, on my return, I got to know about it there had been a coal crisis.

ADV SELEKA SC: Yes, my point is, did you know that the Board's decision in the Board's own mind was about pre-payment to Glencoe?

MR MOLEFE: No, I knew that there had been a pre-
10 payment and that the pre-payment was converted a guarantee, there was a pre-payment decision, and the pre-payment was converted to a guarantee.

And the guarantee was never called, and so when I came to know about it, I was concerned that suddenly we have an exposure and fortunately, it was never called and so I thought oh, we survived and that was for me that was the end of the matter.

ADV SELEKA SC: Do you know, that is the submission that ultimately served before the Board for that decision to
20 be made, was preceded by an exchange of correspondence between Mr Matshela Koko, and the DMR. Did you know that?

MR MOLEFE: I knew about this after it happened and, ja I knew about this after it happened, long after it had happened, in fact ja long after it had happened.

ADV SELEKA SC: But do you know Mr Matshela Koko's affidavit. He says, the approach to the DMR essentially, I am paraphrasing, it was the decision you and him made.

MR MOLEFE: The approach to the DMR?

ADV SELEKA SC: Yes.

MR MOLEFE: No, no, there had been a coal crisis.

ADV SELEKA SC: There had been?

MR MOLEFE: A coal crisis.

ADV SELEKA SC: Yes.

10 **MR MOLEFE:** There is a committee at Eskom, which deals with coal crisis, when there is a major energy crisis. In November there was a coal crises, even when I left to go to hospital I knew that there was a coal crisis. Actually, I was worried as I was going to hospital about how it would be dealt with, but I remember thinking you know what, I have to go for an operation. They will deal with it, there is an acting CEO it is not that Eskom cannot function without me. But no, the approach to DMR happened after the 1st of December as far as I know.

20 **ADV SELEKA SC:** Ja, no, I am just giving you his version and I want to again it is no me.

MR MOLEFE: So this version, is it on affidavits?

ADV SELEKA SC: Yes, Eskom bundle...[intervene]

MR MOLEFE: I literally just got it now I have not read his affidavit.

ADV SELEKA SC: Oh, should I go to it?

MR MOLEFE: No, no I take your bona fide.

ADV SELEKA SC: Yes, I want the Chairperson shall I read it to you Chair, I must read to the Chairperson. This is Eskom bundle 15(a).

CHAIRPERSON: Okay, but while he is preparing this I would like us to take a short adjournment, that is five minutes.

ADV SELEKA SC: Okay, Chair.

10 **CHAIRPERSON:** Let us adjourn.

ADV SELEKA SC: Thank you.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SELEKA SC: Thank you.

CHAIRPERSON: You have referred to Bundle 15 – Eskom Bundle 15.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Page – page 103.

CHAIRPERSON: Yes.

ADV SELEKA SC: Under the heading The DME. Paragraph 3. – I can start at 365.

“At this time as referred to already Eskom
had already communicated with the DME

regarding DME suspension of OCM mining licences etcetera. The DME was accordingly already largely in the loop.”

366 – Mr Molefe that is the one I want to refer you to. He says:

“Mr Molefe and I decided we needed to keep the DME up to date on the developments that has occurred and to request its assistance by the means it had to facilitate

10 a.A resolution of the impasse that quite clearly still existed despite the potential sale to Oakbay/Tegeta.”

From our perspective now I am not sure how does he know about the sale because this is barely in December he says:

“From our perspective the matter had now to be brought to conclusion one way or the other i.e. either by sale of OCM or its business and OCH’s other assets on a viable basis or Glencore’s bringing the business
20 rescue to an end and matters continuing on the basis of the existing Hendrina CSA including its despite resolution mechanisms.”

You turn the page paragraph 368 then he says:

“We” and if you read it in context with the paragraphs before preceding that would be you and him.

“We requested Ms Daniels to draft the required letter. I received the first draft at 18:46 on Friday 4 December 2015. After discussion its contents with her and the Deputy Director General of the DME a second draft followed on Sunday 6 December 2015 at 18:55. I dispatched the letter by email to the Director General of the DME the same evening. Ms Daniels’ initial draft with
 10 the covering email she sent me is then document MMK18.”

3 – Paragraph 370 says:

“Suggestions have been made that our letter to the Department of Mineral Resources was in some or other manner irregular. I deny that it – I deny that it is the case. We had previously intervened with the DME regarding the suspension of OCM’s mining licence and its operations. The DME presented an
 20 avenue to try to exert influence to bring matters to some form of finality one way or the other to ensure continued coal supplies to Hendrina.”

And we stop there. So according to him it was the idea of both you and him to have a letter addressed to the DMR.

Your comment?

MR MOLEFE: Chairperson at different times during the business rescue we sat and worked out different scenarios. Of course the one scenario was liquidation, the other one was the sale of the business.

What we did do is that happened. Not to any party but the sale of the business. What would that mean and we just sort of left out different scenarios in a fashion. As I say during the month of November there was a bit of a coal crisis
10 as well and on the 1st of December 2015 I went in for an operation.

So what happened when I was away I think is that – ja and before I left I did say we need to keep Department of Minerals and Energy abreast about our situation here concerning judicial management possible stay, possible liquidation or maybe if they rescue and continue with R150 we need to make them aware that they are having this kind of problem.

And so I think after I left because if Ms Suzanne
20 Daniels drafted a letter on the 4th I do not know when she got the instructions to draft the letter it must have been maybe the 2nd or the 3rd or maybe the 1st but I was not there I was not part of that.

I never saw that letter to DME because I was not at work and – and the snowball effect that happened

afterwards. But I do agree that there had been discussions with the primary energy people led by Mr Matshela Koko about the implications of this judicial management – business rescue. Yes. But never with – and in the discussions with this we need to keep DMR and DPE informed about our situation.

But that was by not – the discussions were not conclusive of a – so it was not like what we – scenario came in what we would do if this happens, what do we do if this
10 happens.

ADV SELEKA SC: Ja. No it is important for us to know exactly what happened because you see Mr Koko has put a version and he will be coming back. He is expecting us to have put this to you so that we are able to deal with it in relation to him. So I – we must be able to say to him okay we read out this to Mr Molefe. Mr Molefe either said yes that is what happened or no that is not what happened.

MR MOLEFE: No.

ADV SELEKA SC: That is why I need that clarification.

20 **MR MOLEFE:** Ja. We had numerous discussions about informing DMR about the different scenarios that are likely to bare out with the judicial management and the coal crisis. There was a coal crisis and – and that was about my involvement. And then after that I went to hospital and after I had gone to hospital this letter was drafted and it led to the

memo and the decision and the guarantee. But when all of that happened I was not on the scene.

ADV SELEKA SC: Yes. Let us do this. If you – if you look at paragraph 366.

MR MOLEFE: 366?

ADV SELEKA SC: 366 ja on page 103. So he says

“Mr Molefe and I decided that we needed to keep the DME up to date on the developments that had occurred and to request its assistance by the means it had to facilitate a resolution of the impasse that quite clearly still existed.”

So he puts it at the level of a decision and then if you read paragraph 368 that is where he says:

“We requested Ms Daniels to draft the required letter”.

MR MOLEFE: No, no, no the request to draft a letter I was not there.

ADV SELEKA SC: Okay let us deal with 366 first.

MR MOLEFE: 366 is generally saying that with all the scenarios that are 00:09:00 you will need to involve the DME.

ADV SELEKA SC: So you confirm what he says?

MR MOLEFE: Yes. Yes. That we – because we were in business rescue and did not know what the outcome is going

to be.

ADV SELEKA SC: Yes.

MR MOLEFE: And so it had all sorts of implications. We needed to keep the DME abreast of developments.

ADV SELEKA SC: Ja but not only that.

MR MOLEFE: It was – sorry.

ADV SELEKA SC: Sorry not only to keep it abreast of the developments it is to request its assistance by the means it had to facilitate a resolution of the impasse.

10 **MR MOLEFE:** Ja we said we never – we never said what happened and we never discussed what kind of assistance.

ADV SELEKA SC: Yes.

MR MOLEFE: And actually you captured correctly when you say by any means they had but we said we must keep them informed and see how they can help us out of thing. Because we did not know what was going to happen. We were in business rescue with Optimum.

ADV SELEKA SC: Okay.

MR MOLEFE: Yes.

20 **ADV SELEKA SC:** So 366 you confirm it. What Mr Koko is saying that is confirmed. You only have a problem with 368 where he says; we requested.

MR MOLEFE: Ja but also 366 I confirm it but ...

ADV SELEKA SC: With some (talking over one another).

MR MOLEFE: But there was no specific assistance that we

requested. It was just a matter of in a discussion when we discussed the scenarios that we must inform DME and possibly get assistance from them. But in terms of the specifics and even the letter – the letter happens just after I left.

ADV SELEKA SC: Ja you confirm it is you and him who requested Ms Suzanne Daniels to draft the letter.

MR MOLEFE: No I did not – I did not request Ms Suzanne Daniels with Mr Koko. So ja. I think the request to Ms
10 Suzanne Daniels happened between the 1st and the 4th. I do not know when did Ms Suzanne Daniels say she got the request.

ADV SELEKA SC: So what sort of request did you assistance did Mr Koko and you have in mind?

MR MOLEFE: I do not – we just broad terms they will – we – the mine is going into – is in business rescue, it might be sold or it might go into liquidation.

ADV SELEKA SC: So it may what?

MR MOLEFE: Huh?

20 **ADV SELEKA SC:** It might be sold or it might?

MR MOLEFE: Go into liquidation. That would be the two – or three possible outcomes of business rescue. First one is the business rescue practitioner actually rescue.

The second one is that they say they cannot rescue so they sell.

The third one is they cannot rescue with and they cannot sell or they will not sell so they go into liquidation. So the question is, if any of these three scenarios ends up what is our reaction as Eskom to it. None of it should come as a surprise.

ADV SELEKA SC: Ja

MR MOLEFE: But what is our reaction.

ADV SELEKA SC: Yes.

MR MOLEFE: To any of these three scenarios.

10 **ADV SELEKA SC:** Yes.

MR MOLEFE: Whatever the scenarios – scenario that works out is we must be – we must have informed DMR.

ADV SELEKA SC: Yes.

MR MOLEFE: And if any assistance is required from them they should – we should be in a position to ask for assistance if we need.

ADV SELEKA SC: Yes. But just tell the Chairperson because it is – it was not a question of if any assistance is required from them. Mr Matshela Koko says you decided to
20 request its assistance.

MR MOLEFE: No this thing...

ADV SELEKA SC: So if...

MR MOLEFE: This thing was drafted by Emopedi from Soup Mecca. So what I am telling you is my understanding of even what he was trying to say maybe not captured properly

here. It was not asking for specific assistance but if any of the scenarios turns out what is going to happen? I think you must have an understanding of the context in which it was done. It was not to ask for they must therefore do this. And in fact Mr Seleka if you look at the letter that Ms Daniels drafted.

ADV SELEKA SC: Ja we can get the letter.

MR MOLEFE: I do not think it has a request for any specific assistance.

10 **ADV SELEKA SC:** Ja and you struggle to see what the letter actually.

MR MOLEFE: Yes.

ADV SELEKA SC: Is intended to achieve.

MR MOLEFE: The letter was just saying we having a problem and we just letting you know.

ADV SELEKA SC: Yes.

MR MOLEFE: But we have a crisis.

ADV SELEKA SC: Let me take it further because you see before the letter is drafted they are in an exchange between
20 Mr Koko and Mr Duo Rapella 00:14:12.

MR MOLEFE: Mr Who?

ADV SELEKA SC: Duo Rapella.

MR MOLEFE: Yes.

ADV SELEKA SC: And they talking about this issue and the formulation of the draft.

MR MOLEFE: What is the date of the emails?

ADV SELEKA SC: It is from the 4th December so they exchange emails between the 4th until the 7th of December – well ...

MR MOLEFE: After the letter has been drafted.

ADV SELEKA SC: Yes during that time the letter gets to be drafted during that time.

MR MOLEFE: Yes. Mr Seleka I was not there I do not know what that was about and I cannot comment on it.

10 **ADV SELEKA SC:** Ja no that is alright then. So you – are you saying to the Chairperson you did not have any specific request in mind?

MR MOLEFE: No, no.

ADV SELEKA SC: So we know then once you – Eskom got a response from the DMR that response had a pre-payment aspect mentioned in it. The letter from the DMR and that letter was used in the submission as a basis upon which the DMR requested Eskom to make a pre-payment.

20 **MR MOLEFE:** Mr Mantsha of his own volition – Mr Mantsha I think of his own volition.

ADV SELEKA SC: Yes.

MR MOLEFE: Attested the pre-payment. I said somewhere that maybe that was the genesis of the problem.

ADV SELEKA SC: Maybe?

MR MOLEFE: That was the genesis of the problem.

However I was not there I do not know but my – my reading of this document is that the idea of the pre-payment – the first time the pre-payment arises is when Mr Mantsha writes to Mr Koko and said I have read your letter, you say you had a problem just do whatever you can do and even consider pre-payment. And that came from DMR.

ADV SELEKA SC: Yes. Then he does say the letter was not prepared by him he found the letter on his desk his...

MR MOLEFE: That is – that is even worse because it was
10 not even at Eskom it was in his office now. I was not even at Eskom I was in hospital. So I cannot comment on how he got to sign a letter that he denies to sign.

ADV SELEKA SC: Ja. Insofar as the submission is concerned who did you understand was to be paid the pre-payment – the R1.6 billion?

MR MOLEFE: Chairperson I would rather not speculate on that submission. The decision that was taken the interpretation of the decision. There are people who were directly involved and I think they can shed better light than I
20 can because I was indisposed and in hospital.

My knowledge of this matter came to become to be in the end when I came back very peripheral. I just knew that they have a guarantee and I was concerned that we have a guarantee and then suddenly the guarantee was not called and it was actually never really thoroughly interrogated

because it never even became an object. So I would rather not speculate on what was happening there.

ADV SELEKA SC: Okay. Insofar as you say there was a coal crisis.

MR MOLEFE: Insofar as?

ADV SELEKA SC: You say there was a coal crisis.

MR MOLEFE: Yes.

ADV SELEKA SC: Where was this crisis? Is that in respect of a specific power station?

10 **MR MOLEFE:** No. There is a committee at Eskom. Ja there is a committee at Eskom that declares a coal crisis.

ADV SELEKA SC: Yes.

MR MOLEFE: In terms of our operating procedures that meets regularly. That committee is above everybody even above the board and they assess our coal requirements and then declare that we have a crisis or we do not have a crisis. So they assess the stock piles in the entire organisation and then they meet and then they decide that there is a crisis. And once they have decided nobody can overrule them. It is
20 like a – an independent made up of Eskom officials but not even the CEO can overrule what they say.

CHAIRPERSON: They are experts in ...

MR MOLEFE: They are experts yes.

CHAIRPERSON: Ja okay.

MR MOLEFE: So I believe in November they had met and

had said we have a coal crisis. Once that has been declared it means – you know the meaning a coal crisis?

ADV SELEKA SC: No but my question was where – which power station?

MR MOLEFE: No it was a Eskom coal crisis.

ADV SELEKA SC: Well let me...

CHAIRPERSON: Coal crisis meaning that there was the shortage of coal was too much.

MR MOLEFE: Yes for the entire organisation.

10 **CHAIRPERSON:** Yes. Yes. Ja.

ADV SELEKA SC: Okay. Okay yes because there is not such a declaration in November of a coal crisis.

MR MOLEFE: Is that – is that...

ADV SELEKA SC: That is 1 number 2.

MR MOLEFE: Is that your arrogance?

ADV SELEKA SC: No we do not have that.

MR MOLEFE: Ja but the fact that...

ADV SELEKA SC: Number 2.

20 **MR MOLEFE:** But the fact that you do not have it does not mean that it did not happen. I mean were you there Mr Seleka?

ADV SELEKA SC: No I do not know if (talking over one another).

MR MOLEFE: But how can you emphatically say that there is not such a decision?

CHAIRPERSON: Hang on Mr Molefe.

ADV SELEKA SC: Let me finish.

CHAIRPERSON: Wait for Mr Seleka to.

ADV SELEKA SC: Yes. Number 2 the context within which we are reading here it is about Hendrina and the submission related to the coal supply to Hendrina.

MR MOLEFE: Yes.

ADV SELEKA SC: That is why I want to – we need to know when you say a coal crisis is it about this submission
10 because you and Mr Koko are talking about approaching the DMR in respect of the Hendrina issue.

MR MOLEFE: No.

ADV SELEKA SC: This – the paragraphs I have read.

MR MOLEFE: But Mr Seleka I just put those paragraphs in context and I – you are ignoring what I am saying about – and you are insisting on going with your version. Your understanding of your evidence as you want to present it.

CHAIRPERSON: I think Mr Molefe go back to clarifying how the issue of a coal crisis in respect of the whole of Eskom.

20 **MR MOLEFE:** Yes.

CHAIRPERSON: Comes in or came into the question of Hendrina.

MR MOLEFE: Yes.

CHAIRPERSON: Ja. How did it happen – how does it come in?

MR MOLEFE: Now let me explain. There is a committee at Eskom which can declare a coal crisis. That committee did declare a coal crisis in November before I got sick. Now the meaning of a coal crisis is that in terms of the rules Eskom has to undertake extraordinary measures to deal with the coal crisis. And in fact in their

CHAIRPERSON: Declaration.

MR MOLEFE: Ja not – it is not a declaration in their operating manual or guidelines or there is another word that
10 I am looking for but in the document that – that...

CHAIRPERSON: Policy.

MR MOLEFE: Ja policy it specifically says during a coal crisis you may undertake extraordinary measures including the pre-purchase of coal – including the pre-purchase of coal.

So all I am saying is that a coal crisis had been declared we were sitting with a business rescue at Hendrina. We were sitting with business rescue at Hendrina and there had been a coal crisis and we then mapped out different
20 scenarios of how to deal with it.

Discuss them generally like brainstorming and said what happens when this happens? What happens when this happens? What happens when this happens? And then in that brainstorming we also said we need to keep the government informed including DMR and the DPE informed

about our situation before it becomes a crisis that we cannot handle.

And then I went off to hospital and then after I had gone to hospital I think it is after I had left Mr Koko asked Ms Daniels to draft a letter to DMR and the letter was sent. I was not there. I saw the letter much later and DMR's response.

But when I looked at DMR's response the people that talked about a pre-payment even before we did was DMR.
10 But not only that it was not out of line because in fact in the coal crisis context pre-payments are envisaged.

So I think DMR knew that – that in terms of in line with policy remember that you may also do pre-payment and then – ja – that is as far as I can shed light from the policy point of view and what was happening.

ADV SELEKA SC: Yes I hear what you are saying. The – the clarification I seek to have

MR MOLEFE: Yes.

ADV SELEKA SC: Is insofar as what you are saying is at
20 variance with what Mr Koko is saying.

MR MOLEFE: Yes.

ADV SELEKA SC: Because Mr Koko was power station specific.

MR MOLEFE: Yes.

ADV SELEKA SC: He was...

MR MOLEFE: In the matter.

ADV SELEKA SC: Here in the affidavit in the letter in the submission it was power station specific.

MR MOLEFE: Yes.

ADV SELEKA SC: And the pre-payment was also entity specific.

MR MOLEFE: Yes.

ADV SELEKA SC: In respect of a particular power station. But your explanation takes it beyond that and that is why I
10 am saying we do not have that information.

MR MOLEFE: You do not have?

ADV SELEKA SC: We do not have the information that you are now putting before us. We can only go by what Mr Koko has said in his affidavit which is consistent with the submission.

MR MOLEFE: You see Mr Seleka you are trying to say that we instructed Ms Daniels to ask for a pre-payment.

ADV SELEKA SC: No I am not trying to say anything. I am putting to you what Mr Koko is writing in his affidavit.

20 **MR MOLEFE:** But I – I admit – I say we discussed the different scenarios in as far as judicial management is concerned and that there are different scenarios, different outcomes.

ADV SELEKA SC: Yes.

MR MOLEFE: That is possible.

ADV SELEKA SC: Yes.

MR MOLEFE: And whatever the outcome we have to be prepared.

ADV SELEKA SC: Yes.

MR MOLEFE: For any of the outcomes.

ADV SELEKA SC: Yes.

MR MOLEFE: And in the process you must inform DMR.

ADV SELEKA SC: Yes.

MR MOLEFE: We did not go into specifics that this is
10 exactly how the crisis is going to be dealt with.

ADV SELEKA SC: Yes.

MR MOLEFE: It was at brainstorming stage when I left the scene.

ADV SELEKA SC: Yes then we moved onto the pre-payment.

MR MOLEFE: And then – and then I was – I was actually I was mentioning the – the coal crisis because in – in this context the pre-payment arises twice before it actually happened.

20 The one is there was a policy that allows for pre-payment when there is a coal crisis.

 The second one is that the DMR in their response to Mr Koko's letter themselves said consider a pre-payment. That was Mr Mantsha's letter which is now nice and signed but it has (inaudible) so that is all I was trying to explain. I

do not know if that is complex.

ADV SELEKA SC: Ja. Ja I am not for a moment questioning the basis for the pre-payment whether it was allowed or not allowed. I am not. All I am saying to you is we are at the point where I am asking you about the coal crisis and I needed to know what coal crisis are you referring to?

MR MOLEFE: What coal crisis?

ADV SELEKA SC: Are you referring to because the...

MR MOLEFE: At Hendrina.

10 **ADV SELEKA SC:** Say that again.

MR MOLEFE: The coal crisis at Hendrina.

ADV SELEKA SC: No, no what coal crisis are you referring to in November because – because the context in which we are talking about this decision for the pre-payment was power station specific and a particular supplier specific. This supplier would have been – the pre-payment was meant to assist the supplier to supply the Hendrina Power Station. The pre-purchase of coal from Optimum Coal Mine Pty Ltd Eskom requires continuity of supply to the Hendrina Power
20 Station of 5.5 million tons per annum at an average price of – and then they give the price. But that is Hendrina Power Station and it is in that context I am putting this to you.

MR MOLEFE: Chairperson I was not part of the pre-payment decision at Hendrina and I can therefore not comment.

ADV SELEKA SC: Okay.

CHAIRPERSON: You cannot comment on it?

MR MOLEFE: Yes.

CHAIRPERSON: Hm. Okay. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Because let me put this to you then we can also see whether you can or cannot comment. Hendrina Power Station was not in crisis in November or December or January 2015 or 2016. Let me share when this decision was made Hendrina Power Station was not in crisis.

10 **MR MOLEFE:** Was it in business rescue? Or am I making a mistake?

ADV SELEKA SC: No.

CHAIRPERSON: Just – just speak up Mr Molefe?

MR MOLEFE: I say was it in business rescue or am I making mistake?

ADV SELEKA SC: No I am talking the power station now.

MR MOLEFE: The power station?

ADV SELEKA SC: Yes was not in a crisis.

20 **MR MOLEFE:** But Mr Seleka if the mine next door is in business rescue, the mine that supplies it with coal it – it was in business rescue. The outcome of business rescue was going to affect the operations of Hendrina.

ADV SELEKA SC: What I am saying to you is the Hendrina Power Station was not in a coal crisis in December 2015. What is your comment on that?

MR MOLEFE: Oh.

ADV SELEKA SC: Is it... Do you ...[intervenes]

MR MOLEFE: I was... I was ...[intervenes]

ADV SELEKA SC: Are you denying it?

MR MOLEFE: I was not at Eskom in December 2015. I am not in a position to...

ADV SELEKA SC: Okay. You had, in fact, on the 3rd of December, which we say – we said yesterday, your evidence that came out yesterday, on the 10 3rd of September 2015 concluded the interim arrangement with OCM to supply coal to Hendrina.

MR MOLEFE: Yes.

ADV SELEKA SC: And that subsisted until the end of July 2016.

MR MOLEFE: Yes.

ADV SELEKA SC: Yes. So they kept on supplying even in December. The power station was not in a coal crisis.

MR MOLEFE: Chairperson, can I make a suggestion?

CHAIRPERSON: [No audible reply]

20 **MR MOLEFE:** To answer this question of crisis, I suggest that the Commission's investigators go and look at the Coal Crisis Committee... And that will help Mr Seleka.

ADV SELEKA SC: Ja.

MR MOLEFE: To talk about... because I think we are not... Well, I... The people that knew exactly the nature of

the crisis and what the crisis was... is the Coal Crisis Committee that was in operation and it was an extraordinary committee existed...

ADV SELEKA SC: Ja.

MR MOLEFE: So that is my suggestion.

ADV SELEKA SC: Yes. We know of the coal crisis. It is not a coal crisis.

MR MOLEFE: What is it?

ADV SELEKA SC: On the 23rd of December 2015, an
10 emergency was declared but in respect of Arnot Power Station, not Hendrina. And I am going to come back to this.

CHAIRPERSON: Is the suggestion Mr Seleka that an emergency – a declaration of an emergency is the same as declaration of coal crisis?

ADV SELEKA SC: Chair, the... Well, I cannot give a direct answer to that question because the declaration of emergency in December in respect of Arnot Power Station was looking at the future in January 2016 if the Arnot
20 employees were to stop the trucks from delivering coal. So it was ...[intervenes]

CHAIRPERSON: Well, you see, as I understood you.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: You seem to say there was no coal crisis but you use – there was a declaration of emergency

...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...in some of that and I do not think you can do that unless the idea is that the declaration of an emergency is the same as the declaration of a coal crisis because you said there was a declaration of emergency in regard to ...[intervenes]

ADV SELEKA SC: It is Arnot. Arnot, Mr Chair.

CHAIRPERSON: ...and not in regard to Hendrina.

10 **ADV SELEKA SC:** Hendrina. No.

CHAIRPERSON: But if emergency and coal crisis are two different things, then your thinking might not flow.

ADV SELEKA SC: Okay.

CHAIRPERSON: Because if the two are different things, ordinarily you could have an declaration of an emergency and declaration of a coal crisis at the same time.

ADV SELEKA SC: Yes, let me answer the Chairperson based on what we see. The emergency was declared in contemplation of shortage of coal supply which then would,
20 I assume – and I say I assume because I do not know. They will have to explain to us that that constitutes a coal crisis. Perhaps it does if there is a shortage, less than what you need.

CHAIRPERSON: Ja, well, it may well be the declaration of coal crisis is resorted to when the crisis is – has

commenced. It may well be that that is ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: It may well be that first you have the emergency and then you have the crisis. The emergency is forward looking.

ADV SELEKA SC: Yes, and that is why in this particular case of a declaration Chair, I am at pains to explain that the crisis, using the word crisis, was not when the declaration was made. They were saying there might be a
10 situation in January which might result in the Arnot Power Station not getting the coal that it requires. The strike action might erupt and employees might block the transport, delivery. But they will explain to us that that ...[intervenes]

CHAIRPERSON: Ja. Ja, should you not first get the explanation then?

ADV SELEKA SC: Ja.

CHAIRPERSON: Then we know exactly what the question is.

20 **ADV SELEKA SC:** Ja. Yes. So I can leave that aside.

MR MOLEFE: So that is your evidence Mr Molefe.

ADV SELEKA SC: No, no. That is the... That is the... Of course that is the evidence given to us by Eskom. But at this present moment we are talking about the Hendrina Power Station. And I accept your explanation to the

Chairperson that you cannot comment any further.

But I am putting now to you the situation as you would know it. No, but I have already put it to you. The 3rd of September 2015, there is an interim arrangement ...[intervenes]

MR MOLEFE: Yes.

ADV SELEKA SC: ...which ran all the way to July 2016.

And Chair, what I was saying there to Mr Molefe was that, Hendrina Power Station was taken care of taken care of by
10 OCM under Glencore.

CHAIRPERSON: And what does taken care of mean?

ADV SELEKA SC: There was a supply of coal to the Hendrina Power Station.

MR MOLEFE: No, I was not there.

ADV SELEKA SC: You were not there.

MR MOLEFE: Yes.

ADV SELEKA SC: Okay. But you knew about the internal arrangements.

MR MOLEFE: Chairperson, I was not at Eskom in
20 December. Mr Seleka knows better what happened than I do.

AD SELEKA SC: Ja. But what it means Mr Molefe because we can accept the agreement, the existence of the agreement of OCM to supply coal to Hendrina Power Station, and the same breath have this discussion with

Mr Koko that there is a crisis and you have to approach the DME(?) and request their assistance and this is in respect of the Hendrina Power Station.

MR MOLEFE: When did business rescue started?

ADV SELEKA SC: In August.

MR MOLEFE: Yes. So in December there was business rescue.

ADV SELEKA SC: Yes.

MR MOLEFE: Yes. So I have tried to explain to you
10 Mr Seleka. The outcome of – business rescue itself suggest a crisis.

The fact that a company is in business rescue means it is in crisis because companies do not go into business rescue because things are going well.

And so the outcome of business rescue is one of three things, as I have tried to explain. Firstly, the business rescue practitioners ...[intervenes]

ADV SELEKA SC: Face the Chairperson.

MR MOLEFE: The business rescue practitioners will be
20 able to rescue the company. The business rescue practitioners might not be able to rescue the company in which instance they will either sell it or liquidate it.

The questions for us as affected customer is. What happens in the event of any of the three scenarios? That is what I am trying to explain. That had to be

discussed. We cannot... We cannot pretend that everything is okay there because it is under business rescue.

There is going to be an outcome to a business rescue. If the outcome is, the company is rescued, it is fine. If they liquidate, what happens? And if they tell what happened. And all I am saying, Mr Seleka, is we had these discussions. We had these discussions.

And that is the context of the crisis that I am
10 talking about. You talk as if because we signed an agreement in September, everything was fine. Everything might have been fine, they might have been supplying coal but they were in business rescue.

They were not a normal company that was operating. It was being rescued from a disaster by a legally recognised process in South Africa.

ADV SELEKA SC: Ja, I think your explanation would be cogent if in August after you learn that – after Eskom learn that OCM is in business rescue to take the step that you
20 took of the submission approaching the DMR. And then you say it is because we did not know. But you did not do that. You first go into an arrangement where ...[intervenes]

MR MOLEFE: ...Mr Seleka. [Speaker is not clear.]

ADV SELEKA SC: You did not take the steps of approaching the DMR to make a submission to the board to

make a prepayment. What you did is, notwithstanding your knowledge of the business rescue, you actually had a meeting with Mr Ephron on the 3rd of September.

You asked him: Let us go. Supply to Hendrina, please. And that is how the interim arrangement was...

So to come in December and say: Well, we were uncertain about the outcome of a business rescue, which in the first place, did not stand in your way to enter into that interim arrangement. It is not persuasive.

10 **MR MOLEFE:** You are not persuaded?

ADV SELEKA SC: No, that is why I am saying is not persuasive if you look at where your argument is located from a timing point of view.

MR MOLEFE: Ja, I do not understand what you are on about.

ADV SELEKA SC: Okay.

MR MOLEFE: I really do not.

ADV SELEKA SC: On the... Oh, when you look at the evidence, the – one sees this image appearing that your
20 discussion with Mr Molefe(sic) which leads to the engagement of the DMR and in turn leads to the submission to the board of the prepayment to be made was in fact...

MR MOLEFE: Chairman, I am under the impression that Mr Seleka is... his conspiracy theory at all cost.

Irrespective of what I say to him, that is the view that he has and there is no way of changing him. You see. Because I am telling him that we discussed the fact that in business... as an objective factor, business rescue.

It was discussed and the possible outcomes of business rescue. Now he is trying to read into a risk management discussion motive of conspiracy of some kind which I think is unfair.

CHAIRPERSON: So your position is, you disagree
10 ...[intervenes]

MR MOLEFE: I said ...[intervenes]

CHAIRPERSON: ...with that? And you have made your – gave your response?

MR MOLEFE: I disagree in the strongest possible terms.

CHAIRPERSON: H'm. Okay.

ADV SELEKA SC: Thanks Chair. So let us ...[intervenes]

CHAIRPERSON: We are a few minutes past one. We had hoped to finish before lunch.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** Of course, it is important to try and deal with matters.

ADV SELEKA SC: Yes.

CHAIRPERSON: We should take lunch now, I think. But there was a witness who was supposed to testify today. And thought that they would be here in the morning and

then they could be told to wait until we are done with Mr Molefe's evidence. I do not know whether they were here. It is just that I was not made aware what is the position.

ADV SELEKA SC: Chairperson, he gave me a message yesterday which I communicated Chair, that we will start with them after lunch. So I gave them an indication to be here by twelve. The legal representatives did arrive and they are here.

10 **CHAIRPERSON:** No, that is fine. It is just that I was not aware ...[intervenes]

ADV SELEKA SC: Okay.

CHAIRPERSON: ...that that is what has happened.

ADV SELEKA SC: Okay. Sorry, Chair.

CHAIRPERSON: What is your estimate of how much more time you will need with Mr Molefe?

ADV SELEKA SC: Yes.

CHAIRPERSON: As I say so. We need to strike a balance between ...[intervenes]

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: ...doing justice to the issues ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...and trying to finish as soon as possible. We should not in the attempt to try and finish as

soon as possible not do justice ...[intervenes]

ADV SELEKA SC: Ja.

CHAIRPERSON: ...but we should not take too long on matters where we can be brief.

ADV SELEKA SC: Yes, Chair. Chair, if we start at two.

CHAIRPERSON: H'm?

ADV SELEKA SC: Oh, no. We have taken five minutes already of that.

CHAIRPERSON: H'm.

10 **ADV SELEKA SC:** Can we – can I aim to finish Mr Molefe, you and I, at three?

CHAIRPERSON: H'm.

ADV SELEKA SC: Can we do that? Ja.

CHAIRPERSON: H'm. Okay. So let us adjourn and resume at five past two and then we go on. And then when we finish with Mr Molefe's evidence, then I can hear the evidence of the witness who was meant to be before me.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: Okay. We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Mr Seleka.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: In accordance with discussion in chambers. We will interpose here ...[intervenes]

ADV SELEKA SC: Correct chair.

CHAIRPERSON: ...to allow counsel for Mr Anoj Singh who was supposed to testify after we finish with Mr Molefe's evidence to address me.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Okay. Let them sanitise before you use that podium. Somebody will come and sanitise quickly. I think... Ja, Mr Seleka can take his documents. I am sorry Mr Masuku. I do not know whether you have any idea
10 about what was – what is happening but Mr Seleka might or might not have informed you. It is going to be brief.

ADV MASUKU: ...it is okay. It is okay Chair ...[intervenes]

CHAIRPERSON: Ja. No, he is going to be brief. Ja.

ADV A VAN DEN HEEVER: Chairperson, thank you for the opportunity to briefly address you on this matter. Mr Singh was subpoenaed today to come and give evidence.

In fact, it was from today until the end of the week to give evidence in the Eskom stream. He is also subpoenaed to come next week on the Transnet stream.

20 We have prepared a substantive application to explain to you why he cannot be here today. There is an affidavit with a number of annexures, and without divulging a lot of personal information, I can basically place on record, and you will see, Chairperson, that is the last Annexure AS-12. It is a letter from the specialist that was

treating her.

In short, she had an emergency caesarean on the 25th and because of what transpired, she is being forced to be – to stay in bed for at least 10 days and those ten days run out, I think, next Tuesday.

So it is a situation, unfortunately, where client needs to take care of the new-born and a number of other things. So he cannot be here today as much as he wanted to be.

10 So our request to you is that, we accept that the content of the affidavit and the annexures will be read. I know Mr Pule has indicated to us that he accepts the contents hereof.

So we then ask you if we can be excused and that our client will be subpoenaed for the Eskom stream at some stage but we will be here next week on the Transnet.

CHAIRPERSON: Well, I will go in accordance with what you as counsel have informed me, is in the papers. The tradition is that counsel, when they tell a judge what is in
20 the papers, that is what is in the papers.

ADV A VAN DEN HEEVER: Indeed Chairperson.

CHAIRPERSON: Not something else, ja.

ADV A VAN DEN HEEVER: Indeed Chairperson.

CHAIRPERSON: Ja.

ADV A VAN DEN HEEVER: I think Advocate Pule will

confirm what we conveyed to you is indeed what the factual situation is.

CHAIRPERSON: Ja.

ADV A VAN DEN HEEVER: Thank you very much.

CHAIRPERSON: It seems that it is a situation that when he testifies that I excuse Mr Anoj Singh. The information that was known to me, based on correspondence that was made available to me, was information that existed prior the operation of the wife.

10 And I was not sure that that was – that would have provided a different excuse but the information you have given me, satisfies me. So Mr Anoj Singh is therefore excused from appearance today.

ADV A VAN DEN HEEVER: Thank you Chairperson.

CHAIRPERSON: But as you have said he will appear before the Commission next week in respect of the Transnet work stream and other arrangements will have to be made with regard to the Eskom evidence.

20 **ADV A VAN DEN HEEVER:** Indeed Chairperson. May we then also be excused.

CHAIRPERSON: Yes, you are excused.

ADV A VAN DEN HEEVER: Thank you very much.

CHAIRPERSON: Okay.

ADV SELEKA SC: Chairperson, we are ready to proceed.

CHAIRPERSON: Yes, you may proceed.

ADV SELEKA SC: Thank you. Mr Molefe, just back to that, the opening speech, Exhibit U-38.2. We might be shorter than 30-minutes.

CHAIRPERSON: What is the reference, what page?

ADV SELEKA SC: The Exhibit U-38.2, the opening speech of Mr Molefe, page 7, paragraph 26.

CHAIRPERSON: Okay.

ADV SELEKA SC: Yes. Chair, I was also saying that we might be shorter than 30-minutes.

10 **CHAIRPERSON:** [No audible reply]

MR MOLEFE: Or shall we just say...

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs]

MR MOLEFE: [laughs]

CHAIRPERSON: Well ...[intervenes]

ADV SELEKA SC: We do not ...[intervenes]

CHAIRPERSON: ...maybe this thing of counsel been paid for the whole day, then it is better.

MR MOLEFE: [laughs]

20 **ADV SELEKA SC:** [laughs]

CHAIRPERSON: [laughs] Not less than the whole day to be changed. [laughs] Okay alright.

ADV SELEKA SC: Yes, thank you. The second – the last sentence there, Mr Molefe, which says... Well, to read it in context.

“Dr Ben Ngubane and members of his board understood the situation perfectly well.

From them, I receive the blessing to do what was right and for that I am thankful...”

Am I right that what you are saying in that last time, you received from them to do what was right... Or, let me rather ask you. What is that you say you received from them to do which was right?

MR MOLEFE: Yes. To analyse the situation and to handle
10 the matter in a manner that will be in the interest of Eskom.

ADV SELEKA SC: Yes.

MR MOLEFE: That is what...

ADV SELEKA SC: Ja. Well, we have covered this yesterday and I told you about what the board’s decision or the board’s version is on this.

MR MOLEFE: Yes.

ADV SELEKA SC: That they wanted you to come back...

MR MOLEFE: They wanted me?

20 **ADV SELEKA SC:** They wanted you to come back to them. The minute also says they wanted you to... Is given to you before it comes to the board for approval.

MR MOLEFE: Before what comes to the board?

ADV SELEKA SC: The minutes I read yesterday. It says the matter is given to you ...[intervenes]

MR MOLEFE: Yes.

ADV SELEKA SC: ...before it is placed before the board for approval.

MR MOLEFE: The minutes were given to me ...[intervenes]

ADV SELEKA SC: The matter.

MR MOLEFE: Oh, the matter?

ADV SELEKA SC: Yes.

MR MOLEFE: Yes. It was given to me before it was
10 ...[intervenes]

ADV SELEKA SC: Before it comes to the board for approval.

CHAIRPERSON: Okay let us try and – but what I think what Mr Seleka is referring to is that the minutes of the board meeting of the 23rd of April 2015, as he read them yesterday, were to the effect, as he understood them, that the matter was given to you by the board but you would need to bring it back – bring it back to the board later for the board to provide approval.

20 That is what he is referring to you. You remember that discussion yesterday? You remember you said you have your dynamic interpretation of the ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: Yes.

MR MOLEFE: My understanding was that the matter was given to me to handle.

CHAIRPERSON: To deal with, ja.

MR MOLEFE: Yes.

CHAIRPERSON: Yes, you said that yesterday. So what I think what Mr Seleka wanted to remind of you that and then ask you questions.

ADV SELEKA SC: Yes, that the board's version, which seems to be consistent with the minutes, differs from your
10 explanation or understanding of what you say the board wanted you to do. That is all I am trying to...

MR MOLEFE: Yes. The board – I do not think they asked me to come back for approval. They asked me to report back what happens subsequently. And somewhere, I think in August or September, in my report to the board I did mention what happened to the matter.

ADV SELEKA SC: Ja. Well, we have their version. They came here. They said: We wanted him to give us feedback. We have questions. They said the team or the
20 executives could not answer. They said let us refer the matter to the acting CE and he will come back to us. When you read the minutes, the minutes says refer it to him before it comes to the board for approval.

MR MOLEFE: Perhaps there was a misunderstanding.

ADV SELEKA SC: Yes.

CHAIRPERSON: Could it be Mr Molefe that the proper way of understanding that minute might be that the board wanted you to look at the matter and recommend what should happen about it?

Then once you have made the recommendation, they might say, okay, if you recommend that they should leave it in your hands, you will deal with it, they must say, okay, that is fine.

Or if your recommendation was that they as the
10 board must make a certain decision, then they would make whatever decision if they were persuaded that the way forward that you would have recommended would be the right one.

MR MOLEFE: Perhaps Chairperson but that was not my understanding. My understanding was to deal with the matter. And in any event ...[intervenes]

CHAIRPERSON: Deal with the matter to finality?

MR MOLEFE: Yes. In any event, this was such a serious matter that would have put Eskom out of pocket. Not only
20 was it serious and would have put Eskom out of pocket, it was very delicate in my interpretation of the detectives(?) that were being employed by Optimum... and so on. So I felt that we had to deal with the matter precisely.

CHAIRPERSON: Well, to the extent that you say it was a very serious matter, would that not have been the reason

why the board might have wanted that it should not be dealt with and finalised without their involvement or that they should know what your recommendation for example was as to what should be done?

MR MOLEFE: Perhaps Chairman.

CHAIRPERSON: Yes.

ADV SELEKA SC: Did you have a debate – a discussion with the board about this issue prior to you terminating the Corporation Agreement?

10 **MR MOLEFE:** I cannot recall. I may have had discussions with different members of the board.

ADV SELEKA SC: Yes.

MR MOLEFE: But not in the board meeting with them.

ADV SELEKA SC: Yes. Please turn to page 5 of that same exhibit, 38.3. U-38.2. Page 5.

MR MOLEFE: Yes.

ADV SELEKA SC: It is the opening speech.

MR MOLEFE: Oh.

ADV SELEKA SC: The opening speech.

20 **MR MOLEFE:** Which paragraph?

ADV SELEKA SC: Page 5, paragraph 18.

MR MOLEFE: [No audible reply]

ADV SELEKA SC: Paragraph 18 where it reads:

“...I could not face Eskom employees and unions.

To tell them that their bonuses would not be paid.

This was nearly the case in 2015 and that we had no funds to fix the apartheid wage gap between black and white employees of Eskom, while rich international corporations were unduly exploiting Eskom.

As I have stated, the payments to Glencore would sunk Eskom...”

10 That word exploitation, could that be what driven you to or drove you to deal with the matter, as you say, decisively?

MR MOLEFE: It was not the only reason Chairperson.

ADV SELEKA SC: There were many?

MR MOLEFE: [No audible reply]

ADV SELEKA SC: There were many?

MR MOLEFE: Ja, there were quite a few. I mean, I gave the context yesterday about my dealing with the ...[intervenes]

20 **ADV SELEKA SC:** Yes.

MR MOLEFE: ...the Glencore before Transnet, that they were... when the entire industry has agreed to the Take or Pay Agreement and that I found that this agreement was basically preposterous.

And my information was that it is possible even

ultra vires but it was not entered into...

ADV SELEKA SC: Yes, that is ...[intervenes]

CHAIRPERSON: We have spent quite some Mr Seleka on this yesterday.

ADV SELEKA SC: Yes. No, I am moving on Chair.

CHAIRPERSON: H'm.

ADV SELEKA SC: The last sentence which says:

“As I have stated, the payments to Glencore would have sunk Eskom...”

10 Are you able to explain to the Chairperson, Mr Molefe, why in January 2016, February to April – I think from April also to October 2016, did Eskom agree to buy coal from OCM via Tegeta?

MR MOLEFE: When?

ADV SELEKA SC: January 2016.

MR MOLEFE: We spoke about this yesterday Mr Seleka. That was for Arnot.

ADV SELEKA SC: That is correct.

20 **MR MOLEFE:** And it was not just Tegeta. There were six coal suppliers. And the contract at Arnot was one thousand and I think ninety rands per ton.

ADV SELEKA SC: Can I clarify my question?

MR MOLEFE: [No audible reply]

ADV SELEKA SC: What I am saying to you is this. OCM owns the mine.

MR MOLEFE: OCM...?

ADV SELEKA SC: OCM owns the mine.

MR MOLEFE: OCM owns the mine?

ADV SELEKA SC: Owns the mine.

MR MOLEFE: Yes.

ADV SELEKA SC: It could go directly to buy from OCM and supply to Arnot.

MR MOLEFE: There were six suppliers that were requested to supply coal.

10 **ADV SELEKA SC:** I will finish.

MR MOLEFE: I am not sure where they got the coal from.

ADV SELEKA SC: No... Oh. But let me finish.

MR MOLEFE: Yes.

ADV SELEKA SC: Because the submission for the prepayment for six-hundred and fifty-nine makes it clear that they are going to get coal from OCM. Tegeta will get it from OCM and supply Arnot.

MR MOLEFE: The submission of six-hundred?

ADV SELEKA SC: R 659 million.

20 **MR MOLEFE:** The prepayment?

ADV SELEKA SC: Yes.

MR MOLEFE: Oh, are we at the prepayment now?

ADV SELEKA SC: I am linking it with the interim contracts that were there in 2016, from January 2016.

MR MOLEFE: the interim contracts were entered into in

December.

ADV SELEKA SC: Well ...[intervenes]

MR MOLEFE: Six of them. Six of them for Arnot.

ADV SELEKA SC: Ja, but it is for Arnot.

MR MOLEFE: And in our discussion yesterday and I said at R 400,00 they were better than the R 1 000,00 than was being paid ...[intervenes]

ADV SELEKA SC: I must ...[intervenes]

MR MOLEFE: ...corrected me and said it was not
10 R 1 000,00, it was R 600,00.

ADV SELEKA SC: Ja, but I am asking a different questions.

MR MOLEFE: It was even better.

ADV SELEKA SC: No, I am asking you a different question.

MR MOLEFE: Yes.

ADV SELEKA SC: The contracts that I am talking about ...[intervenes]

MR MOLEFE: Yes.

20 **ADV SELEKA SC:** ...are in January 2016.

MR MOLEFE: The six to Arnot?

ADV SELEKA SC: Tegeta... between Tegeta and Eskom with Tegeta supplying coal to Arnot.

MR MOLEFE: Yes.

ADV SELEKA SC: Those – that interim contract

...[intervenes]

MR MOLEFE: Yes.

ADV SELEKA SC: ...or short-term contracts

...[intervenes]

MR MOLEFE: Yes.

ADV SELEKA SC: ...between Eskom and Tegeta

...[intervenes]

MR MOLEFE: Yes.

ADV SELEKA SC: ...relates to coal that Tegeta gets from

10 OCM.

MR MOLEFE: Yes.

ADV SELEKA SC: And supplies to Arnot.

MR MOLEFE: No, I am not aware that the coal came from

...[intervenes]

ADV SELEKA SC: OCM.

MR MOLEFE: ...OCM, Tegeta. You will remember that that was the time when I was sick in hospital. So December/January 2016. So I am aware that there was a problem at Arnot ...[intervenes]

20 **ADV SELEKA SC:** Ja.

MR MOLEFE: ...the contract was coming to an end but I also know that six BEE suppliers were contracted to supply at four hundred and something. One of them was Tegeta.

ADV SELEKA SC: Yes.

MR MOLEFE: Peculiar but you are not interested in the

other five, not even their names, but one of them was Tegeta.

ADV SELEKA SC: H'm.

MR MOLEFE: And all of them supplied at about R 400,00 which was way below what we were buying the coal at in a mine from... Sorry, in a power station whose coal supply agreement had come to an end.

Now I was – I am not aware that they bought the coal from OCM, what the arrangements were. In fact, I
10 never saw the detail of those agreements with the...

I just came to know about it at the executive level when I came back. This is the arrangement that was done to deal with the situation at the Arnot. So I cannot comment about the fact that Tegeta was buying coal from OCM.

ADV SELEKA SC: Because you do not know anything about it.

MR MOLEFE: No, I was not aware that that was happening for Arnot. I was not aware that that was the
20 arrangement but that they buy from OCM supply Arnot.

ADV SELEKA SC: Did you have any idea of where the coal – they were supplying to Arnot, they were getting it from?

MR MOLEFE: No, I just know that Arnot was being supplied at R 400,00. I never went into the detail, where

they are getting the coal, why they are getting the coal.

ADV SELEKA SC: Ja. Is that not rather striking?

MR MOLEFE: Yes.

ADV SELEKA SC: Strikingly strange?

MR MOLEFE: [No audible reply]

ADV SELEKA SC: You know why I am saying that?

MR MOLEFE: No.

ADV SELEKA SC: Because there is a statement you made about the President as the chairman of the company.

10 He would have known what was happening with the transaction.

MR MOLEFE: Yes.

ADV SELEKA SC: But the Chief Executive of Eskom does not know what is happening with Eskom and Tegeta and where Tegeta is getting the coal from.

MR MOLEFE: Yes.

ADV SELEKA SC: How come?

MR MOLEFE: Granularity. Granularity.

CHAIRPERSON: Face this side Mr Molefe because when
20 you face that side ...[intervenes]

ADV SELEKA SC: Oh, ja face the Chairperson.

CHAIRPERSON: ...I cannot hear you.

MR MOLEFE: Granularity. He paid(?). So, I mean, even as I was in hospital, I can tell you that this and this and that happened. I was aware of what was happening but if

you go and ask me but – so where did Tegeta get the coal?
That is the level of detail to which I never went down to.

I just know that there were companies that were dealing with the situation at Arnot by supplying at R 400,00 which was less than what we have been buying coal from Arnot at and that what we – what Arnot had been asking for including the request of purchase land for them.

So I am aware of that but the granularity that did pay – the precise detail of, so where did they get the coal
10 and on which days was it delivered and who was the person who signed the proof of delivery? I do not have that detail.

Similarly, on this matter, a company like OCM, when it is in negotiations of a nature such as we are talking about here, which is that they have a penalty of R 2 billion and they are in negotiations to increase the price from R 150,00 to R 400,00 and/or R 500,00 and if they do not, they have a hardship.

That matter would have gone. The chairman
20 would have known about it. The chairman would have known about it and I am saying... Well, I think the chairman would have known about it because he is not naïve.

ADV SELEKA SC: What one would ordinarily have expected that if price was Eskom's issue, Eskom which is

in financial strains, as you have said, would have been to go directly to OCM and even pay a cheaper price than they would have had to pay ...[intervenes]

MR MOLEFE: Oh, then what would be...

ADV SELEKA SC: Wait. Even pay a cheaper price to supply to Arnot than what they paid to Tegeta because Tegeta had a mock-up.

MR MOLEFE: What would be the cheaper price?

ADV SELEKA SC: No, cheaper in respect of the figures
10 that are given. So let us – let me give you an example. The January contract between Eskom and Tegeta, you were paying R 467,00 per ton.

MR MOLEFE: Yes?

ADV SELEKA SC: Tegeta was paying, to get it from OCM, R 448,00 per ton.

MR MOLEFE: Ja?

ADV SELEKA SC: You could have paid that R 448,00 per ton directly to OCM.

MR MOLEFE: Ja. Chairperson, the procurement people
20 who were paying a spread of R 20,00 is something that never came to my... And did not need to because ...[intervenes]

CHAIRPERSON: Come closer to the mic.

MR MOLEFE: The procurement people were paying R 20,00 spread because one of the suppliers was getting

the coal somewhere, is a matter that never came to my attention. I was happy with the big picture, which is that, Arnot is getting coal at much less than what they were getting it from.

I think that, now that you mention it, if Tegeta could get the coal cheaper somewhere and give it to us, as long as they were supplying at a price that they had contracted with the procurement people. And I was trying to explain yesterday Chairperson, price is willing for our
10 willing seller.

So if there is a willing buyer willing seller at R 468,00 and there was another willing buyer willing seller at R 440,00 and somebody could go and buy the coal at R 440,00 and sell it at R 468,00, that is how capitalism works ...suppose the markets work. There is nothing peculiar about it.

And in fact, not something that needs to be elevated to the office of the Chief Executive as a crisis. It happens all the time. People buy products and sell them
20 at a higher price when they have an existing contract to supply at a higher price.

There is nothing irregular about it. It is just when, I think when they contract – the Primary Energy people contracted with the sixth company, they contracted...

ADV SELEKA SC: H'm.

MR MOLEFE: But I do not know Mr Seleka ...[intervenes]

ADV SELEKA SC: Ja.

MR MOLEFE: ...if Tegeta was the only one that was doing that of the six.

ADV SELEKA SC: That was doing?

MR MOLEFE: That were getting – that were actually not mining the coal but buying it somewhere and giving it to us at R 468,00. I do not know but it does not matter even if
10 they were doing it. It is just that you are interested in Tegeta because of...

ADV SELEKA SC: Because of your relationship with Tegeta and the owners of Tegeta which dates way back before Transnet at IDC to establish a private bank. That is the reason.

MR MOLEFE: H'm.

ADV SELEKA SC: Because it seems from your explanations that you could not see eye to eye with Glencore but you were playing soft gloves with Tegeta.

20 **MR MOLEFE:** But I told you, even when the six contracts were signed, I was not there.

ADV SELEKA SC: No, sure. I understand that but I am telling you why there is a focus on Tegeta because of the Gupta's.

MR MOLEFE: Ja.

ADV SELEKA SC: And you will know from the Parliamentary Portfolio Committee ...[intervenes]

MR MOLEFE: So that is... that is ...[intervenes]

ADV SELEKA SC: No ...[intervenes]

MR MOLEFE: ...the end of your story and you will stick to it?

ADV SELEKA SC: No, no. Let me ...[intervenes]

MR MOLEFE: ...despite what evidence says?

ADV SELEKA SC: No, no.

10 **MR MOLEFE:** Oh, so you will not stick to?

ADV SELEKA SC: No, I am not sticking to any story.

MR MOLEFE: No, you are. You are pinning me on Tegeta at all costs even when I tell you I was in hospital.

CHAIRPERSON: Mr Molefe, all you need is to say that you disagree with what he is saying and if you want to expand, you expand. Then he moves on. He says what he wants to say. If you think it has got no foundation or is wrong or is flawed, you are free to say so. When I stick to it or not but we do need to move on so that there is
20 purpose.

MR MOLEFE: I disagree with what you say Mr Seleka.

ADV SELEKA SC: Yes. Because on the facts, we have not gotten anything from Eskom to explain why it could not go directly to OCM to buy this coal and ...[indistinct – audio cut] or not. There is no ...[intervenes]

MR MOLEFE: Because I was in hospital. That is why I could not go to hospital in January, I was in hospital.

ADV SELEKA SC: No, Eskom, not you, the individual, but Eskom.

MR MOLEFE: No but you are pinning me, you are saying because of my relationship with the Guptas, you are not saying Eskom's relationship with the Guptas, so you are personalizing it and I am telling you that as a person I was not physically there. I understand the transaction because
10 am the Chief Executive but I was not physically there, it was not done at my bidding, I did not say guys, you guys must buy from OCM, do not buy directly from OCM, I was not there to do that. I have pulmonary oedema which is – my lungs had been flooded with water and I was still sick.

ADV SELEKA SC: In his affidavit Mr Marsden says during that time in January 2016 Mr Gert Opperman had told him in respect of Hendrina we do not need the amount of coal that had been contracted for, we need less. As a result of that, Hendrina or OCM had a surplus of coal and it was
20 that surplus of coal which Tegeta was buying and transporting it to Arnot.

MR MOLEFE: I cannot comment on that, I was [indistinct – dropping voice]

ADV SELEKA SC: Okay, then let us see whether you can comment on this because the impression from all of this is

that Eskom went out of its way to assist Tegeta financially and do so for the purposes of acquiring OCH and to remove Glencore from Eskom. Are you able to comment on that?

MR MOLEFE: No, I disagree and I cannot comment on that.

ADV SELEKA SC: Okay. Let me take it further and see whether you can comment on this. This is relative to the penalty claim. In your testimony yesterday you were
10 saying it did not sit well with you that you could leave the penalty claim against Glencore and go to the Soweto residence and tell them to pay Eskom.

MR MOLEFE: Yes.

ADV SELEKA SC: So that was the hard stance taken in regard to Glencore.

MR MOLEFE: Yes.

ADV SELEKA SC: When it came to Tegeta, Eskom did not only fail to recover that 2.1 billion. Not only did it fail to recover that but it went a step further, it gave Tegeta
20 temporary relief of about 13 months in terms of which Eskom waived penalties.

MR MOLEFE: Is this after I had left?

ADV SELEKA SC: That is from January 2016.

MR MOLEFE: After I had left.

ADV SELEKA SC: You had left.

MR MOLEFE: Yes, I had left, so I cannot comment on it.

ADV SELEKA SC: And that is what Eskom relative to Tegeta. Ja, I cannot comment on that what Eskom did, I had left. So that adds you would have left ...[intervenes]

MR MOLEFE: But while I was there, there was no relief that was given to Tegeta on anything while I was there.

ADV SELEKA SC: Ja but when you were there, Tegeta was ...[intervenes]

MR MOLEFE: There was no relief that was given to
10 Tegeta on anything, so I do not know why you are trying to bring things that happened after my tenure.

ADV SELEKA SC: Sorry, Mr Molefe, you left in December 2016.

MR MOLEFE: Yes.

ADV SELEKA SC: This was taking place in 2016, the reliefs were given, the first one from the 1 September 2016 to July 2017 and it was given on the 20 December 2016 after they had already breached the contract.

MR MOLEFE: The relief was given on the 20 December
20 2016?

ADV SELEKA SC: Ja. Effective, let me tell you...

MR MOLEFE: Yes.

ADV SELEKA SC: Effective from the 1 September 2016.

MR MOLEFE: I officially took leave during December 2016 until my last day at work, my remaining – I was not at

work, there was an Acting CEO during December 2016.

CHAIRPERSON: From beginning of December?

MR MOLEFE: Yes, from beginning of December.

CHAIRPERSON: Oh, okay, so you were not at Eskom December.

MR MOLEFE: I was not at Eskom.

CHAIRPERSON: Ja and somebody else was acting in your position.

MR MOLEFE: There was an acting CEO.

10 **CHAIRPERSON:** Okay.

ADV SELEKA SC: But they would already have been in breach from the 1 September because that is – we retrospectively ask for that relief.

MR MOLEFE: Yes.

ADV SELEKA SC: Are you aware that they were in breach?

MR MOLEFE: No, I was not aware that they were breach but I was not party to any discussion in the relief.

ADV SELEKA SC: Ja. Now lastly, Chair, is the point Mr
20 Molefe referred us to in regard to Mr Snehal Nagar, I went and read that affidavit.

CHAIRPERSON: With regard to?

ADV SELEKA SC: Mr Snehal.

CHAIRPERSON: Ja. Oh is that the one who is supposed to have ...[intervenes]

ADV SELEKA SC: Confirmed.

CHAIRPERSON: Given calculations?

ADV SELEKA SC: Ja but I think Mr Molefe was saying confirmed the figure of 2.17 billion.

CHAIRPERSON: Well, if we are talking about the same thing, Mr Molefe was saying somebody from – somebody came here and was explaining how the penalty of 2, whatever the amount is, billion rand, was made up and seeking to explain or justify it and I think that is what – if
10 he was talking about and that is the person you are talking about as well?

ADV SELEKA SC: That is correct, yes.

CHAIRPERSON: Okay.

ADV SELEKA SC: We are talking the same.

CHAIRPERSON: Yes, okay.

ADV SELEKA SC: I read the affidavit, I do not need to – or we can if you want to, Mr Molefe. In – maybe the Chair, ...[intervenes]

CHAIRPERSON: Why do you want to read the affidavit?

20 **ADV SELEKA SC:** No, I am not reading the affidavit, I will explain what I see from the affidavit.

CHAIRPERSON: Okay, alright.

ADV SELEKA SC: And then Mr Molefe can comment.

CHAIRPERSON: Okay.

ADV SELEKA SC: Because – oh ...[intervenes]

CHAIRPERSON: Well, if it is important to read you can read, I just want to understand what the connection is.

ADV SELEKA SC: Yes, sorry.

CHAIRPERSON: With what Mr Molefe said yesterday, or what the purpose is of referring to the affidavit.

ADV SELEKA SC: Yes. In fact as I drop my head that it clicked in my mind that you are asking me for the purpose not for why am I reading, why should I read, ja. The purpose, Chair, is to explain – Mr Molefe, you would listen
10 there. What Mr Nagar says in affidavit in regard to the 2.1 billion – so he puts it as a claim that could be – that Eskom could have – and that is at the beginning of the calculation and he goes on to talk about a calculation and the errors in the calculation that they subsequently change. He talks about the 158 million that was already charged that had to come from that amount, it was not due, it had been deducted and he arrives at a conclusion that in his view he believed that Eskom had a potential claim of 1.1 billion, the ultimate conclusion. So that is what I wanted to
20 convey to Mr Molefe.

CHAIRPERSON: Yes, remember that he said he cannot comment on how they came to that amount.

ADV SELEKA SC: Yes.

CHAIRPERSON: He was told that the claim was.

ADV SELEKA SC: Yes.

CHAIRPERSON: He was told it was legitimate and he sought to recover that amount.

ADV SELEKA SC: Yes.

CHAIRPERSON: So with regard to how it was made up and whether there was a proper foundation for it, it was justified or not, he said he has no personal knowledge, all he knows is people that he believed knew told him there is this claim that Eskom has against OCM, it is legitimate. I think he said he did explain some things about it but he
10 was satisfied that he should pursue the claim.

ADV SELEKA SC: Yes. No, I accept that, Chair. All I am saying is to clarify what came out yesterday is confirmation of the figure of 2.17 by Mr Nagar. I have read the affidavit. One needs to clarify what he said in that affidavit, just for the purposes of the record. Ja. Because even what he believed was the 1.1 billion Eskom would be entitled to pursue on – it was still compromised, it was still reduced to 255 million. It is not Mr Molefe – it may not be Mr Molefe's problem but just to place it on record. Yes.

20 **MR MOLEFE:** Just for the record, Chair, the narrative has been that when I arrived at Eskom I arbitrarily imposed a penalty of 2 billion on Optimum so that they can sell the mine to Tegeta, right? What this proves is that there was no arbitrary action on my part and that even the 2 billion was not a figment of my imagination, it is mentioned in Mr

Nagar's papers, it is an amount that had been outstanding long before I arrived. So my only purpose of including it in my statement was to say that the narrative that says that it was my scheme to impose the penalty to force Optimum into hardship – I think even Mr Ramathodi put it like that, that Mr Molefe arrived there and he just imposed a R2 billion penalty as if I woke up one morning and imposed a R2 billion penalty. The R2 billion penalty was properly documented, it was calculated – there may have been
 10 disagreements between the different officials, legal, engineers and so on and even the executives but there was a basis of the penalty in the region of R2 billion.

Whether eventually after I had left Eskom was able to recover it, is another matter that I was not involved in. Ja, but sometimes I even think well, by pursuing the 2 billion if we got was 200 million is still better than nothing than not pursuing it at all because at least something went to Eskom but I am not expression an opinion on that, I was not there. The 2 billion is what was on the table as what
 20 needs to be pursued and as a responsible Chief Executive, that is what I did.

ADV SELEKA SC: Chair, from the evidence one cannot conclude that the 2.17 billion was properly documented. I think that clarification needs to be pointed out.

CHAIRPERSON: I am sorry, just repeat the clarification?

ADV SELEKA SC: I said from the evidence given, even from Mr Snehla's affidavit it cannot – a conclusion cannot be made that the 2.17 billion penalties were properly documented.

MR MOLEFE: But do we agree, Chairperson, that the 2.1 billion was not a figment of my imagination?

ADV SELEKA SC: I do not know, Mr Molefe, Ms Daniels testified here that the opinions of CDH were drawn to you and Mr Koko's attention and you did not heed the concerns
10 that were raised.

MR MOLEFE: No but it is not something that I sucked out of my thumb.

ADV SELEKA SC: [inaudible – speaking simultaneously]

MR MASUKU: Sorry, Chair, now I am not understanding, can I just ask?

CHAIRPERSON: Yes.

MR MASUKU: If Mr Seleka is suggesting that the 2 billion was in fact a figment of Mr Molefe's imagination because that would be unfair for him to continue making that
20 suggestion when he cannot substantiate it. It will be inconsistent with his own evidence. Even if it were to be wrong on the evidence he has, it does not suppose the proposition that he is trying to advance which is that this was an arbitrary figure for which Mr Molefe just woke up one day and imposed.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Thank you, Chair. I think we are talking cross purposes. Mr Molefe is the one saying to me this was not a figure of his own imagination, it was not his thumb suck. I responded to clarify what he said about this figure was properly documented. I say when you read the evidence even Mr Snehal's affidavit, CDH's affidavit, you cannot come to the conclusion that the figure was properly documented. I have never gone beyond that to say
10 whether it was a figment of his imagination or not, I am not saying that. Then I put to him what Ms Daniels said. Ms Daniels said these concerns in the opinions of CDH were drawn to their attention but they decided not to heed those concerns and forged ahead with the claim. That is all.

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

ADV SELEKA SC: Ja.

CHAIRPERSON: I think it is clarified.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** And that brings me to the end.

CHAIRPERSON: Yes. Did you deal last time with the meeting between or involving Mr Molefe, Dr Ngubane and Mr Ramatlhodi?

ADV SELEKA SC: We did, Chair, last time and we touched a little bit on it yesterday, we just brushed it. For

the benefit of the Chairperson that can be traversed.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think you should traverse that.

ADV SELEKA SC: Yes because Mr Molefe, as we stopped yesterday, there are notices given by DMR in August.

MR MOLEFE: Yes.

ADV SELEKA SC: Which are different from the notices given in November 2015.

10 **MR MOLEFE:** Which are?

ADV SELEKA SC: Are different from the notices given in November 2015.

MR MOLEFE: Yes.

ADV SELEKA SC: The notices issues in August – and they say the 4 August, related to the retrenchment process that did not follow Section 189.

CHAIRPERSON: I am not sure, Mr Seleka, whether we are on the same page.

ADV SELEKA SC: Yes, Chair.

20 **CHAIRPERSON:** I am more interested in the purpose of the meeting that was subject divergent relations between on the one hand Mr Ramatlhodi.

ADV SELEKA SC: Yes.

CHAIRPERSON: I think to a certain extent his former DG – is it Ramon?

ADV SELEKA SC: Ramontja.

CHAIRPERSON: Ja, yes. And Mr Molefe and Dr Ngubane.

ADV SELEKA SC: Yes.

CHAIRPERSON: As I understand it, if I recall correctly, Mr Ramatlhodi's version was that that was a meeting where Dr Ngubane and Mr Molefe – maybe he said Dr Ngubane –[sought to put pressure on him, I think to cancel or suspend the mining licence of Glencore.

10 **ADV SELEKA SC:** Of Glencore.

CHAIRPERSON: Of Glencore. And Dr Ngubane and I think Mr Molefe's version was that the purpose of that meeting was for them to ask him to withdraw the notices, if I am not mistaken.

ADV SELEKA SC: Yes.

CHAIRPERSON: That he had issued which had ensured that, I think, OCM stopped providing coal or that is the meeting I am talking about and I think the most important thing is what was discussed at that meeting really.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: What was the purpose of the meeting, is it the purpose that Mr Ramatlhodi mentioned or the purpose that Dr Ngubane and Mr Molefe mentioned.

MR MOLEFE: Chairperson, Mr Ramatlhodi ...[intervenes]

ADV SELEKA SC: Yes, Chair, it is fine.

CHAIRPERSON: Yes.

ADV SELEKA SC: If you go straight into the meeting that is fine, it is just that ...[intervenes]

CHAIRPERSON: No, you can deal with other matters.

ADV SELEKA SC: Ja.

CHAIRPERSON: I just wanted to make sure we are – you understand which meeting I am talking about.

ADV SELEKA SC: Yes. No, I am because the notices give the context to that meeting.

10 **CHAIRPERSON:** Okay. No, that is fine.

ADV SELEKA SC: And I think – Mr Molefe, you know this because – let us see his explanation.

CHAIRPERSON: You know which meeting I am talking about, Mr Molefe.

MR MOLEFE: Yes, the meeting that was talked about here.

CHAIRPERSON: Ja, okay, no that is fine.

MR MOLEFE: Chairperson, I just recall that Mr Ramatlhodi in his evidence said Mr Molefe was there and
20 he kept quiet, he did not say ...[intervenes]

CHAIRPERSON: I am sorry, just repeat that sentence?

MR MOLEFE: He says Mr Molefe was there and he kept quiet and he did not say anything. My recollection, actually, I do not recall exactly what was discussed, I do not even recall that Mr Mantsha was there. I recall

vaguely that there was meeting with Mr Ramatlhodi and Dr Ngubane. However, what I did say in my statement and even in parliament was that I found it peculiar that Mr Ramatlhodi said what was discussed there was that issue, the takeaway the licences of Glencore and that he said he would never do something like that because of the problems at Eskom when in fact he had already done it, with the retrenchments. So that specific meeting I cannot recall what was being said but I just remember Mr

10 Ramatlhodi's statement being odd in a sense that but he had done that, exactly that.

So when he did it and how he did it – what actually happened at that time, I am not sure what the sequence of events was but the only thing – and I do not remember what was ...[intervenes]

CHAIRPERSON: Discussed.

MR MOLEFE: Maybe I was absentminded in that meeting, as he says I was quiet, but I just found it odd that he would so vehemently deny that he would agree or he would so

20 vehemently say that he would never have taken away the licences when in fact he had done so with the retrenchment issue.

CHAIRPERSON: Well, it is important when one looks at the point you made to have regard to the dates when was the retrenchment issue that you are talking about.

Unfortunately, my recollection is that none of the parties who attended that meeting appear to remember the date or they give very different, I think, times. I think Dr Ngubane's version, if I am not mistaken, suggests that the meeting would have been – I do not know whether early in August or early in July but Mr Ramatlhodi's version, if I am not mistaken, seemed to suggest that the meeting would have been early in September or late August but Mr Seleka might be able as he asks questions might be able to say
 10 the retrenchment notices were on such and such a date then we can take it from there.

ADV SELEKA SC: Yes, Chair. The notices regarding the retrenchment are said to have been issues around the 4 or the 5 August 2015 but Dr Ramontja says those notices were lifted on the 7 August 2015 after ...[intervenes]

CHAIRPERSON: And effectively were withdrawn.

ADV SELEKA SC: They were withdrawn, yes.

CHAIRPERSON: Those – now we refer to as notices, you know, notices of retrenchment, would normally be issued
 20 by the employer.

ADV SELEKA SC: Ja.

CHAIRPERSON: These were notices to say what?

ADV SELEKA SC: They are not notices of retrenchment, yes, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: These notices, let me see what
...[intervenes]

CHAIRPERSON: I think if I recall correctly, the suggestion from Mr Ramatlhodi was that the employer wanted to retrench workers in breach of some law and those notices are notices that the Department of Mineral Resources could issue when an employer seeks to retrench workers in breach of the law.

ADV SELEKA SC: Ja. According to Dr Ramontja, he says
10 the department suspended Optimum Coal Mine operations in terms of the Act on or about 4 August 2015, the suspension related to concerns about retrenchment processes that were being implemented by the mine, mine management. The dispute was attended to and the suspension was lifted on or about 7 August 2015.

CHAIRPERSON: Yes. So if Mr Molefe you – okay, so those were the – would those have been the notices that you say Mr Ramatlhodi had already issued for
...[intervenes]

20 **MR MOLEFE:** Yes, that is the deed that had already been done.

CHAIRPERSON: Yes.

MR MOLEFE: Before.

CHAIRPERSON: Yes.

MR MOLEFE: He did suspend the operations. But when

he came out in public he said I could never suspend operations because we were having load shedding. But, Chair, the 4th – the 7 August is four days before we actually stopped load shedding. Stopped on the 8 August 2015. So it was around that period, it was at a very delicate time and he did suspend operations of Optimum and – so when he came out and said but how could they have expected me to suspend these operations, I felt – I thought it was odd because it is something that he had
 10 done before.

CHAIRPERSON: Well, I must say that my recollection and Mr Seleka might check this, my recollection is that his version was that what Dr Ngubane wanted him to do was not just suspend any licence but was actually to cancel the mining licence, is that correct, Mr – or withdraw the mining licence?

ADV SELEKA SC: He uses the word, Chair.

CHAIRPERSON: Oh, does he use the word suspend?

ADV SELEKA SC: Ja, he uses the word suspend.

20 **CHAIRPERSON:** Oh, okay, okay. So then your point would come in if you say if he had already previously suspended the mining licence of Glencore why would he have had – why would he say he could not suspend the mining licence of Glencore in the midst of load shedding.

MR MOLEFE: Yes.

CHAIRPERSON: That is the point you make.

MR MOLEFE: Yes. Maybe he could have given reason maybe.

CHAIRPERSON: Ja.

MR MOLEFE: But not that he could not because he did do it.

CHAIRPERSON: Ja.

MR MOLEFE: So he should have said well, it is illegal or it is *contra bonos mores* or whatever but not to say that he
10 cannot do it.

CHAIRPERSON: Now you say you cannot recall what was discussed at that meeting but I am under the impression that in your affidavit you ...[intervenes]

MR MOLEFE: No, I simply say that the discussion could not have been about the suspension of the mining licence.

CHAIRPERSON: Yes.

MR MOLEFE: In any way because it is something that we did not want him to do. In any case, he could not say that he refuses to suspend the mining licence because he had
20 already done it. So I cannot recall what the discussion really was about, Chair.

CHAIRPERSON: Ja.

MR MOLEFE: As I say, I think in that meeting I just sat quietly and must have been absentminded because I cannot really recall what has been said. I do not even

remember that Mr Montsha ...[intervenes]

CHAIRPERSON: Ramontja.

MR MOLEFE: Ja. I have a vague recollection of this meeting with Mr Ramatlhodi and Dr Ngubane but I cannot recall – but I can, by deduction, I can say but it is unlikely that this was the [indistinct – dropping voice]

CHAIRPERSON: Okay. Because that is the meeting where he said – as he said Dr Ngubane went to the extent of saying to him in effect he should tell him what his final
10 decision is about the request that he was making because he needs to go and brief the President about the matter and the President was going to be going out of the country on that day if I can recall correctly.

MR MOLEFE: Yes.

CHAIRPERSON: Is my recollection correct Mr Seleka?

ADV SELEKA SC: Yes, no Chair that is correct.

CHAIRPERSON: Ja, and he says he refused, and he says it didn't take long after President Zuma had come back from a certain trip, it looks like the President did go out of
20 the country, either on the same day or the following, I cannot remember, was it the 2nd of September?

ADV SELEKA SC: That's a remarkable memory Chair, that is 22 September yes 2015.

CHAIRPERSON: Oh, okay.

ADV SELEKA SC: So, I can read it to the Chair.

“It is however Ngubane became impatient as he advised me that he had to brief the President on the outcome of the meeting before he left for his BRICS meeting that afternoon, I did not waiver in my stance. A few weeks after the return of the President from his BRICS meeting on 22 September 2015 I was called to meet the President at his official residence, [should I carry on]. When I arrived, we met Mr Ace Magashule and Mr

10 Mosebenzi Zwane whom I did not know at the time, in the waiting area. I privately met the President who thanked me for my exemplary service as Minister of the DMR and informed me that he is moving me to the position of Minister of DPSA as there was a vacancy at the time, I then agreed and then left”.

CHAIRPERSON: Ja, okay, well what I wanted to say is, it’s a meeting, where, according to Mr Ramatlhodi, Dr Ngubane, among other things, you know what’s your final

20 decision because I must report to the President before he leaves, but that might not jog your memory, just in case it could jog your memory.

MR MOLEFE: No.

CHAIRPERSON: It doesn’t?

MR MOLEFE: Not.

CHAIRPERSON: Okay, alright, Mr Seleka?

ADV SELEKA SC: Yes, the – according to Dr Ramonsha [?], Mr Molefe, he places your meeting, meaning Dr Ngubane and you with Minister Ramatlhodi at the time in early September 2015...[intervenes].

CHAIRPERSON: 30 September or 30 August?

ADV SELEKA SC: In early September 2015.

MR MOLEFE: Ja, as I say, Chair I remember that meeting here, I don't even recall Mr Ramonsha was there, but I
10 can't – I don't remember the dates.

CHAIRPERSON: And you are not able to say, where about in August or September or July it might have been...[intervenes].

MR MOLEFE: My thought process about this thing is like one thing that happed there was a suspension of the license and of the operation and then it was exposed and then, a few years later Mr Ramatlhodi said...[intervenes].

CHAIRPERSON: A few years, or a few weeks or a few months.

20 **MR MOLEFE:** Yes.

CHAIRPERSON: Oh, when he was...[intervenes].

MR MOLEFE: When he was in Parliament, just before Parliament.

CHAIRPERSON: Oh, okay.

MR MOLEFE: Two years later, so this is when this cue

comes back for the first time, after a few years and he says that look, these people were trying to get me to suspend a mining license and my thought was, that cannot be possible because we did not want the mining licenses to be suspended and in any case he did do it, he did do it without our encouragement, he did do it. So, that is my view on this issue, that is what I remember happened.

CHAIRPERSON: Yes.

MR MOLEFE: And then I – unfortunately, I’ve lost a lot of
10 the detail about it.

CHAIRPERSON: I think, Mr Seleka, it’s a question of just checking whether, in his affidavit, Mr Molefe said more or less the same thing. I was under the impression that he – his affidavit reflected somebody who had a recollection of what happened at the meeting. Obviously that you can only get by looking at his affidavit.

ADV SELEKA SC: It’s here, I have it in front of me
Chair.

CHAIRPERSON: Yes.

20 **ADV SELEKA SC:** Because I’ve been trying to follow him and find the passage in his affidavit.

CHAIRPERSON: Ja, what did you say in the affidavit?

ADV SELEKA SC: He says, during – that’s paragraph
97,

“Dr Ngubane and I had a meeting with Minister

Ramatlhodi where Dr Ngubane asked him to reconsider the decision to suspend the licences of Glencore because of our concern about the negative impact on the security of supply of coal to Hendrina Power Station and the possible impact on load shedding. We were relieved, when a few days later, the suspension of the licenses was withdrawn. The next paragraph says, I was dumbfounded when, in May 2017 former Minister Ramatlhodi claimed
 10 that the Eskom Chairman, Dr Ngubane and I met with him to ask him to suspend Glencore's license".

MR MOLEFE: As I said that is how I recall the incident.

CHAIRPERSON: Yes, is the position that the difference between what he says now and what he said in the affidavit, is that, in the affidavit you seemed to remember at least one or two things that were said.

ADV SELEKA SC: Yes, that's what I think I'm picking up.

CHAIRPERSON: Ja, yes. Does that surprise you, that in the affidavit you seemed to have remembered at least one
 20 or two things?

ADV SELEKA SC: Chairperson, all I remember is that the licenses were suspended, there were representations that the licenses should not be suspended, and I think they happened that meeting. I can't remember when that meeting was or what the details of the conversation was

and the licenses had been suspended and a few days later, the licenses were restored, operations were restored and in fact, yesterday, I was saying that in my head, it was in the context of the strength of Mr Glason. So, and – but then I cannot impute that ...[indistinct dropped voice] but I do remember that, in that whole confusion, that individual licenses got suspended maybe it was a month and a half or a month later the licenses were suspended and then I remember there was a frantic effort to make contact with
 10 the DMR and discuss with the DMR about the suspension of the licenses and the impact on Hendrina. There was a meeting with Mr Ramatlhodi. What I can't remember is whether two meetings...[intervenes].

CHAIRPERSON: That's what I wanted to find out because yesterday at some stage I seemed to understand, either from you or from Mr Seleka that there may have been two meetings, I think from you if I'm not mistaken.

MR MOLEFE: I can't recall properly, the only thing that I remember is that licenses were suspended and we made
 20 contact ...[indistinct – dropping voice].

CHAIRPERSON: Ja, if...[intervenes].

MR MOLEFE: This issue of the President and so on, if it was mentioned in a meeting where I was present, I do not remember.

CHAIRPERSON: If the meeting was about you and Dr

Ngubane asking him to withdraw the suspension of the mining license and if you accept that those notices had been issued, was it on the 4th of August and withdrawn on the 7th, then your meeting must have been between those two dates.

MR MOLEFE: Yes.

CHAIRPERSON: Which is early August.

MR MOLEFE: Yes.

CHAIRPERSON: Ja, on your – if that is what the purpose
10 of the meeting was then that meeting would have been between those two dates.

MR MOLEFE: Yes.

ADV SELEKA SC: Ja.

MR MOLEFE: Ja, if it was about the license, that's the meeting I recall.

CHAIRPERSON: Yes, ja.

MR MOLEFE: This other one, it may have happened, but I don't...[intervenes].

CHAIRPERSON: You don't recall.

20 **MR MOLEFE:** So, I can't – I complained, I remember – ja I remember us going to the DMR office.

CHAIRPERSON: Ja.

MR MOLEFE: And getting to Mr Ramatlhodi's office as I say, I don't even remember that Mr Ramatlhodi was there.

CHAIRPERSON: Okay, Mr Seleka?

ADV SELEKA SC: Ja, Dr Ngubane's version is that the withdrawal of the notices was done on the 11th of November 2015, he says,

“The meeting was arranged by Mr Molefe, I cannot remember the date of the meeting, luckily Mr Ramatlhodi re-instated the mining license on 11 November 2015”.

So, if the meeting took place in early August 2015, those notices would have remained in place for the rest of
10 August, October and the first week of November.

MR MOLEFE: Dr Ngubane says 11 November?

ADV SELEKA SC: 11 November yes.

MR MOLEFE: I can't comment.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: But what is also strange is this, Mr Molefe, there are notices that are issued in November 2015 abruptly issued by the DMR and they stay for a longer period than what you see in the first notices, but we don't have any evidence of intervention by officials like you, the
20 Chairman, Dr Ngubane, with Minister of the DMR at that time being Minister Zwane to reverse the imposition of those licenses, I mean the suspensions.

MR MOLEFE: The notices in November suspend operation?

ADV SELEKA SC: They suspended operations.

MR MOLEFE: At Hendrina?

ADV SELEKA SC: At various mines of ...[intervenes].

MR MOLEFE: Including Hendrina?

ADV SELEKA SC: Okay let me read from Miss
..[indistinct]:

“In the subsequent four days, three further Section 54 notices were issued to other mines in which Glencore had an interest,

And then he gives the names, Wonderfontein,
10 Tweefontein, Goedgevonden, copies of these sections are annexed, and the reasons provided for the suspensions are set out in the notices. The first one was Koornfontein Mine pursuant to a Section 54 notice, ja, 26 November 2015.

MR MOLEFE: Ja, I was aware of the Hendrina one because of our interaction with Mr Dazendorf, I’m not sure the other suspensions, how they happened and how the primary energy...[indistinct dropped voice].

ADV SELEKA SC: How did you become aware of the Hendrina one?

20 **MR MOLEFE:** Sorry?

ADV SELEKA SC: How did you become aware of the notices in respect of Hendrina?

MR MOLEFE: It was in the press, it was in the press, I think in my submission to Parliament I even attached the newspaper article but now I’m ...[indistinct dropped voice].

ADV SELEKA SC: Say again?

MR MOLEFE: I say now, I'm afraid to submit them because you were saying they're not credible, yesterday.

ADV SELEKA SC: You submitted what?

MR MOLEFE: The newspaper clippings.

ADV SELEKA SC: Oh, now we accepted them, you can give them to me.

MR MOLEFE: They're in my – I think they're attached to my affidavit.

10 **CHAIRPERSON:** If they are attached to the affidavit then they are there.

ADV SELEKA SC: Ja.

CHAIRPERSON: Mr Seleka?

ADV SELEKA SC: Yes, well the impression to be made or to be – you know the impression, Mr Molefe, that has been expressed in regard to these notices being issued against Glencore that Glencore – a pressure was being brought to bear on Glencore to succumb to the offer that had been made by Oakbay/Tegeta and I'm saying the
20 impression – I'm giving you a chance to comment.

MR MOLEFE: No, I don't agree with it.

ADV SELEKA SC: That in you and Dr Ngubane approaching Minister Ramatlhodi it was in furtherance of that pressure.

MR MOLEFE: I don't agree with it.

ADV SELEKA SC: You don't agree that will be the questions.

CHAIRPERSON: Okay, Mr Masuku do you intend re-examining or not really?

ADV MASUKU SC: No, I don't intend to re-examine, partly because, Chair, I do think that it's been a long day for my client, and I do feel like it will be unfair to subject him to further questioning.

CHAIRPERSON: Yes.

10 **ADV MASUKU SC:** I would though, if a smart question which usually comes through, if it's something that I need to place before you, I will ask for an opportunity to do that.

CHAIRPERSON: No, no that's fine. Okay, you are scheduled to appear before the Commission in regard to the Transnet work stream sometime next week.

MR MOLEFE: Yes, Chair.

CHAIRPERSON: Yes, okay so we'll see you next week.

MR MOLEFE: Yes, I'd like to make a statement.

CHAIRPERSON: Sorry?

20 **MR MOLEFE:** I would like to make a statement.

CHAIRPERSON: Now?

MR MOLEFE: No, on Monday.

CHAIRPERSON: [Laughter], you'll make your request on Monday. We going to adjourn, I just want to say this Mr Molefe, it may be that, at some stage, even if it's during

the Transnet – your evidence under Transnet it may be that we might come back to it. One of the issues that I may have to grapple with, depending on what the picture is that will emerge after all the evidence is in, is whether certain decisions about what was to happen at Transnet, at Eskom were being made outside of Eskom/Transnet and even Government or not and if so, who knew about these decisions or who were participants in those decisions and so on. One of the things I raised earlier on with you was,

10 there is this situation where, in December 2010 – actually I shouldn't go through it because we went through it, where either the newspaper associated with the Gupta's the New Age in 2010 says, you are going to be the next boss of Transnet and if I recall correctly, in terms of evidence, you may not have applied for that position at that time and then we – or you go to Eskom then at some stage along – some months before that Mr Salim Essa got into Henk Esther, and says, Mr Salim Essa said we have made a decision that, the next boss of Eskom will be Mr Brian Molefe and

20 then within the context of the suspension of the Executives at Eskom there is evidence, it's not unanimous, it is disputed that there are witnesses who have said on the 10th of March 2015 one day before the Board suspended the Executives, a meeting took place at Melrose Arch involving Mr Koko.

Two meetings, one involving Mr Koko, Mr Salim Essa and Ms Daniels at which Ms Daniels was told that there will be suspension of Executives and names were given and then another one involving Mr Koko and Mr Salim Essa and Mr Abraham Masango where Mr Masango says he was also told that there would be suspension of Executives and I think names were given and of course the evidence, also, that I've heard, includes evidence where some documents that everybody seems to accept came
10 outside of Eskom seemed to have been sent to Eskom for example a document or email that was saying to the Board of Eskom, it should make a resolute resolution that it would not, I think, have any business relations with certain newspapers including The City Press and Dr Ngubane says, he did take that and present it to the Board and the Board took such a resolution and then the manner in which the Executives, the three Executives who exited Eskom it may well be that when all evidence is in one might say, maybe there were people who were outside of Eskom and
20 outside of Government may be working with people within Government, with people within Eskom, maybe also Transnet, I'm not sure who were influencing to say the least, decisions that were being taken. So, within your context the question might be, what are the chances that some people were planning about your life that you go to

Transnet and be Group CEO and then you go to Eskom and be Group CEO without your knowing, without talking to you, without any consultation. So, I mention that, just to say, as I look at the situation, I may need to grapple with those issues and you have indicated what you've indicated earlier on but if you have anything further that you'd like to say, maybe when you come for the Transnet work stream you could deal with it.

MR MOLEFE: If I can just say one thing about that story
 10 is that firstly, I'm not aware that there were decisions that were taken outside, it might well be so, but I'm not aware that decisions were being taken outside of organisations or outside of the Government. Secondly my frustration with that merit is that story that you just told is that it does not leave me with anything to answer because all of those things, my name is mentioned in the context of other people talking about me, there is not where it says...[intervenes].

CHAIRPERSON: Mr Molefe said this.

20 **MR MOLEFE:** Ja, and Mr Molefe said this, and Mr Molefe did this and so on and so forth. So, that frustrates me because it looks like there is – I'm about to be accused or – asked questions that are about to be cast on me on things that I had no control over because the whole – from the beginning of this statement that you just said, till the

end there is nowhere, where you say and then you, Mr Molefe, you can't explain this or you did this and you can't explain that and so on. As I have tried to do in the last two days Chair, all my actions at Eskom – now I think I've given a reasonable explanation why we were doing things the way we were doing it was not directed from us, it was in what I believed to be correct and I have – I just have a difficulty, I don't know how I'm going to deal with the fact that people who are then talking about me then [speaking
10 in vernacular].

CHAIRPERSON: Well, I don't know whether ...[indistinct] when they are planning – well I don't know whether I should say they are planning making good plans for your career.

MR MOLEFE: No, I didn't need them for my career, as I said I didn't need them for my career, they never consulted me so I am surprised.

CHAIRPERSON: Ja, but the purpose of mentioning it to you is just so that you know what I may be grappling with
20 when I have to look at the evidence and to give you the opportunity to influence which way one should look at it and in part you are saying, I'm frustrated because in all of this people ...[indistinct] [laughing], they are gossiping about me.

MR MOLEFE: And my ear, Chair, is ...[indistinct]

[laughing].

CHAIRPERSON: Okay, alright. Okay, we ...[intervenes].

ADV MASUKU SC: Obviously, the other option is if it is possible to have - to get those answers to you in writing. The idea of coming to the Commission physically...[intervenes].

CHAIRPERSON: Yes.

ADV MASUKU SC: It's quite a tiresome process.

CHAIRPERSON: Yes.

10 **ADV MASUKU SC:** It's very involving.

CHAIRPERSON: Yes.

ADV MASUKU SC: So, it seems to me, at the point which you reach where you're needing to confirm one or two things regarding who was planning his career without his authorisation, it may well be that a good way to do it, is to simply write to him and say here is what I have, if you can give me an affidavit in response to what you need and that will be sufficient. You don't really have time now.

CHAIRPERSON: Yes, no, no I think what will happen is, I
20 think I will give him the opportunity of making written submissions on what I should make of the evidence I've heard, so that will cover that ja.

ADV MASUKU SC: Thank you.

CHAIRPERSON: Okay, thank you to everybody, we are going to adjourn the proceedings for the day and tomorrow

whose evidence will I be hearing Mr Seleka?

ADV SELEKA SC: It's Ms Bianca Goodson.

CHAIRPERSON: Ja, only one...[intervenes].

ADV SELEKA SC: On McKinsey Trillian.

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

ADV SELEKA SC: Only one witness ...[intervenes].

CHAIRPERSON: Ja, in the evening I will have an evening session tomorrow and I'll continue with Mr Mantsha's evidence in regard to Denel, just for the benefit of the

10 public.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 4 MARCH 2021