

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

11 MARCH 2021

DAY 359



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Recording & Transcriptions

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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 11 MARCH 2021

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning DCJ.

CHAIRPERSON: Are you ready?

ADV MYBURGH SC: Yes we are thank you.

CHAIRPERSON: Yes.

ADV MYBURGH SC: DCJ today we are going to start with the evidence of Mr Gama. He is here. You will find Mr
10 Gama's exhibit in Bundle 7 that is Exhibit BB28.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Mr Gama has thus far filed two affidavits which we will obviously ask you to admit into evidence when he is sworn in.

But perhaps I could just say this by way of background if I may? You are aware Chairperson that the parties have reached an agreement to the effect that we will affectively ring fence evidence in relation to locomotives and I suppose it is important for me to explain
20 that when we talk about evidence and locomotives we are talking about the acquisition of locomotives as well as any transactional advise and agreement and also relocation.

So effectively we will not deal with anything dealing with locomotives today. The agreement is that Mr Gama we have provided him with what we consider to be the

relevant parts of the Fundudzi Report which we have invited him to deal with. The agreement is that an affidavit will be put in by next week Friday as I understand.

So it is our intention today to deal with four main topics outside of the locomotives.

The first relates to Mr Gama's reinstatement.

The second relates to GNS/Abalozi.

The third relates to alleged assistance provided by Mr Sagar of McKinsey to Mr Gama in respect of the
10 completion of his NBA.

And then fourthly it had been our intention to deal with driver 2 but I understand there may be some issues from Mr Gama's side. I will discuss that with my learned friend over the tea break hopefully we can come to some assistance or arrangement. Apparently it is alleged that there is still some information outstanding and apparently Mr Gama wants to cross-examine Driver No.2 so that might have to be put on hold as well. But certainly we can at least today deal with reinstatement, GNA and Mr Sagar.
20 The benefit of that as well is that after our examination of Mr Gama and any re-examination I guess that we will all be in a position then to deal insofar as Mr Gama persists with the application to cross-examine Mr Todd and that should be something that could be determined quite easily in the light of our examination of Mr Gama.

CHAIRPERSON: Well I would imagine that any re-examination would have to happen when he has completed all his evidence.

ADV MYBURGH SC: Complete his evidence.

CHAIRPERSON: On everything.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Ja. Ja.

ADV MYBURGH SC: And then as you are aware Mr Gama as you know is represented by Counsel he is here if you
10 would like him to place himself on record?

CHAIRPERSON: Yes. You may do so from where you are if your microphone is working.

ADV OLDWADGE: Good morning.

CHAIRPERSON: Morning.

ADV OLDWADGE: Mr Chair. Oldwadge KC; Johannesburg Bar, Brian Khan Incorporated my attorneys.

CHAIRPERSON: Yes.

ADV OLDWADGE: And it is a matter of record that I have been representing Mr Gama from the outset. Thank you.

20 **CHAIRPERSON:** Thank you very much. Okay you are ready?

ADV MYBURGH SC: Yes we are.

CHAIRPERSON: Good morning Mr Gama.

MR GAMA: Good morning DCJ how are you?

CHAIRPERSON: I am alright how are you?

MR GAMA: Great thank you.

CHAIRPERSON: Good. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR GAMA: Siyabonga Innocent Gama.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR GAMA: No.

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

MR GAMA: Yes.

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

MR GAMA: So help me God.

CHAIRPERSON: I am not sure whether they would – the transcribers would have heard Mr Gama's responses let us double check we might have to repeat it. Must do it again?
20 Okay I am sorry. Just speak up a bit so they can hear and it can be recorded.

REGISTRAR: Please state your full names for the record.

MR GAMA: Siyabonga Innocent Gama.

CHAIRPERSON: Okay no, no I do not think that is up that is loud enough. So try – try again.

MR GAMA: Okay try and speak closer.

CHAIRPERSON: Maybe closer to the microphone ja.

MR GAMA: Siyabonga Innocent Gama.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR GAMA: No.

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

MR GAMA: Yes.

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

MR GAMA: So help me God.

CHAIRPERSON: Thank you; you may – you may sit down. Thank you Mr Myburgh.

ADV MYBURGH SC: Thank you Mr Chairman. Mr Gama the protocol is I am just going to take you to your affidavit and get them entered as exhibits. I know that you wish to
20 make an opening address. You are more than welcome that let us just enter your affidavits formally and then...

CHAIRPERSON: If he would like to make an opening address I will prefer that I see what he is going to say.

ADV MYBURGH SC: Yes.

CHAIRPERSON: First because I allowed Mr Brian Molefe

to make an opening address without seeing his statement and it implicated certain people.

ADV MYBURGH SC: Sure.

CHAIRPERSON: So – so I would like that you see it, I see it first.

ADV MYBURGH SC: Alright.

CHAIRPERSON: So that we are just sure that it does not implicate anybody because if it does they should procedurally first be served with 3.3 Notices.

10 **ADV MYBURGH SC:** Yes. It is – this is something we have raised with our learned friends. Mr Chairperson perhaps can I suggest then that what we do is we get Mr Gama's affidavits entered and then we perhaps have a short adjournment where we can be provided with the copy of Mr Gama's opening address and we can then read it and then reconvene. Or would you like to rather see the opening address now?

CHAIRPERSON: Well no, no, I think we can do it the way you are suggesting. It may be called an opening address
20 but it may be that whether he makes it now or sometime later might not make a difference but of course he or his counsel will indicate whether it makes a lot of difference or as long as he gets a chance at some stage to – to make it. But certainly we can have his affidavits admitted.

ADV MYBURGH SC: Yes.

CHAIRPERSON: And then maybe take a short adjournment, we look at it. It may be that if it does not implicate anybody he can then go ahead.

ADV MYBURGH SC: YEs.

CHAIRPERSON: And make it. If it does implicate somebody it may be that it might have to wait and other arrangements might be made for another time. Mr Oldwadge do you want to say anything in this regard or not really?

10 **ADV OLDWADGE:** Mr Chair I fully respectfully in agreement with the proposed way forward. Thank you.

CHAIRPERSON: Yes okay alright. Thank you.

ADV MYBURGH SC: Thank you. Mr Gama you have Bundle 7 Exhibit 22 in front of you.

CHAIRPERSON: Mr Myburgh maybe pull your microphone a little to – ja, ja.

ADV MYBURGH SC: Thank you. Mr Gama I think it is the file in front of you. It is Bundle – sorry Bundle 7 Exhibit 28.

20 **CHAIRPERSON:** Ja you look on the – you look at the spine of the file to see which bundle it is and then you can go inside the file to look at the actual exhibit.

ADV MYBURGH SC: Could I ask you please to turn to page 7 and there you will find an affidavit and it starts at page 7.

CHAIRPERSON: I am sorry. It is Bundle 7 he?

ADV MYBURGH SC: Bundle 7 Exhibit 28.

CHAIRPERSON: Where do I find Exhibit 28? What page?

ADV MYBURGH SC: Is it not the first part of the file DCJ?

CHAIRPERSON: Oh is it after BB24? No that is Gigaba. Is the pagination of the bundle not sequential because if you tell me the page number?

ADV MYBURGH SC: Well if – what I have is Exhibit 28 that is then paginated by itself.

10 **CHAIRPERSON:** Oh okay. Let me try and look for it. The best is...

ADV MYBURGH SC: DCJ do you have Bundle 7?

CHAIRPERSON: Sorry?

ADV MYBURGH SC: Do you have Bundle 7?

CHAIRPERSON: Yes that is the one I have.

ADV MYBURGH SC: Well Bundle 7 has got a tab in the front that says BB28.

20 **CHAIRPERSON:** I have got – I have – I have now reached Mr Gama's affidavit which appears on page 116. 116 Mr Gama would be the black 116 at the top left of the page. Disregard for now the red numbers on the right hand corner unless you are specifically asked to use it. I must...

ADV MYBURGH SC: DCJ I am afraid that for some reason we – our documents are different.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Perhaps I could – perhaps...

CHAIRPERSON: Yes.

MR GAMA: I 00:11:04 the same as that decision.

CHAIRPERSON: I do not know what – okay how come your one is different from mine Mr Myburgh they should be the same.

ADV MYBURGH SC: May I...

CHAIRPERSON: The one that I have in front of me Mr Gama's affidavit is one deposed to on the 31st of August
10 2020.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Of January – 31st January 2021. Is that – is that the one you were...

ADV MYBURGH SC: No.

CHAIRPERSON: No.

ADV MYBURGH SC: DCJ may I ask – perhaps suggest that we – we take a short adjournment.

CHAIRPERSON: We take the adjournment ja.

ADV MYBURGH SC: So I can sort that out and we can try
20 and deal with the statement issue then.

CHAIRPERSON: Ja okay let us...

ADV MYBURGH SC: I will speak to your Registrar.

CHAIRPERSON: Let us do that because it is going to cause problems if we do not have the same things. Okay we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I realise that Mr Gama's opening statement was much longer than I – I had anticipated and going through it would take quite some time so that is why I sent the message that we will have to start and I would have to read it some other time.

10 Having said that I do realise that there may be certain portions or certain topics that he deals with that may be might not create any problem so one option is that if there is agreement about certain portions that are not – do not implicate anybody that he could deal with those and maybe can leave out for now those that may implicate other people for later.

Or – or he could make the full statement at a later time when we have all had a look but I have seen that he – I think he – there are portions that may implicate certain people if I am not mistaken. I do not know Mr Myburgh what
20 is – are you able to say?

ADV MYBURGH SC: Chairperson we have identified I think three or four points that may certainly be problematic.

CHAIRPERSON: Yes.

ADV MYBURGH SC: I – from our side I think the real introductory stuff about the purpose of the statement if Mr

Gama wishes to complain about how he has been treated by the – by the Transnet's stream we do not have any difficulty with him dealing with that.

CHAIRPERSON: Ja.

ADV MYBURGH SC: We spoke with the investigation, his motivation to join Transnet, his achievements at Transnet so really up until page 6 we do not have a difficulty and that would probably fall typically within an opening statement.

But then he deals with the – the various witnesses.

10 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: It seems to me also there I suppose potential problem is that really evidence and along the way he does say some things that might – they implicate people outside of the ordinary sort of course of argie bargie of litigation.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So I mean one possibility is that Mr Gama be afforded an opportunity of perhaps just paring this down and then we could go through the rest of it.

20 **CHAIRPERSON:** Well in the course of his evidence insofar as he is – so far as he may deal with the evidence of certain witnesses obviously that is fine but one assumes that he would deal with those within the context of the – of his affidavit which if they implicate those people would have served on those people and – but I do not know whether

what he says here is confined towards his – in his affidavits about those witnesses or whether it might be going beyond that.

ADV MYBURGH SC: Well you – we have identified two or three pages where we think he is going beyond that.

CHAIRPERSON: Ja.

ADV MYBURGH SC: When – another – another possibility if I could suggest this.

CHAIRPERSON: Hm.

10 **ADV MYBURGH SC:** We –we are confining ourselves today.

CHAIRPERSON: Ja.

ADV MYBURGH SC: To reinstatement GNS, Abalozi, Mr Sagar and Driver 2.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Driver 2 may have to be put on hold. The reinstatement in GNS topics effectively deals with Mr Todd's evidence.

CHAIRPERSON: Hm.

20 **ADV MYBURGH SC:** Perhaps if Mr Gama deal with the introductory material in his opening statement and then deal with whatever he wants to say about Mr Todd that may be relevant to the examination that we are going to undertake today Chairperson and then we can see if we can deal with the other things on the next occasion.

CHAIRPERSON: Ja. Let me hear what Mr Gama's counsel

has to say.

ADV OLDWADGE: Mr Chair thank you I am somewhat in agreement albeit not fully in agreement with what has been proposed by Mr Myburgh. I do believe that the purpose of this statement is an introductory topic to this opening statement is important.

There is and I want to say this at the outset when there is mention made in the opening statement of the prejudice that my client has suffered it is as a consequence
10 of non-provision of information and documentation by the legal team.

It should not be in any way interpreted that it is aimed at you Mr Chair; none whatsoever and I emphasise that point.

His discontent flows over into for instance the aspect concerning witness number 2. My client's approach to the matter is that he has indicated that he wishes to cross-examine but he wants certain information.

CHAIRPERSON: Okay.

20 **ADV OLDWADGE:** You know so it flows over. So to compartmentalise as it were certain aspects of the statement is difficult. But I do believe and I do not wish to speak on his behalf he has given me the nod thus far and if he is not in agreement with me from where he is he will indicate to me but I do believe what is important is that we deal with that

second paragraph and it is also important in the context of the evidence that has been given with reference to his performance and in particular certain matters such as re-instatement and in fact the fact that he had been identified as being a candidate for the position of Group Chief Executive Officer of Transnet.

It is important to have regard to one particular thing and that is his achievements within Transnet.

CHAIRPERSON: Ja.

10 **ADV OLDWADGE:** And specifically how he came through the ranks.

CHAIRPERSON: Yes.

ADV OLDWADGE: It is not as though he parachuted in.

CHAIRPERSON: Ja. No, no.

ADV OLDWADGE: Like some of others did.

CHAIRPERSON: The achievements are quite in order because he does not implicate anybody in any wrongdoing in regard to that.

ADV OLDWADGE: Thank you Mr Chair might I make this
20 final submission ...

CHAIRPERSON: Yes.

ADV OLDWADGE: On that score of matters.

CHAIRPERSON: Yes.

ADV OLDWADGE: The position is I am not entirely sure that there is merit to a finding that he is implicated in the context

of state capture others. What my client does say is that in relation to evidence that has served before you he is not satisfied that in all material respects it is accurate, correct and truthful.

CHAIRPERSON: Ja.

ADV OLDWADGE: And I think that is the gist of his complaint.

CHAIRPERSON: Yes, no, no that is fine. I think what we should do and I think we – we are all agreed at least on this
10 and I say all because so far I take Mr Gama I take you Counsel to be representing you but I will give you a chance to say something.

I think it – I think Mr Myburgh is probably correct that maybe the first five and a half pages could – do not seem to implicate anybody in anything.

Now I have not read the – the statement so I do not know whether – here the statement you make is correct but maybe if he is able to cover the first five and a half pages to go to just – to deal with those.

20 Insofar as the rest of his statement may appear to be his response to certain witnesses maybe we should say if and when – I mean those – a lot of those witnesses I think will not feature in today's evidence because of the scope that has been agreed.

When he comes back it may be that everything will

have been cleared for him then to make – to deal with the rest of his opening statement. That is – that is what I am thinking.

So in the end he will get a chance to deal with them it is a question of when and also the procedure. I think we would be largely in agreement with that?

MR GAMA: Mr – can I add Chairperson.

CHAIRPERSON: Yes. Yes thank you. Mr Gama you wanted to say something?

10 **MR GAMA:** Yes I just want to add Chair. Chairperson I have not spoken here about anybody who has not already spoken about me.

CHAIRPERSON: Yes.

MR GAMA: So there are no new ...

CHAIRPERSON: Yes.

MR GAMA: There are no new names and also Chairperson.

CHAIRPERSON: Ja.

MR GAMA: When one provides context.

CHAIRPERSON: Ja.

20 **MR GAMA:** To something that someone said.

CHAIRPERSON: Ja.

MR GAMA: I am not implicating.

CHAIRPERSON: Ja.

MR GAMA: I am ...

CHAIRPERSON: But remember that I have not read it.

MR GAMA: Yes. But I am just telling you.

CHAIRPERSON: Yes.

MR GAMA: (Inaudible).

CHAIRPERSON: Yes.

MR GAMA: The elegant way to deal with it would be to do those things that we have agreed that we should do.

CHAIRPERSON: Yes.

MR GAMA: But also I think as Counsel indicates to go further and talk a little bit about the – the other issues
10 beyond page 6 about the topics that we will be discussing here today.

CHAIRPERSON: Yes.

MR GAMA: And then at a later date I can then come back.

CHAIRPERSON: Yes.

MR GAMA: To the other issues but here I am not implicating people I am giving context.

CHAIRPERSON: Ja.

MR GAMA: To the untruth that I think I have been visited upon me.

20 **CHAIRPERSON**: Yes. No, no, no but as I understand you you – you have no quarrel with the proposition that insofar as you seek to respond to certain witnesses that can be done later. Ja. Okay alright.

ADV MYBURGH SC: Just put another way DCJ what I had - would be comfortable with.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Is obviously the introductory material.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Must be dealt with as you said the first five and a half pages.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And then as I have mentioned.

CHAIRPERSON: Ja.

ADV MYBURGH SC: We are going to deal principally with
10 Mr Gama's re-instatement in GNS and that relates to the evidence of Mr Todd.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Mr Gama does at page 10 paragraph 8.3 deal with Mr Todd's testimony and statement. If he wishes to deal with that and obviously subject to your direction we would have no difficulty with it because it then deals with the evidence we are about to traverse now.

CHAIRPERSON: So our – after page 6 you say he deals with Mr Todd's evidence from page 10.

20 **ADV MYBURGH SC:** At paragraph 8.3.

CHAIRPERSON: And that goes up to when?

ADV MYBURGH SC: I think it is just that series of sub-paragraphs.

CHAIRPERSON: Oh just those 8.3?

ADV MYBURGH SC: Mr Gama will correct me if I am wrong.

CHAIRPERSON: Ja.

ADV MYBURGH SC: But if he refers to Mr Todd anywhere else we would have no difficulty with him.

CHAIRPERSON: Ja, ja.

ADV MYBURGH SC: Dealing with that.

CHAIRPERSON: Okay. Okay that is fine. Let us do it that way then.

ADV OLDWADGE: Mr Chair just one final request.

CHAIRPERSON: Yes.

10 **ADV OLDWADGE:** From me if you will permit me?

CHAIRPERSON: Yes, yes.

ADV OLDWADGE: I also request that my client be permitted to read out into the record from page 14 which is the page that incorporates his conclusion in the matter if he will be permitted to read that into the record as well?

CHAIRPERSON: Okay. Okay.

ADV OLDWADGE: It is not a long...

CHAIRPERSON: No, no I think – I think when I just glance at it it looks like there should be no problem with that.

20 **ADV OLDWADGE:** Thank you Mr Chair.

CHAIRPERSON: Yes. Yes. Mr Myburgh I do not see – it does not look like there is a – should be a problem with that?

ADV MYBURGH SC: Just glancing at it briefly, no Chairperson.

CHAIRPERSON: Yes. Yes. Ja, no, no. So – so basically

then it is from the beginning of your statement Mr Gama up to paragraph 7.9.9 at page 6 and then you can skip up to – go to page 10 paragraph 8.3 dealing with Mr Todd. If there is anything else relating to Mr Todd elsewhere you can include it but otherwise you then skip to your conclusion and then at a later date you will be able to cover what you are not able to – we are not able to allow you to cover today. Is that alright? Okay alright. I give you the chance to do that now. Just switch on your microphone and you can keep it on
10 throughout.

MR GAMA: Chairperson thank you very much for the opportunity to deal with those aspects. I hope it is not stranger but it is just to give ...

CHAIRPERSON: It is just a matter of time.

MR GAMA: Context to those because of time. Chairperson I would like to take the opportunity therefore to just thank you for making – for allowing me to make this opening address.

First I would like to address the aspect of the prejudice that has suffered by me at the hands of the
20 commission's legal team.

Aspects relating to me being called to provide evidence. I will speak a little bit about why I joined Transnet, my history and then I will talk as we have agreed will ring fence I will talk a little bit about one of the witnesses.

Chair various testimonies have been provided by witnesses in this commission who have sought to implicate me. But what I want to do is I want to highlight some of the glaring discrepancies, some of the inconsistencies in their testimonies, some of the improbabilities and some of the falsities that relate to it.

But first I start with the commission's legal team. The commission has been tasked with the responsibility to interrogate matters in their search for the truth. However the
10 legal teams are set that they would not merely presume a particular set of facts.

Witnesses may give different even contradictory versions in relation to a particular factual allegation or set of facts. It is therefore the function of the commission and yourself Chairperson the Commissioner to consider all the relevant material and any and all versions in the search for the truth.

I would like to address the commission on the issue of the prejudice which has suffered at the hands of the legal
20 team since May 2019 up to the present day.

Although in recent days things have improved dramatically. When I first addressed and engaged the commission in May 2019 it is when I received my second Rule 3.3 Notice.

I set out the failure of the legal team in terms of

adequately informing me as a witness in terms of what I needed to do to testify at the commission and also in implicating me and conduct which allegedly forms part of state capture.

The failure to provide me with sufficient notice severely prejudiced me as I was often caught unaware that such allegations were being levelled against me. Sometimes I would wake up and turn on the television and there is somebody who was speaking about me and I do not even
10 have the Rule 3.3 Notice. Sometimes I get it two weeks later. Sometimes I do not get it at all.

So by way of example maybe I should just skip that in the interest of time but shortly after the second Rule 3.3. Notice was served on me my attorneys have been engaging and in constant communication with the commission and the evidence leaders concerning the witness statements and the documents referred to in such statements.

Between May 2019 and September 2020 we got one standard 00:18:30 from the commission and we acknowledge
20 receipt of your communication our legal team will look at and that is it. And there was never any follow up as a result of that.

By engaging with the commission at every turn whenever there were witnesses I demonstrated my willingness to participate in the inquiry with a clear proviso

that I required to be provided with the documents and facts to by the witnesses timeously in order to be able to test or challenge their versions if and when necessary and to exercise my right in terms of inter alia Rule 3.4 of the Rules.

The commission has at all relevant times been aware of the fact that I take the allegations against me seriously and do not appreciate being ambushed by the tactics that have been quite evidently in employed by the evidence leaders tasked with allegations concerning Transnet and
10 myself.

One such example is the late provision of certain reports which have been read into the record. Numerous requests by my attorneys of record for important and relevant documents including witness statements, affidavits and transcripts have gone unanswered as I have indicated.

Now it is regrettable Chair that the commission Secretariat or legal teams have conducted themselves in a way where you find that the provision of matter that is sought from the commission for instance the request for
20 copies of my diary during my tenure at Transnet. I have asked for it since September 2020.

It cannot be difficult Chair to find a diary. It cannot be difficult to find certain minutes of meetings that I have indicated took place at Transnet and I have given dates to say these meetings took place on these dates in the minutes

there is this document. It cannot be too difficult.

So I still have not received copies of my diary despite my attorneys requesting this on numerous occasions. We have been given something like meeting requests which is of no use to me to deal with – with it and being told that no that is the only thing that we have which is an aspect of your diary.

I do believe Chair that in the ordinary course such diary is spelt somewhere within the records of Transnet it
10 must be.

On 21st of October 2018 the commission served the first Regulation 3.3 Notice in relation to me which was by – a statement by Barbara Hogan. It served to inform me that I had possibly been implicated by the evidence of Hogan and that I was entitled to attend the hearing of her evidence which would be presented.

This was the first time that I had engaged with the commission. Following on from that first notice as I have indicated it went quiet until 24 April 2019 when I received
20 that second Rule – Regulation 3.3 that I have just discussed with you.

The notices came with a huge body of documentation and almost also – there was also outstanding documentation – a lot of it which was requested by me and my legal team on numerous occasions.

And as I have indicated the information was just not forthcoming and there has been information for instance where I have asked the commission that I saw my name being mentioned that there were certain vaults somewhere in Gauteng and that I was an owner of a vault and I have asked for information from the commission relating to that. All I get is that the legal team is going to come back to me about it.

But these are serious allegations that are being levelled against you when you know of no such but your
10 name gets dragged and tainted into those things.

Chairperson in November 2020 I have received my second Regulation 10.6 Notice which called upon me to provide an answer within 21 days to deal with the testimony of Siyabulela Mapoma and Christopher Todd. That testimony in respect of Regulation 10.6 sought to implicate me in misconduct and fraud.

I deny any and all allegations Chairperson of misconduct and it – as it relates to state capture in the strongest terms.

20 Ultimately on 8th February 2021 I received the summons to attend the commission in order to provide evidence and to be questioned regarding my affidavits of 29 and 31st January respectfully and to 00:24:07 to approximately 20 matters under investigation and ranging from Transnet's acquisitions, locomotives, international trips

which afferently coincided with trips of the Gupta family.

Chairperson I just want to share with you why I decided to join the state owned entity and particularly Transnet in 1994 after having had a promising career in banking which included a stint in Wall Street in New York.

At the dawn of our democracy Chair I was convinced that it was my duty to contribute what business skills I had to the growth and development of a new country. An opportunity which I believe is not afforded to many people.

10 So addressing the national question from a perspective of creating a moderately prosperous nation has always been my guiding objective.

The concept of helping to build a new country therefore was an exciting proposition post the success of the first democratically held elections in our country.

At the heart of this excitement on my part was the possibility to contribute to the aspired dismantling of the immoral apartheid system.

20 And too to create a new society where redress and the redistribution of wealth would help to bring about many previously marginalised people especially black people and women to the mainframe of the economy moving them from the periphery to the centre.

I was convinced that Transnet had the capability to contribute substantially to a sustainable development health

state. I believed as I still do that SOC – SOE's can make a contribution towards moving the masses of our people from the periphery to the centre.

The majority who are largely participants in the second economy of have-nots have the possibility to be assisted to move towards the first economy through deployment of state resources they are targeted orderly and considered way.

Training skills development the promotion of supplier
10 development hubs are at the forefront of the national initiative to improve the productive capacity of our country.

In all my dealings Chair I have practiced principles of fairness, principles of ethical leadership and I have played pivotal roles in the redress of the growth and equality in our country and especially as it relates to youth employment and business opportunities.

Those who have worked with me will attest to the positive energy that I have brought into the workplace to inspire young people to strive for excellence through
20 believing in oneself in order for them to succeed.

So I could never stand by and ignore the immorality of the concentration of our economy on a few leaks. Our country Chairperson needs to continue the conversation of how more people can participate in the economy especially strategies to address youth unemployment and to give hope

to those who have never enjoyed the dividend of a stable democracy.

We must continue the conversation of how we can unite our divided country by addressing the National question you will I am sure Mr Chairman we agree Chairperson that the goal of a united nation living prosperously under a constitutional democracy remains a dream.

I now turn briefly and indeed not exhaustively to deal
10 with my achievements that I obtained during my tenure at Transnet.

My career in Transnet started in 1994 Mr Chair there are some who would want you to believe that it started in – when Minister Gigaba assumed the position of Minister of Public Enterprises it is not true.

I have worked as a senior executive at Transnet under various Ministers including the late Minister Stella Siquau, Minister Jeff Radebe, Minister Alec Irwin, Minister Brigette Mabandla and Hogan prior to Gigaba's appointment.

20 Chairperson during this time I worked as a senior executive under many chief executives and also I worked as a chief executive myself of various divisions within Transnet. But also there were Group Executives such as Sakhe Matozo, Mafika Mkwanazi, Maria Ramos and lastly Brian Molefe that I served.

When I was appointed as the Chief Executive of Spoornet which is the largest division of Transnet I was specifically approached by the then Group Chief Executive Maria Ramos in 2005 to intervene and apply my skills and expertise to effect a turnaround for Spoornet.

I welcomed the opportunity because it was part of my dream unfolding. In the year that I joined Spoornet they had made a loss of R100 million despite a turnover of some R13 billion at the end of March and to me it was a travesty
10 that in the year that I have joined Spoornet, they have made a loss of hundred million despite a turnover of R 13 billion at the end of March. And to me it was troubled that you could have such a huge turnover and not make money, not make a profit.

And it was one of the things that I declared to everybody that we will not, not make a profit again. So from that day onwards, we worked hard, 16 to 18-hours a day to make sure that we turn around that business.

The following year... Let me just say that during
20 the preceding period, the five year period before I went to Spoornet, I had been running the Port Authority Division of Transnet which of the ladders contributed to profitability in the Transnet.

During 2007, it was two years after I had been appointed at Spoornet, the division was renamed Transnet

Freight Rail, CFR. It also became the largest contributor to the profits of Transnet in 2008 which was three years I joined.

So under my stewardship, TFR overtook the Port Authority Division and became the leading division in Transnet in terms of the... I have documented some of the successes that I and my team managed to bring to the Railways Act 2008.

The success can be attributed, Chairperson, to
10 our proper understanding of Transnet's operation which we documented and which contributed to a sustainable overall...

If I were to highlight a few there milestones and achievements during my tenure at Transnet, it would be noted that Transnet became the first ever SOE to be accredited and certified as a top employer by the Top Employer's Institute.

CFR won the best African Railway Operator Awards for two years running between 2011 and 2012. I
20 was the National Business Leader of the Year in 2008. I was also the Young Business Leader of the Year in 2004 which is awards that are awarded by the National Business Awards.

At TFR in conjunction with the Glasgow Caledonian University and the University of Johannesburg

which spearheaded and introduced the first ever university accredited railway qualification in Operations Management up to master's level.

We launched the first ever Chief Executive Talent National Programme for future leaders and we prided ourselves in achieving a year-on-year growth and revenue and profit always far above CPI.

We won various logistics national awards and even international accolades for the longest trains 375...
10 trains, as an example. I have been inducted, Chairperson, to the Global Hall of Fame for my contribution to work in the Maritime Sector.

I have also held positions as the President of both the Pan African Board Association between 2003 and 2004 which is the continental association with all boards in Africa.

I was also the President of the Union African Railways between 2006 and 2009 and I hold the title of Lifetime President, Honour and Lifetime President of the
20 Railway.

In 2003, Chairperson, in Durban we hosted the World Port Conference which was the first time that this type of conference had ever been hosted by on the continent of Africa.

I now turn, Chairperson, to the testimony of the

report. Chairperson, Todd sought to mislead the Commission to the effect that I was at TFR not on merit.

CHAIRPERSON: I am sorry. Just repeat that sentence.

MR GAMA: He sought to mislead the Commission to say that I was at TFR not on merits but because Gigaba had handpicked me so that I can contribute to the project of what is now known as State Capture.

A phenonium, Chairperson, where you as Chairperson, are required to make a determination as to
10 his deformation where you are required to make a determination as to this nature, form and context as well as what characterise this and if it is exists and who the key-players are.

Todd's contention is that I did not qualify for the job of Group Chief Executive at Transnet but he does not indicate what he basis his false assertions on. He has not professed to the rail or a port's person who know what the qualify the person for the post or the job as the Group Chief Executive of Transnet.

20 I think that his allegations are worse than false. They are vindictive and they are vindictive because Todd was involved in my disciplinary hearing in 2009 representing the company and I will come back to that later in my testimony Chairperson.

Todd has never had sight of my performance

ratings over the years yet he deems himself an expert and has personal knowledge of my performance... at Transnet which he knows nothing.

It should be noted that Transnet has a Performance Management System which eradicates non-performance. So if I had non-performed I would have known about it. I would not have been there.

But significantly, Todd makes false assertions that there was no evidence regarding the basis upon which
10 the Board of Transnet reinstated me which has now been contradicted by a number of witnesses and on a number of occasions and even by himself as he successfully files different affidavits to the Commission.

I will skip my other contribution Chair to another day.

CHAIRPERSON: Yes.

MR GAMA: And... But Chair, I must indicate to you, Chairperson, today I am finally delighted to have the opportunity to address you. On all of the matters that have
20 been brought to the attention of the Commission concerning myself and I believe that you will distil the true state of affairs from the falsities that have been advanced about me before you.

There are still many issues that are outstanding that I would wish to address in this forum. However, I truly

believe that my version and narration of events should be preferred or above that of journalists' narrations that have been made by people such as Todd.

I believe, Chairperson, that you are envied with a desire to determine truth and to remove injustice, that you will be fair to all of us who have appeared before you and more so of those of us who have been unjustly accused by people who have identified us, people who have defined us and as their enemies where to be tainted
10 and to be defiled without providing the Commission with actual evidence.

I have come here, Mr Chairperson, in order to provide you with an honest version of events so as to assist the Commission in its findings. Transnet, as a discern, was my lifelong passion and place of employment and it provided me and my family with sufficient sustenance.

The success of Transnet was my labour of love and I would never do to Transnet anything that did not
20 advance its growth and development.

I have met and worked with more than 60 000 colleagues at Transnet who in some shape or form and whether to a lesser or to a greater extent relied upon on my expertise or who relied on my integrity and who relied on my commitment, and that of the countless hardworking

individuals who were with me day in, day out and as I have indicated, most days at Transnet turns into nights while we advanced and protected Transnet's interest.

My desire to contribute to the building of a new nation would be incomplete if Transnet were not to succeed in its quest to facilitate well-class logistics to strengthen our country's supply chain.

A successful Transnet to me would no doubt contribute to the objectives of creating a sustainable and a
10 capable developmental state. I thank you Mr Chairperson.

CHAIRPERSON: Thank you Mr Gama.

ADV MYBURGH SC: Thank you Chairperson.

CHAIRPERSON: You wish to say anything in response to any aspect Mr Myburgh?

ADV MYBURGH SC: Not at this stage.

CHAIRPERSON: Not at this stage?

ADV MYBURGH SC: We may later say ...[intervenes]

CHAIRPERSON: Okay. No, I will – I just want to touch on a few matters, maybe two or three. Thank you for your
20 statement Mr Gama and thank you for coming to participate in the Commission and to put your version and to present yourself for rationing on any of the matters that the Commission is looking at.

I just want to say something about the Commission's Legal Team and your complaints are about

prejudice. It may be that Mr Myburgh intended doing so from the point of the Legal Team and he may do so or say something at some stage but I want to say something.

To the extent that you were not given documents that you should have been given or you were not given timeously documents that you should have been given by the timeously, to the extent that that situation that is not the way the Commission wishes to operate.

But I must say that despite the Commission's
10 best efforts and the Legal Team's best efforts and the Secretariat's best efforts, there have been occasions with different witnesses and different implicated persons, there had been occasions where things have not happened the way they should have been.

So the acknowledgement can be given and it has happened openly and so on, and you may or may not be aware that there have been occasions where I have been harsh on the Legal Team when some of the failures have happened.

20 So with regard to the special reference to what happened in your case, I might not be aware. I am just speaking in general that that – there had been occasions when such failures have occurred. Sometimes with an explanation that gets given which is satisfactory, sometimes not satisfactory. So.

But we did, as you may be aware or at least your legal team may be aware is that, when we drafted the rules we included a provision that says if any person believes that they have not been given adequate notice in terms of the rules, they may apply to the Chairperson for such a relief as would undo that prejudice that they may have suffered or that they may fear that they will suffer.

Now, of course, that is just all abrasive. It is not – it might not be very clear but it reflects that intention that
10 if there is some prejudice that anybody has suffered, we would like to look at how we can mitigate that or how that can be addressed.

Of course, you have said that in recent times there has been a change of attitude in terms of the Legal Team providing information. So that I have noted but I must also say that there was a time in the life of the Commission when the Transnet work stream, which is the work stream under which you fall, had certain challenges because some – there were changes in the Legal Team that
20 was handling Transnet and that took some time.

Mr Myburgh was not always here. He joined the Legal Team only from a certain time, last year. So there had been – it had – the Transnet work stream had been handled by other people before. So that also may have caused some problems and maybe that might explain why

at some time you might have received letters that says the Legal Team will look at it and then nothing comes back but that is no justification. It is just to explain that there were these challenges.

So I thought I would just touch on that. And then I think I need to say, you will deal with Mr Todd's evidence. I did not understand his evidence to be to the effect that he was doubting your competence or performance in terms of your work. I understood him to be saying because certain
10 findings had been made against you in the disciplinary inquiry, he had a certain view arising out of that, but of course, that can be traversed in case I misunderstood him.

I think that is what I wanted to say and other than also to say. It is quite important that you use this opportunity to put your side of the story, provide whatever explanation because irrespective of what I as Chairperson will find, it is important that people know what your version is, people know what your response is to certain allegations.

20 Because, you know, whatever I might find, people might say but we heard Mr Gama's explanation. We will believe what he said. The Chairman can find whatever but we understand what he had to say. So it is very important to use the opportunity to put your side of the story and deal with whatever allegations. So I thought I

would just mention that.

But I must also say that I believe that as you acknowledge the – that there has been positive change on the Legal Team in terms of furnishing you with information, documents that my impression also is that, at least in terms of what I have seen in the past few days, you and your legal team have been cooperative with the Commission and that is appreciated.

Okay alright. Let us continue then Mr Myburgh.

10 I think we can start.

ADV MYBURGH SC: Yes, thank you DCJ.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Mr Gama, I would like to take another good shot in trying to admit your affidavit into evidence. So we are in Bundle 7, Exhibit 28. That is the first part that is before you, DCJ, 205.

CHAIRPERSON: Oh, okay. I hope we – you and I have the same ...[intervenes]

ADV MYBURGH SC: Yes, we do.

20 **CHAIRPERSON:** Okay.

ADV MYBURGH SC: The first part. And could I ask you to go to page 22, please?

CHAIRPERSON: Okay I have got it.

ADV MYBURGH SC: Mr Gama?

MR GAMA: Ja, I am intending to.

ADV MYBURGH SC: You will find an affidavit that starts at page 22. We are only using the black numbers and runs through to page 115 including annexures.

CHAIRPERSON: Just remember to move the mic towards you again Mr Myburgh.

ADV MYBURGH SC: Do you confirm that?

MR GAMA: 115? Ja.

ADV MYBURGH SC: Yes. And could I then take you to the signature page of the affidavit, page 57?

10 **MR GAMA:** [No audible reply]

ADV MYBURGH SC: Will you confirm that you deposed to this affidavit on the 29th of January 2021?

MR GAMA: Correct.

ADV MYBURGH SC: And will you confirm the truth and accuracy of the affidavit?

MR GAMA: That is correct.

CHAIRPERSON: I think your voice goes down Mr Gama. So just try and speak up.

MR GAMA: Let me sit closer to the mic Chair.

20 **CHAIRPERSON:** Yes, ja. That is much better. Did you proceed to the second affidavit?

ADV MYBURGH SC: I did not. Sorry. Did I miss your response? You confirm the truth and accuracy of the affidavit?

MR GAMA: Yes.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Is that in respect of the first or the second?

MR GAMA: The first affidavit.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And could I take it one at a time, DCJ?

CHAIRPERSON: That is fine.

ADV MYBURGH SC: Could I ask you, please, I am going
10 to admit this affidavit signed on the 29th of January 2021
as Exhibit 28.3.1?

CHAIRPERSON: As Exhibit...?

ADV MYBURGH SC: [No audible reply]

CHAIRPERSON: As Exhibit...?

ADV MYBURGH SC: 28...

CHAIRPERSON: H'm?

ADV MYBURGH SC: Point 3 point 1.

CHAIRPERSON: Okay. So the affidavit of Mr Siyabonga
Innocent Gama which starts at page 22 is submitted and
20 will be marked as Exhibit 28.3.1.

**FIRST AFFIDAVIT OF SIYABONGA INNOCENT GAMA IS
SUBMITTED AND MARKED AS EXHIBIT 28.3.1**

ADV MYBURGH SC: Thank you. Mr Gama, could you
then, please, turn to your second affidavit? That you will
find commencing at page 116 and it runs through a series

of annexures to page 234.

MR GAMA: Okay I have got it.

ADV MYBURGH SC: Do you confirm that?

MR GAMA: Yes.

ADV MYBURGH SC: And then if we go to the signature page of this affidavit. That you will find at page 169. And would you confirm that you deposed to this affidavit on the 31st of January 2021?

MR GAMA: I confirm.

10 **ADV MYBURGH SC:** And would you confirm the truth and accuracy of the affidavit?

MR GAMA: Yes.

ADV MYBURGH SC: Chairperson, could I then ask you to admit Mr Gama's affidavit deposed to on the 31st of January of this year, commencing at page 116 as Exhibit 28.3.2?

CHAIRPERSON: The affidavit of Mr Siyabonga Innocent Gama which starts at page 116 is submitted as an exhibit and will be marked as Exhibit 28.3.2.

20 **THE SECOND AFFIDAVIT OF SIYABONGA INNOCENT GAMA IS SUBMITTED AND MARKED AS EXHIBIT 28.3.2**

ADV MYBURGH SC: Thank you Chairperson. Mr Gama, I want to start by asking you a few questions just to make sure we all appreciate the time at which you served as the CEO of TFR and then as the Group Chief Executive. In

what years were you the CEO of Transnet Freight Rail?

CHAIRPERSON: Just one second Mr Myburgh. We probably would need to have Mr Siyabonga's opening statement also admitted but you might wish to deal with that later.

ADV MYBURGH SC: I will find a place for that at tea-time.

CHAIRPERSON: Ja, ja.

ADV MYBURGH SC: DCJ, to work out where it would best
10 fit.

CHAIRPERSON: Ja-no, that is fine.

ADV MYBURGH SC: Mr Gama, in what years did you serve as the CEO of TFR?

MR GAMA: It was between 2005 and 2015.

ADV MYBURGH SC: And then I understand, and you must correct me if I am wrong, that you acted as the Group Chief Executive of Transnet from April 2015 to April 2016. Is that right?

MR GAMA: That is correct.

20 **ADV MYBURGH SC:** And you were then appointed as the Group Chief Executive of Transnet in April of 2016?

MR GAMA: That is correct.

ADV MYBURGH SC: And you held that position until October of 2018?

MR GAMA: That is correct.

ADV MYBURGH SC: And as we understand it, you took over first in your position as the acting GC and then after that had been appointed as GC from Mr Molefe. Is that correct?

MR GAMA: That is correct.

ADV MYBURGH SC: Good. Perhaps I could also ask you to confirm, if I have it correctly, that the Group Chief Financial Officer under Mr Molefe, Mr Singh, he also was seconded and then became employed at Eskom and that
10 the Group Chief Financial Officer that served under you, effectively Mr Singh's replacement, was a Mr Pita. Is that correct?

MR GAMA: That is correct. Mr Singh also served under me for a brief period when I was acting.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Was that before he was seconded to Eskom?

MR GAMA: That is correct.

CHAIRPERSON: Okay.

20 **ADV MYBURGH SC:** I would like now to turn to the question of your visits to Saxonwold and your connection with the Gupta's. You explain in your affidavit how you came to visit the Saxonwold compound of the Gupta's. I think, if my memory serves me correctly, on one occasion. Could you explain that to us, please?

MR GAMA: Yes. Thank you very much. You want me to give background and context?

ADV MYBURGH SC: Anything that you wish to in that context, yes.

MR GAMA: Okay. Yes, I had through my interactions at Transnet, we had an entity that was called Regiments and that was assisting us on a number of operational issues together with McKinsey, mainly dealing with some reengineering work where we are trying to make sure that
10 we improve and increase our capacity around the coal line first and foremost.

But also they had done some work for us when we were looking at the Maputo Corridor and looking at how best we could reengineer that corridor because it was also a corridor which was full of – there were many trucks on the road, especially to the Port of Maputo.

And so I had on occasion met a fellow by the name of Salim Essa. I think on one occasion in that meeting. And I believe that he was part of Regiments.

20 I then, on a different occasion, accosted Mr Essa. He was in our offices. And I had gone to see Mr Singh who was in his office. It was just a few metres from mine. And he was there. So I spoke to Mr Singh briefly and they were together.

And I just said: Look, can I chat with Mr Singh.

We had a discussion. And then he said to me: Look, at some point, I would like to have a chat with you. I said to him: No, that is fine. Just ask Mr Singh to give you my number and we can get together. It is not a problem.

So we left it at that and I think sometime later, Mr Essa had then tried to call me. He called several times but I was not available but I think – I really do not have the dates Chair.

CHAIRPERSON: No, that is fine. Ja.

10 **MR GAMA:** I do not have the dates.

CHAIRPERSON: Ja.

MR GAMA: But I have ...[intervenes]

CHAIRPERSON: [Indistinct]

[Parties intervening each other – unclear]

MR GAMA: I have got an approximate time.

CHAIRPERSON: Ja.

MR GAMA: To say, I think it must have been around October or November of 2015 ...[intervenes]

CHAIRPERSON: H'm, h'm.

20 **MR GAMA:** ...when I eventually agreed that, okay, we will meet. He gave me an address and I went there. It then turned out afterwards when I went there that this was actually not an office but it was actually the Gupta residence.

CHAIRPERSON: Yes, Mr Myburgh?

ADV MYBURGH: Yes, you want to carry on with your visit to Saxonwold? What happened then? I am sorry, Mr Gama, if I may say you are more than welcome to look at your affidavit as I am asking you these questions. Do you want to turn to page 47?

CHAIRPERSON: I think he thought you might have a further question.

ADV MYBURGH: Yes, I do.

CHAIRPERSON: Yes, okay.

10 **ADV MYBURGH:** So now the further question is, as I understand it, you say that Mr Essa effectively invited you to a meeting and that is how you found your way.

CHAIRPERSON: 47 will be the black numbers, Mr Gama.

MR GAMA: Yes.

CHAIRPERSON: Not the red numbers, you can ignore the red numbers, top left corner of which page, black numbers, 47. Mr Myburgh is not going to say Transnet 07-047, he will just say page 47, so you know what he is talking about. Okay, I think you might wish to repeat your question, Mr Myburgh.

20 **ADV MYBURGH:** Yes, so as I understand it, you were invited to a meeting by Essa, that is how you found your way to the Saxonwold residence of the Guptas. Could you explain what happened there please?

MR GAMA: Yes, at that venue I met with Mr Essa, he was waiting me outside. We went inside, we went into something

that looked like a boardroom and we sat there and we exchanged pleasantries and after a few minutes somebody that was introduced to me as Tony Gupta who I later found out is also known as Rajesh Gupta. He came and greeted me and we had a discussion.

It was not a very long discussion but Mr Gupta was just indicating to me that they had followed my career within Transnet and we thought that I had done very well in the company and that they had certain businesses and that it was
 10 their view that at some point maybe we could have a discussion around how Transnet and those businesses could cooperate going forward but there was not really anything in particular at that point in time in terms of what it is that he thought that will do but he was saying look, I think we can probably meet again at a later date when we have enough time and then I can take you through some of the entities that we have which I think might have a bearing on some of the work that you do at Transnet, so ...[intervenes]

CHAIRPERSON: And this was Tony Gupta talking?

20 **MR GAMA:** Yes, yes. So just enquired to him to say what would be the nature of that relationship that you are talking about but there was not really anything specific. So I was a bit annoyed because one ...[intervenes]

CHAIRPERSON: Did you feel like your time had been wasted?

MR GAMA: Ja, I think the first thing was that I thought that I am going to meet Essa at his offices and then I realised that no, we are actually at the boardroom of their residence and there was not really anything – I mean, if they had told I am going to somebody's home I probably would not have even agreed to the...

CHAIRPERSON: And was Mr Essa around as Mr Tony Gupta was talking to you?

MR GAMA: Yes, no, he was with me all the time.

10 **CHAIRPERSON:** Ja.

MR GAMA: In fact he walked me out as I left and I expressed my dissatisfaction to him to say look, you should not ambush me and bring me to people's homes when I thought that you wanted to talk about the business. So he just said look, I just thought I must introduce you to Mr Tony, as he called him because this family does a lot of business and, you know, they are influential, I thought it would be good for you and Transnet to work with them but obviously you are in a hurry but maybe at future date you could fine,
20 you know, time to talk about ...[intervenes]

CHAIRPERSON: When you met Mr Tony Gupta was he the first Gupta brother that you had met, that you were meeting. In other words, you had not met any of the other Gupta brothers at that time?

MR GAMA: I think at that time the popular Gupta brother in

that I had seen in the newspaper was Atul Gupta.

CHAIRPERSON: Okay.

MR GAMA: I always used to see his picture in the news.

CHAIRPERSON: Yes, yes.

MR GAMA: Yes. But I had never met him.

CHAIRPERSON: You had never met him, ja.

MR GAMA: Ja.

CHAIRPERSON: Okay, Mr Myburgh?

ADV MYBURGH: Yes, thank you. So, as I understand it, Mr
10 Gama, you say that is the one and only time that you went to
the Saxonwold residence of the Guptas?

MR GAMA: That is correct.

ADV MYBURGH: And did you subsequently ...[intervenes]

CHAIRPERSON: Well, I just want to say it is interesting that
Mr Gama says – I think that Mr Essa said that the Guptas were
a very influential family because that seems consistent with
what Mr Henk Bester says he told him when they had a
meeting in 2014. Mr Henk Bester said ...[intervenes]

ADV MYBURGH: Yes.

20 **CHAIRPERSON**: He said we are very powerful, you know,
something like they were very powerful, we have decided that
the next boss of Eskom will be Mr Brian Molefe, so Mr Essa to
you say, you know, the Guptas are a very influential family.
Ja, okay.

ADV MYBURGH: Do you wish to add anything to that, Mr

Gama?

MR GAMA: No, no, no, I am not privy to – I do not know who Mr Bester is.

CHAIRPERSON: No, that is fine.

ADV MYBURGH: So as you say at paragraph 31.1 of your affidavit that was the only time that you went to the Saxonwold residence of the Guptas?

MR GAMA: Yes.

ADV MYBURGH: Did you after that have occasion to interact
10 at all with Tony Gupta?

MR GAMA: No, no, I have not.

ADV MYBURGH: Did you have occasion to interact at all with Ajay Gupta?

MR GAMA: No, I have not.

ADV MYBURGH: And Mr Essa?

MR GAMA: Yes, Mr Essa I did.

ADV MYBURGH: In what context did you interact with Mr Essa and over what period of time?

MR GAMA: I have probably seen Mr Essa maybe four or five
20 times, I do not know. The next time that I would see him was in Dubai, a month or two later. He was always I think in this management consulting sort of space, as I understood it then. When I travelled to Switzerland, which was to the World Economic Forum, on my way back I had a stopover in Dubai and that is where I met him.

ADV MYBURGH: So that was the next time you met him?

MR GAMA: That was the next time that I met him.

ADV MYBURGH: I understand, please correct me if I am wrong, that you said that you met him subsequently on four or five occasions. Could you describe the other occasions to us please?

MR GAMA: I probably have met him – I think it was the third or the fourth occasion when I met him at the Gupta residence. I met him once in Dubai. I probably met him one more other
10 time after he came back to the country.

ADV MYBURGH: Chairperson, would this be a convenient time to take the tea adjournment?

CHAIRPERSON: Yes, let us take the tea adjournment, it is quarter past so we will resume at half past. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH: Thank you, Chairperson. So we had stopped at the point that you were telling us ...[intervenes]

20 **CHAIRPERSON:** One second, Mr Myburgh? Okay, thank you.

ADV MYBURGH: Thank you. We had stopped at the point where you were you were telling us I think about your third meeting with Mr Essa. So you met him – well, you have explained how you went to the Saxonwold compound where

you met him. You said a month or so later you met him in Dubai and then you last interaction with him, when was that and what was it around?

MR GAMA: So I think I have met him – I have seen him – I did not have a meeting *per se*, but I am saying I have seen him after Dubai, I have seen him somewhere. I think I saw him he was in a restaurant.

ADV MYBURGH: Alright, sort of a – you casually saw him?

MR GAMA: Ja, ja.

10 **ADV MYBURGH:** Alright. Have you ever been to Mr Essa's office which I understand to have been in Melrose Arch?

MR GAMA: No.

ADV MYBURGH: Had you ever been to his apartment?

MR GAMA: No.

CHAIRPERSON: So both he and Mr Tony Gupta never followed up on what they talked about which seems to be that they wanted to have further meetings or further discussions to do business together?

MR GAMA: No, there was not a follow-up.

20 **CHAIRPERSON:** Yes.

MR GAMA: Because I think I had said to Mr Essa that no, I was not really interested, you know, meeting people in their houses and things like that. I was quite annoyed I think on that day, so I only spoke to him later when we were in Dubai and we were talking about – he was thinking

about setting up what he called a BEE consulting entity that he was thinking about that he thought would be – would have a lot of black people, especially women and all of that.

ADV MYBURGH: Mr Gama, if I could just take you to your affidavit please at page 47. The first time that you met Mr Essa, you deal with that at paragraph 31.2.1 where you say it was during 20 ...[intervenes]

MR GAMA: Page 40...

10 **ADV MYBURGH:** 47.

MR GAMA: Ja.

ADV MYBURGH: Paragraph 31.2.1.

MR GAMA: Ja.

ADV MYBURGH: You say that was in 2015 you attended a meeting with Regiments, would that meeting have been at the Carlton Centre?

MR GAMA: No, not this particular meeting, I think it was at TMR.

20 **ADV MYBURGH SC:** So, was this at a time then before you had become presumably the – you acted as the Group Chief Executive?

MR GAMA: Ja.

ADV MYBURGH SC: So, it was probably in the early part of 2015.

MR GAMA: That's correct ja.

ADV MYBURGH SC: And then you say at paragraph 31.3, the next time you met him that was July/August 2015, that was in Mr Singh's office, this then, was at a time when you were the acting Group Chief Executive.

MR GAMA: That's correct, it was at the Carlton Centre.

ADV MYBURGH SC: And it was also at the time then, before Mr Singh went to Eskom, this must be the time when he was reporting to you?

MR GAMA: Yes.

10 **ADV MYBURGH SC:** And do I understand from paragraph 31.2.1 and 31.2.2 that you assumed, when you first met Mr Essa that he worked for Regiments?

MR GAMA: Yes.

ADV MYBURGH SC: And when did you come to learn that that wasn't so?

MR GAMA: Much later, much later.

ADV MYBURGH SC: When?

MR GAMA: I think – and I think he was also on the same page with me to say, okay I think it's Regiments
20 Management Consultant and he was telling me about management consulting, but I think much later, it must have been sometime in 2016. When Regiments wanted to cede their contacts with Transnet to Trillion then his name was not appearing amongst the Directors and it was actually Pillay and not Essa that was appearing so then I

realised that I may have made a mistaken assumption about that, ja.

ADV MYBURGH SC: Alright, I'd like now, to turn to the MBA issue, could I ask you to – the alleged assistance given to you by Mr Sagar/McKinsey in relation to your MBA.

MR GAMA: Okay.

ADV MYBURGH SC: Perhaps, Mr Gama, in fairness this is not something that you dealt with in your affidavit so let
10 me take you to the documents that are relevant and then we can go through them and then of course, you'll be afforded an opportunity to say what you would like to. You were issued with a 33 Notice by the Money Flow team in late November 2020, that you find at page 235 of your Exhibit and attached to that Rule 33 Notice was an extract of an affidavit from a Mr Mazala and that you find, the extract commencing at page 240, are you there?

MR GAMA: Ja.

ADV MYBURGH SC: I'm going to take you through these
20 extracts if I may. At 240 it states that,

“The growing body of evidence provided by the Commission that suggests a pattern of misconduct by Regiments at these entities, this includes, in particular, Regiments having entered into an agreement with Mr Salim Essa and other individuals

linked, publicly to State Capture engaged in a pattern of troubling payments that we were unaware of at the time, the work was being conducted (I leave open here and in the next paragraph the possible exception of Mr Vikas Sagar a former partner of our firm whose circumstances are discussed, fully below)”).

And then if I could take you to page 243, the second paragraph between the two lot,

10 “While the media has reported on allegations related to Regiments and the Commission has now presented evidence related to concerning behaviour by Regiments, we have not found evidence that anyone at McKinsey knew of this activity at the time it was occurring (I leave open here the possible exception of Mr Sagar) whose circumstances are discussed more fully below”.

And that then brings us to page 244 at paragraph 7.2.1 between the two dark boxes,

20 “MBA assistance in July of 2017 McKinsey was first provided information that indicated that Mr Sagar, whilst with McKinsey may have helped/coordinate research support and draft course work for the MBA studies of Transnet’s then CEO, Mr Siyabonga Gama in late 2015 and early 2016”,

And then if you go to page 245, at the foot of the page, paragraph 7.2.4.1,

“In addition to the MBA assistance and the 9 February 2016 letter (both discussed in more detail below), our issues of concern with Mr Sagar also stem from the forensic analysis conducted on his computer and phone after collection in 2017 as part of the investigation”.

And then if I could take you please to page 242 at
10 the top, paragraph 7.2.4.2.1,

“Of particular importance the document set includes an email dated 16 November 2015 from Clive Angel to Mr Sagar and Mr Wood copying Mr Essa...[intervenes]”.

CHAIRPERSON: Did you say 242?

ADV MYBURGH SC: 246.

MR GAMA: Ja, mine is blank .

CHAIRPERSON: Mine is blank too.

ADV MYBURGH SC: 246.

20 **CHAIRPERSON:** Oh, 246 I think you said – you may have said 242, okay, alright.

ADV MYBURGH SC: I think what’s happening DCJ, is I might have been looking at the red numbers, I’m sorry.

CHAIRPERSON: [Laughter].

ADV MYBURGH SC: Mr Gama, can I just take you back, I

referred you just now to page 243, you saw that part, black numbers, you saw that part in the middle.

MR GAMA: 243, yes.

ADV MYBURGH SC: And then 244 the MBA assistance part, you saw that 244?

MR GAMA: Yes, you read through that.

ADV MYBURGH SC: And then 245 we've dealt with I was on 246, where there's reference to Mr Essa and then I want to deal with the next sub-paragraph at 246, paragraph
10 7.2.4.2.2,

"The document set also includes an email response dated 18 November 2015 from Mr Sagar to Mr Angel and Mr Essa that was sent from Mr Sagar's personal email address assuming it is authentic, which we have no reason to believe it's not, the email suggest that Mr Sagar chose to move his communications with Mr Essa off of McKinsey's system to the personal email account",

So those are the various of the extracts and what
20 we do know is that out of caution, McKinsey then made a report in terms of Section 34 (1) of the Prevention and Combating of Corruption Activities Act, that report you find at page 249 and can I direct your attention please, to paragraph 2 (c) right at the foot of the page,

"A company contractor contacted McKinsey 12 July

2017 concerning a request he received from Mr Vikas Sagar, a former partner of the company to provide assistance to Siyabonga Gama (then the Acting Chief Executive Officer of Transnet) in connection with Mr Gama's MBA course work including Mr Gama's MBA "Capstone" project in December 2015 – January 2016. It will be McKinsey commissioned an investigation into the matter which revealed the following 1). Mr Gama was enrolled in

10 the Trium Global Executive Programme (class of 2016[2]; it appears that Mr Sagar coordinated research support for Mr Gama on one group assignment on the second assignment Mr Gama provided course work materials created by Mr Gama and his fellow student team members to Mr Sagar. In turn Mr Sagar supplemented this course work using company resources and contractors to outline and help draft the two chapters which Mr Gama submitted as his contribution to the Capstone

20 Project. (e) The support commissioned by Mr Sagar caused the company to incur costs of R100 000. (f) I'm unaware of any quid pro quo sought by Mr Sagar or received by the company in exchange for the benefit etcetera",

Do you want to comment on that?

MR GAMA: Yes, thank you very much. It is true that Mr Sagar introduced us a person who was supposedly an editor and we were writing a Capstone project, I think there were five or six of us...[intervenes].

CHAIRPERSON: At least who were doing the MBA?

MR GAMA: Yes, the Capstone project, there's about five or six of us who were writing that Capstone project. In fact, a lot of the people had – they were – I was collecting information from the different students, let's call them
10 students in order for us to write the final project report. As you will know, with people from different nationalities and – I was having difficulties in terms of the manner in which they presented, or they wrote, or the writing styles and I wanted to have one consistent writing style for the project. So, he then introduced me to somebody that he said was an Editor and I did not know whether this person was contracted to McKinsey or not, I never asked but he said, look you can speak to this lady, she's an Editor she can help you with your particular challenges. So, I then took
20 that content and I said, look, this is the work that we've been doing can you assist us to write it in a particular way which she did and that was around Christmas time of – December 2015 to around, maybe the 15th of January, I think the project was due around the 14th of January, there about so it was a two-week period when people were

enjoying Christmas time, I remember that there was no Christmas for me...[intervenes].

CHAIRPERSON: You had no Christmas [laughter].

MR GAMA: Ja, that particular year, so I went through it, she helped me and together with some of the other people who then said – we were giving her the contents because she wasn't a subject matter expert to help us to edit it and we did acknowledge in our Capstone project, the good work that she helped us with in terms of editing and the work.

10 That, it is said here, that Mr Sagar contributed or supplemented this using company resources I'm not familiar with it, it's something to do with them he never told me that this was a McKinsey resource or anything and he just indicated to me that this lady could assist us, and she did do that. There isn't any chapters that Mr Sagar contributed for me. The interesting this, we were doing last-mile logistics, Chair, and I our subject matter was a place in India, in Calcutta where they have, what is called Karana Stores, so this is a global MBA, so you need to

20 understand everything that happened in other countries and we had a research team that we had dispatched there now we were putting together the findings of this thing. So, one of the things that I shared with Mr Sagar, who is a native of India because that – we were doing last-mile logistics about India and he took an interest in it, you

know, to say, oh so how far are you now with these things that you are doing and – the concept of Kirana stores being used as last-mile logistics was something that had not been thought of and we came up with an IT system that could actually plug into global logistic companies such as DHL and other places. So, it's like, for instance, you wanted to deliver something in the township or in an informal settlement where there are no addresses, so – and people go to work during the day there's no-one and
10 people will only be there at night and everybody frequents this store. So, if they have the parcel they will then have to go there and what we use is the fact that they have a cell phone and then we can tell them and then they can track it, but they go and fetch it from the Kirana store. So that was, sort of the nub of it Chair. So, I would just share with him from time to time, he would say, how far are you, I would share with him, no this is where we are, that's interesting, and then he'd say, ja it's actually quite interesting because we're dealing with global companies
20 like Amazon people can order a parcel from Amazon and it gets delivered in the Kirana store and we've now created this software and we're putting together some warehouses in and around this place where you can distribute parcels from there. So, that's really what it was, so I did send him some of the information just out of interest and courtesy

because he was interested, not that we asked him to do anything for us, he wouldn't be able to do anything for us, we had the research team in India that was doing these things for us.

ADV MYBURGH SC: So, did you pay this Editor?

MR GAMA: No, she never sent an invoice.

ADV MYBURGH SC: And as I understand it, did she work intensely like you for two weeks over Christmas?

MR GAMA: I worked over Christmas she did the work it
10 was after Christmas, I think, it must have been for three or four days between the 4th and the 8th of January or something, but it was me who was working. I did most of the work, but it was difficult because of the writing styles of five or six different people and when I sent the work to her, she was able to distil it very quickly, I think she does this for a living.

ADV MYBURGH SC: But Mr Gama it seems – I mean who did you think was paying this person?

MR GAMA: She never sent me an invoice actually, in fact
20 it's something that – you know when you're in the middle of things like this I was just worried about delivering the Capstone project, I did, in fact, sometime later try to send her an email to say, you know, you never sent me an invoice, but I never got an answer. I don't know, I mean, from what I gather here she may or may not have been

paid by Mr Sagar, I don't know.

ADV MYBURGH SC: Well, it does appear from what was said to you, that disciplinary charges were brought against Mr Sagar and then he and McKinsey parted ways. So, if we go to paragraph two, as I understand it, you deny – we needn't read it again, but you essentially deny everything that is recorded there, you say,

“Well, I might have sent Mr Sagar some of my work, but it was only because he was taking an interest in it...[intervenes]”.

CHAIRPERSON: I'm sorry, are you – have you gone to his affidavit?

ADV MYBURGH SC: No, paragraph two of the Section 34 report at page 250.

CHAIRPERSON: Oh, okay, alright, yes continue.

MR GAMA: No, this speculation by McKinsey is denied.

ADV MYBURGH SC: Speculation by McKinsey?

MR GAMA: That he might have contributed to my course work, he wouldn't have.

20 **CHAIRPERSON:** Well, I don't know whether you want to say you deny that because it may be that you don't know but he made arrangements with the Editor and did pay the Editor without you knowing.

MR GAMA: No, no, I'm not talking about the payment, he's talking about the two chapters that he says there.

CHAIRPERSON: Oh, okay, I missed that, yes Mr Myburgh?

ADV MYBURGH SC: So, the second or the third sentence, in turn Mr Sagar supplemented this course work, you don't agree with that, using company resources and contractors to outline but you don't, as I understand it – you accept there's a possibility that Mr Sagar might have engaged someone to assist you, that you didn't know of?

MR GAMA: No, I didn't know of it and he introduced me
10 to the lady, I was in communication with her on email.

ADV MYBURGH SC: And then you see it says,

“The support commissioned by Sagar caused the company to incur costs of R100 000”.

Do you have any comment on that?

MR GAMA: No, no I cannot comment on it.

ADV MYBURGH SC: What I'd like to explore then, is your relationship with Mr Sagar. When did you first meet him?

MR GAMA: Let me also just indicate to you Chair that subsequent to these revelations as it were and my MBA
20 programme did an intensive investigation.

CHAIRPERSON: I'm sorry, your MBA programme?

MR GAMA: They did an extensive investigation.

CHAIRPERSON: Yes, the institution?

MR GAMA: The institution.

ADV MYBURGH SC: Ja.

MR GAMA: And into this work and I participated, and they are quite happy in terms of what happened and transpired here and there's nothing untoward in terms of them ...[intervenes].

CHAIRPERSON: Them being [Indistinct – audio distorted].

MR GAMA: Ja, I cannot recall, Mr Myburgh when I met Mr Sagar and he was working for Mortens[?], Mortens has been a transfer from at least 2005 and I think at some point he must have been one of the consultants that came
10 through, I don't know at what point that he came through. I worked with him quite a bit, I think, around 2012, so I don't know when I first met with him.

CHAIRPERSON: So, what you can say, I would imagine is by, 2015 you had known him for quite some time, for a number of years?

MR GAMA: Yes, I think I met him around 2012.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: Did you then, continue working with him when you took up the position as the acting Group
20 Chief Executive of Transnet in 2015?

MR GAMA: Yes.

ADV MYBURGH SC: You've seen on that portion of the affidavit that I've read to you that he seems to have interacted, at least at a point, with Mr Essa, presumably you didn't know anything about that?

MR GAMA: No, I didn't know anything.

ADV MYBURGH SC: You say that your global MBA Trium they conducted an investigation after these revelations?

MR GAMA: Yes.

ADV MYBURGH SC: Would you be prepared to share those documents with us?

MR GAMA: Yes.

ADV MYBURGH SC: Thank you. I'd like now, to turn to a different topic and that's your re-instatement at TFR as the
10 CFO in February of 2011, Mr...[intervenes].

CHAIRPERSON: Can I – as CEO not CFO.

ADV MYBURGH SC: CEO, I'm not going to make you someone else, I'm sorry. So, it's your re-instatement as CEO. Now, Mr Gama, I think it's important to explain that the main focus of...[intervenes].

MR GAMA: Where – which section do you want to refer me to?

ADV MYBURGH SC: No, we're not in any particular section. It's important to explain in relation to your re-
20 instatement that the main focus of the Commission's investigation is whether or not your re-instatement was the result of any political instruction or pressure, that's the main focus of the instruction and flowing from that, really, the main target of the investigation or focus of the investigation is Mr Gigaba and also the Board, because it

was the Board that decided to re-instate you, you would have seen that, correct?

MR GAMA: Yes, it was the Board...[intervenes].

CHAIRPERSON: Maybe one could just say, Mr Myburgh, whether there was political pressure or political interference or whether even without political interference there was something untoward that made the decision – that made the Board to make the decision.

ADV MYBURGH SC: Yes.

10 **CHAIRPERSON:** In a manner of speaking.

ADV MYBURGH SC: Yes, in other words, Chair, to your point, something other than the issue of prospects of success. So, what is important for you to appreciate as we go through this topic is the – the actual target of the investigation is not you, the target is rather, the people who decided to that, the Board, I take it you appreciate that?

CHAIRPERSON: Ja I also wanted to emphasise that because you did not re-instate yourself.

20 **MR GAMA:** It would be quite impossible Chair.

CHAIRPERSON: [Laughter] ja so as you approach the evidence and the issues that will be raised with you and questions, you must remember that the primary focus is – relates to those who made the decision to re-instate you, rather than you – you come in, simply because they were

supposed to have regard to certain things in making those decision, okay alright.

MR GAMA: Yes, Chair, I have been a case study in this Commission where I think, people have made numerous inferences and where my name has been brought in but nothing to do with what I did.

CHAIRPERSON: Yes, no, no it's important for you to understand that when I say what I've just said and when Mr Myburgh says what he has said, namely the focus is on
10 those who made the decision to re-instate you, you need to appreciate that that is not to prevent you from making an input into the discussion, it's not meant to do that but it's just to indicate that since you did not re-instate yourself the focus is on those who made the decision.

MR GAMA: Ja.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: So, I think, perhaps put another way Mr Gama, I mean what is going to form, really, my questioning of you is not whether you think you were
20 correctly re-instated, I'm quite sure you do, but rather what motivated the Board to re-instate you, do you appreciate that?

CHAIRPERSON: And it may well be, I'm sorry – it may well be that on many issues you might have nothing to say, and ask the Board, so – but where you want to say

something, feel free, okay.

ADV MYBURGH SC: So let us start off with the questioning section political influence or interference. Perhaps we can start with the evidence of Barbara Hogan.

Now we have a transcript of the relevant portion perhaps I could just ask you to turn behind you to Bundle BB15 and this is Transnet Bundle 2.

MR GAMA: Yes.

10 **ADV MYBURGH SC:** You have it?

MR GAMA: I have got it.

ADV MYBURGH SC: Could I ask you please to turn to page 216. Now when Ms Hogan gave evidence she testified about the stance adopted by the former President in relation to you and could I ask you please to go to 216 to line 20 and this – this discussion appears to have been had at a time when you were suspended.

CHAIRPERSON: I am sorry what page?

ADV MYBURGH SC: 216.

20 **CHAIRPERSON:** Okay.

ADV MYBURGH SC: At line 20 he says:

“Chair I was extremely shocked the President would not hear of any candidate except Siyabonga Gama”

And we talking about the candidate for Transnet GCE.

‘I informed him how professional the selection process was. I informed him that he was facing some serious misconduct charges that the board in terms of the PFMA was obliged to investigate these charges. It was not just going ahead and under these circumstances it would not be in the interest of Transnet to appoint a Group CEO who was facing you know whose time would be caught up with defending himself in a misconduct but even over and above that I was recommending Mr Maseko. On the basis of the recommendations made by the Transnet the recommendations made by the professional evaluation agency.”

Now can I then ask you to turn to page 22 3 and if I could ask you please to have regard to line 3 where Ms Hogan says:

“Yes it actually shocked me I okay you know he then said to me you may not appoint anyone to the board because the board also had to have changes until Mr Gama’s disciplinary was over because I said to him we cannot appoint him until the disciplinary is over if that is the candidate that you are

insisting on.”

And if I could take you please over the page to page 224 and direct your attention to line 13. Ms Hogan continued:

“No at the same meeting should he wanted me to go ahead with the appointment of Mr Gama. I said I cannot do that. We kind of compromised. He then said – he said alright we will wait until the disciplinary process is over. I did not agree to that – sorry I did not
10 agree to that. But we then agreed that I would provide him with further information which I then did.”

If you go to page 227 in a similar vein at line 9.

“He was insisting firstly that I go ahead and appoint Gama.”

Now you would have seen that that is opposite Mr Makena’s name that it clearly was Ms Hogan because the Chairperson directed a question at her.

“He was insisting firstly that I go ahead and
20 appoint Gama. I said I could not. He was facing misconduct charges and he was not the preferred candidate he then said that no appointment to translate must be made until the disciplinary case against Mr Gama is concluded. I was concerned about that and I

said I would him with further evidence. I was already remember I was only one month into the job but I was already feeling that the President was exceeding his authority here and I was truly shocked you know. When you explain to the President that a person is facing misconduct charges you expect a certain response to say – sorry that says oh well if that is the case let us look at the preferred candidate that the board is recommending.”

CHAIRPERSON: It looks like Mr Myburgh the transcribers may not have made it clear that part of what you are reading you are reading was what she said. It looks like it was the evidence leader.

ADV MYBURGH SC: Yes I have made that point.

CHAIRPERSON: Yes, yes, yes.

ADV MYBURGH SC: DCJ yes.

CHAIRPERSON: But the context makes it clear I think.

20 **ADV MYBURGH SC:** Yes absolutely Chair.

CHAIRPERSON: That it is she who is talking.

ADV MYBURGH SC: And then if I could take you please to page 250 and what now happened is that the evidence leader read into the record her statement relating to the evidence that she had given. The statement there you see it

at paragraph 11 recorded:

“I was shocked and disappointed when President Zuma informed me that he was adamant that Mr Gama was his only choice for the Group CEO. I informed him that that was not possible and that Mr Gama was not the board’s choice and I could not override the board as they had undergone a very professional selection process. I further
10 informed President Zuma that Mr Gama was the subject of an inquiry into procurement irregularities and that it would be very messy to appoint a Group CEO who could potentially be facing fairly serious charges.”

Two lines below that.

“President Zuma said that if that was my view no appointment whatsoever was to made at Transnet until Mr Gama’s disciplinary process was over. We agreed
20 that I would provide him with more detailed information to further apply his mind.”

You see that? And then if you go to page 253 there is another quote from her statement.

“Mr Gama was formerly charged by Transnet and later suspended on 1 September 2009.

Immediately before and in the days following his suspension Mr Jeff Radebe “Gama will become CEO” Minister Sipiwe Nyanda “Gama is being persecuted like Jacob Zuma that also ANC. The SACP and ANC Youth League under Julius Malema at the time all issued strong and harsh statements in support of Gama accusing Transnet of persecuting him. This was reflected in numerous statements and media reports.”

Did you have occasion to see those media reports at the time of your suspension?

MR GAMA: Maybe.

CHAIRPERSON: Or maybe even before your suspension.

MR GAMA: I think – I think it would be – I may have seen some – seen some newspaper clippings now which are reduced and I cannot really read what was said there but I guess if I was in the middle of that storm I would have read some of it.

20 **ADV MYBURGH SC:** So there you seem to have quite a lot of political support amongst the people, Minister Radebe, Minister Nyanda who we will come back to in due course etcetera.

MR GAMA: When you say I seem to have the political support from the ANC, the SACP, the Youth League, the

South African Transport Union as it is written here how does that bring about a situation of state capture?

ADV MYBURGH SC: Well it depends what is behind this Mr Gama.

MR GAMA: No I am just asking because...

CHAIRPERSON: Well I think – I think allow Mr Myburgh to pursue his line of questioning.

MR GAMA: Okay.

CHAIRPERSON: Yes as I said some of the things you might
10 have nothing to say because people may have been talking about you and you are not part of that or making whatever statements but some you might willing to say something.

MR GAMA: Yes no it is fine I see that he is formulating a hypothesis Chair. So he is at places that he wants to pose it.

CHAIRPERSON: Okay well he is in the – bringing to your attention some of the matters that may appear to be relevant to – how to make the – your reinstatement. Of course and your counsel in due course might say no they are irrelevant
20 but that is the context he - he wants to bring this to your attention and then where you are able to comment you may comment where you are not able to it is fine. Yes Mr Myburgh.

ADV MYBURGH SC: Thank you. Could we then go please to page 267 and if I could direct your attention to line 22

again Ms Hogan.

“No you know I did await the outcome of the disciplinary hearing but once that outcome you know once he found guilty on the three counts and dismissed on all three counts the Deputy Minister and myself initiated a process to appoint a new Transnet board and that was – that was then a year after all of this had happened and it was then towards
10 July/August 2010.”

So that was following your – your dismissal. You as I have it this is what is recorded in the Settlement Agreement which we will come to. You were dismissed on the 29th of June 2010 does that accord with your recollection? 29 June 2010.

MR GAMA: Okay I am going to have to record it as a sad day ja.

ADV MYBURGH SC: And then can I take you please to page 277 Ms Hogan says at line 3.

“Well Mr Gama was fired at the end of 2010.
20 I was fired by the President at the end of October 2010.”

She goes on to say at line 10.

“That Mr Brian Molefe was appointed as the CEO of Transnet.”

And a few lines below that.

“Then Mr Gama was reappointed as the CEO of Transnet Freight Rail. It was a couple of months later on the grounds that they had reviewed the sanction and had an independent review. I did not quite know what that was about and that the board felt that the sanction it had been applied was too harsh. Chairperson it was now a different board from the one that was in existence during your time. Yes this was the board that he had been appointed by Minister Gigaba and who succeeded me.”

And then if I can take you to page 278 at line 18 Ms Hogan talks of a memorandum that was prepared by her department. This was after your dismissal.

“It was a submission to cabinet for the appointment of a new board to Transnet.”

And she then two lines below that

“Confirms also asks you signed that memorandum on 27 October 2010. She says yes”

And then if you go to page 279 also towards the foot of the page at lines 4 – 24 Ms Hogan.

“So now the President has said I can go ahead – I cannot go ahead until Gama is

dismissed. Gama is dismissed. Will send the details of the judgment – the entire judgment to the President. Started processing a cabinet memorandum for the appointment of the new Transnet board. That is post Gama's dismissal? Yes. And it is really in that context that she explains as she put it that she was fired at the end of October 2010."

- 10 And we know then that she was replaced by Minister Gigaba with effect I think it was from the 1 January that year. Now Mr Gama did you – did you know anything about this?

MR GAMA: No.

ADV MYBURGH SC: Did you know that you enjoyed the support of former President Zuma to be appointed as the next Group Chief Executive of Transnet?

MR GAMA: No.

- ADV MYBURGH SC:** Did you come to learn that Minister Hogan appears to have fallen out of favour in relation to – to
20 you?

MR GAMA: I do not know that.

ADV MYBURGH SC: Do you – did you come to learn of that in the press or anytime afterwards?

MR GAMA: No I do not know 00:15:59 anything to do with me or that it was one of the things I do not know. I do not

know. I do not 00:16:07.

CHAIRPERSON: Yes I think ..

MR GAMA: I think it is a question that you must pose to Mr Zuma.

ADV OLDWADGE: Mr Chair I must at this stage I have been quite patient listening to what has been put to my client and I did not want to unnecessarily object to this line of questioning but I fail to appreciate and I say this in the context of what was previously indicated to my client by Mr
10 Myburgh and even respectfully by yourself but this line of questioning is not aimed at establishing whether he had a role to play or even a part in his reinstatement.

Now he is being questioned as to his knowledge of matters which really have nothing to do with him. It is in the context of him having been told but it is not alleged or insinuated or suggested in no manner of means that you had any role to play in that.

In the context of that it is my submission that this line of questioning is wholly irrelevant. If that is not what it
20 seeks to establish then Mr Myburgh must make his position clear because it is not relevant. Unless it is of course suggested that my client had some role to play which is then a contradiction in what was put to him this morning to the extent that Mr Myburgh finds it appropriate to refer to the evidence of Ms Hogan and press article. That may be

evidence before you. It is irrelevant for my client in that context to be called upon to deliver some kind of response or even an opinion. Thank you.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes I think our position is that we certainly do not intend to question Mr Gama about the merits of the decision to reinstate him in other words whether he thinks it was a good or bad decision in labour law but it is always been our case and Mr Gama knows this because of
 10 the 3.3's that have been issued and the questions that have been posed to him that there is an investigation into whether or not some influence – political influence or otherwise was brought to bear on his reinstatement. He was given a 3.3 I think you already know in relation to Mr Hogan's evidence and one of the questions posed to him in I think it was his second 3.3 was the question of any and all interaction that you had with former President Zuma and or former Minister Gigaba regarding your reinstatement as the CEO of Transnet Freight Rail. So those things are bound up and I am simply
 20 pursuing that line of inquiry.

MR SOLOMONS SC: Mr Chair if I might...

CHAIRPERSON: Yes.

MR SOLOMONS SC: Be permitted a short reply.

CHAIRPERSON: Ja.

MR SOLOMONS SC: It is not in answer to my objection. If

that is what Mr Myburgh seeks to achieve it is a simple approach put it to the witness. There is no relevance to the line of questioning explored by him. He is now obfuscating the issue. It is not what I put in my objection. I said it was irrelevant to ask him whether he had comment on this. It was suggested to him this morning in unambiguous terms that he played no role. It is in the context of that that I say it is irrelevant. If he says well I want to put questions directly to him in relation to that then
10 do so. But do not – do not go and obfuscate matters that is not my objection with respect.

CHAIRPERSON: Ja I think what – I think what – I think part of the inquiry is to determine whether the decision to – the board's decision to reinstate Mr Gama was arrived at because at least in part of any considerations that may be relevant to what the commission is looking at.

Now I take it that Mr Gama wishes to dispute any suggestion that in reinstating him the board may have acted because of any considerations that should not have
20 been taken into account.

Now of course I am talking within the context of – of the commission. And if he would seek to dispute or oppose any such proposition or line to the extent that the legal team may want to say if Ms Hogan's evidence before the commission is true – if it is found to be true for example

that in circumstances where the board of Transnet had gone through professional selection criteria and recommended a certain candidate and not Mr Gama but the former President Mr Zuma took the stance that Ms Barbara Hogan says he took namely or that position of Group CEO of Transnet I want Mr Gama and nobody else and if you tell me that he may be facing or he is facing disciplinary processes he cannot be appointed at this stage because he still faces that the position will have to remain unfilled until
10 those processes have been completed because that is part of what Ms Barbara Hogan said.

It may well be that when – that the legal team could look at the circumstances surrounding his reinstatement and say there may well be a connection with the stance allegedly taken by President Zuma in regard to how much he insisted that the – Mr Gama should be the Group CEO which he did end up being of course and that will be dealt with later.

It may well be that it is fair to highlight those things
20 that the legal team might think they will ask me to have regard to so that Mr Gama might say I hear what you say but look at this and that and that and that therefore on the - whatever may have happened on the basis of the following facts or factors the board's decision had nothing to do with those things it just have to do with the merits of

the SZCEO. So there is – there is that possibility to say if in the end the – it is possible that there is a risk that the legal team might argue that even if it is not because of anything he did but his reinstatement was at least in part based on that political influence it might be that it is fair that he must know exactly what the legal team is thinking and be able to say no but on the merits I should have been reinstated or something like that.

That is the thinking that I have about it. Okay
10 alright.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: I think you probably say let us leave it there Chair.

MR SOLOMONS SC: Out of respect I am not going to say anything for the effect Mr Chair.

CHAIRPERSON: Okay alright. No thanks. But the idea and I know that – well in my own mind I think you all accept the idea is just to make sure that one does not have a situation where Mr Gama has not had an opportunity to
20 deal with something that might be relied upon later on. It is just to try and be fair. But again where – where he has nothing to say you know it is fine. Mr Myburgh.

ADV MYBURGH SC: Yes thank you. Perhaps I could take you to page 58 of Bundle 7 your exhibit.

MR GAMA: My exhibit?

ADV MYBURGH SC: Your exhibit BB28. If you could turn to page...

CHAIRPERSON: Is that a different bundle?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Yes okay.

ADV MYBURGH SC: Bundle 7 BB28 if you could go to page 58.

CHAIRPERSON: Okay Mr Myburgh always remember so....

ADV MYBURGH SC: Bundle 7.

10 **CHAIRPERSON:** The bundle that helps me. Bundle 7 ja. And what is the page number?

ADV MYBURGH SC: 58 – 58.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: Are you there Mr Gama? This is your second Rule – sorry Regulation 10.6 Notice to produce an affidavit. Could you go please to page 60 at paragraph 1.7 at the foot of the page you were called upon to specifically address in addition to the allegations in the aforementioned affidavits (and annexures) the following.

20 “1.7.1 Any and all interactions that you had with former President Zuma and or former Minister Gigaba regarding your reinstatement as the CEO of Transnet Freight Rail in 2011.”

Do you see that?

MR GAMA: Yes.

ADV MYBURGH SC: Could we please then go to your answer to paragraph 1.7.1 and that you will find at page 47. Are you there at 47?

MR GAMA: Yes.

ADV MYBURGH SC: You see that you at paragraph 29 answer at paragraph 1.7.1. do you see that?

MR GAMA: Yes.

ADV MYBURGH SC: And your answer is:

10 “I repeat what is contained in paragraph 6.3
 above.”

You see that? So let us then go to paragraph 6.3 above.
That you find at page 30. And your answer at 6.3 towards
the foot of the page is that

 “I am there to believe that my reinstatement
 followed after intense discussion and
 debate concerning the topic by the Transnet
 board. I assume the value I added to
 Transnet as referred to in paragraph 3
20 above and I will have played a role in the
 board’s deliberation.”

You see that?

MR GAMA: Yes.

ADV MYBURGH SC: Perhaps I could pose the question to
you again. It is posed at paragraph 1.7.1 of the Regulation

10.6 Notice and that is what interactions if any did you have with former President Zuma and or former Minister Gigaba about your reinstatement.

MR GAMA: None.

ADV MYBURGH SC: You did not say that in your affidavit.

MR GAMA: H'm?

ADV MYBURGH SC: You do not deal with that question in your affidavit.

MR GAMA: I do not... Okay. Can I read it for you and I
10 quote.

ADV MYBURGH SC: Alright.

MR GAMA: 6.4:

“It has been brought to my attention that the Commission is also investigating whether erstwhile President Zuma and/or erstwhile Minister Gigaba may have attempted to secure my reinstatement...”

ADV MYBURGH SC: Yes.

MR GAMA: “I emphatically deny having had knowledge of
20 such attempts until such time that I became aware of such allegations during the Commission’s proceedings...”

ADV MYBURGH SC: Alright. I do apologise.

MR GAMA: So... ...[intervenes]

ADV MYBURGH SC: [Indistinct] ...[intervenes]

MR GAMA: Oh, so no. No, it is not what other people telling you but I was not at closed meetings.

ADV MYBURGH SC: I suppose if the cross-reference were to 6.3 and 6.4 then that confusion might not have arisen. So you ...[intervenes]

MR GAMA: Close quote.

ADV MYBURGH SC: ...deny having any knowledge of such attempts?

MR GAMA: Yes.

10 **ADV MYBURGH SC:** Alright. Did you have ever occasion to meet President Zuma, former President Zuma?

MR GAMA: When?

ADV MYBURGH SC: Well, ever.

MR GAMA: H'm?

ADV MYBURGH SC: Ever.

MR GAMA: Have I met President Zuma?

ADV MYBURGH SC: Yes. Personally. Have you met him?

MR GAMA: Yes.

20 **ADV MYBURGH SC:** When?

MR GAMA: He was there to launch locomotives in 2014 or 2015. I do not know the date.

ADV MYBURGH SC: Is that the only occasion that you met him?

MR GAMA: No, he is officiated on a number of Transnet

projects what we did out of the market demand strategy. I do not know the date.

ADV MYBURGH SC: So apart from those, let us call it business official meetings, have you met him?

MR GAMA: No.

ADV MYBURGH SC: Did you ...[intervenes]

MR GAMA: Not about this, anyway.

ADV MYBURGH SC: Well, I am asking you. Have you met him? I will not tie you to a subject.

10 **MR GAMA:** No, no. I have not had any personal meetings with President Zuma. That did not happen.

ADV MYBURGH SC: Have you had personal meetings with Mr Gigaba?

MR GAMA: Yes, I had had a meeting with Mr Gigaba.

ADV MYBURGH SC: When was that?

MR GAMA: A personal meeting.

ADV MYBURGH SC: I beg your pardon?

MR GAMA: I am saying I have had a meeting with Mr Gigaba.

20 **ADV MYBURGH SC:** Yes.

MR GAMA: It was after my reinstatement at Transnet. He asked me meet and I have met with him.

ADV MYBURGH SC: What did you meet him about?

MR GAMA: He wanted me to assure them that I would give support to the Group Chief Executive of Transnet,

Mr Molefe and make sure that I supported him so that the company can succeed.

ADV MYBURGH SC: And when would that meeting have been?

MR GAMA: Sometime in 2011, probably around April or May of 2011, after I had been reinstated.

CHAIRPERSON: Was that within the – his seeking that assurance from you? Was that within the context of the fact that you had previously also applied ...[intervenes]

10 **MR GAMA:** Oh ...[intervenes]

CHAIRPERSON: ...appointment to that position?

MR GAMA: That is correct. ...[intervenes]

CHAIRPERSON: ...that was now occupied?

MR GAMA: Yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Yes.

MR GAMA: Ja.

ADV MYBURGH SC: But that would have been around the time of Mr Molefe's appointment?

20 **MR GAMA:** After Mr Molefe had been appointed.

ADV MYBURGH SC: After?

MR GAMA: Yes, yes.

ADV MYBURGH SC: And you also applied for that position, as I understand?

MR GAMA: I applied for it in 2009.

ADV MYBURGH SC: But you confirm that you applied for it this time as well.

MR GAMA: Yes.

ADV MYBURGH SC: Now let us deal then with Mr Gigaba. We know that he is appointed as the new Minister from the 1st of November and he then appoints a new Board of Directors with Mr Mkwanazi as the Chairperson, correct?

MR GAMA: Yes.

ADV MYBURGH SC: Now you would have seen that at the
10 first meeting that Mr Mkwanazi had with Mr Gigaba, Mr Gigaba tell him, at least according to Mr Mkwanazi, that the fairness of your dismissal should be reviewed. Do you know anything about that, of the stance of Mr Gigaba?

MR GAMA: No, I was not at that meeting. Chair, maybe just to a bit of context which I do not know whether Mr Myburgh knows or does not know. I was dismissed at a particular day as he said. I appealed that dismissal. When I appealed that dismissal ...[intervenes]

CHAIRPERSON: I know you used in your affidavit the
20 term appeal as you do now.

MR GAMA: Yes.

CHAIRPERSON: And that is understandable because you are not a lawyer.

MR GAMA: That is correct.

CHAIRPERSON: But it is technical you referred to an

unfair dismissal just to the Bargaining Council.

MR GAMA: That is correct.

CHAIRPERSON: It is not an appeal but you institute proceedings to challenge your dismissal. So I am just making that because I saw in your affidavit you used that term but I know what you mean.

MR GAMA: No, thank you. Thank you for schooling me.

CHAIRPERSON: [laughs]

MR GAMA: [laughs] You know these matters much more
10 than many...[intervenes]

CHAIRPERSON: [laughs]

MR GAMA: You are quite correct. But I think as a result of my referral of the unfair dismissal to the Transnet Bargaining Council, there was a meeting at the Bargaining Council whereas the appellant or whatever name you ...[intervenes]

CHAIRPERSON: Yes, it is called applicant.

MR GAMA: Applicant, yes.

CHAIRPERSON: Ja, ja. Transnet or TFR would be the
20 respondent. Ja.

MR GAMA: Yes, yes. So as the applicant, I adduced certain arguments around a matter. Then Transnet requested that the matter be adjourned so that an opportunity could be given to Transnet and myself to engage on the matter and see whether or not we could not

settle this matter.

So when Mr Mkwanazi gets into the arena, he is taking over from that process where the discussions between me and Transnet that have been asked, let us discuss this, let us see if we cannot settle this.

And I can tell you Chairperson, I did not want to go back to Transnet in terms of the settlement discussions that we are having. I just wanted to see how much money they could give me to go away.

10 **CHAIRPERSON**: [laughs] That is quite interesting.

MR GAMA: So... H'm. I am saying that there were discussions that are taking place as a result of that.

CHAIRPERSON: But part of what you are saying is. I am not the one who was pushing to be reinstated. If they gave me ...[intervenes]

MR GAMA: No, I said to them pay me so much. I will leave you in peace.

CHAIRPERSON: Ja, okay. H'm.

MR GAMA: And you can do your shenanigans without me,
20 because even the circumstances of my being charged, they knew it had never happened at Transnet before where instead of people saying to you, we think there has been a transgression of this nature. How can you resolve it?

Auditors at Transnet, they come to management and they say: Manager so and so, this is what has

happened. Are you aware of it? How do you plan to remedy it?

When it came to Game, they were saying you have done something but we will not tell you. We will not tell you what we think you have done. So we will tell you when we give you the bundle at the disciplinary instead of saying these are the issues.

Or if they tell you, they would give me half... Half is too much Chair. They will give me a quarter of the
10 information. They will come to me and say: Here is the last page of what you signed. Do you remember? Is this your signature?

So I was charge in those circumstances where it was clear that there was something else. I was only charged as a consequence of my application for a post as the GCF of Transnet.

If I had never applied to the GCF of Transnet in 2009, I would never have been charged. So, and people were scrapping around.

20 And Chair, there is a succession plan in Transnet. And you can go and ask for them in June or September 2008 and say: And who was the person that was earmarked to take over from Maria Ramos? You can go and ask them and maybe they will give you that document.

And then the decision not to follow their own succession plan, you can also go and ask them why. I had not been trusted that time. So Chair, I am saying there is a lot of context to this thing. And sometimes when you hear and you – I am being asked whether it is Zuma, there is always somewhere where organs say that Mantashe as well.

CHAIRPERSON: Ja.

MR GAMA: That is the same thing.

10 **CHAIRPERSON:** Ja.

MR GAMA: And you have to ask the question, what was the context because I do not think they just woke up one day and they said: Oh, okay, it is Gama. It was the SACP. It was the ANC. I do not know. But the actual discussion that I am being asked about, I was not a party to that.

CHAIRPERSON: H'm, h'm.

MR GAMA: I am not privy to any presidential discussion with Cabinet Ministers.

20 **CHAIRPERSON:** H'm, h'm. Now Mr Myburgh has put a certain question and I am not sure whether this has answered it. If it has not, Mr Myburgh, you can put your question again.

ADV MYBURGH SC: Yes. No, I do not think it has. I was dealing with the issue of the first discussion between Mr Mkwana and Mr Gigaba. And I had asked you whether

you knew anything about the stance that Mr Mkwanazi said Mr Gigaba adopted and that is that the fairness of your dismissal should be reviewed.

And as I understand your answer, you say: Well, Mr Mkwanazi picked up as the new chairperson, there had been preceding negotiations. Is that – did I understand your evidence correctly?

MR GAMA: Yes. Well, when I engaged with Mr Mkwanazi, he said to me: Look, do not entertain these things of us
10 paying you a lot of money to go away. The business is suffering. We would want for you to continue to make a contribution. And because I knew him, I changed my mind. He had been my GCE before.

I said to him, yes, I will stay but let us then discuss how we deal with it, because his issues were that Transnet... In fact, what he said to me. I think that within four months of going cash negative. He said: Look, in four months' time the company is not going to be able to pay salaries for the employees because of what is
20 happening at TFR and I needed to go and fix this thing. I agreed and that is how we had an issue – a discussion about settlement.

And at that time he said to me: Look, if you agree that you can come back then we can discuss the reinstatement. I have to go back to my board colleagues

to discuss this matter and then we will have another discussion. That is where we were.

So as far as I am concerned there was that process, Chair, that you have described. It is not an appeal. There was that process and out of that process then came the discussion that I was having with Mr Mkwanazi.

ADV MYBURGH SC: Yes. If I could go back to the discussion that Mr Mkwanazi with Mr Gigaba. What
10 Mr Mkwanazi said is that it was clear to him that Mr Gigaba had some information about your dismissal. He said that he referred to condonation of procurement. He spoke about such things.

And what Mr Mkwanazi assumed is that he knew that because, according to Mr Mkwanazi, he assumed that you had been speaking to Mr Gigaba. Do you want to comment on that?

MR GAMA: No, I had not been speaking to Mr Gigaba. Remember, you just told me and the Chair earlier that
20 Ms Hogan was the Minister of Public Enterprises So there is nothing that I would have been discussing with Mr Gigaba. I did not know that Mr Gigaba is going to become the Minister of ...[intervenes]

ADV MYBURGH SC: This is a discussion that Mr Mkwanazi says he has and ...[intervenes]

MR GAMA: Did he give you a date ...[intervenes]

ADV MYBURGH SC: Well, you see, this is the tricky part of the – of Mr Mkwana's evidence. He says it was in October. You will recall Chairperson.

CHAIRPERSON: At the end of October.

ADV MYBURGH SC: At the end of October.

CHAIRPERSON: H'm.

ADV MYBURGH SC: And he seem to stand by that. It was put to him by the Chairperson that it could not have
10 been in October, end of October. It must have been after the 1st of November because that is when we know objectively when Mr Gigaba was appointed. But if I recall that evidence correctly, Chair, he did indicate that he met with Mr Gigaba in his capacity as he being the Minister.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So I think it is more of a date issue than ...[intervenes]

CHAIRPERSON: Ja, I think if they did meet before
1 November, it would only have been if Mr Gigaba had
20 been told that from 1 November he was going to be the Minister of Public Enterprises. That is the only thing I can think of.

But in the end, whether they met on the 31st of October or early in November, it might not really matter. It is more the content of the discussion that may

be important. And if that discussion related to what would be Mr Gigaba's portfolio from the 1st of November.

ADV MYBURGH SC: Thank you, Chair. So ...[intervenes]

CHAIRPERSON: So to answer it. It is either end of October or early November because I think Mr Gigaba has dealt with that in affidavits. He has not testified yet and I think that he admits that such a meeting took place but I think he says it was early November.

MR GAMA: Okay.

10 **CHAIRPERSON:** H'm.

ADV MYBURGH SC: So the simple proposition is that on Mr Mkwana's evidence, Mr Gigaba knew about your dismissal case. He knew about the controversy in relation to the condonation of procurement irregularities and he, in that context, assumed that you had been speaking to Mr Gigaba. You say you have not done that?

MR GAMA: No, and as I say, there would have no reason for me to do so because I did not even know that Mr Gigaba was going to become the Minister of Public
20 Enterprises, but two, this was a very public matter and people wrote thesis around this in 2010.

ADV MYBURGH SC: And what Mr Mkwana also says is. He thought that you or he assumed that you had spoken to Mr Gigaba because when you were suspended, you had lobbied any Ministers.

MR GAMA: That is not true.

ADV MYBURGH SC: Did you not lobby Ministers?

MR GAMA: I went could(?) and I stayed with my father and I planted tomatoes.

ADV MYBURGH SC: Now I want to deal with the involvement of Mr Mhlangu. We know Mr Mhlangu, he was the advisor to Mr Gigaba.

MR GAMA: Yes.

CHAIRPERSON: We are two or three minutes before one
10 o'clock. I do not know whether you want to start or you want to start after two?

ADV MYBURGH SC: I am happy to start after two.

CHAIRPERSON: Yes.

ADV MYBURGH SC: It may be more convenient.

CHAIRPERSON: Yes, yes. Okay let us take the lunch break now. We will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

20 **ADV MYBURGH:** Chairperson, Mr Singh and his counsel are in attendance. I am sure you are aware, as we are, that there is something of a concertina now of witnesses. I said to them that perhaps I would raise that and you may be prepared with your direction to release them and maybe we can set a time as to when they should come back.

CHAIRPERSON: Yes.

ADV MYBURGH: I am sorry, I should perhaps have raised this with you in chambers, but...

CHAIRPERSON: No, no, no, that is fine. Is your plan that after Mr Gama you would call Mr Singh or Mr Gigaba?

ADV MYBURGH: Well, I am in the – I have got a double problem, DCJ, I do not know, I think I am really in your hands. Mr Gigaba, I think is formally scheduled to follow Mr Gama insofar as that was the plan but that was based
10 on the fact, you will remember, that we agreed with Mr Singh because his wife was giving birth that he would give evidence on Thursday and Friday. We would have prepared to have Mr Singh directly after Mr Molefe given that they deal with common ground.

CHAIRPERSON: Well, Mr Singh, as I understand the position, is ready to give evidence on all matters relating to Transnet.

ADV MYBURGH: I think he is (indistinct – recording distorted)

20 **CHAIRPERSON:** (indistinct – recording distorted) issues that he must deal with later.

ADV MYBURGH: I understand, DCJ, that he filed an affidavit recently. I have not seen that affidavit, I assume my colleague confirmed that it deals with all the – insofar as there were outstanding issues, that it deals with them.

CHAIRPERSON: Well, if ...[intervenes]

ADV MYBURGH: That I would have to confirm though.

CHAIRPERSON: No, no, that is fine. What is your estimate of how long – when we will finish with Mr Gama? Five, half past five, six, or...?

ADV MYBURGH: I would think so, yes, DCJ.

CHAIRPERSON: Yes, okay. So one option is for us to take whoever between Mr Singh and Mr Gigaba who can finish in a day and take one who will not finish in a day to
10 another time.

ADV MYBURGH: Alright, well, I think that ...[intervenes]

CHAIRPERSON: But another approach is to look at the subject matter and then say well, it makes better sense to start with so and so even if he might not finish in a day. So if you had planned to have Mr Singh testify after Molefe then maybe that is what you should try and do but then we can talk about maybe starting tomorrow with him.

ADV MYBURGH: Yes, DCJ, if I could perhaps go back to your first proposal. If I was to choose who could be
20 finished in a day I think Mr Gigaba can be because we know that we are confining that to Transnet and there is really only two issues.

CHAIRPERSON: Yes.

ADV MYBURGH: Mr Singh, of course, can never be completed in a day.

CHAIRPERSON: Ja, ja.

ADV MYBURGH: There is the added complication that I have not had an opportunity to study his affidavit. Of course, I should be – hopefully I can do that overnight but I am in your hand, Chairperson.

CHAIRPERSON: You do not what the position – what view you will take after reading his affidavit.

ADV MYBURGH: No.

CHAIRPERSON: I guess what is true is that with regard
10 to someone like Mr Singh you can probably finish a day without getting to that affidavit, depending.

ADV MYBURGH: Yes, if that is possible.

CHAIRPERSON: Ja, ja, ja.

ADV MYBURGH: So it is really six of one and half a dozen of the other. We can certainly start with Mr Singh and then finish halfway through his evidence or we could deal with Mr Gigaba and finish what we have. We are in your hands, DCJ.

CHAIRPERSON: No, I am easy too, I am easy too, but
20 based on the fact that you had planned that Mr Singh should come after Mr Molefe, I think we should start with Mr Singh after Mr Gigaba – after Mr Gama but also I am aware that with regard to Mr Gigaba there are certain developments that make him not finish everything tomorrow.

ADV MYBURGH: Yes, I would say also that I would probably feel more comfortable holding Mr Gigaba over so as to deal with him all at once instead on a piecemeal basis.

CHAIRPERSON: Ja, ja, ja. No, no, no, I think that is how we should proceed. So I hope that helps counsel for Mr Singh? Yes. Mr Gigaba's legal team is not here as we talk about these things, they are not here.

ADV MYBURGH: No, they are not but we can get hold of
10 them and at least we have ...[intervenes]

CHAIRPERSON: Ja, that is right and then in that event maybe they can be here tomorrow morning and talk while they are here about what is proposed to be done.

ADV MYBURGH: Thank you.

CHAIRPERSON: Okay, alright.

ADV MYBURGH: Sorry, would we start then at half past nine tomorrow, Chairperson?

CHAIRPERSON: We can start at half past nine tomorrow as well.

20 **ADV MYBURGH:** Thank you. Alright, Mr – sorry, may I continue?

CHAIRPERSON: You may continue.

ADV MYBURGH: Thank you. Good afternoon, Mr Gama. I had just turned to a different topic and that actually does refer to Mr Gigaba. You know, Mr Mhlangu, he was Mr

Gigaba's adviser?

MR GAMA: Yes, I know him.

ADV MYBURGH: So the chronology of events that flowed after the first discussion between Mr Gigaba and Mr Mkwanaazi was that in January there was a discussion between Mr Mhlangu and Ms Mkwanaazi where Mr Mhlangu in fact puts Mr ...[intervenes]

CHAIRPERSON: January 2011, nè?

ADV MYBURGH: January...

10 **CHAIRPERSON:** I must be 2011 because Mr Gama was reinstated in February.

ADV MYBURGH: Yes.

CHAIRPERSON: Or at least his settlement agreement was in February.

ADV MYBURGH: Yes, it is January 2011. You are correct, the discussion was in – at the end of October or at the beginning of November 2010. So going into the next year, Mr Gama, the sequence or chronology of events is that Mr Mhlangu contacts Mr Mkwanaazi and Mr Mhlangu
20 puts Mr Mkwanaazi in touch with Sbu Gule of Denys Reitz. I take it you do not know anything about that.

MR GAMA: No, I do not.

ADV MYBURGH: Alright. So if I could then take you please to – just bear with me, sorry. If I could take you to Transnet bundle 2, that should be in the boxes behind you

somewhere. Yes, if you could please turn to – so this, Chairperson, is Transnet bundle 2, EXHIBIT BB15. If I could ask you to go to page 3? So what follows Mr Mkwanaazi having been put in touch with Mr Gule by Mr Gigaba's adviser is then a meeting which takes place on the 22 January and I assume, DCJ, that that should in fact be 11 and not 10.

CHAIRPERSON: I am sorry, that page 3?

ADV MYBURGH: Yes.

10 **CHAIRPERSON:** Oh, yes, that – are you talking about the first paragraph?

ADV MYBURGH: Well, it is the date, it says 22 January 2010 but then paragraph 1 refers to 22 January 2011.

CHAIRPERSON: Oh, yes, no, no, it should be 2011, not 2010.

ADV MYBURGH: Now what it reflects, Mr Gama, is that there was a meeting attended by Mr Mapoma and Mr Mkwanaazi on behalf of Transnet. Mr Langa, I understand he was your attorney at the time, is that right?

20 **MR GAMA:** That is correct.

ADV MYBURGH: Together with yourself and then Mr Gule and Sangoni, they were two attorneys from Denys Reitz, would confirm that?

MR GAMA: Yes.

ADV MYBURGH: And what the note reflects is that there

was a private discussion amongst Transnet and its attorneys and then there as a discussion with you. I would just like to take you please to paragraph 4 at the foot of page 3. So this of course now needs to be seen in the light of Mkwanazi's interaction with Mr Gigaba, which I have explained to you, and Mr Mkwanazi says at this meeting or consultation, explained that he would like to assist Mr Gama where reasonably possible, his intention is to bring him back into his, the Chairman's office, he wants

10 Mr Gama to assist him on a number of strategic issues, he however needs good motivation to do so. His view is that if he is provided with an opinion setting out that there had been some unfairness towards Mr Gama at the board meeting on 16 February he would persuade the other board members to make the decision to bring Mr Gama back into the organisation. Did Mr Mkwanazi ever convey this to you? Did he ever convey that to you, Mr Mkwanazi?

CHAIRPERSON: In other words, did he ever say to you he would like to assist you and he would like to bring you

20 back to the Chairman's office and he would like you to assist him on a number of strategic issues and that he just needed a good motivation to do so and if he could get an opinion setting out that there had been some unfairness towards you he believed that he could persuade the board to make the decision to bring you back. Did he ever say

that to you?

MR GAMA: No, no, no. What he said to me was he was no interested in the discussion about me getting compensation and going way, that he would like me to come back to the company and that is what he said.

CHAIRPERSON: Okay.

MR GAMA: So I guess this is the part when we had not ...[intervenes]

ADV MYBURGH: You were in a separate meeting.

10 **MR GAMA:** I do not think we were in this ...[intervenes]

ADV MYBURGH: No, no, it does reflect that.

MR GAMA: Ja, ja.

ADV MYBURGH: But as Mr – and of course it needs to be seen in the context of the discussion you had with Mr Gigaba that Mr Mkwanazi accepted that what he was really looking for here was some friendly legal advice, he just needed something that showed some unfairness so he could persuade the board members that you should come back. You say he did not raise that with you?

20 **MR GAMA:** No, no.

ADV MYBURGH: Alright and then what we do know is that – just to continue with the chronology, there was then some advice prepared and if I could take you to that. It was prepared by Mr Mapoma and then there was some input by Deneys Reitz and the product that was then produced you

find at page 16.

MR GAMA: On one six?

ADV MYBURGH: Ja, one six. And this ultimately did serve before the board and what I want to just direct your attention to is that Deneys Reitz – and you can comment on it, if you want – they added only two paragraphs and that is paragraph 10 and 11 on page 17. And really the high-water mark then ...[intervenes]

CHAIRPERSON: I am sorry, Mr Myburgh, I think I have
10 lost you or you have lost me.

ADV MYBURGH: Page 17, DCJ, one seven. The high water mark of their advice is at paragraph 11. This is all it says:

“It is accordingly our view that there is a probability that the bargaining council or a court considering the appropriateness of the sanction of dismissal of Mr Gama may reach the conclusion that dismissal was no appropriate having regard to the challenge on sanction advanced by him. In that instance the
20 court may either award compensation to Mr Gama or find that a lesser sanction ought to have been opposed and therefore order is reinstated.”

Do you see that?

MR GAMA: Yes.

ADV MYBURGH: Now you may have read that Mr

Mkwanazi described this as a very poor opinion and it was, this piece of advice serves before the board but in light of the fact that it was considered poor, what Deneys Reitz were required to do was then to provide and augmented opinion, as it was called. And that then brings us to page 19. Now this is an opinion rendered on the 22 February which is in fact after the board had taken the decision to reinstate you and what it reflects and I am going to refer you to two paragraphs is in paragraph 1.1 at page 20, it
10 records that:

“There are various opinions which have been obtained from reputable firms of attorneys with regard to the prospects of success of Mr Gama in successfully challenging his dismissal by the company. All the opinions, including ours, which we gave after perusing documents pertaining to the disciplinary enquiry were of the view that Mr Gama’s chances of successfully challenging his dismissal were not good.”

20 And then the only other thing we need to have regard to, that is of material relevance, is at page 22, paragraph 4. You will see that that is a cut and paste of the earlier piece of advice where there say there is a probability that the conclusion may be different.

Now Mr Mkwanazi accepted that this opinion was

contradictory because in paragraph 1.1 at 20, it says advice have been given by a number of firms including theirs, the prospects of success were not good and then, of course, it ends off on this basis that there is some chance of Transnet being unsuccessful and he accepted that this was not an acceptable opinion. Do you have any comment to make on that?

MR GAMA: Well, I was not at the meeting so I do not know anything about the sequence of events.

10 **ADV MYBURGH:** Sure.

MR GAMA: And, as you say – and the thing that you just read for me is not dated, it does not have a date on it.

ADV MYBURGH: The first piece of advice that I read to you, you will see that, if you go to page 15, that was sent – Mr Mapoma prepared the memorandum, he sent to Mr Sangoni, Mr Sangoni from Deneys Reitz settled it and sent it back to Mr Mapoma on the 15 February a day before the board meeting. So this first piece of advice served before the board.

20 **MR GAMA:** Okay, that is the one where number 11 says that then they reach the conclusion that dismissal was not appropriate.

ADV MYBURGH: Yes.

MR GAMA: So that is on the 15 February 2011.

ADV MYBURGH: That is right, yes.

MR GAMA: Okay.

ADV MYBURGH: And then what happens is there is the board meeting, despite the fact that Mr Mapoma – sorry, Mr Mkwanazi is of the view that this is a poor opinion and it requires to be augmented, the board nevertheless decided to reinstate you, you are now on the 16 February. And then when asked to augment their opinion they then produce, as he said, the contradictory opinion that I have taken you to. Do you have a comment on that?

10 **MR GAMA:** No, I do not, I was not party to this, I do not know anything ...[intervenes]

ADV MYBURGH: You have seen Mr Todd's opinion in the documents that have been sent you.

MR GAMA: No, I have not.

ADV MYBURGH: Alright. Well, maybe I should take you – would you please go to Transnet bundle 3, EXHIBIT BB17? And could I ask you please to turn up page 65 and I call it an opinion but it is really in the form of a report. You will want to page through it, Mr Gama, you will see that it is
20 very comprehensive. It deals with the investigation that preceded the disciplinary enquiry, I will just go through the headings, initially:

“Attempts to convene the inquiry.

Gama's High Court application.

Attempts to schedule a disciplinary enquiry.

Gama's subsequent objection to Adv Myburgh SC.

Gama's refusal to accept the appointment of Adv Antrobus SC proceeding to proceed by ...[intervenes]

MR GAMA: Sorry, you are swallowing your words, can you speak slower?

ADV MYBURGH: At page 72:

"Gama's refusal to accept the appointment of Adv Antrobus SC."

10 At page 73.

"Decision to proceed by way of disciplinary enquiry instead of arbitration."

74 ...[intervenes]

CHAIRPERSON: That is too fast, Mr Myburgh. Ja?

MR GAMA: This document, Chair, has not been discovered to us so we have never [inaudible – speaking simultaneously]

ADV MYBURGH: This is part of Mr Todd's affidavit, it has been given to you.

20 **MR GAMA:** It is a document being prepared on 2 February 2011?

ADV MYBURGH: Yes. And then if you have a look at page 74:

"Disciplinary enquiry and outcome"

And then he talks about the summary of the findings, page

74, 75, 76, 77, 78, 79 and 80. Then he has a heading at 81:

“Dealing with the question of sanction.”

He deals with that at page 81, 82, 83, 84, 85, 86, 87 and 88, 89 he then has a heading against that backdrop of:

“Gama’s weak prospects of success in the bargaining council arbitration.”

Do you see that? It seems it is 26 page opinion.

MR GAMA: Ja, it has not been discovered to us.

10 **ADV MYBURGH:** Alright. Well, what I think is perhaps important is that Mr Mkwanazi himself accepted that it is quite difficult to compare the Bowmans’ opinion to what boiled down to one paragraph or two paragraphs really in the 15 February opinion. Do you have any comment on that?

MR GAMA: No, I do not have any comment on what Mkwanazi has said.

ADV MYBURGH: I am taking you through the chronology to show you that Mr Mkwanazi may very well have acted on
20 instruction or under the influence of Mr Gigaba and in relation to this very issue, Mr Mkwanazi in fact accepted in his evidence, Mr Gama, that he had not contacted Mr Todd in relation to this matter because he really did not want to hear that Transnet might succeed at arbitration. Do you want to comment on that?

MR GAMA: I do not know what Mr Mkwanazi, I was not...

ADV MYBURGH: So it is your case ...[intervenes]

MR GAMA: I do not whether I can be asked to comment on Mkwanazi's comments.

ADV MYBURGH: Let me ...[intervenes]

CHAIRPERSON: Yes, there might be no – you might have nothing to say but you might say well, I am surprised that Mkwanazi said you did not want to hear an opinion that said Transnet may succeed because on the merits of my
10 case it was clear that there had been unfairness, so I do not know what he was looking for, the unfairness was there.

MR GAMA: No, I think the first time that I ...[intervenes]

CHAIRPERSON: I am giving you an example.

MR GAMA: No, I am saying this is the first time that I see this Todd document.

CHAIRPERSON: Yes.

MR GAMA: I do not know if Mr Mkwanazi ever had a copy of this document and if so; when did he have it because in
20 all the documents that ...[intervenes]

CHAIRPERSON: You have seen.

MR GAMA: That I have seen that went to the Transnet board and all of that and that was in front of the board, there was never any reference to a court document.

CHAIRPERSON: You mean that you saw after your

reinstatement or...?

MR GAMA: Yes, yes.

CHAIRPERSON: Ja.

MR GAMA: So that is why I am saying I have never seen this document.

CHAIRPERSON: Ja.

MR GAMA: I do not know if Mkwanazi ever had it.

CHAIRPERSON: Ja.

MR GAMA: I cannot really comment on it, I have not even
10 read it.

ADV MYBURGH: Alright, well just for the sake of completion, Mr Mkwanazi did have it. Now ...[intervenes]

MR GAMA: All I am saying is I do not when he had it and all I have seen in the minutes of the board of Transnet is that they considered opinion from Deneys Reitz. That is what I saw.

CHAIRPERSON: I think in his evidence he conceded that he had seen it before the board made the decision, this one and he did speak about other opinions as well.

20 **ADV MYBURGH:** Yes, well it was the 15 February opinion which was referred to as the Deneys Reitz opinion.

CHAIRPERSON: Ja.

ADV MYBURGH: As you will remember, Chairperson, it was already drafted by Mapoma with Deneys Reitz's input.

CHAIRPERSON: Ja.

ADV MYBURGH: But what I am interested in finding out from you, Mr Gama, is what did Mr Mkwanazi – when did you first start interacting with him? Was it before the meeting that you attended with Deneys Reitz on the 22 January 2011?

MR GAMA: No, I think it was on that day.

ADV MYBURGH: And you ...[intervenes]

MR GAMA: He was in the company of Mr Gule.

ADV MYBURGH: And you have already recounted to the
10 Chairperson but perhaps you could just repeat it, that you say he told you right from the outset – what did he say?

MR GAMA: He said to me – because what I had wanted in terms of the settlement was that I get compensation. Then he said no, his preference is that I need to come back to Transnet and work, especially because the business was suffering and, as I said to you, probably in his own words he said in the next four months we might not have enough money to pay salaries, I need you to go and fix that [indistinct – audio distorted]. So it was in that context that
20 I said to him no, that is fine, and prepare to come back and let us put aside the discussion about compensation.

CHAIRPERSON: Maybe I would ask this, which I was going to ask later, if you – if the idea of reinstatement came from him because you were looking at being given compensation, the issue of the reinstatement being with

full back pay, did it come from you or did it come from him?

MR GAMA: Sorry, Chair? The full back pay?

CHAIRPERSON: Yes, I am saying you have just told me and you told me earlier that what you wanted was compensation.

MR GAMA: Yes.

CHAIRPERSON: But Mr Mkwanazi said his preference was that you should come back and he gave his reasons. So my question is whether you were the one who insisted
10 that if you were reinstated you should be given full back pay for the time that you had been out of Transnet or whether that idea came from his side?

MR GAMA: Well, the concept of reinstatement, Chair, is exactly that, that you get full back pay.

CHAIRPERSON: Ja.

MR GAMA: But it was cheaper to pay me back than what I was asking, it was far, far cheaper.

CHAIRPERSON: Yes, are you going to share to ask by any chance what you were asking for or you don't feel
20 comfortable to share?

ADV MYBURGH SC: Apart from as much as possible ...[intervenes]

MR GAMA: It was far, far cheaper to pay me back ...[intervenes]

CHAIRPERSON: And to take you – to reinstate you then?

MR GAMA: To reinstate me then ...[intervenes]

CHAIRPERSON: To pay you the amount you had in mind?

MR GAMA: Yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Alright, now let me then switch back to Mr Gigaba and his advisor Mr Mahlangu, remember you meet him now 22 January, you say that was the first meeting that you had with Mr Mkwanazi, is that correct?

MR GAMA: That is correct, yes.

10 **ADV MYBURGH SC:** Could I ask you please to go to Transnet bundle 1, it is also part of the BB15 exhibit, and this is - I want to take you to Mr Mahlangu...[intervene]

MR GAMA: You said bundle 1?

ADV MYBURGH SC: BB15, bundle 1, I want to take you to Mr Mhlangu's affidavit please.

MR GAMA: Okay, page?

ADV MYBURGH SC: Let us start with page 175. Now attached to Mr Mhlangu's affidavit were two emails that he had sent to Mr Gigaba. The first email you find at page
20 178, you see that? That is dated the 18th of January 2011, now it says in the second bullet point, now I understand that Transnet and this must have been before you even met Mr Mkwanazi:

"I understand that Transnet may be nearing a settlement with Gama, I have obtained the details of

the settlement and then brief you accordingly. I suggest that you socialise the President and his key aids (formally and informally) on the proposed settlement. It is intended that the forthcoming Board should consider and authorise it.”

MR GAMA: Yes.

ADV MYBURGH SC: You see that?

MR GAMA: Yes, I see that.

ADV MYBURGH SC: So you would confirm that this would
10 have been before you had even spoken to Mr Mkwanazi on what you have told us.

MR GAMA: Ja, I do not know the dates, I know that there was a meeting between Mkwanazi and myself and Langa and Gule at, I think at Inanda Club.

ADV MYBURGH SC: I beg your pardon?

MR GAMA: At Inanda, Inanda Club, and then there was another meeting at the Indaba. So I am not sure, I cannot tell you which one took place before which one, but I think this one where we were showing the minutes is probably
20 the second meeting.

ADV MYBURGH SC: Oh I see, I understood you to say that it was the first.

MR GAMA: No, I cannot remember where exactly, where we met them.

CHAIRPERSON: I seem to remember from Mr Mkwanazi’s

evidence that the meeting which had Mr Gule was first, I think that one was the one with Mr Mkwanazi, ja.

MR GAMA: He was always with Mr Mkwanazi.

CHAIRPERSON: Oh, even before the other one.

MR GAMA: Yes.

CHAIRPERSON: Okay, I understand that, but I understood, my impression was that the Inanda Club one was the first one but it could be the other way around.

MR GAMA: It is possible but he was always with him.

10 **ADV MYBURGH SC:** But at the Inanda Club because I am going to come to that, was Mr Mkwanazi in the presence of lawyers because as we have it and of course, what I am putting to you is just one side of the story. But what we do have is Mkwanazi I think and Mr Mapoma saying the two of them were there at Inanda together with you, not with the lawyers.

CHAIRPERSON: No lawyers.

MR GAMA: It is a long time ago Chair, but my recollection is that he was always, maybe the lawyer he was with was
20 Mapoma but he was with a lawyer.

CHAIRPERSON: Ja, ja.

MR GAMA: I have never met him without, he was always with a lawyer.

CHAIRPERSON: Is your recollection that your own attorney was there as well or not?

MR GAMA: Yes.

CHAIRPERSON: That he, Mr Langa was there?

MR GAMA: Yes.

CHAIRPERSON: Okay in both occasions?

MR GAMA: Yes.

ADV MYBURGH SC: Then if I could take you to the second email. This is another email Mr Mahlangu reporting to Mr Gigaba, I am going to take you just to the first paragraph:

10 "Dear Minister

At my meeting with the Chair, now he is meeting with Mkwanaazi, he acknowledged that the advertising of the GC position was a mistake in the light of Gama's response to the advert the Board seeks guidance on the way forward despite the ongoing, without prejudice discussions."

We can accept that that is the settlement discussions.

20 "G insists on staying on the list, he was informed through his lawyer of an offer to reinstate him, no loss of benefits or contribution towards his legal costs. My recommendation that the issue regarding his discipline and appointment of the GCE be dealt with separately."

You see that?

MR GAMA: Yes.

ADV MYBURGH SC: So what we see here is that Mr Mahlangu was meeting together with - Mr Mahlangu and Mr Mahlangu was then reporting back to Mr Gigaba.

CHAIRPERSON: You may have said Mr Mahlangu on both, it is Mr Mahlangu meeting Mkwanazi.

ADV MYBURGH SC: Yes, well Mr Mahlangu was meeting with Mr Mkwanazi and then Mr Mahlangu was reporting back to Mr Gigaba, I beg your pardon.

MR GAMA: Okay.

10 **ADV MYBURGH SC:** You see that Mr Gama?

MR GAMA: Yes, I see that.

ADV MYBURGH SC: Alright, and what Mr Mkwanazi accepted, is that he was in effect reporting back to Mr Gigaba through his advisor, Mr Mahlangu.

MR GAMA: Okay.

ADV MYBURGH SC: Now turning to Mr Mapoma, Mr Mapoma says three things that I would like you to comment on, and I will take you to the relevant portions.

CHAIRPERSON: It is Mapoma I think.

20 **ADV MYBURGH SC:** Mapoma.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Mr Mapoma, and he was the Transnet lawyer. He says:

“That from the outset when he started assisting Mr Mkwanazi, Mkwanazi told him that he had been

instructed to reinstate you, and that he wanted to find a way to do so cleanly. He said he assumed that the instruction had come from former President Zuma.”

You want to comment on that?

MR GAMA: No, I was never present in those meetings between Mapoma and Mkwanazi, so I am not privy to that, so I cannot comment on that.

ADV MYBURGH SC: So then we come to something
10 where you were present and that is the Inanda meeting because Mr Mapoma also talks about this, and the evidence that he has given is that at this meeting, he was told by Mr Mkwanazi that this was a settlement negotiation. He said that the settlement negotiations broke down because you wanted to be appointed as the Group Chief Executive.

MR GAMA: Ja, I think Mr Mapoma would have been mistaken. I think I have read somewhere his statement...[intervene]

20 **ADV MYBURGH SC:** Yes, I can take you there if you want.

MR GAMA: Ja, where is it?

ADV MYBURGH SC: Ja, if you to bundle 1, BB15.

MR GAMA: Ja, page?

ADV MYBURGH SC: Page, I think it is page 8, just bear

with me for a second. No, I have referred you to the wrong exhibit. It is exhibit BB16, I do beg your pardon and this is in bundle 3. The part that I am questioning you about Mr Gama that you say – I assume it is the passage you referring to is I think at page 8, para 19 where he says:

10 “During a break, Mr Mkwanazi briefed me that Mr Gama was to be reinstated and we have to meet with Mr Gama because later Mr Mkwanazi asked me to accompany him to meet Mr Gama at the Inanda Estate on the day, which was a weekend. I am not sure if it was a Saturday or Sunday, the meeting happened between Mr Gama and Mr Mkwanazi, I waited for them to finish. There was nothing to do after this meeting, as apparently, Mr Gama and Mr Mkwanazi could not reach consensus on the terms of the reinstatement. According to Mr Mkwanazi at the time, Mr Gama wanted to be reinstated as the CEO of Transnet, and Mr Mkwanazi was not agreeing to that condition. They also could not
20 agree on the issue of the fees that had to be repaid.”

Do you want to comment on that?

MR GAMA: Yes, my comment is as follows. I could never have asked to be reinstated into a position that I have never occupied and so it would be absurd in the extreme

for someone to say, reinstate me as CEO of Transnet, because I had never occupied that position.

The – I could only be reinstated as the CEO of TFR, I think that is probably what he may have meant to say I wanted to be reinstated as the CEO of TFR. So I cannot really say anything further, I think Mr Mapoma could probably be mistaken, because I knew that if for anybody to be appointed as the CEO of Transnet, you have to go through a particular process.

10 And that process involves both the Board and the Minister, and from the Minister it even goes to cabinet. So I could not Chair have asked to be reinstated as CEO of Transnet, which is the position that I have never held. So I think Mapoma may have been mistaken in terms of what Mkwanazi may have said.

ADV MYBURGH SC: Of course, there was at this time a vacancy in the GCE position, correct?

MR GAMA: Yes, there was a vacancy, but it was not one where I would want to be reinstated to, I never occupied it.

20 **ADV MYBURGH SC:** But it is a position that you wanted because you applied for it.

MR GAMA: Ja, I had applied for it but there were no new processes they had advertised it. What I asked Mkwanazi if it in relation to that, I had asked him a question that since we are having this discussion, and you have now

advertised this position do you think I should apply or I should not, have

and he did not have an answer.

ADV MYBURGH SC: But Mr Gama did you not really want to be reinstated so that you could become the GCE, was that not ultimately what you wanted to do?

MR GAMA: I had never Mr Myburgh been the GCE, I had been suspended and charged when I applied for that position.

10 **ADV MYBURGH SC:** Alright.

MR GAMA: So I had never held the position. So you could not reinstate someone to a position that he had never had.

ADV MYBURGH SC: No, but that is not, that is not the proposition that I put to you, so I beg your pardon.

CHAIRPERSON: No, no, okay unless between Mr Mapoma and Mr Mkwanaazi in that conversation that Mr Mapoma says they had during the break, unless between them, there was some misunderstanding what was sort to be said
20 was that you had said, you want to be the Group CEO we cannot talk about reinstatement, because the point you made about reinstatement is correct.

Unless they used the wrong terminology, but the idea was that maybe you said look, there is a vacancy right now, I am now putting my own words Mr Gama, you know,

my record, my track record I have performed very well, wherever I have been put in Transnet now here is a vacancy, why do you not appoint me to that position.

So I am just saying unless somebody used the wrong word, the wrong terminology but the idea was that maybe that is what you said.

MR GAMA: No, it would have been preposterous Mr Chairman of me to do such a thing it is unlike me and it is not me, and it did not happen.

10 **CHAIRPERSON:** Ja, okay alright.

MR GAMA: And so I think, and I am trying to interpret something here for Mr Mapoma, I think Mr Mkwanaazi would have said since we have advertised the GCE position Gama is asking whether he should apply.

CHAIRPERSON: Ja, Mr Myburgh.

ADV MYBURGH SC: Mr Gama, I just wanted to ask you this, I mean why were you not - moving onto a different issue, was it not your ultimate aim to become the GCE so that really being reinstated into the position of CFO, CEO
20 rather of Transnet Freight Rail was simply an immediate stepping stone. Was that not really what you wanted the GCR post?

MR GAMA: I had applied for the position a year earlier.

ADV MYBURGH SC: Yes, the answer is yes, presumably.

MR GAMA: I had applied for that position, so I had

ambition but my ambition was done properly, I had follow whatever processes was there. I could not say to Mkwanazi no, now appoint me as the GCE, he did not have those powers. So I would not ask a man to do things that he cannot do.

It was a logical step but it was not at all costs and that is why I went back and I assisted Transnet in terms of TFR.

ADV MYBURGH SC: Sorry, can I take you to another, the
10 last paragraph I want to deal with in relation to Mr Mapoma, can you turn to paragraph 27 please at page 12.

CHAIRPERSON: I am sorry Mr Myburgh I thought it was going to be just one reference so I told her not to bother...[intervene]

ADV MYBURGH SC: Transnet bundle 3.

CHAIRPERSON: I will need to have it Ma'am, bundle 3 what page?

ADV MYBURGH SC: Page 12.

CHAIRPERSON: Of course, Mr Gama, you had been at
20 Transnet since '94 you said, is that right?

MR GAMA: 1994.

CHAIRPERSON: 1994?

MR GAMA: Yes.

CHAIRPERSON: Were you aware whether each time there was a vacancy in the position of Group CEO of Transnet

there would be advertisements and different candidates would be interviewed or whether sometimes somebody who was considered to be suitable would just be appointed.

MR GAMA: Ja, it really just dependent on them, but there was always a process of the - in terms of the articles of the company, the CFO, and the GCE the Board would recommend to the Minister, and the Minister in cabinet would then make a decision on that appointment.

So even if it was not advertised, there will still be a
10 process that would be followed and in that particular case, there was then an advertisement.

CHAIRPERSON: Ja, no I am thinking about that issue in the context of your saying you could not Mr Mkwana to do what he had no power to do, because I take it that if the power lay with the Minister or cabinet the Board could certainly recommend and one takes it that the Board's recommendation would carry a certain amount of weight with either the Minister or the candidate or both.

So, even if it was something that was not unheard
20 of in Transnet or in SOE's for a Group CEO to be appointed without advertising the position and inviting various candidates so, it could well be that you would not have been if you did, you would not have been asking him to make the appointment, you would have been asking him to make a recommendation and that he should take his Board

on-board and make a recommendation that look, here is somebody that we as the Board with his, and he has a track record within Transnet.

MR GAMA: No, Chair even if it had happened before, because it did happen before.

CHAIRPERSON: Yes, ja.

MR GAMA: But after that there had been a recordal that the Board would give the Minister at least three names from which to choose from.

10 **CHAIRPERSON:** Okay.

MR GAMA: So in order to arrive at those three names, you need to go through the process at least.

CHAIRPERSON: Ja, okay.

MR GAMA: You could not just meet somebody at the airport and say I like you let me put you on the list, it does not work like that.

CHAIRPERSON: Okay, Mr Myburgh.

ADV MYBURGH SC: Thank you, I was going to take you then to the last paragraph that I want to ask you about in
20 Mr Mapoma's affidavit at paragraph 27, so it is at page 12.
Are you there?

MR GAMA: Yes.

ADV MYBURGH SC: It says:

“Mr Mahlangu called, these are telephone calls,
then put pressure on me to the reinstatement of Mr

Gama, accusing me of causing the delay. Telling me number one, he wanted to get it done quickly. He never mentioned any name, he stopped calling me when I sternly told him to stop calling me, and that I do not report to him nor to the Minister nor to no one and that I was assisting Mr Mkwanazi in implementing the Board's decision."

I presume you have no knowledge of that?

MR GAMA: No, I have no knowledge of that.

10 **CHAIRPERSON:** Well, I just want to mention this and again you might not be able to say anything. It is interesting that say Mr Mapoma's evidence included him saying that, Mr Mkwanazi had said, I think he said Mr Mkwanazi had said he had been instructed to reinstate you but Mr Mkwanazi I think denied that, but I think that is what Mr Mapoma's said, that point one.

Point two, we have a situation where Mr Mapoma says Mr Mahlangu called him and put pressure on him to finalise your reinstatement and accused him of possibly
20 delaying and told him that number one, he wanted to get it done quickly. And you have said in your evidence, I think in your first meeting with Mr Mkwanazi, he made it clear that his preference was that you should be reinstated, you should come back.

So I am just mentioning that when one looks at a lot

of these pieces, they all seem to suggest that reinstatement, not necessarily in your mind, but in the mind maybe of other people your reinstatement seems to be a proposal as opposed to compensation or any other or you getting nothing.

MR GAMA: No, no your quite right Chair, I abandoned the notion when Mkwanazi indicated to me that his preference that I go back, in fact he was saying, I do not want to pay you so much money to go away. I would rather reinstate
10 you and you come back to work and we fix the problems at the company.

So I think that was the issue, then as for Mapoma, Mapoma I think for me he was advising Mkwanazi because he would come to the meetings, but he did not really say anything in the meeting. But then I guess outside of the meeting, they were having the discussion, so I do not know how Mahlangu would then call Mapoma to ask him to expedite the reinstatement, because I do not think that Mapoma per say was the one who sees to it that particular
20 issue.

CHAIRPERSON: And well maybe I could mention and Mr Myburgh will indicate if he has a different recollection. That I think I Mr Mkwanazi denied Mr Mapoma's evidence that during the break, in that meeting with you that he told Mr Mapoma that you wanted to be reinstated in the position

of Group CEO, Mr Mkwanazi denied that part of Mr Mapoma's evidence if I recall correctly.

ADV MYBURGH SC: Well I am not sure on that DCJ but what I do know it really - it might have been one of those things he could not remember you see.

CHAIRPERSON: Oh, he could not remember, yes, ja.

ADV MYBURGH SC: He said to me he did not confirm the version.

CHAIRPERSON: Yes, okay I think Mr, wants to say
10 something.

ADV OLDWADGE SC: Mr Chair, I wanted to raise this earlier and I thought in fairness to Mr Gama it ought to be put to him that whilst that may have been the version of Mr Mapoma it was denied, and in fact, what Mr Chair with respect is alluding to is that very denial by Mr Mahlangu...[intervene]

CHAIRPERSON: Well I was about to come to him, the Mahlangu one.

ADV OLDWADGE SC: Yes, but there was also denial by
20 Mr Mkwanazi, I am struggling to find the document, but there certainly was and I just think in fairness it ought to be put that that was not a one sided version that can be accepted on the face of it. It was something that was denied by a subsequent witness, thank you.

CHAIRPERSON: Ja, no, I was also going to say, if I recall

correctly, Mahlangu denied...[intervene]

ADV MYBURGH SC: Yes, Mahlangu expressly denied that.

CHAIRPERSON: Yes, yes okay.

MR GAMA: I also do not think that Mkwanaazi would have agreed to that because it did not happen.

ADV MYBURGH SC: Alright, just I suppose in fairness as well and Mr Chair, you would be better apprised of this than me because it is in the very early days of the
10 Commission. But as I understand President, former President Zuma also took issue with Ms Hogan's evidence.

CHAIRPERSON: Yes, no, no, you are right. The former President Mr Zuma, when he gave evidence in July I think of 2019, Ms Barbara Hogan's evidence was put to him in terms of him allegedly having insisted that for the position of Group CEO of Transnet he wanted you and nobody else, he denied that, the one, the one part which I must mention is that the, the proceedings during that week when the former person was giving evidence were interrupted at a
20 certain stage I think on Wednesday because he had complaints about how he was being questioned.

As a result of which the proceedings were adjourned and there were discussions among the lawyers and for the rest of the week his evidence did not continue and he indicate, it was agreed that he would come back to

continue.

Of course where the Commission is with him now is public knowledge, but one of the issues that I still wanted to raise with him was this. That on Ms Barbara Hagen's version, the reason why or rather let me put it this way. On her version, which must be common cause, the position of group CEO of Transnet remained unfilled until she had left and she left at the end of October 2010.

Now she had been speaking to the former president
10 about the filling the position some time I think in 2009, and she said the only reason why the position was not filled for such a long time after she had spoken to the former president, was because the former president was not prepared to have anybody else, anybody else appointed to the position except you, and she said there was a candidate, Mr Sipho Maseko whom the board had recommended and she also had no problem with that candidate, but the former president wanted only you.

So what I had hoped the former president would
20 clarify later, if he came back, is what on his version the reason was why the position of group CEO was not filled over such a long period in circumstances where there was a candidate that had been recommended by the board, which the minister was happy with and he does not appear to have raised any issues with that candidate or about that

candidate.

That of course has not been asked to him, because he has not come back, but that he definitely denied having said that he wanted you and you only to be appointed. Mr Myburgh?

MR GAMA: Thank you Chair.

ADV MYBURGH SC: Yes, thank you. I have found the relevant passage.

CHAIRPERSON: Yes.

10 **ADV MYBURGH SC:** It is, can I just read it to you? It is at page 145. You do not have this in front of me, you but on day 285. I was questioning Mr Mkwanazi about this very issue and you ...[intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: You intervened and you rolled up the controversy and I will read the whole page, because it deals with this. So I think everyone is half right here. Mr Mkwanazi said:

20 "I suspect that Mr Mpoma might have got his facts wrong there, because the position of Transnet group chief executive was a position where there was a parallel process to interview etcetera, etcetera. So I suspect that Mr Mpoma might have meant is the position of chief executive Transnet [indistinct – audio

distorted].”

I suspect that is what he meant, and then you said

Chairperson:

“Well, I do not think he was confused because he gave, his evidence was clear. He said I asked him. I said that Gama had been dismissed from the position of CEO of QRF.”

Mr Mkwanazi said:

“You did sir, I recall.”

10

And then you said:

“Yes, and yes but he said that Mr Mkwanazi told me that the reason why they did not agree is that he was now, he wanted to be appointed or to use the word reinstated as group chief executive officer and Mkwanazi said that he rejected that. He wanted him to be reinstated in the position of CEO QRF which is the position from which he had been dismissed.”

20 That is what he said. You were summarizing what Mr Mpoma said. Mr Mkwanazi then responds to your question at line 22, saying:

“Well, Mr Mpoma said that and I suspect Mr Gama might have said that, but clearly Chairperson I could never agree to a position like that.”

That takes us to the end of that page, so
...[intervenes]

CHAIRPERSON: I think you are right. Everybody is half
[indistinct – audio distorted].

MR GAMA: Ja, and I state Chair that I would not have
asked to be reinstated as the CEO.

CHAIRPERSON: Ja, no the one point which I want to raise
as we looked at this issue, is that against the suggestion
you made and I think you emphasized that it was just your
10 thinking, that maybe Mpoma, Mr Mpoma must have been
talking about reinstatement to the position of CEO of TFR.

It would seem to me and I would like to hear what
you have to say that given Mr Mkwanazi's attitude towards
having you back, it is difficult to think that that could have
your demand to be reinstated to TFR could have led to a
[indistinct – audio distorted] because that is what you
wanted.

Ja. Okay.

MR GAMA: In fact, and it is just a proposition. My
20 suspicion about this thing is there was somewhere where
Mkwanazi wanted me to work in his office.

CHAIRPERSON: Ja.

MR GAMA: And I suspect that is what this was about.
Where ...[intervenes]

CHAIRPERSON: Was he also acting group chief executive

at the time?

MR GAMA: Yes, he was but he was the Chairman of the company.

CHAIRPERSON: He was both Chairman and acting group chief executive?

MR GAMA: Yes. So he was like an executive Chairman. So he, I think because of the work load that he was having in that position, he wanted somebody who could assist him and I did assist him for a while in that office.

10 **CHAIRPERSON:** Ja.

MR GAMA: So my suspicion was he wanted me to do that, but it was not an existing position. It was not a position per se. It was there because he was the Chairman and it is something that will fall away because non-executive Chairman do not really have to go to the office.

CHAIRPERSON: Ja, ja.

MR GAMA: I think that is what it was and probably we just have that discussion where I have said I did not want to rotten the corner of his corporate when I could be in an
20 operational environment.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Thank you.

MR GAMA: It was a proposition.

CHAIRPERSON: Ja.

MR GAMA: But I think it may have been that.

CHAIRPERSON: Ja, ja, yes.

MR GAMA: And not anything else.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: I want to move then to another topic and that is I do not know if you know this or you came to learn of it, but the corporate governance nomination committee in early February were confronted with the difficulty as to whether you should be allowed to be put forward as a candidate for the group chief executive
10 position.

Are you aware of that?

MR GAMA: I have read that in the last two weeks or so when you send me some ...[intervenes]

ADV MYBURGH SC: And ...[intervenes]

MR GAMA: Some minutes.

ADV MYBURGH SC: And what happened there, I am not sure we necessarily need to go to them, but you will be aware of the fact that there is a policy or procedure within Transnet that as a general rule does not allow someone to
20 be appointed if they have previously been dismissed, but Transnet has a discretion to override that and in this case the discretion was exercised in your favour.

Presumably that must be common cause.

MR GAMA: Yes.

ADV MYBURGH SC: And are you aware of the fact that

that decision was taken despite the existence of a senior counsel's opinion that cautioned against that?

MR GAMA: Sorry, a cautionary?

ADV MYBURGH SC: Senior counsel's opinion that cautioned against the exercise of the discretion allowing you to throw your hat in for the position of GCE.

MR GAMA: No, no. I am not preview to all of those intricacies. As I said I just saw this in minutes recently but it did not really concern me.

10 **ADV MYBURGH SC:** Of course the problem that arose and this was, it is the minutes I think that you speak about. Is that at this stage and you although contesting the sanction of dismissal but you intended to do it arbitrationally, you accepted your guilt in relation to three charges as I recall.

Is that correct? In other words you accepted that you were guilty of this conduct but what you intended to contest as you were entitled to do, was the question of sanction.

MR GAMA: That is correct.

20 **ADV MYBURGH SC:** And that was the difficulty but despite that, the committee decided that you could be put forward. Did you then attend an interview for the position of group chief executive?

MR GAMA: Sorry Mr Myburgh. I am not really sure what you are asking. You speak a bit fast.

ADV MYBURGH SC: Alright. Did you attend an, were you shortlisted and did you attend an interview for the position of group chief executive?

MR GAMA: Yes, I did.

ADV MYBURGH SC: Moving forward in the chronology, we know then that on the 16th of February 2011 the board resolved to reinstate you. You would have seen that, correct?

MR GAMA: Yes.

10 **ADV MYBURGH SC:** And what Mr Mkwanazi has testified about is that they did that principally on the basis that your procurement deviations ought to have been condoned. You have seen that.

MR GAMA: Yes.

ADV MYBURGH SC: What we know then is ...[intervenes]

CHAIRPERSON: I am sorry. Just make sure you are loud enough Mr Gama so that you will be recorded. Your answers will be recorded.

MR GAMA: Okay, let me come forward a bit Chair.

20 **CHAIRPERSON:** Ja, okay. Yes, Mr Myburgh?

ADV MYBURGH SC: What we know then is that a settlement agreement was entered into and perhaps I could take you to a copy of that agreement. Could you turn to BB15, Bundle 1?

MR GAMA: Okay, let me just move this one. Okay.

CHAIRPERSON: What page Mr Myburgh?

ADV MYBURGH SC: I will take you to page 36, please and this was an agreement it seems Mr Gama, if you go to page 40 and 41, that was signed by you on the 23rd of February and by Mr Mkwanazi the previous day. Correct?

MR GAMA: Yes.

ADV MYBURGH SC: Can I just ask you before we get to the content of this agreement, did you negotiate this agreement directly with Mr Mkwanazi?

10 **MR GAMA:** Ja, over a period of time with Mpoma and Mkwanazi.

ADV MYBURGH SC: Mr Mpoma as I understand it was assisting him, is that correct?

MR GAMA: Yes.

ADV MYBURGH SC: There is something that I neglected to ask you and that is in your discussions with Mr Mkwanazi, did he ever tell you about what Mr Gigaba had asked him to do?

MR GAMA: No.

20 **CHAIRPERSON:** Yes, I am sorry. In the negotiations that happened over a long time as you say, involving you and Mr Mkwanazi you say and Mr Mpoma assisting Mr Mkwanazi, were your attorneys also assisting you in those negotiations?

MR GAMA: Yes.

CHAIRPERSON: Okay, alright.

ADV MYBURGH SC: So he does not tell you at the beginning of his discussion with Mr Gigaba?

MR GAMA: No. As I said I always understood and known that everything that led to the settlement agreement that I have, was as a result of my referral of my unfair dismissal to the bargaining council.

ADV MYBURGH SC: Did he ...[intervenes]

MR GAMA: So everything that I did, there was never any
10 mention to me that no, there is any politician or anyone that is involved in it. We were just talking about what was before us and to say how do we resolve the matter.

ADV MYBURGH SC: And you never got a sense from your interaction with Mr Mkwanazi that he was reporting to the minister ...[intervenes]

MR GAMA: No, no.

ADV MYBURGH SC: Via Mr Mhlangu?

MR GAMA: No, no.

ADV MYBURGH SC: So let us then go through the terms
20 of this agreement and let us start with the preamble.

MR GAMA: Ja.

ADV MYBURGH SC: It has the normal sort of stuff. At 2.1, unfair dismissal dispute has arisen between the parties. Following your dismissal on the 29th of June, it records that you had referred an unfair dismissal dispute to

the bargaining council and that the parties were now engaging in a settlement.

What was agreed was that you would return to Transnet with effect from the 23rd of February so that was the date of your signature.

MR GAMA: Yes.

ADV MYBURGH SC: And that you would resume your duties as the CEO on a later date, on 1 April.

MR GAMA: Yes.

10 **ADV MYBURGH SC:** Why was that?

MR GAMA: Because Mr Mkwanaazi wanted me to help him in his office.

ADV MYBURGH SC: Alright.

MR GAMA: He had a backlog of things. He said I have got a backlog of things in my office. They are all strategic issues. I need you to assist me. I have got a new PCE, he is still going to be getting to his feet. I just need you to help me with all of these things and that is what I did.

20 **CHAIRPERSON:** Is that to say between the date of the conclusion of the settlement agreement and the 1st of April when you would resume or return to the position of CEO of TFR, he wanted you to help him during that time in his office?

MR GAMA: Yes.

CHAIRPERSON: Oh, okay.

MR GAMA: He wanted me to help him with some issues there. I did not really stay that long. I did not ...[intervenes]

CHAIRPERSON: How long did you stay?

MR GAMA: I think it was about a month.

CHAIRPERSON: And then you ...[intervenes]

MR GAMA: Then Mr Molefe asked me to go back quicker.

CHAIRPERSON: Ja.

MR GAMA: To TFR.

10 **CHAIRPERSON:** Ja.

MR GAMA: And so I think sometime in March, Mr Molefe had asked me to go back. It was an interesting position because it was the position where if the GCE wanted something, he would write to the Chairman but now it was coming through me.

So now I could either you know recommend to the Chairman not to listen to the GCE or not. So it was untenable. So I needed to go back and do what I needed to do.

20 **CHAIRPERSON:** Yes.

MR GAMA: It was TFR, so ...[intervenes]

CHAIRPERSON: Well, I was under the impression that you were given this period just to have to yourself before returning to work, but you would be paid.

MR GAMA: No, no I was working.

CHAIRPERSON: Yes, but of course the settlement agreement does not make, does not touch that. It does not say anything about what you have just told us is that you, you or that period you would be working in the Chairman's office.

MR GAMA: Ja, no he gave me boxes like this.

CHAIRPERSON: Ja, okay. Okay, Mr Myburgh?

ADV MYBURGH SC: Thank you. Then if we get to the business part of this, paragraph 3.2:

10 "Any employment benefits that were due to him for the intervening period of 30 June 2010 to 23 February 2011 in terms of his employment contract shall be deemed to be fully restored."

And then it says:

"That a full restoration of benefits entails the following. The payment of your short term benefits, payments of your long term benefits, the restoration of your salary ..."

Over the page, you confirm that?

20 **MR GAMA:** Yes.

ADV MYBURGH SC: And then, so you were placed really in a position as if you had not been dismissed financially. Is that correct?

MR GAMA: Ja, it was restoration as a status quo.

ADV MYBURGH SC: Paragraph 3.3:

“Mr Gama is deemed to have served his six month final written warning. Final written warning will be deemed to have been effective 29 June 2010 to 29 December 2010.”

Is that right?

MR GAMA: Yes.

ADV MYBURGH SC: So you were given a final warning that it had no teeth, really. Is that correct?

MR GAMA: Yes.

10 **ADV MYBURGH SC:** And how did that come about?

CHAIRPERSON: It is a strange sanction. That is why Mr Myburgh is asking because you were involved in negotiations. Maybe you can throw light as to how it came about.

MR GAMA: Yes, no it was a final written warning for six months, because as you know I had made an admission of misconduct and we agreed that this was negligence, but it was not willful negligence and as a consequence of that, then they required that to show that I had taken that
20 accountability and responsibility, I should accept a final warning.

But because I was being reinstated and restored, so it has started on the day after my dismissal. So it allowed me to be able to then go back to work having served the ...[intervenes]

CHAIRPERSON: On a clean slate?

MR GAMA: The final written warning and being able to focus on my work.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: I suppose it also allowed you to apply for the position of GCE with effectively a clean record?

MR GAMA: No, if you look at the date of this settlement agreement, it says 23 February.

ADV MYBURGH SC: Yes.

10 **MR GAMA:** 2011, the GCE had already been appointed.

ADV MYBURGH SC: Was that before then?

MR GAMA: Ja, no he had already been appointed. He was there, he had been appointed earlier. I think it started maybe two weeks before this.

ADV MYBURGH SC: Alright.

MR GAMA: So ...[intervenes]

ADV MYBURGH SC: Now Mr ...[intervenes]

MR GAMA: It had nothing to do with that.

ADV MYBURGH SC: What I was getting at really when I, I
20 mean I understand why you were given a final warning, but what I was trying to find out is this idea that the final written warnings served whilst you were not in the employ of the company is a bit unusual, is it not?

MR GAMA: I was in the employ of the company, I was restored to the date of dismissal. This was part of the

negotiation. That is why the negotiations they took longer. We negotiated. You know, negotiations is a give and take. We negotiated a lot of things.

This is what we finally agreed to. If you think my negotiation skills were good, that is fine. But we negotiated.

ADV MYBURGH SC: You see Mr Gama, it is at this point I just want to repeat. You are not an accused person here, you are not an implicated person. What we are trying to do
10 is to find out what the facts were in relation to this settlement, and yes I mean one of the issues that you touch on that was very important to our investigation, and that is how is it that you really on the face of this agreement took Transnet to the cleaners?

You know, you talk about give and take and bargaining, but where is that reflected in this agreement? You get everything, you get a final warning which had expired and then you get a very generous cost payment which we will come to in a moment.

20 I mean what caused Transnet, and perhaps we can ask you to help us with this. What caused Transnet to capitulate almost completely it seems?

CHAIRPERSON: Particularly, before you answer. particularly in circumstances where as you have said, you were admitting guilt in regard to those three charges and

one access that they did not include findings of, they were based on negligence if I recall correctly.

So when one looks at this settlement, and one if one has a background and has read the judgment, the Chairperson's judgment, quite frankly I got shocked when I saw it.

I got shocked. I could not understand how any employer would have gone as far as they went, and maybe it is because your negotiating skills, but it might not be
10 your negotiating skills, it might be something else on the part of Transnet.

MR GAMA: No, no thank you very much for asking the question Mr Chair. I think it would perhaps be helpful to look at the context again you know, because I think context is everything. I said to you earlier this morning, that here was an employee, a CEO of a division who have been charged.

But given a quarter of information about what was happening. Where in fact the internal auditors would have
20 said to me here are the issue, how do you propose to remedy this particular situation, and there were about six or seven employees who had actually gone against instructions that I have given them to go out and on a tender for security services.

On the last day, they catch me when I am in a hurry

and they say look, you need to sign this. It is the end of the tender process. Everything has been done as you said it would be done and I do not look at it because I am thinking that they followed the process.

When somewhere in the middle, they stopped and they did not do it, normally what would have happened in Transnet, they would have come to me and said this is what has happened and then one of the things that I would have done, would have been to discipline these employees
 10 in terms of what they do, but also would have been to them, go and ask for a condonation because there was this open and available in Transnet to say a misrepresentation has occurred.

I have been misled by my employees. They said to me they have gone out on a tender when in fact it was a confiner and because that kind of irregularity in procurement, you are able to go to the delegated authority and say to them yes, there is misrepresentation that has occurred.

20 I would like that the actions that have happened be condoned and these are the steps that we are going to take to make sure that something like this does not re-occur. That had been hidden from me. This board and I explained to Mkwanazi, in the negotiation, for instance and that is why you will see there was a report by Nkonki.

There was an employee, I am not going to ... who had exceeded his authority by 750 million, had never been charged and were made aware and was allowed to retire. If the auditors had picked this thing with me, I had exceeded my authority by four million.

I was charged. I am not going to say all of the other things that happened in the middle. I was charged. The second one was in circumstances where the legal team had said to me here is an agreement, we have now
10 prepared it, everything that was supposed to be done, including the resolution etcetera.

Everything is in here, you just need to sign here. There was 244 page document. I was then tasked that there was a missing paragraph in the 244 page document, that I thought was there but was not there, and having regard to input and advice from the legal team, who were always aware and have been aware for some time that this was how things was going to happen, we had remedied that at some point.

20 At a later date we remedied it, but on the eve of the appointment of the GCE at Transnet, it was pulled out. It was pulled back. We had remedied this thing in 2008 and nothing was said about it, but in February of 2009 when there was a new GCE that needed to be appointed, they then said by the way you had signed that agreement and

you never, there was this paragraph that was missing in this 244 page document.

There had never been a CEO in Transnet who was charged and disciplined for the actions of his employees. Alternatively there had never been a CEO in Transnet who was not informed by the internal auditor that this is actually what is happening, so that I could be able to remedy this particular issue.

So when we were having the settlement discussion,
10 we also have regard to the unfairness that had been visited on me. We were having regard to whether or not I should have been charged in the first place. Although I said yes, I have been negligent not actually having done one, two, three.

However, it was glaring to everybody that it was not willful negligence, it was glaring to everybody that I had not been dishonest. It was glaring to everybody that no fraud had been committed or perpetuated by me. So we were having this discussions and then saying what is the
20 most appropriate way to try and restore me?

Mkwanazi had been in Transnet, he knew about these processes. That there are condonations that take place. In fact, that board if I can give an example, there had even been a company that has been appointed on the pipeline.

The new multi-product pipeline in Transnet which had been appointed irregularly. They had spent 1.7 billion. They had gone through that board, they have been paid the 1.7 billion when they have been irregularly appointed. Which means the contract was not couture and the cost had gone up to 3.2 billion.

They had to condone those actions that has taken place and here was Gama who had exceeded his authority by four million rand, in circumstances where he had been
 10 misled into thinking that these employees have actually implemented what he had asked them to implement, which was to go out on a tender process for the security service.

Which they perpetuated to the last day to say yes, we have gone out to tender and I then because I was in a hurry, I do not get time to actually sit down and look at it and I am thinking that they have done what I had asked them to do.

I just look at the last page and as a result of that, I become this negligent person. So those were the
 20 circumstances in which we were negotiating. There was a list I think, of about 42 condonations that had taken place you know, during that period. This thing of me being charged Chair, they were looking for anything in order to charge me.

When Mkwanaazi and myself were having this

discussion, we then said I said no, I agree in future you are now saying that if your legal people sign a document and say no, everything is fine, maybe I correct ... I should have said to them just show me that paragraph, but these are people that we trusted their bona fides.

We trusted their intent. There was not anything that we would lose. In fact, we had everything to gain in terms of building the 50 leg new at the Transnet facilities because we were pursuing a project Chair, where we
10 wanted Transnet to eventually manufacture its own locomotive.

So there were a lot of things that we wanted to learn, but then the people at Transnet engineering were supposed to have cooperated in terms of helping us with that. They did not make the premises available. So it was a whole context ...[intervenes]

CHAIRPERSON: It was all of those factors that you ...[intervenes]

MR GAMA: Ja, it was all of those factors that said it is
20 most appropriate to re-visit this thing, to make sure that the unfairness and the harm and the hurt that I have gone through be restored. So we were having this discussion and it took many days.

CHAIRPERSON: Ja.

MR GAMA: But we ...[intervenes]

CHAIRPERSON: Ja.

MR GAMA: We were quite thorough and methodical about it.

CHAIRPERSON: Of course, against what you have said in support of saying there was unfairness, that is how you argued your case to Mr Mkwanazi, against that of course, the position was that one there had been a disciplinary process and I think it is fair to say it was quite a thorough disciplinary process, because it seems to have run, been
10 running almost like a trial.

You know, I think I am under the impression that it was more than ten days of hearing, Chaired by somebody not from Transnet, but rather somebody from outside, an experienced lawyer. You were given an opportunity to be represented by lawyers of your own choice, Transnet was represented by lawyers of its own choice.

Whatever you wanted to put before the Chairman of the disciplinary inquiry, you say to him this is unfair, I should not even have been charged in the first place. All
20 of those arguments you had had a chance to put them before the Chairman and this Chairman had made findings against you.

So I am just saying why you may have put to Mr Mkwanazi what you have said, against that there were these considerations as well. You would accept that, I

would imagine.

MR GAMA: Yes, no that have happened, but what have not been taken into account in getting to the sanction that they got into was that the first offender when it was not gross negligence, it was found guilty or the sanction of dismissal did not ...[intervenes]

CHAIRPERSON: Was too harsh.

MR GAMA: Yes, it did not apply. In terms of Transnet's own code of good practice. So those things have not been
10 brought into bags, and I think in the dying days of the actual trial, because it cost me quite a lot of money. I think I could not even go to the, what is it called? Aggravation?

CHAIRPERSON: Aggravation, ja. Ja.

MR GAMA: I did not have the resources.

CHAIRPERSON: Ja, ja.

MR GAMA: You know ...[intervenes]

CHAIRPERSON: The mitigation for the other side.

MR GAMA: Yes, that mitigation.

20 **CHAIRPERSON:** Ja.

MR GAMA: I had already paid five million rand plus from the High Court, because I paid money from the High Court and when I was being paid in 2011, it was a part refund of money that I had already paid. So it was all of those ...[intervenes]

CHAIRPERSON: All of those things.

MR GAMA: Those issues that we were dealing with. So ...[intervenes]

CHAIRPERSON: Okay, so that is fine.

MR GAMA: And all of it was technical discussions that looked at the context of what had happened. There were people and instances and incidents within Transnet that was very similar. The Nkonki KPMG report came to the same conclusion.

10 That there was no one at Transnet other than Gama that had ever been charged, disciplined, fired for something that could have been rectified inside the company if people were just being fair to one another and they followed their own processes to deal with it.

 Yes, it was like a [indistinct – audio distorted] trial. The way that it was ...[intervenes]

CHAIRPERSON: Well, it might not be appropriate to refer it like that, but ja you know it was a disciplinary hearing that was Chaired by a member, a senior member of the
20 Johannesburg Bar and there were lawyers on all side.

MR GAMA: The manner in which Chair, Transnet had done it ...[intervenes]

CHAIRPERSON: Ja.

MR GAMA: It was very, ja I withdraw that ...[intervenes]

CHAIRPERSON: Ja, ja.

MR GAMA: I do not want to be offensive to anyone.

CHAIRPERSON: Ja. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Mr Gama, I suppose just to end off on that I have got two points. When you say I asked you just coin the phrase, how did you take them to the cleaners and ultimately what you ...[intervenes]

CHAIRPERSON: Sorry?

ADV MYBURGH SC: What you have explained to the Chairperson was that that happened because really of the
10 unfairness of your dismissal, correct?

MR GAMA: Yes.

ADV MYBURGH SC: But you still accepted a final written warning valid for six months.

MR GAMA: How does someone who admits misconduct, who accepts a sanction one below dismissal, how do they land up then and I must ask you this, not as an accused person, not as an implicated person. But how do you then land up taking them to the cleaners?

MR GAMA: Taking who to the cleaners?

20 **ADV MYBURGH SC:** In the settlement agreement you got everything and more than you could have got.

CHAIRPERSON: Effectively he is saying Mr Gama the ...[intervenes]

ADV MYBURGH SC: Well, you said ...[intervenes]

CHAIRPERSON: The settlement agreement must be

looked as at the outcome of negotiations. It looks like you walked all over Mkwanaazi and Transnet and just they gave you whatever you wanted. He says how did this happen.

MR GAMA: Take me to your next negotiation sir.

CHAIRPERSON: It is your skills. Mr Myburgh?

ADV MYBURGH SC: Mr Gama, can you give us some insight into that, because again you are here to assist us in this investigation and I do not know, it is difficult because you are so obviously an interested party in this,
10 but it strikes one as strange.

I will just ask you to comment on that. Was it just, you talk it down to your negotiation skills or do you say that frequently?

MR GAMA: Ja, no there is nothing else to this really. There is nothing else other than context.

ADV MYBURGH SC: Alright.

MR GAMA: And there was a context to this and Mkwanaazi was right at the tail end of it.

CHAIRPERSON: Ja.

20 **MR GAMA:** It was well reported and recorded and in the country.

ADV MYBURGH SC: You see ...[intervenes]

MR GAMA: The settlement agreement is really an indication of the intent to restore.

CHAIRPERSON: Ja. No, no I think you have indicated

what in your view ...[intervenes]

MR GAMA: I do not think there was any other sinister thing on the part of Transnet, but yes I negotiated hard.

ADV MYBURGH SC: Because I must just tell you and just to give you insight, you might have seen or read the evidence of Mr Mkwana. I mean I asked him whether he could have done, and perhaps it was a bit flippantly, whether he could have done a worse job.

I think it is a very difficult position for Transnet to
10 defend.

MR GAMA: I do not know. As I said, it was an issue for them on my part, but I think they understood the unfairness, they understood the inequity. They understood the pain.

CHAIRPERSON: Much better than the Chairperson of the disciplinary inquiry, ja I would imagine you would say.

MR GAMA: Yes, the Chairperson of the disciplinary inquiry have done whatever that they have to do ...[intervenes]

CHAIRPERSON: Ja.

20 **MR GAMA:** Within the context of what they had been given. So but with them, if I say to you this is a matter where I probably should never have been charged in the first place because it could have been fixed, through processes that existed in the company.

In circumstances where I was not being provided

with full information in terms of what was going on, until at the disciplinary hearing and even at the disciplinary hearing I still did not have all of the information that I required to be able to defend myself properly.

ADV MYBURGH SC: So Mr Gama, have you ...[intervenes]

UNKNOWN: Sorry.

CHAIRPERSON: Sorry.

UNKNOWN: Mr Chair, there is an important aspect I wish to raise and it is not my purpose to suggest that you are
10 being misled, but to make a notice statement to the effect of Transnet could not have done a worse job, it is not correct.

In fact it is a document introduced by the legal team, in their possession and within their knowledge, when they sought the advice from the [indistinct – audio distorted] attorneys, I just want to for the record, quote one caption which is contained in the penultimate paragraph of the advice and recommendation that they make, once they were seized with a request to consider Mr
20 Gama's position and this is what it says and I quote:

“Mr Gama is a highly experienced executive and the Transnet executive and the company is still in need of his skills as it embarks on the anticipated growth path and contribution to the national fiscus and job creation.”

Then the final paragraph:

“The solution to the problem at hand was simply this.”

This is the recommendation:

“The solution is the proposed settlement.”

Now in fairness to my client, how can Mr Myburgh put such an outrageous statement to him, it could not have done a worse job, when the Commission is in possession of this document that explains the rational for the settlement
10 agreement.

On its own terms, with respect.

CHAIRPERSON: Well, you will get a chance if you wish to make use of it, to re-examine Mr Gama and then you can raise such matters.

UNKNOWN: Just one thing ...[intervenes]

CHAIRPERSON: Yes.

UNKNOWN: To be put in perspective and objectively to my client.

CHAIRPERSON: Yes.

20 **UNKNOWN:** Thank you Mr Chair.

CHAIRPERSON: But of course you will remember that in his rates provides that opinion after they have indicated that Mr Mkwana said he just needed an opinion that would motivate, to enable him to take Mr Gama back. So ja, okay. Mr Myburgh?

ADV MYBURGH SC: Thank you. Mr Gama, when you were explaining to the Chairperson your feelings of unfairness and you touched on we know although you did not deal with it directly, you explained the circumstances in relation to GNS, that charge and also the circumstances in relation to 50 like new.

You explained that you and Mr Mkwana over a period of time dealt with that and came to an understanding in relation to how unfairly you were treated.

10 What you do not mention at all, is the fourth charge which was that of unwarranted criticism of Transnet and its executives.

If you could perhaps go to bundle 3, Exhibit 16. If I could ask you please to turn up page 88.

MR GAMA: Eight eight?

ADV MYBURGH SC: Now this is part of what we have referred to or I have referred to as the Todd opinion, but what I want to do, just above paragraph 60, there is a paragraph which Mr Todd quotes from the findings of the
20 Chairperson.

Are you there?

MR GAMA: I am just ...[intervenes]

ADV MYBURGH SC: So just above 60.

MR GAMA: Ja.

ADV MYBURGH SC: That last paragraph of the quote.

This is an extract from the Chairperson's findings on sanction:

10 “Transnet submits that no employment relationship can continue to exist in the circumstances of this public attack on its executives and on Transnet itself. In short, Well's evidence on this aspect set out above is overwhelming and uncontradicted. This charge goes to the heart of Transnet's loss of faith in Gama and there can be no doubt that dismissal is the only appropriate penalty for Gama's conduct under this fourth charge.”

In other words, what the Chairperson said is that you stood to be dismissed on that charge alone. When you talk about the unfairness of your dismissal and you articulated here, you make no mention at all of this.

MR GAMA: Ja, no thank you very much for reminding me. Chairperson, sorry. I thought in Zulu before I ...[intervenes]

20 **CHAIRPERSON:** You are allowed to think in Zulu first and then translate.

MR GAMA: Yes, yes.

CHAIRPERSON: Well, I can tell you that ...[intervenes]

MR GAMA: It was the grass that was suffering when LFM's ... so Chairperson, what had happened here is that during

the course of all of this, there had been such utterances there that have been made against mainly Wells.

CHAIRPERSON: I am sorry, do you say mainly something?

MR GAMA: Mainly Wells.

CHAIRPERSON: Oh, Mr Wells. Ja.

MR GAMA: Ja, ja.

CHAIRPERSON: Was acting group CEO at the time.

MR GAMA: Yes, yes and maybe one or two Transnet executives and these utterances were made by my legal
10 counsel, not necessarily by myself but I reconciled to the fact that he was my counsel and that therefore I should take responsibility for that.

After it had happened, I had apologized to Wells that it had happened in the manner in which it had happened. Wells had accepted the apology, but then went on to say that he could not accept the apology for the company and that in his view, that there was therefore, what is the legal term?

There was a breakdown.

20 **CHAIRPERSON:** Breakdown in relationship.

MR GAMA: There was a breakdown in the trust relationship.

CHAIRPERSON: In the trust.

MR GAMA: Or in the employment relationship. But Chair, in terms of that, I think there is a case, there is the Louw

case that we could probably refer to. That breakdown applies in instances and circumstances where dishonesty has been found.

In this case, there was no dishonesty that had been found. Yes, there was the altercation, words were exchanged and as a result of that, certain pain have been caused, but it is something which we believe that did not apply to this particular set of circumstances.

So when I took the final written warning, it was in
10 circumstances where all of those things were taken into account, but also to say it would not have been a dismissible offence on its own, especially in circumstances where there was no finding of dishonesty.

Yes, there was a breakdown in trust as they indicated but it was not a dismissible, the sanction of dismissal on its own could not have held.

ADV MYBURGH SC: Mr Gama ...[intervenes]

MR GAMA: I would probably go back to that law and indicate some more if you wanted to, but it was my and our
20 belief that the, that breakdown could not have resulted, especially in circumstances where it was not myself, that had actually made whatever those utterances were, but I did reconcile to it to say it was my legal counsel, and I accepted that and as a consequence of that, I offered an apology to Wells.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Mr Gama, there is a lot of labour lawyers in this room ...[intervenes]

MR GAMA: There is what?

ADV MYBURGH SC: There are a lot of labour lawyers in this room, as you may know and if you I do not think you are going to persuade them that in terms of labour law the employment relationship is only broken down if you act dishonestly.

10 That is by no means the law. So that is the first proposition. The second proposition which I want to ask you about, is you say well, we looked at this and we decided but what about what the Chairperson had found. A highly respected senior counsel who knows of labour law, when you say we just decided.

 How did that happen? The third thing I want to put to you, is if you are talking about you and Mr Mkwanazi, Mr Mkwanazi said many times that he in fact forgot completely about this charge. He never, ever considered it and in fact
20 he conceded that if he had then that in itself was sufficient to sustain your dismissal and ought to have caused you not to be reinstated.

CHAIRPERSON: Yes, he said that.

MR GAMA: No, he may have said that, but Mr Mkwanazi does not even know what has been said in terms of those

words, those discussions because he had not been there when it happened. So my sense Chair, is that it is always difficult for me to re-visit that time period in my life.

But my sense is Chair, everything put together, we discussed it, we negotiated. I took responsibility, even for things that have not been said by me. I took that responsibility. I went further. I apologized to Wells for what had happened.

Wells accepted the apology, but he did not want to
10 accept it on behalf of the company. But he accepted it personally, and so I am just saying all of those things taken together, and I think the negotiation, it is very difficult for me to say what was on my opposite side's mind when they agreed, because I do not know.

But I put context to them and I think they were very receptive to the context that I had put to them.

ADV MYBURGH SC: You see, Mr Gama, I mean the thing is the board also seem to have forgotten about the fourth charge, because as you know, your reinstatement is agreed
20 to fundamentally because of the procurement condonation issue.

I mean, was there any talk at all of this fourth charge during these negotiations, because Mr Mkwana said nothing about that. In fact he said he forgot about it.

MR GAMA: Ja, it is such a long time ago that we in future

I would like to take maybe minutes of the negotiations so that one can be able to refer to them. I do not have any minutes of the actual negotiations. I do not know whether we discussed that particular issue or not.

CHAIRPERSON: Maybe ...[intervenes]

MR GAMA: But I think everyone was alive to the fact that I had actually offered an apology to Mr Wells.

CHAIRPERSON: Maybe it would be fair, would it not be, to say that maybe all of you forgot about that particular
10 charge, because Mr Mkwanaazi according to Mr Myburgh and I think he is right, said he had forgotten about that charge and if he had remember it, that would have been enough to sustain the dismissal.

Therefore he would not have agreed to your reinstatement, and when it comes to you, when you were relaying to me what you were discussing with him, my impression was that you were also focusing when you were giving your evidence, you know, you were focusing on that procurement one.

20 Not on this one. Is it possible that all of you for whatever reason, did not focus on this one?

MR GAMA: Ja, I cannot remember Chair. I think I would go along with your proposition Chair that we probably did not ...[intervenes]

CHAIRPERSON: Ja.

MR GAMA: Put too much focus on it.

CHAIRPERSON: Ja. Mr Myburgh?

ADV MYBURGH SC: Thank you. Can we please go back to the settlement agreement, Bundle 1 BB15, page 38?

CHAIRPERSON: I see Mr Myburgh we have ...[intervenes]

MR GAMA: Sorry, BB?

CHAIRPERSON: Just gone past four.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Maybe we could take a short adjournment
10 now and then resume later.

ADV MYBURGH SC: Thank you Chair.

CHAIRPERSON: Shall we take a ten minute adjournment, so we will resume at quarter past four? We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us continue.

ADV MYBURGH SC: Thank you Chairperson. Mr Gama Transnet Bundle 1 BB15 page 38 the Settlement Agreement. Are you there?

20 **MR GAMA:** Yes.

ADV MYBURGH SC: I just want to take you and I think this might be the last paragraph that I need to take you to in the Settlement Agreement. Paragraph 3.5

“Transnet will make a contribution equivalent to 75% of Mr Gama’s taxed legal costs incurred during Mr

Gama's high court application and in respect of his unfair dismissal dispute referred to the Transnet Bargaining Council."

You see that?

MR GAMA: Yes.

ADV MYBURGH SC: Just so that we – we understand and I ask you to confirm that the reference to the high court application that was an application that you brought to stop your disciplinary hearing?

10 **MR GAMA:** Yes.

ADV MYBURGH SC: That you lost with costs? Is that right?

MR GAMA: Painfully so Mr Myburgh yes.

ADV MYBURGH SC: Ja I am sure – I am sure – when I – when I count out the number of attorneys and senior counsel I feel your pain. You – I need not take you to the judgment we have seen it before. I think there were two sets of attorneys or even more and senior counsel. So despite that what was agreed is you would get 75% of your costs of those proceedings. Is that right?

20 **MR GAMA:** Ja that I would be refunded 75%.

ADV MYBURGH SC: And then you would be refunded as well in respect of your unfair dismissal dispute referred to the Bargaining Council what did you understand that to mean?

MR GAMA: It was the disciplinary hearing.

ADV MYBURGH SC: Why would it include the disciplinary hearing?

MR GAMA: Sorry?

ADV MYBURGH SC: Why would it include the disciplinary hearing? It talks about an unfair dismissal dispute referred to the Transnet Bargaining Council.

MR GAMA: Because the – the – you will have a disciplinary hearing and then it leads to that dispute – the unfair dismissal dispute as well. So both of them – if the
10 disciplinary hearing did not take place there would not be an unfair dismissal dispute.

ADV MYBURGH SC: But at the same time that...

MR GAMA: So it was always our understanding and the way that Transnet treated it that ...

ADV MYBURGH SC: Alright.

MR GAMA: It is both the labour dispute and the high court dispute – that is the most elegant way of describing it.

ADV MYBURGH SC: I just want to put to you – I mean firstly you are in the company I think of Mr Mapoma and Mr
20 Mkwanazi?

MR GAMA: Yes.

ADV MYBURGH SC: But it is capable I think on a – on a proper legal construction for labour lawyers who are familiar with this you get dismissed and then a dispute that is referred to the Bargaining Council is a separate thing but I

do not know if you want to comment any further. That you say is how you and others interpreted it – fair enough.

MR GAMA: Yes – ja, no our interpretation is that it is the whole labour dispute.

CHAIRPERSON: Ja I think – I think that maybe – maybe there is room for non-lawyers maybe not non-lawyers in general maybe non-labour lawyers I am not sure to understand it in that way but I think the – the correct – I think the correct understanding would be that until you are
10 dismissed there is no unfair dismissal dispute. Ja. So when he talks there for when the Settlement Agreement talks about your costs in respect of your unfair dismissal dispute referred to the Bargaining Council it can only be talking about costs that you have incurred after the dismissal dispute had arisen or had been referred to the Bargaining Council. Anything that happened before there was a dismissal dispute is not included. That – that I think is the correct understanding. But you – you may say you understood it in a certain way together with whoever else..

20 **MR GAMA:** Ja I am – I think all the parties who were negotiating Chair we understood it be the labour dispute in its entirety. The way it is framed here is as you say it but I think as you say when lay persons such as ourselves sometimes have a – but I certainly know what the intent was. The intent was to say the labour costs and the high court

costs yes.

CHAIRPERSON: Well I do not know about Mr Langa who was your attorney but I understand you know the attorneys who were representing Transnet.

MR GAMA: Yes.

CHAIRPERSON: And Mr Mkwana and the board to have specialists labour law department and Mr Ghule who was in my law firm at some stage I know him to be a labour lawyer. So – so – ja okay.

10 **MR GAMA:** Ja, no.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thank you.

MR GAMA: It is a difficult one for us non-labour law people but we – I know what the intent was at least – but I think maybe the way that it could be framed may be slightly unfortunate.

CHAIRPERSON: Hm.

ADV MYBURGH SC: Now Mr Gama you of course lost your high court application fairly and squarely and you did not
20 appeal – why?

CHAIRPERSON: You – I am not sure whether you have a reasonable expectation that he will say fairly and squarely.

ADV MYBURGH SC: Yes well I mean you lost your high court application – you did not appeal. What on earth caused Transnet to agree to pay 75% of your costs in that

failed high court application?

MR GAMA: No Mr Myburgh before I go there this is the other thing with the law when you appeal you go through the same Judge who – who blew you and then he says no I do not – your chances of succeeding elsewhere are not there. I did appeal. I did appeal for ...

CHAIRPERSON: Ja you did appeal.

MR GAMA: It was not upheld.

CHAIRPERSON: Application for leave to appeal.

10 **MR GAMA:** Yes, yes.

CHAIRPERSON: Hm.

MR GAMA: I did ask for that application for leave to appeal but it was exactly the same Judge that we went to but that is what I do not understand because the Judge – all the Judge says well I gave you my verdict no other Judge will give you any other verdict.

CHAIRPERSON: But of course Mr Gama you do know that all – many of appeals that happen happen because the same Judge who found against you whoever – or whoever appeals
20 said well I will give you the – the right to appeal against my judgment.

MR GAMA: Yes.

CHAIRPERSON: And sometimes they are successful in their appeal sometimes they are not. So the system does work.

MR GAMA: Ja somebody was saying to me you know you

should have gone to the labour court to (inaudible).

ADV MYBURGH SC: But Mr Gama what caused Transnet from your perspective to agree to this in circumstances where they had won that application and it was separate from these proceedings – the labour court proceedings who labour proceedings as you put it?

MR GAMA: Ja I think it came through from the fact that I was saying to them that if there was not this intention to charge me and discipline me in circumstances where I
10 believed that there could have been very uncostly relief that could have been done inside the company itself without having to charge me and all of those things. It was really that context that – that permitted to say I only really went to court because I had nowhere else to turn. I mean I do not think people go to court because they want to go to court. If – if I can get relief on a matter through mediation and a discussion that is always my preference. We only go to court because we are no longer talking – we are no longer having a fair basis on which we could meet. We do not have
20 – we do not even have an arbiter so the court becomes the arbiter.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes thank you.

CHAIRPERSON: Are you moving away from this cost leaf?

ADV MYBURGH SC: Yes I am.

CHAIRPERSON: Ja. No I just want to say Mr Gama this Settlement Agreement including this part is one of those things that makes one say what was going on with the board? Because when they entered into this Settlement Agreement with you this high court application had long been finalised and passed and then your application for leave to appeal had been dismissed there was not risk of it being resuscitated as I understand the position. It was something that had happened quite some time earlier and they had won
10 and the court had said you must pay their costs. Now they are only faced with a labour dispute where you have referred an unfair dismissal dispute to the Bargaining Council. There is – there was no way that the result of the Bargaining Council the dispute in the Bargaining Council could result in the Bargaining Council reversing the high court order about the costs. The court had said you must pay them – the costs. There was no risk of that being changed. So one would have expected that they would – if you ever raised that issue they would say look that is finalised you had an
20 opportunity to appeal, you failed we are not entertaining that – that has been finalised. We can talk about only this dismissal, this dispute because this one is still pending. You see. Now not only the one option may have been that they say okay we are not going to enforce our costs order against you even though we have a right to do so. Even that would

have been problematic but for them to say even though you lost Mr Gama – even though the court you – said you must pay us our legal costs we are going to pay you 75% of your legal costs. It is just something unthinkable. It is difficult to understand to those – to many lawyers you know who – who know how these things get – how matters get settled. So it is one of those things and you might not be able to explain it you know because as you said earlier on you are not – you were not in their minds when you were negotiating but if you
10 might be able to say well I think it is what I have already told you Chair about the unfairness and so on and so on there was nothing else that I could but it is one of those things that are just difficult to explain and I think Mr Mkwanaazi had difficulty in explaining it himself. So you might be able to say Chair I cannot say anything but I understand what you are saying but you know the board must explain itself.

MR GAMA: Ja. No Chair I – I do understand. In fact you have given me a lesson in terms of some of these costs because some of it – we always read about the stats but we
20 do not really understand how it works.

CHAIRPERSON: Yes.

MR GAMA: And you would know in here there was costs of Counsel and ever shares and whatever. I had already paid some of these to – to Transnet. So because of the restoration – I do not know whether we call it restorative

justice if there is such a word but in terms of the restoration they were trying to meet me some – somewhere. They did not meet me the full way because – also what I found Chair when people talk about taxed legal bill they are not talking about your bill they take your bill and they reduce it. So although I – I had paid about R5 million in legal costs in which 75% would have been R4 million I think – I think I only got R2 million back.

CHAIRPERSON: Okay alright. Well part of what – why I am
 10 putting this to you is to enable you to see that this is one of those features that of the Settlement Agreement that make one ask the question was there something else other than the merits of the matter that was influencing the board to settle the matter on the terms of which it has settled. Why were they going out of their way to do something that is not usually done? That is the kind of (inaudible).

MR GAMA: No to me I think Mkwanaazi was quite eager that we go and we fix the business and I think he was repaid within six months.

20 **CHAIRPERSON:** Hm. Hm.

MR GAMA: And – because that business went to the moon Chair. It made a lot of money.

CHAIRPERSON: But – but I am tempted to think that even if they did not offer to pay you 75% of your legal costs in the high court matter if they reinstated – if they offered you

reinstatement you would have come back? You would not have said – because you...

MR GAMA: They offered me reinstatement in circumstances where I thought I would get much more compensation. I – I – it is me who asked for the ...

CHAIRPERSON: The costs.

MR GAMA: The debt to be met halfway on the...

CHAIRPERSON: Ja.

MR GAMA: I was on a limb I was planting tomatoes and I
10 was not making enough money to pay my legal costs from the tomatoes.

CHAIRPERSON: Ja. Ja. Well I must just say to you something I wanted to say earlier on. You said that you had demanded a very high amount of compensation from them you did not want reinstatement it was Mr Mkwanaazi who made you change your mind and ...

MR GAMA: Yes.

CHAIRPERSON: Accept that maybe you should be reinstated. You did not tell me how much you had demanded
20 and you may not need to mention it but I can tell you that it is generally accepted in these types of disputes that the Bargaining Council would not have had power in this type of case to award you more than twelve months or compensation equal to twelve months remuneration. If you made a case of victimisation of being dismissed because of race and so on

the highest it might have done is to go to 24 max so I am just mentioning that.

MR GAMA: Yes.

CHAIRPERSON: Because Mr Mkwanazi if you demanded quite a big amount he should have sought legal advice and should have known that at the Bargaining Council he could not get your illicit number.

MR GAMA: Yes, yes.

CHAIRPERSON: Okay alright. Mr Myburgh.

10 **ADV MYBURGH SC:** Yes thank you. Just to add to what the Chairperson said about costs I just want to point out as well that a Bargaining Council arbitrator would never have been able to award you your costs of your disciplinary hearing. They have no such power. So that is why you got a deal it is so much better than what the best outcome would have been for you at the Bargaining Council. You want to comment on that?

MR GAMA: Ja well I mean there was lots of offers, there was all kinds of things. I am – I am well aware of some of
20 those things probably now as Chairperson has indicated and as you indicate the twelve months, 24 months type of – so – but I had asked for certain amount based on my youth and the number of years ahead of me and – and the manner and way in which it had been done.

ADV MYBURGH SC: Perhaps just one last point as well is

that in a Bargaining Council arbitration where an employee admits guilt and is prepared to accept the final written warning or is given one very seldom would that person be reinstated without any loss of benefits at all.

MR GAMA: Well I am – we were not of the Bargaining Council we had a situation as I say to you I – we negotiated and this – this document is the result of that negotiation. At the moment you are giving me a master class on – on labour issues that I have always relied on other people.

10 **ADV MYBURGH SC:** Yes I suppose in a way now you – you understand that these were probably questions that might have been harder for Mr Mkwanaazi to ask – answer than for you because you say you were on the other side of the table. But you understand how they require an interrogation certainly from Transnet's perspective. I am going to – I am going to turn to a different topic and I just want to outline for you seven concessions that Mr Mkwanaazi made in relation to the decision to reinstate you.

20 The first one was that he accepted Mr Gama you might have seen this that fundamentally what led the board to reinstate you was that Mr Mkwanaazi told them that he had a list of contraventions comparable to your case that were condoned. You accepted that that is – was fundamentally the cause of the decision to reinstate you.

And the concession that he made is he accepted that

that was wrong. He accepted that your case were actually not comparable to those on the list. Want to comment on that?

MR GAMA: Yes he should not have conceded to that because it was comparable. I do not think he should have conceded to that but maybe it was late in the afternoon and he was tired..

ADV MYBURGH SC: The second concession that he made is that the board could not have come to your assistance on
10 the grounds of condonation because you never applied for it.

MR GAMA: Yes I could not apply for condonation in circumstances where the information was not being given to me. I think I have indicated that Chairperson earlier today that this one was like going to war and you just have a knife and your other hand is tied at the back and you know that you have to fight but you – you not sure what it is that you are fighting with it was a bit fuzzy.

ADV MYBURGH SC: Thirdly...

CHAIRPERSON: But – I am sorry. At a certain stage
20 whether before the disciplinary hearing started or during the disciplinary hearing you – you became aware that you were charged with something that could be taken care of if you were – if you initiated or requested or applied for condonation is it not? That is correct.

MR GAMA: Yes.

CHAIRPERSON: Is it not true that you did not initiate that even if you got to know it late because as long as you had not been dismissed you remained an employee of the company and therefore you should have been able to say well now that I know that this is something that can be condoned I am initiating the condonation process and let them refuse it if they refuse it.

MR GAMA: Ja.

CHAIRPERSON: But initiate.

10 **MR GAMA:** No, no the – Chair that could have been done except that when we are so standard Chair you do not come to work. You go to your 00:24:19 and that is all you do. So it was during my suspension that I was now given the information and I was being given the bundles like this to say here is the information and that is when you can then say okay now I have the information now I know what I should have done. But why did you not give me the information? So – but at that time there is nothing that you could do. By the time I came back to the company the
20 contract itself had long expired or been cancelled so it was not – it was no longer – so there is not the condonation that you go and ask for because it was no longer in place that contract has been cancelled or it had expired. I think it was cancelled in January of 2010 I only came back in February of 2011 so it is thirteen months later.

CHAIRPERSON: No, no I think – I think after you had been dismissed I do not think it would have applied.

MR GAMA: Yes.

CHAIRPERSON: The issue of condonation.

MR GAMA: Yes, ja.

CHAIRPERSON: You know.

MR GAMA: So if – if before I have been charged that is why I was saying I would not have been charged if I had been told what was going on with this.

10 **CHAIRPERSON:** Yes. Yes. But you accept the point do you not that even if you got to know this while the disciplinary process was on you had the opportunity nobody could prevent you you were still an employee of the company to say now that I know that you are charging me with something that could be condoned and the policies of the company allow me to apply for condonation I am now applying – let us postpone this disciplinary hearing pending the outcome of my condonation application. And then you put all the motivation you – you could put to them and see how they
20 could dismiss it in the light of the evidence that you – you say there was.

MR GAMA: If one could remedy the situation like that one could have done that but this is a situation now people say no, no you have now been charged you must just deal with this but – all you can raise is that no but you are being

inconsistent in the manner and way in which you do things because if you had told me because like I said to you Chair before these types of things that – we have got a system of internal controls in the company. The part of the system of internal controls is that the internal audit if there is such a thing they will pick it up and then they will alert you and then they are able to deal with it. With this one the internal auditors we used as forensic auditors to investigate a case where I had to be charged. It was not a matter – it was not
 10 the normal managerial management thing and – so they were not sharing with me because they were dealing with this thing in a particular way. Because as I say my charges were in the serious circumstances.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes thank you and the third concession made by Mr Mkwanaazi that seems to me maybe of some importance is that the board had failed to consider the fourth charge which was deserving of dismissal in itself. I think we have already dealt with that.

20 **MR GAMA:** Yes.

ADV MYBURGH SC: The fourth concession is he said that condonation could never be granted – never have been granted in relation to the 50 like locomotive charge. So it was not something that could be condoned.

MR GAMA: No it could be condoned. Condonations apply in

four different circumstances. You ask for a condonation where you have paid some monies without a contract being in place. You ask for a condonation where you went into a confinement when you should not have. You apply for a condonation where you enter into a contract for a longer period than it should be and you apply for a condonation where it – I think it is called management oversight where there has been management oversight of course you could apply for a condonation. And it was an oversight matter and
10 as soon as it gets picked up – the most important thing is that in management it is the dynamic situations that things happen. It is what you do as soon as you know what is happening that is important. But you cannot do anything if you do not know. And this one as I said it had been cured in 2008 by August 2008 we had cured this and now you will even see when they were presenting the evidence, they were saying no we know that this thing has been cured but we now went out of our way to find out how it could have happened. Who should we hold responsible for it. And
20 that is what happened on the...

ADV MYBURGH SC: And he also conceded that the first charge... Oh, sorry. That it would have been inappropriate to grant condonation in respect of the GNS charge. Your case was that there was a fraud that was committed and you were found to have acted negligently by, it seems,

having signed, effectively, blind document.

MR GAMA: There was a misrepresentation that was made to me and I signed the document in circumstances where I was not aware that they had abandoned the actual tender process that we had asked them to follow and they moved it into a confinement.

I then said, when I found out what the issues were, that indeed it was some kind of scam that the employees and the GNS people had done and that it should
10 have been dealt with much, much differently.

But it was not a fraud that was perpetrated by me. It was a fraud that I wanted to pursue that was perpetrated by about six or seven employees, in fact. And I know that eventually they – they had disciplined only two employees but there were many people in that chain.

In terms of our internal controls, again, who should have picked this up to say: No, we were asked to go out on tender. Now they say, no, somebody at the group level stopped the tender process but they never
20 came back to us at the division to say the group has stopped the tender process. What do we do?

CHAIRPERSON: But of course you accept, do you not, criticism that you were wrong to sign such an important document without reading it?

MR GAMA: Yes.

CHAIRPERSON: You accept that?

MR GAMA: Yes.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: And then the sixth concession was that, and I think we accept this between us, that the third charge, of course, had nothing to do with procurement at all.

MR GAMA: Yes.

ADV MYBURGH SC: I think it is actually the fourth charge
10 but you know which one you are speaking about.

MR GAMA: It used to be the fourth charge but the third charge had fallen away as it became the third charge.

ADV MYBURGH SC: And then ultimately what Mr Mkwanazi conceded is that the board's decision to reinstate you was indecisive and that in hindsight you ought not to have been.

MR GAMA: H'm. I do not know what other board members will say because they had applied their mind. So I do not know if other board members would agree to his
20 concession. I do not know if you have canvassed the views of other board members because he did not make the decision on his own.

And I think when you have got more minds dealing with the matter, it assists you in terms of getting that input. So I do not know if other board members of

Transnet would agree with Mr Mkwanazi.

But I think it is neither here nor there. It is what he says. I cannot disagree with that he says. I do not know the context and the circumstances under which he says that.

ADV MYBURGH SC: The important thing, I think, is that he accepts, Mr Gama, that fundamentally what led the board to reinstate you is that he told the board that he has got a list of similar contraventions which he accepted was
10 wrong.

I think – we see – we know as a matter of fact, if you go to the minute, we know who – I think – perhaps you remember – was it a unanimous decision of the board to reinstate you? You can have a look at the minutes.

So when we accept that there was that decision. Of course, Mr Mkwanazi was here and he gave evidence and we dealt only with him but I am quite sure that we know the other board members supported this decision but only he has ...[intervenes]

20 **CHAIRPERSON:** Maybe what we can tell Mr Gama as well, Mr Myburgh, is that before Mr Mkwanazi came to give evidence in the Commission about this matter, he was sent correspondence from the Commission and the same correspondence was sent to many other board members of that time, maybe all but it might not be all but quite a

number.

And one of the things that he was asked to do and the other members of the board were asked to do is to depose to an affidavit and deal with your reinstatement or their decision to reinstate you and justify it and justify the terms of the settlement agreement.

There are some affidavits that the Commission received from some members who – I think there may have been two members of the board who were against the
10 settlement or the reinstatement.

ADV MYBURGH SC: Ja, that is right.

CHAIRPERSON: I cannot remember, there were two but the others were in favour. There are members of the board, who in their affidavits say, they think their decision was justified but I do not know whether after they would have listened to what Mr Mkwanaazi being questioned on these matters and hearing his answers, I do not know how many of them might say: Look, in the light of this particular... Because he was the one who was negotiating
20 with you, maybe they might change their minds but there may be some who will not change their minds.

But I just want to say, we do have affidavits and if they have never been sent to you, if you would like to see affidavits from them, that can be arranged and you can get them where they seek to indicate their reasons. But I

think luckily the reasons seem to be the same.

ADV MYBURGH SC: Ja.

CHAIRPERSON: Their reasons. So, but no other board member has come to testify other than Mr Mkwanaazi and we do not know what they – how they would deal with the questions that were put to Mr Mkwanaazi. Ja.

MR GAMA: Ja.

CHAIRPERSON: Okay Mr Myburgh.

MR GAMA: Noted.

10 **ADV MYBURGH SC:** Ja. I think that was the last concession that I wanted to put to you in relation to the decision to reinstate. Then in relation to the terms of the settlement agreement. These are the concessions that Mr Mkwanaazi made.

He said that you should not have got – and this is on the assumption that you were then to be reinstated – he said you should not have gotten full back pay as if you were innocent of everything. You want to comment on that?

20 **MR GAMA:** Well, I do not know. I mean, if he says I should not have gotten full back pay, that is what reinstatement is about. But if maybe he wanted to penalise me somehow, he should have done so at the negotiation. I do not think – maybe he tried that or not. I cannot remember the aspects of the ...[intervenes]

CHAIRPERSON: Well, he was questioned with regard to this issue within this context, namely, that the Bargaining Council, if the unfair dismissal had not been settled and had proceeded to the Bargaining Council, the Bargaining Council arbitrator who would have arbitrated the dispute, would not have been bound to give you full back pay even if he reinstated you.

He would have had – he or she would have had power to reinstate you, give you full back pay if he or she
10 thought that the case – that you deserved that in the light of all the circumstances.

But he could also have decided to make the reinstatement not to be fully retrospective and he could also have said: Well, in the light of the fact that the applicant accepts that he was properly found guilty of three charges, serious charges, I am not going to reinstate him with any back pay. I will reinstate him only with – prospectively which means you will get no back pay and so on.

20 Of course, it would have – other options might have been there. So that - Mr Mkwanaazi was being asked questions around this issue in the light of that, that of – just because you may have deserved to be reinstated, the legal regime not would not have forced the arbitrator to give you full back pay. He or she would have had the wide

discretion and he would have had to take into account that you were not innocent.

You yourself admitted guilt in regard to serious charges. Therefore, having regard to the need to be fair to the employer and the employee, the arbitrator may have awarded reinstatement, maybe without the – if he went the route of reinstatement. That was the context.

MR GAMA: Yes.

CHAIRPERSON: Ja.

10 **MR GAMA:** No, in fact, a good point... [laughs]

CHAIRPERSON: [laughs] Mr Myburgh.

ADV MYBURGH SC: Thank you. Mr Gama, then he also conceded that you should – Transnet should not have undertaken to pay your IP(?) costs. I think we have already addressed that. And that you should, similarly, not have been paid your cost in the labour matter. This, in circumstances, where you had admitted guilt on three acts of misconduct.

20 **MR GAMA:** Ja, it was the outcome of the negotiations. I mean, we considered a lot but we negotiated this. So I am not sure where we are – where that puts us but...

CHAIRPERSON: Well, he may have considered a lot in the negotiations too. [laughs]

MR GAMA: [laughs] I mean, we started a new negotiation with the Commission. [laughs]

CHAIRPERSON: [laughs] Yes?

ADV MYBURGH SC: Mr Gama, in fact, if my reading of the transcript is correct. Mr Mkwanazi went so far as to state that he would not be opposed to chairman recommending to the President in his report that steps should be taken to recover the costs of settlement from members of the board. I mean, that I show...

CHAIRPERSON: That is how he ...[intervenes]

ADV MYBURGH SC: ...extensive ...[intervenes]

10 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: ...his concession were, ultimately.

MR GAMA: Yes, yes. Which is why I think it is important to canvass the views of the board because I do not have context ...[intervenes]

ADV MYBURGH SC: So ...[intervenes]

MR GAMA: ...to all of the concessions.

ADV MYBURGH SC: Then, and I think this highlights, that you are not the implicated party here.

MR GAMA: Okay?

20 **ADV MYBURGH SC:** It was in light of these concessions, concession in relation to reinstatement, concessions in relation to settlement agreement. Effectively, he concedes the decision to reinstate was indefensible. He, effectively, concedes that the decision to grant you all those benefits under the settlement agreement was indefensible.

The question that was then canvassed with him, is well, you know, what made you do this. And he was asked by the Chairperson: In the light of the concessions that you made, how do you settle? How do you reinstate him? How do you give him back pay?

Of course – and I read from page 242 of Day 285:

10 “Of course, how do you even undertake to pay his legal fees? It is something that is so difficult to understand. Except if one says that there was some other agenda. That the board was pursuing in wanting to get Mr Gama back. It was not a question of there is some unfairness in the dismissal. It was not just a question of: Are we likely to lose this case of arbitration. It was other considerations. Can you understand why I am saying that?...”

And Mr Mkwanazi said:

20 “I understand what you are saying Chairperson.”

The Chairperson says:

“Can you fault it?”

He says:

“I cannot fault it Chairperson.”

So just to make the point that he said that in the

light of the concessions that he made. I understand entirely that you do not agree with them but he himself accepted in this hearing that when you look at this and it is placed under the microscope from his perspective as the chairperson of the board and also the person who negotiated with you, it was consideration, careful consideration as to whether there was not perhaps something else at play.

MR GAMA: H'm. Well, I do not know. I mean, he was
10 negotiating. So. Did he say there was something else at play?

ADV MYBURGH SC: No, I put a proposition to you. He says – the Chairperson asked him can you fault it and he says: I cannot fault it. And fundamentally, what was put to him is: Except if one says there is some other agenda that the board was pursuing in wanting to reinstatement Mr Gama.

CHAIRPERSON: So in other words, what I was putting to him is. One hoped that as the chairperson of the board at
20 the time and having being involved in the negotiations, he would be able to explain these things and make us understand that there was nothing wrong with the settlement agreement. That the terms that appeared very strange, there was good justification for them to be included in the settlement agreement.

But after he given evidence and made all these concessions, certainly I was still left with the question: Why did you agree to settle the matter on these terms? Because he was not able to explain them properly.

And then I was saying: Well, to the extent that we seek to establish why it is that Mr Gama that was reinstatement in the first place and reinstated on these terms. The question still remains. Was it because of the merits of his case or was it because of something else that
10 maybe we have not been told.

That basically was the context of the question. And you might not be able to say much about that.

MR GAMA: Yes, Chair thank you very much. I might not be able to say much about it except that I think I have said much and enough in terms of ...[intervenes]

CHAIRPERSON: The negotiations.

MR GAMA: ...the fact that even the charging I have talked to, Chair, about the context. I think he might not remember now because it is a bit some time ago when we
20 were negotiating. It is more than ten years ago. He might not remember the context.

But I also think that the fact that you have more than one board member, it is to give checks and balances in terms of the decision you are making. And they could not be – or if there were 15 board members, you could not

have had 13 of them agreeing and two disagreeing, you know.

I know you always have somebody dissenting but if the 13 of them had agreed, I think it is in the context of what was happening. As I said to you. No one, no Chief Executive at Transnet has ever been charged for the things that I had been charged for. No one. And it will remain like that.

And then one day I will write a book and I will be
10 clearer in that book in terms of what was at play.

ADV MYBURGH SC: Mr Gama, just when you write your book, do not forget about the fourth charge because again you have missed it out.

MR GAMA: Uhm ...[intervenes]

ADV MYBURGH SC: Mr Mkwanazi conceded that he and all the board members, they did not – and you see that from the minute – they reinstated because of the condonation issue. There is no consideration of the fourth charge.

20 **MR GAMA:** Ja, I will write that down too.

ADV MYBURGH SC: Alright.

MR GAMA: Maybe I was lucky.

ADV MYBURGH SC: Can I then turn to the issue of costs and I do not want to detain you long in relation to things where we know some of the facts. You may be able to help

us with a few others. Could I ask you to turn to Mr Mapoma's affidavit.

CHAIRPERSON: Okay before you got there Mr Myburgh. Mr Gama, I see that in Clause 4 of the settlement agreement, you and Transnet agreed to that, that the terms of this agreement will be kept confidential and would not be disclosed to any third party unless that was required by law or by an order or in order to enforce the conditions.

Why did you think these terms of the settlement
10 agreement should be confidential and not be known by third parties? This Transnet is a government entity. It is taxpayers' money that was involved in settling the matter. Why should that remain confidential between the parties?

MR GAMA: It is a standard clause that we have.

CHAIRPERSON: H'm, h'm. There was no particular discussion on it?

MR GAMA: No. It is just, you do not want anyone to wake up and give this the public and say this is – it is just a standard clause where we have it in all settlement
20 agreements at Transnet to say you keep it confidential. It is an employer/employee relationship.

CHAIRPERSON: H'm.

MR GAMA: That... if a court of law wanted to have a copy of it, we will give it.

CHAIRPERSON: Ja. No, no. I think the ...[intervenes]

MR GAMA: So I think similarly the Commission.

CHAIRPERSON: Ja. It is fair to say that the clause did have something to allow for that to say... But even if it was not there, when there is an order of court, then there is an order of court.

MR GAMA: Yes.

CHAIRPERSON: It is just that, particularly, when the settlement agreement has some of the terms and conditions that we are talking about which appears
10 unusual. When you see this clause, it is like the parties did not want anybody else to know that your reinstatement was on these terms because they are unusual.

MR GAMA: H'm.

CHAIRPERSON: No, okay alright.

MR GAMA: No all of them are ...[intervenes]

CHAIRPERSON: Yes, okay. Mr Myburgh.

ADV MYBURGH SC: Thank you DCJ. Could I ask you, please, to go to Mr Mapoma's affidavit where he summarises ...[intervenes]

20 **MR GAMA:** At which page are we?

ADV MYBURGH SC: The first two cross-payments at Bundle 13, Exhibit BB-16, page 29. Sorry, page 31.

CHAIRPERSON: Yes, I have found it.

ADV MYBURGH SC: Do you have it Mr Gama?

MR GAMA: Page 31, yes.

ADV MYBURGH SC: Sorry, can I just say, if it any time you feel you want to refer to your affidavit that you put up, you are more than welcome to ask me and I will direct you it. Alright?

MR GAMA: [No audible reply]

ADV MYBURGH SC: So what Mr Mapoma says at paragraph 12 is that:

10 “Two payments were made to Langa Attorneys when I was at Transnet. Firstly, they were paid R 1 016 000,00.

On 28 March 2011 being 75% of the tax costs incurred by Transnet with bone fide... in the high court litigation.

Secondly, they were paid R 1 720 000,00 on 9 June being 75% of the tax costs by a private tax consultant incurred by Mr Gama in the high court litigation, his disciplinary inquiry and his referral to the Bargaining Council...”

20 Now can we just deal with the first and can you – do you know anything about this, how you came to be paid 75%, not of your costs in the high court, but 75% of the costs incurred by Transnet with two different sets of attorneys in the high court?

MR GAMA: I am not sure I follow the question.

CHAIRPERSON: Okay ...[intervenes]

MR GAMA: If you say it was paid – incurred by Transnet. If you are talking about the cost order. There is a cost order against me and I paid to Transnet an amount. I think ...[intervenes]

CHAIRPERSON: I think Mr Myburgh ...[intervenes]

MR GAMA: ...and I think this is 75% of that amount.

CHAIRPERSON: Yes. I think just allow Mr Myburgh to explain his question to you.

MR GAMA: [No audible reply]

10 **ADV MYBURGH SC:** You know, I think before I do that Chairman, if you do not mind?

CHAIRPERSON: Ja.

ADV MYBURGH SC: You said something which we have not heard before. I am not suggesting you are acting improperly in any way. It is just in our investigation, it has not come out that you ever paid something and that is why this is such a radical process. Are you saying that you had actually met the cost order in the high court judgment and that you were now being reimbursed for that?

20 **MR GAMA:** Yes.

ADV MYBURGH SC: Alright. And then ...[intervenes]

CHAIRPERSON: Ja, he also mentioned that a little earlier this afternoon.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Ja, ja.

ADV MYBURGH SC: I made a note in wanting to come back to that.

CHAIRPERSON: H'm, h'm.

ADV MYBURGH SC: Could you just explain that to us? I mean, do you have records and the likes? Because, Mr Gama, it is something, obviously, if we can get to the bottom of that, then our investigation has come to an end. Is that what happened here?

MR GAMA: Ja, that is what happened. In fact, I tried to
10 go to the bank so that I could get this but the bank says they only keep this information up to ten years. So when I asked for this information, I think it was in November 2020 and so they say they could only give me up to – my bank statement, up to November 2010.

These high court costs were incurred between September 2009 and before I was dismissed, probably around April. And during that time, I paid because Transnet was sending me a sheriff.

So I paid through the bank but unfortunately I do
20 not have the – those records. I do not know if – the bank just said to me: Look, we cannot – we can only back ten years. They have shown up to the ten years but this was more than ten years ago. It happened...

In fact, I know that the payment took place in December of 2009 when I paid this to Transnet. They

actually did an order into my bank and I paid at that time. So I was looking for those bank statements so that I could show that I paid that cross order there, the Eversheds. The cost order plus some – what was it – they had a senior counsel and all of that, that was, ja ...[intervenes]

ADV MYBURGH SC: Eversheds and Bowmans because they were two separate firms.

MR GAMA: Ja.

ADV MYBURGH SC: And do I understand correctly from
10 what you say ...[intervenes]

MR GAMA: No, Bowmans was still saying that I still owed them some money at some point in 2011, I think.

ADV MYBURGH SC: Oh, I see.

CHAIRPERSON: Yes, yes.

MR GAMA: But the others ...[intervenes]

CHAIRPERSON: ...you had settled.

MR GAMA: No, I did then settled Chair.

CHAIRPERSON: Do you remember about how much you
had paid to settle Eversheds' costs including
20 counsel...[intervenes]

MR GAMA: It was close to a million rands Chair. I just cannot ...[intervenes]

CHAIRPERSON: Ja, you cannot remember.

ADV MYBURGH SC: And had you paid Bowman Gilfillan anything because we know – just so that in fairness to you,

let me just tell you the chronology, Mr Todd early on says that Mr Mkwana had instructed him to hold off on the execution I think of the cost order, they were on the point of doing that. That would have been in early 2011. I can take you to the affidavit. So did you ...[intervenes]

MR GAMA: Ja, I have seen that, I am aware of that, I ...[intervenes]

ADV MYBURGH: Did you ever settle the Bowmans' bill?

MR GAMA: I guess it would have been settled at the time
10 when I was refunded.

ADV MYBURGH: Yes, but you did you ever pay anything? As you say, you paid Eversheds, did you ever pay anything to Bowman and Gilfillan?

MR GAMA: I cannot remember how much they had been paid. My sense is probably that there must have been a shortfall and they were now – I think that there was R400 000 that they were pursuing at some point.

CHAIRPERSON: Is that Bowmans ...[intervenes]

MR GAMA: Ja, at the time when we were doing the
20 settlement, yes.

CHAIRPERSON: Yes but say as far as Bowmans were concerned you do not remember having made any payment to them.

MR GAMA: Ja.

CHAIRPERSON: Or you say – ja, it is Eversheds that you

remember that you made payment.

MR GAMA: Ja.

ADV MYBURGH: So nothing to Bowmans?

MR GAMA: I do not know, I do not remember – they cannot give me – and it was always good those times, there were still cheques, you could see the cheque on your statement.

ADV MYBURGH: So, Mr Gama, just so that we can perhaps follow this up further. The R1-odd million payment
10 that you made, did you make that physically to Eversheds Attorneys, you did not make it to Transnet?

MR GAMA: It went to Transnet and then Transnet paid it.

ADV MYBURGH: Because that is something that I have asked Transnet to look at and they have hunted high and low and they cannot find.

MR GAMA: Ja, they must look from the 1 December 2009 to the 31 December 2009, they will find it.

ADV MYBURGH: And it would come from you, not from Langa Attorneys?

20 **MR GAMA:** No, they got it from my account.

ADV MYBURGH: Alright, we will have a look at that. And then you are aware of the third [indistinct – dropping voice]

MR GAMA: Sorry?

ADV MYBURGH: That you see at BB17, it is the next divider. Could I ask you please to turn to page 842 still in

bundle 3, the same one you have there, turn to 842, it should be right at the back.

Now this is the affidavit of Mr Todd at 842, you will see it deals with the first payment at paragraph – sorry, I will let you get there. I deals at 842, paragraph 6(a) deals with the first payment that we have dealt with. (b) deals with the second payment and then perhaps just to fast-forward this, if you go to page 844, so those were – those first two payments were made in 2011. Then he deals with
10 the fact that in - at 844, paragraph 7, four years later, in April of 2015, Transnet then made a further payment to Langa Attorneys, for an additional amount you see of 1.399 million. Do you know anything about this?

MR GAMA: No, I know that there have been some monies that Langa had been complaining very bitterly that certain monies remained outstanding for a long time and those he had said related to his own bill. So I have seen this, I never really entangled myself with these matters.

ADV MYBURGH: Did you ever receive this money?

20 **MR GAMA:** Sorry?

ADV MYBURGH: Did you receive the money or was it paid to Langa and did they keep it?

MR GAMA: No, this one was not for me.

ADV MYBURGH: Alright, so your explanation is that is really something that they need to explain, not you, as I

understand.

MR GAMA: Yes, yes.

ADV MYBURGH: The other two payments you accept you received.

MR GAMA: Yes.

ADV MYBURGH: Can I just take you, whilst we are there, to page 854 of bundle 3, so it is just a few pages on. This is a letter from Langa Attorneys attached to Mr Todd's affidavit. I just want to direct your attention to paragraph

10 2. It says that:

“We confirm...”

And this deals with the issue of costs in this particular, the third payment:

“We confirm that when this matter was settled it was agreed in writing with the then Minister of Public Enterprises that the costs incurred by Mr Gama, our client, would be borne by Transnet. It was further agreed that Transnet would contribute 75% towards the bill incurred by Mr Gama.”

20 I just want to ask you about the statement that it was agree with the Minister of Public Enterprises.

MR GAMA: No, I am not aware that it was agreed with the minister, I know that it was agreed with Transnet.

ADV MYBURGH: Do you have any idea where you attorney might have got this from?

MR GAMA: No, you are going to have to ask him. He probably meant that Transnet is a public enterprise, I am not sure. You are going to have to ask him.

CHAIRPERSON: Well, I see that he says it was agreed in writing with the Minister of Public Enterprises. So there must be a document somewhere.

MR GAMA: Yes, that is correct.

CHAIRPERSON: Reflecting that agreement involving the Minister of Public Enterprises.

10 **ADV MYBURGH:** So, Mr Gama, what then happens, you were reinstated in February of 2011 and four years later or so you become the Group Chief Executive, correct?

MR GAMA: Acting.

ADV MYBURGH: Acting, a year after that. April to April you then became – you were appointed into that position.

CHAIRPERSON: It has been a long day, I think maybe everybody's voice has gone down except mine, so...

ADV MYBURGH: I will speak up, thank you, Chair.

CHAIRPERSON: Ja, okay.

20 **ADV MYBURGH:** Alright. Now I want to turn to another topic please and that is GNS and Abalozi.

MR GAMA: Yes.

ADV MYBURGH: Mr Gama, I think it is important for us to look at this thing quite narrowly and perhaps also just to ...[intervenes]

MR GAMA: Sorry, we look at this thing?

ADV MYBURGH: To look at it narrowly.

MR GAMA: Narrowly.

ADV MYBURGH: And to focus really on the paragraphs where it is stated in the 3.3 notice where it is alleged that you are implicated because a lot of the events in relation to GNS and Abalozi traversed in Mr Todd's affidavits do not deal with you at all.

MR GAMA: That is correct.

10 **ADV MYBURGH:** So, for example, what we know is – and I will just ask you to confirm this ...[intervenes]

MR GAMA: Sorry, which bundle are we at now.

ADV MYBURGH: We will come to that now.

MR GAMA: Okay. Just let me sketch the kind of general architecture of GNS. What we know is that litigation was instituted against them, I think that might have been at a time when you were suspended or not there. Then you came back into the organisation, you played a limited role – and we will come to that – but ultimately, there was a so-
20 called Newpin and what the risk committee decided, of which you were not a member, was that the litigation – the action should be withdrawn.

And then, what we also know, and we dealt with this with Mr Molefe, is that he then negotiated with Abalozi, not you, and ultimately there was a settlement concluded

and it was I think a process by Mr Singh. So risk committee you are not involved in, settlement and ultimate payment you are not involved in. Let us detract one or two things relative to the time that you came back into the organisation until it is dealt with by the risk committee.

So could I take you then to Mr Todd's affidavit? I want to ...[intervenes]

MR GAMA: Is it in bundle 3?

ADV MYBURGH: Ja, it is in bundle 3 and if you can go to
10 page 486 to begin with. In fact if I could ask you to turn forward, you know, he gave more than one affidavit dealing with this. Could you – just give me a second please? Yes, what happened – and Mr Todd deals with this at page 63. Could you go there? I just want to get the chronology right. You will see that at ...[intervenes]

MR GAMA: Page?

ADV MYBURGH: Page 63(e).

MR GAMA: 63, oh so we are moving away from
...[intervenes]

20 **ADV MYBURGH:** Ja, we are going to the beginning of that file. Still bundle 3, but 63. You need to turn ...[intervenes]

MR GAMA: 633?

ADV MYBURGH: 63.

MR GAMA: Oh, at the beginning?

ADV MYBURGH: Yes.

MR GAMA: Okay.

CHAIRPERSON: Well, 2486, I thought you said 486.

MR GAMA: Ja, I was also there, Chair.

CHAIRPERSON: Ja.

ADV MYBURGH: Okay, so 63, paragraph (e) he says that:

“Transnet terminated the contract with GNS and later issued summons to recover 95.5 million that it had paid to GNS.”

And he attaches the summons as annexure 8 and that you
10 find – perhaps I could ask you to go there, at page 142 and
you will see that that summons was issued on the 27
October 2010.

MR GAMA: 146? 144?

ADV MYBURGH: 142.

MR GAMA: Yes.

ADV MYBURGH: You will see that it was issued on the 27
October 2010. Do you see that?

MR GAMA: Yes.

ADV MYBURGH: Now, as I understand, you were
20 suspended at that time.

MR GAMA: Yes.

ADV MYBURGH: Alright. So you did not have anything to
do with this, presumably. You then, we know, reinstated in
2011.

MR GAMA: Yes.

ADV MYBURGH: Now, if I could take you please to Mr Todd's affidavit on GNS and to – there are two paragraphs where you are implicated and that is paragraph 39 and 47.

MR GAMA: Which affidavit now?

ADV MYBURGH: Paragraph 39 you find at page 497.

MR GAMA: 497.

ADV MYBURGH: So you were in the 3.3 notice also referred to paragraphs 4 – perhaps we should start there, paragraph 4 of this affidavit. I am sorry, that is at page
10 486 and these are all just historical matters, paragraph 4 at 486 he attaches a copy of the initial approved appointment of GNS and that was signed by you on the 5 December 2007. I take it you would agree with that?

MR GAMA: Ja.

ADV MYBURGH: And then in paragraph 5 he says:

“Mr Gama's approval of this appointment on confinement was one of the matters that led to the disciplinary proceedings.”

We know that that is history. And then at paragraph 6 he
20 attaches certain transcripts and then he summarises them at 7, that is history. In paragraph 8 he talks about the fact that two people were dismissed at the Kassel inquiry, that is history. And paragraph 9 he makes the point that what then followed were civil proceedings and I have taken you to those instituted on 27 October 2010.

So what I really want to do is then to focus just on the other two paragraphs mentioned in the 3.3 notice, that is paragraphs 39 and 47 and they relate to the time when you came back into the organisation. So it is a bit of a longwinded introduction, but do you follow what I saying? 39 is at page 497, bundle 3.

MR GAMA: Yes.

ADV MYBURGH: Alright, thank you, Mr Gama. So at paragraph 39, 497, this is a time now you are backing the
10 organisation on 14 January 2013, Mr Siza Mthethwa general manager Rail Network for Transnet Freight Rail addressed a memorandum to Ms – I am not sure how you pronounce that, Chairperson, you will give me an elocution lesson, I am sure. Ms Mbandla.

CHAIRPERSON: Are you looking at Ms Mbandla?

ADV MYBURGH: Mbandla.

CHAIRPERSON: Ja, second line.

ADV MYBURGH: Yes, the second line, Mbandla.

CHAIRPERSON: Ja, Mbandla, ja.

20 **ADV MYBURGH:** So on 14 January Mthethwa addresses a memorandum to Mbandla and copies you as the Chief Executive. A copy of that memorandum is attaches marked W. Alright? Can you we just have a look at that? You find that at 678, the memorandum and on the face of it the memorandum is from Mr Mthethwa it is to Ms Mbandla and

it is copied to you, is that correct?

MR GAMA: Yes.

ADV MYBURGH: Then Mr Todd says at paragraph 39:

“I point out that Mr Mthethwa had been the final approver of the second extension of the scope of services provided by GNS referred to earlier.”

Do you accept that, that that be so?

MR GAMA: That is in annexure what? Annexure O? Where is that annexure?

10 **ADV MYBURGH:** Give me a second? Let me come back to that, I will ask my junior to look for it. But do you have any particular difficulty with that statement?

MR GAMA: No, I do not.

ADV MYBURGH: And this was for the appointment of train crew monitors and rapid response and then what Mr Todd seeks to do in (a), (b) and (c) is to summarise what the memorandum says. Do you see that? He says (a) the purpose of the memorandum, (b) he deals with in the memorandum and then (c) I point out that the
20 memorandum. Do you see that?

MR GAMA: Yes.

ADV MYBURGH: So the only reason that you are given a 3.3 notice here in relation to this paragraph is really simply because you were copied on this memorandum and you accept you were, is that right?

MR GAMA: Yes.

ADV MYBURGH: So let us then go to the only other paragraph that you were referred to and that is paragraph 47. Now here things might have got mixed up. 47:

“In a memorandum dated 8 October 2013 signed by Mr Gama...”

Says on 22 October 2010, I think that should be '13, we will come to the memo.

10 “Mr Gama sought approval from Mr Molefe for TFR to present its response to the Transnet Group Risk Committee to questions raised by the committee in respect of GNS/Abalozi. Copy of the memorandum is attached marked CC.”

Now that you find at page 705.

MR GAMA: Yes.

ADV MYBURGH: And you accept that that is the memorandum at 705 and that it is dated the 8 October and that you signed it and it is just incidentally, it is dated the 8 October 2013, Chairperson.

20 **CHAIRPERSON:** Yes.

ADV MYBURGH: Which shows that paragraph 47 needs to be amended.

CHAIRPERSON: Ja, ja. I previously wrote 2013 next to or above 2010.

ADV MYBURGH: Yes.

CHAIRPERSON: But there should be a proper
...[intervenes]

ADV MYBURGH: We will attend to that like yesterday. Alright, so this is a memorandum dated the 8 October, as Mr Todd said and it was signed by you, as he says, on the 22 October and he says that you sought approval from Mr Molefe for TFR to present its responses to Transnet Risk Committee. Now if you have a look at page 705:

10 “The purpose of the submission is to request
 approval from the GCE...”

That being Mr Molefe, for TFR to present its responses to the Transnet Group Risk Committee. Would you agree that the first sentence then of Mr Todd’s paragraph 47 but for the 2013 instead of 2010 is in fact accurate?

MR GAMA: But can you read the entire sentence, Mr Myburgh, it would be interesting to read, [inaudible – speaking simultaneously]

ADV MYBURGH: I thought I had read the entire sentence.

MR GAMA: No read on.

20 **ADV MYBURGH:**

 “To present its response to the Transnet Risk
 Committee to questions raised by the committee in
 respect of GNS/Abalozi.”

Are you saying it is misquoted?

MR GAMA: No, it is important. No, you only went up to

Risk Committee to questions raised.

ADV MYBURGH: No, fair enough.

MR GAMA: Ja, I just want you to read the entire sentence.

ADV MYBURGH: But it still accords with the purpose of your memorandum.

MR GAMA: Yes.

ADV MYBURGH: It is an accurate quotation.

MR GAMA: Yes.

10 **ADV MYBURGH:** So you do not have any difficulty with that?

MR GAMA: No.

ADV MYBURGH: And then what Mr Todd does, is he seeks then to – he attaches the memorandum and he says:

“The background to this request, as explained in the memorandum is this:

(b) The memorandum states this.

(c) The memorandum went on to explain this.

20 (d) In the memorandum Mr Gama recorded that responses to these questions had been provided.

(e) Again he refers to the memorandum and (f) he says:

“Consequently Mr Gama requested...”

And he repeats the request. Do you have any difficulty with Mr Todd’s summary, that is all he seeks to do, of this memorandum? I mean, it either accords with the

memorandum or it does not.

MR GAMA: Yes, I got a number of difficulties.

ADV MYBURGH: Alright, so in what respect is his summary wrong?

MR GAMA: So can we start with – you said that Mr Mthethwa writes a memo on the 8 October or it is dated the 8 October.

ADV MYBURGH: Right?

MR GAMA: And he signs it on the 8 October.

10 **ADV MYBURGH:** Right?

MR GAMA: I then recommend the memo on the 22 October.

ADV MYBURGH: That seems correct, yes.

MR GAMA: That is correct.

ADV MYBURGH: Ja.

MR GAMA: I think it has been read into the record.

ADV MYBURGH: Yes.

MR GAMA: So Mr Mthethwa compiles the report.

ADV MYBURGH: Right.

20 **MR GAMA:** And it is what is called an accompanying memo.

ADV MYBURGH: Fair enough.

MR GAMA: Mr Mthethwa cannot write to the GCE.

ADV MYBURGH: So, in other words, he wrote it, not you, if that is what you are saying?

MR GAMA: Yes.

ADV MYBURGH: Alright, fair enough.

MR GAMA: So Mr Mthethwa writes the memo and he says I am writing the memo.

ADV MYBURGH: Right.

MR GAMA: And he says it is because the Group Risk Committee has asked me – has raised certain questions in a meeting so I am now writing this – I now have this presentation that I wish to make.

10 **ADV MYBURGH:** Yes.

MR GAMA: To the Group Risk Committee as a result of their questions and it is Mr Mthethwa all the way, he writes this thing.

ADV MYBURGH: So, in other words, what you are saying is that Mr Todd attributes you to being the author of the memorandum but it is actually Mr Mthethwa and that has a series of knock-on errors, is that right?

MR GAMA: Yes and there he has a series of things where he says Mr Gama then ...[intervenes]

20 **ADV MYBURGH:** Instead of Mr Mthethwa?

MR GAMA: Ja, everywhere where he put Mr Gama it should be Mr Mthethwa.

ADV MYBURGH: Well, ...[intervenes]

MR GAMA: He knows who the author is. If he says Mr Gama recorded that the responses to the questions have

been provided to the Group Executive Ms Mbandla on 3 October. I did not, on 3 October I was copied a memo between Mr Mthethwa and Ms Mbandla and Mr Mthethwa could not write to the Group Executive directly without ...[intervenes]

ADV MYBURGH: Yes but ...[intervenes]

MR GAMA: ...letting his Chief Executive be aware that ...[intervenes]

ADV MYBURGH: But, Mr Gama, it is a simple error, I
10 mean ...[intervenes]

MR GAMA: It is not a simple error.

CHAIRPERSON: Are we talking about – I am sorry, are we talking about the memo at page 705 to 706?

ADV MYBURGH: Yes.

CHAIRPERSON: Yes.

ADV MYBURGH: And Mr Gama is pointing out, Chairperson, that if you look at 706 it is compiled by - in other words, it is written by Mr Mthethwa.

CHAIRPERSON: Yes.

20 **ADV MYBURGH:** It is then recommended by Mr Gama.

CHAIRPERSON: Yes.

ADV MYBURGH: It seems that the controversy is that when Mr Todd summarises the memorandum, he is saying this is Mr Gama who said (a), (b) and (c).

CHAIRPERSON: Yes.

ADV MYBURGH: Whereas he should have said that it is Mr Mthethwa who had said (a), (b) and (c).

CHAIRPERSON: Oh, I think this is one of the issues I was raising there with counsel for Mr Gama to say I was not sure what the issue was. So basically your complaint about what Mr Todd said about this memo is that he represents it as if you were the author.

MR GAMA: Yes.

CHAIRPERSON: But you are saying although your
10 signature does appear on the memo, as far as you are concerned, the author is the complier, namely Mr Mthethwa.

MR GAMA: That is correct.

CHAIRPERSON: Ja. So that is the point you seek to make.

MR GAMA: Yes but the inference is – that are then made as a result of that and it goes onto the record that he makes.

CHAIRPERSON: Yes.

20 **MR GAMA:** Where the inferences that Mr Gama is now trying to influence something about Abalozi when in fact I am not even in the playground, Chair.

CHAIRPERSON: But let us get this clear. While on page 706 there is nothing that expressly says written by, so the author is so and so, I mean expressly, there is nothing that

...[intervenes]

MR GAMA: It says compiled by.

CHAIRPERSON: It says compiled by and then it is compiled by Siza Mthethwa.

MR GAMA: Yes.

CHAIRPERSON: General Manager Rail Network. And then below that it says recommended by Siyabonga Gama, TFR Chief Executive and you sign. Although you have that on page 706, on page 705 the memo represents to Mr Brian
10 Molefe and whoever sees that page, sees the page 1 of that memo, as the memo coming from you going to Mr Molefe.

MR GAMA: Yes because ...[intervenes]

CHAIRPERSON: That is what appears.

MR GAMA: Yes because all of the memos that would go Group Chief Executive, they have to come from his direct report because otherwise you will get everybody in the organisation writing to the Group Chief Executive.

CHAIRPERSON: I accept that in terms of protocol
20 whatever arrangements, I accept that.

MR GAMA: Yes.

CHAIRPERSON: But the question that arises from my mind is anyone who never sees the second page of the memo, that is what page 70 seeks here, who just sees the first page, the face of the memo, would be correct to say

this is a memo from Mr Gama to Mr Molefe, I think we would be agreed on that, is that correct?

MR GAMA: Yes, if they only saw that.

CHAIRPERSON: If they only saw that page ja, but if they saw both pages they would see that the memo was compiled by Mr Mthethwa and that you were recommending whatever Mr Mthethwa had said in the memo.

MR GAMA: Correct Chair.

CHAIRPERSON: And you were recommending it to Mr
10 Molefe.

MR GAMA: Yes.

CHAIRPERSON: Ja. Now, so – so would we – would you agree that the one page, the first page, gives one the impression that it is your memo?

MR GAMA: That is correct.

CHAIRPERSON: Yes. But our point is when both pages are looked at one should say – one should not say that the memo comes from you.

MR GAMA: H'm.

20 **CHAIRPERSON:** Well the memo comes from you even if you look at the second page, you simply say, I think your point you want to simply say the ideas in the memo did not originate from you.

MR GAMA: Yes.

CHAIRPERSON: But once they were placed before you,

you had no problem embracing them?

MR GAMA: Yes.

CHAIRPERSON: Is that fair?

MR GAMA: That is fair.

CHAIRPERSON: Okay, alright, okay.

MR GAMA: And Chair just to add to that, at paragraph 47 Mr Todd is alive to the fact that the memo is prepared and compiled by Mr Mthethwa and signed by him on the 8th of October, where he also says, and we agreed that is a typo, 10 and then he says it is signed by Mr Gama on the 22nd of October, so he knows both of these things. So he is alive to it, so he has not just read the covering pages, he also read the second page.

COURT: Yes, but I just want to say – well I haven't looked more closely to what is – to what is on this page and the other pages, but my impression is that to the extent that it may be said that if he said it was a memo from you to Mr Molefe it would seem to me to that if that sought was a mistake it should be understandable in the context of what 20 we have just pointed out. Would you take issue with that?

MR GAMA: If you say ...[intervenes]

CHAIRPERSON: But you might want to say ...[intervenes]

MR GAMA: It would be understandable if Mr Todd was not seeking to make inference.

CHAIRPERSON: H'm, h'm.

MR GAMA: He makes inferences in circumstances where he is very clear, and he says it himself, on paragraph 47 where he starts, to say Mr Mthethwa addressed this and in any event there is nothing in the memo itself that talks to anything, it is just a covering memo. The memo says background, we have been asked by the Board Risk Committee to talk about GNS, we requested in January 2013 to talk about costs, subsequent to that the Risk Committee wants to ascertain certain issues, KPI's, etcetera, etcetera, and then after he has finished that background he then says the discussion I am trying to bring this matter to finality, because security resides within my area, and I would like to go and explain to the committee the background to the problem so that we can solve the issue related to specialised security services and then it closes, and then it says recommended but you see ...[indistinct – audio distorted] the request that we address the Risk Committee, so he sends it to me, I recommend it, then it is up to the GCE to then make sure that it gets onto the Risk Committee pack.

CHAIRPERSON: Okay.

MR GAMA: At their request, but here this is being said by Mr Todd in circumstances where his only reason for saying it in the manner in which he says it, it is because he wants to say that I was now trying to influence the Abalosi

settlement and it was not my space, I was not there, I was not in that field. This is a matter which was being dealt with by the Group Legal and Group Risk people. All I was doing here was to recommend the memo so that the work that they wanted to do can be done.

CHAIRPERSON: H'm.

MR GAMA: Of course ...[intervenes]

CHAIRPERSON: Of course it is true that when you recommend something that originates from somebody else
10 you – other than to say it did not originate from you, otherwise if there is something bad about the content, the suggestions or the points you can also be criticised for that, because you embraced the contents but that is apart from saying look I didn't originate these ideas that came from somebody else.

MR GAMA: This one Chair is not one of those memo's which have the content in it.

CHAIRPERSON: Ja.

MR GAMA: This is one of those memo's that says I have
20 representation to make, it is attached and all I need from you is to be aware that I am going to be making a presentation, and it is not one of those where you then say - ja, it is just a cover memo and it is all it is, it is all of two pages long.

CHAIRPERSON: Okay, okay.

MR GAMA: Yes.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: And perhaps just going forward, and we know you were not involved in the risk committee's decision to withdraw the litigation against Abalosi did you come to learn in time of the terms of the settlement with Abalosi the R20million payment?

MR GAMA: No.

ADV MYBURGH SC: You have no insight?

10 **MR GAMA:** No I have no insight.

ADV MYBURGH SC: Into that?

MR GAMA: No.

ADV MYBURGH SC: Mr Gama could I then take you to your opening address.

MR GAMA: Yes.

ADV MYBURGH SC: Your opening address.

MR GAMA: Yes.

ADV MYBURGH SC: Do you have it with you? The written document?

20 **MR GAMA:** Yes it is in my bag, let me ...

CHAIRPERSON: This bundle can be taken away?

ADV MYBURGH SC: I think so DCJ.

CHAIRPERSON: Okay, okay.

MR GAMA: Yes.

ADV MYBURGH SC: So I want to just deal with the

complaints that you make against the Transnet Legal – Transnet Stream Legal Team, let me say that any complaints that are raised by someone in your position are obviously taken very seriously. I want to just deal with three things that fall within my watch, and I want to start with paragraph 2.3. You are right that you were not provided with a Rule 3.3 Notice or the Affidavit of Mr Mkhwanazi and Mr Mhlangu[?] at the time, and the reason why you were not is because you are not an implicated party in your reinstatement. Mr Mkhwanazi's affidavit deals with why did the Board decide to reinstate you and that is the focus of our investigation. The same applies to Mr Mhlangu, you have in time then received those affidavits, but that is why you did not receive them at the time. In fact you received Mr Todd's affidavit, the initial affidavit dealing with your reinstatement but you received it because he referred to GNS twice, so when you were given Mr Todd's affidavit it was not given because you were an implicated party in your reinstatement, so I hope that that clarifies that issue.

Then at 2.6 and 3.1 ...[intervenes]

MR GAMA: Sorry before you move off there, Mr Todd was at this Commission approximately the 10th to 16th of October, presenting evidence. I never received anything about Mr Todd, I was just told that there is somebody on

television talking about you.

ADV MYBURGH SC: Well I can only deal now
...[intervenes]

MR GAMA: I only received it on the 28th of October when I wrote to the Commission and I said I have now seen that Mr Todd has been talking about me, can I please have – I received it two weeks now.

ADV MYBURGH SC: Well let me – I will investigate that and I will come back to you when we resume, but I am
10 dealing now with paragraph 23, here you don't deal with Mr Todd. At paragraph 2.6 and 3.1 you say you did not get the Fundudzi Report and 3.2 you say there is seven documents that were discovered late, but you would accept that ultimately the parties have reached agreement that your evidence is deferred in that regard, is that correct?

MR GAMA: Absolutely Mr Myburgh, I think I did say, and I also said to Chair that of late there has been a huge improvement and we are able to cooperate and to receive documents and where we have not received them we have
20 been able to defer and I think as a result of that we will be filing a supplementary affidavit by the 19th of March, that is the agreement that we reached with your consent.

ADV MYBURGH SC: I also just want to make mention of the Fundudzi Report, that was a report that was introduced very early on in the Commission and 3[3]'s were not issued

in relation to it and it is really in that context that it has not been given to you before and was produced in the run-up to this hearing. So that then remains for me to deal with your diary and this is something that perhaps requires more work and maybe even ...[intervenes]

CHAIRPERSON: I am sorry Mr Myburgh, I cannot remember everything clearly about the Fundudzi Report and other reports such as M & S Reports which have been received by the Commission.

10 **ADV MYBURGH SC:** Yes.

CHAIRPERSON: But it is possible that at that stage the thinking might have been that the Fundudzi Report or the investigators who were conducting the investigation that resulted in the Fundudzi Report would have – were thought to have afforded affected parties the opportunity to deal with matters that ended up in the reports so it is possible that the thinking might have been well those who conducted that investigation would have afforded those people affected by the Fundudzi Report the opportunity to
20 comment on the matters that the report dealt with and the people would have known about those findings, so there might have been that, unlike a situation where allegations are made for the first time. Okay.

ADV MYBURGH SC: And then the final thing I wanted to deal with Mr Gama ...[intervenes]

CHAIRPERSON: I am sorry, Mr Oldwadge did you want to say something?

ADV OLDWADGE: I do indeed Mr Chair, and I will be very brief.

CHAIRPERSON: Yes.

ADV OLDWADGE: I am not going to accept that explanation and what is being put to my client, simply for this reason, this report was dated 2018, it has come to our attention that some of the implicated parties in this report, 10 you find it on the very first page of this report, and our client seems to be one of the implicated parties. A number of these other implicated parties were interviewed in relation to this investigation and during this investigation so it must have been within the contemplation of this legal team for some time. Our client's complaint as per his opening statement is simply this, you held back on this report, you knew I was an implicated party, I was never interviewed in this process, yet – and this is the context yet again – I am expected to deal in detail with 20 interrogatories posed to me in relation to the locomotives issue when in truth you knew all along that this was a document that I ought to consider for that very purpose.

It is in that context that Mr Gama says ...[intervenes]

CHAIRPERSON: No, no.

ADV OLDWAGE: ...this is not accepted.

CHAIRPERSON: No that – as I said I cannot remember clearly whether the thinking that I mentioned might have been the thinking what would be necessary would be for somebody to go back and check what happened, because if for example other people were afforded then it would require a different explanation but I think what is also good is that in the end when that was pointed out an arrangement has been made which will allow Mr Gama an
10 opportunity to deal with the matter properly.

ADV MYBURGH SC: Just to point out something, Mr Gama was in fact interviewed by Fundudzi but Chairperson I make no excuses for this, this is something that should have been done earlier, we accept that. When it was brought our attention we came to the agreement that we did, we have identified a much more limited tranche of pages that we would like Mr Gama to deal with and we don't even expect him to put up an affidavit, we asked him if he chooses – we invited him to deal with them and he
20 can deal with them to the extent that he is implicated and if he chooses to do so. We are not asking him for a 10.6 affidavit, we are simply asking him that prepare yourself we would like to deal with that in due course.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And then finally in relation to this

diary Mr Gama I tried to broker a discussion between your legal team and my investigators so that some understanding is shared on what we have given you here electronically and we have not. Are you comfortable that this issue can be resolved or is it something that we need to deal with further on?

MR GAMA: No, no I suspect that it is an issue that can be resolved, we will get the IT teams to look at it again and I think there is some understanding that it may perhaps be
10 resolved and that would assist us. So we just need to make sure that is it in fact resolved and I think if it is then we are fine, but I think there are attempts by both sides.

ADV MYBURGH SC: So the long and the short of this and if necessary we can put up an affidavit and explain everything, but we have made over a lot of electronic data, in fact there was so much that Mr Benjamin saved it on a flash disc and hand delivered it to Brian Khan Attorneys. We accept that we hadn't been able to provide Mr Gama with the Microsoft Outlook pages that we are all used to,
20 but we have given him the underlying data and we I think are in a position to be able to use that so that we can help him recreate the diary, and that is something that I think both parties are committed to.

CHAIRPERSON: Okay, no that is fine.

ADV MYBURGH SC: Chairperson I mentioned at the

outset that we intend to ring fence all issues in relation to the locomotives and the transaction advisors. There is only one thing other than that, that I intend as things stand to deal with next time when we reconvene and that relates to the transaction involving Nkonki, but apart from that I have no further questions today.

CHAIRPERSON: Okay no, that is fine. I think we will adjourn for the day because I think we have a common understanding that whatever re-examination maybe desired
10 can be dealt with when Mr Gama has given all this evidence, so I thank everybody for all their cooperation, all your cooperation for us to work till this time.

We will adjourn, thank you Mr Gama, we will adjourn and then a new date will be determined for you to come back.

MR GAMA: Thank you very much Mr Chairperson.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 12 MARCH 2021