

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

10 MARCH 2021

DAY 358



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 10 MARCH 2021

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning Chairperson.

CHAIRPERSON: Okay. I am sorry we have had some few minutes delay but let us – let us continue. Mr Molefe good morning.

MR MOLEFE: Good morning Chairperson.

CHAIRPERSON: The oath you took two days ago will
10 continue to apply – affirmation I think it was.

MR MOLEFE: Yes Chairperson.

CHAIRPERSON: Yes okay thank you.

ADV MYBURGH SC: Thank you. Good morning Mr Molefe.

MR MOLEFE: Good morning Sir.

ADV MYBURGH SC: Yesterday we were on the point of ending off the topic of the 100 locomotives. I just want to take you if I may back to the Fundudzi Report. This is at Bundle 6 could I ask you to turn please to page 160.

CHAIRPERSON: 106?

20 **ADV MYBURGH SC:** 160 Chairperson – 160.

CHAIRPERSON: 0 – okay. Is that on Bundle 5?

ADV MYBURGH SC: Bundle 6.

CHAIRPERSON: Bundle 6 okay.

ADV MYBURGH SC: Are you there Mr Molefe?

MR MOLEFE: Yes.

ADV MYBURGH SC: I just want to direct your attention please in closing to – to two paragraphs under the heading Conclusion that being Sub 4 and Sub 5. Paragraph 5.8.29.4 reads there:

“Transnet would have saved R1.2 billion if it procured a 100 locomotives from the Mitsui at R3.188 billion than procuring from CSR at R4.4 billion.”

You want to comment on that?

10 **MR MOLEFE:** Yes this is – this does not compare with base price. It compares the total price which includes the other things that I talked about yesterday that are based on assumptions

ADV MYBURGH SC: Right.

MR MOLEFE: So in fact what that could be is just a difference in the different assumptions on hedging, forex and so on.

ADV MYBURGH SC: And then they go onto to conclude in the next sub paragraph:

20 “Molefe and Singh failed to conduct a cost/benefit analysis when a decision to change the locomotives from the 19E Mitsui locomotive to the 20CSR locomotive was taken.”

Do you want to comment on that?

MR MOLEFE: Ja I do remember Chairperson that in the memo it refers to the – the project continuing to be NPV positive which means that the net present value of the acquisition would be positive. I remember.

CHAIRPERSON: The net value of the acquisition would be?

MR MOLEFE: Net – NPV Net Present Value.

CHAIRPERSON: Ja.

MR MOLEFE: The acquisition would be positive which
10 means that it has a positive value to Transnet. NPV is – ja it is a calculation that people make in the financial markets to determine 00: 03:33 and investment decisions.

CHAIRPERSON: Okay.

MR MOLEFE: So generally as a rule a negative NPV means you should not do the investment. A positive NPV means that you can do the investment.

CHAIRPERSON: Okay.

MR MOLEFE: In fact I think in the...

CHAIRPERSON: In the memorandum.

20 **MR MOLEFE:** In the memorandum or ...

CHAIRPERSON: You want to ...

MR MOLEFE: I cannot remember exactly what it is.

ADV MYBURGH SC: But Mr Molefe can I ask you is that – is the conclusion here does it not go beyond that? In other words you – you – it seems frail to conduct a comparison

between the one and the other. I understand your point about the NPV we are going to deal with that perhaps in a different context with other people.

MR MOLEFE: But it acknowledged that the NPV was positive.

ADV MYBURGH SC: Well if you say that was in the memorandum then I will take your words for it but what I am looking for here is was there a time where you actually did a cost benefit analysis as between the two possible
10 deals?

MR MOLEFE: Chairperson when you do cost benefit analysis there are things like accounting costs and so on that are comparable. But the total – the true cost benefit analysis includes things that cannot be quantified in rands and cents and these are the considerations that we made for example that the locomotives were failing – then the three locomotives were failing. And there is no value that is put to that although in the end they will have a cost.

So that was not the value of the failing locomotives
20 is not built into a cost benefit analysis like that So in the end a cost benefit analysis – an accounting cost benefit analysis is just a guide.

In the end you have to go with what you think would be in the interest of the company.

ADV MYBURGH SC: Now we undertook yesterday to add I

think it was 10 pages of documents that you provided to us to the bundle. We have done that but if you could please go to Bundle 5 that is your exhibit; Exhibit 22.

MR MOLEFE: Okay. Yes.

ADV MYBURGH SC: Now if all the administration has worked out correctly if I could ask you to turn to page 114. Are you in the right file Mr Molefe? Bundle 5 Exhibit 22.

MR MOLEFE: Yes. My – yes.

CHAIRPERSON: Alright.

10 **ADV MYBURGH SC**: So what you will find directly after 114 is a series of documents marked 114.1 – I think you may have them there in front of you. 114.1 running through to 114.10 do you have those documents?

MR MOLEFE: Yes.

ADV MYBURGH SC: So these are the documents you gave us yesterday.

MR MOLEFE: Yes.

ADV MYBURGH SC: You recognise them?

MR MOLEFE: Yes.

20 **ADV MYBURGH SC**: So what we have done is we have added them so they follow directly after your affidavit, you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Would you like an opportunity to address the Chairperson on the significance of these

documents? Are there any particular portions that you wish to draw to our attention?

MR MOLEFE: Yes Chairperson these documents indicate the – the correspondence between Transnet Engineering – sorry TFR Engineers detailing the failures of the Mitsui locomotives.

ADV MYBURGH SC: Sorry I cannot hear you Mr Molefe.

MR MOLEFE: Detailing the failures of the Mitsui locomotives.

10 **ADV MYBURGH SC:** Alright.

MR MOLEFE: So these different matters and the tables that show the instances where the Mitsui locomotives had failed in – in the period preceding our decision to do the award.

CHAIRPERSON: Is your evidence that these were brought to your attention before you made the decision to change and go with CSR as opposed to Mitsui?

MR MOLEFE: Yes they were brought to my attention at the time but I have recently been able to get these documents.

20 **CHAIRPERSON:** Yes.

MR MOLEFE: That actually show.

CHAIRPERSON: Yes.

MR MOLEFE: Yes.

CHAIRPERSON: Okay. And when we say they were brought it might be that it is the problems that were

brought or it is the letters giving you – telling you about the problems.

MR MOLEFE: No, not the letters.

CHAIRPERSON: Not the letters.

MR MOLEFE: In fact that the locomotives had been failing.

CHAIRPERSON: Ja. Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. Sorry I just for some reason am not picking you up clearly. Did you say the
10 locomotives had failed?

MR MOLEFE: They were failing yes.

ADV MYBURGH SC: Failing the Mitsui locomotives.

MR MOLEFE: Ja.

ADV MYBURGH SC: And if I understand your evidence.

MR MOLEFE: Failing means break downs.

ADV MYBURGH SC: No I understand.

MR MOLEFE: Yes.

ADV MYBURGH SC: As I understand your answer to the Chairperson you say that – these documents bear out the
20 fact that there was that problem and it was something that you knew of at the time.

MR MOLEFE: It was something that was brought to my attention at the time.

ADV MYBURGH SC: Alright. And they all relate then to that topic and issue?

MR MOLEFE: Generally relate to that topic yes.

ADV MYBURGH SC: Alright. I would like then if I may to turn to a different topic now and that is the procurement of the 1064 locomotives.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now Mr Molefe I would – I just want to sketch some of the evidence that has been given so that we can get to the point where I can ask you a few questions around this.

10 What we have heard and a lot of evidence has been given about this was the building of the initial business case for the 1064 locomotives and ultimately it would appear from the evidence that a final business case was adopted by the board on the 25th of April.

Does that accord with your recollection?

MR MOLEFE: Yes.

ADV MYBURGH SC: And it may be a little bit onerous but I want to take you to the business case and then to the board resolution just so we can place those two documents
20 on record and then I will ask you some questions from there.

I have asked my colleagues to fish out for you two files. I hope that they have managed to find Exhibit BB4(b). And could I ask you please to turn to page FQC402. You will see that this is an attachment

incidentally to Mr Callard's affidavit and it reflects there procurement of 1064 locomotives for General Freight Business dated submission 25 April addressed to Transnet Board of Directors. And it also titled Procurement of 1064.

CHAIRPERSON: Keep your microphone on Mr Molefe at all times.

ADV MYBURGH SC: It kept...

MR MOLEFE: So it is the file that keeps it.

CHAIRPERSON: Ja.

10 **ADV MYBURGH SC:** Procurement of 1064 locomotives for General Freight Business final version.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now if I could ask you just to keep your finger there and then turn all the way to page 516 that seems to be the end of the business case. FQC516.

MR MOLEFE: Yes.

ADV MYBURGH SC: What I note there is that this business case was not signed – this version by you, Mr Singh and Mr Gama. Do you recall signing the final
20 version of the business case?

MR MOLEFE: Ja I think that if the business case was presented to the board it must be the final – the signed version must have been presented to the board.

ADV MYBURGH SC: Alright. Could I ask you then please to go to the beginning and then go to page FQC405. I will

take you to the last paragraph of that page.

MR MOLEFE: Yes.

ADV MYBURGH SC: It says:

“The risks that are inherent in a procurement event of this nature had been identified and litigation strategies are in place. Accordingly it is recommended that the 1064 locomotive business case be approved with estimated total costs of the acquisition of R38.6 billion as per the corporate plan.”

And it is what is in brackets that as you know has become contentious. So the ETC is R38.6 billion as per the corporate plan (excluding potential effects of forex, hedging, forex escalation and other price escalations.)

MR MOLEFE: Yes.

ADV MYBURGH SC: You would confirm that that was then contained in the final business case.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** Now if I could then ask you – you can perhaps keep that open so that we know what the wording is. Could I ask you ...

CHAIRPERSON: I am sorry I thought that was 405 – 2405 is that correct?

ADV MYBURGH SC: FQC405.

CHAIRPERSON: Oh yes – no I can see where you are indeed. Ja.

ADV MYBURGH SC: And then if I could ask you please Mr Molefe to go to Bundle or Exhibit BB4(f). I think that is also been taken out for you.

MR MOLEFE: Yes.

ADV MYBURGH SC: And BB4(f) is divided into two parts; point 1 and point 2 I would like you to go to the first part and turn to page YIL23. It is part of the annexures to Mr
10 Laher's affidavit or statement.

MR MOLEFE: Yes.

ADV MYBURGH SC: And if we all on the same page what you find there is a certified exert from the draft minutes of the special meeting of the Transnet board held on the 25th of April and you will see there 6.1 Procurement of 1063 locomotives for the TFR General Freight Business resolved that the board approved the following:

The business case for the acquisition of the 1064 locomotives or TFR's General Freight Business at an
20 estimated cost of R38.6 billion as per corporate plan (and the same wording then as the business case excluding potential affects from forex hedging, forex escalation and other escalations. Confirm that?

MR MOLEFE: Yes and just to add that I presume that they were approving the signed document.

ADV MYBURGH SC: Yes.

MR MOLEFE: Ja. Which – which I do not know if Transnet still has the signed document but that is the document that was approved.

ADV MYBURGH SC: You mean the signed business case?

MR MOLEFE: The signed business case.

ADV MYBURGH SC: Alright we will have a – we will have a look for that but I assume you must be right that if it was presented as you say.

10 **MR MOLEFE:** Exactly.

ADV MYBURGH SC: And adopted at the board it would have been signed.

MR MOLEFE: Would it have been – it would have been the signed version ja.

ADV MYBURGH SC: We will – alright.

MR MOLEFE: So all I am saying is I do not know if what you have just seen now.

ADV MYBURGH SC: Yes.

MR MOLEFE: Is an earlier draft.

20 **ADV MYBURGH SC:** Yes.

MR MOLEFE: That was not signed.

ADV MYBURGH SC: Yes but the point is it includes the same bracketed phrase.

MR MOLEFE: Yes that – it includes the R38.6 billion yes.

ADV MYBURGH SC: Okay. So you know what the

controversy is in relation to that bracketed phrase?

MR MOLEFE: The R38.6 billion.

ADV MYBURGH SC: Yes. I mean the controversy is that it is alleged by some and we will come to the evidence that actually the business case in support – in support of the R38.....

CHAIRPERSON: Look this side Mr Molefe.

MR MOLEFE: Yes I just wanted to hear properly from his eye Chairperson.

10 **CHAIRPERSON**: Ja, no, no I know ja.

ADV MYBURGH SC: So the controversy is and we will come to the evidence in a moment that there are some witnesses who maintain that the business case ETC estimate of R38.6 in fact included hedging and escalation costs – did not exclude it. You know that controversy?

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright. Now what I just want to put to you is that in 2018 after these events Mr Laher and Mr Moola do you know those gentlemen?

20 **MR MOLEFE**: Yes.

ADV MYBURGH SC: They were requested by the GCFO.

MR MOLEFE: Yes.

ADV MYBURGH SC: to undertake an investigation to determine whether the business case ETC estimate of R38.6 included hedging and escalation.

MR MOLEFE: Yes.

ADV MYBURGH SC: And they were assisted by Mr Callard.

MR MOLEFE: Yes.

ADV MYBURGH SC: Ant the conclusion that they came to was that the business case and ETC estimate in fact included those two things – did not exclude it. We heard – we heard.

MR MOLEFE: Was that – was that their conclusion?

10 **ADV MYBURGH SC:** Well you have heard that evidence and you know of it.

MR MOLEFE: Come again.

ADV MYBURGH SC: That was their conclusion yes.

MR MOLEFE: And what was the amount that they calculated to 00:19:22 ETC with that exercise?

ADV MYBURGH SC: I get a sense you know the answer to that question.

MR MOLEFE: Huh?

ADV MYBURGH SC: I get a sense you know the answer to
20 that question?

MR MOLEFE: Yes I do.

ADV MYBURGH SC: Okay what is it?

MR MOLEFE: Chairperson let me – let us just cut to the chase.

ADV MYBURGH SC: Sorry?

MR MOLEFE: Let us cut to the chase.

ADV MYBURGH SC: Yes absolutely.

MR MOLEFE: And just explain what happened.

ADV MYBURGH SC: Ja.

MR MOLEFE: Chairperson when a procurement of this nature is done because we saved an estimate how much we think it will cost to buy locomotives and these are big numbers. So the number that you come out as an – with as an estimate you can assume that from a negotiation point
10 of view that is going to be the base. That is going to be the minimum from which you move from. And that number even if you confidentially take it to the board it is going to take – to come out – it is going to – to go out into the market. So this number – the R38.6billion was an – a desktop estimate. It was not even arrived at by doing a – by phoning suppliers around and saying how much do you think you will sell us a locomotive for? It was the desktop estimate but it had to be a conservative desktop estimate. You can imagine Chairperson if we had gone out with an
20 ETC of R50 billion we would have ended up at 75 in the purchase. So the ETC was R38 billion it is not a price, it was an estimate; a desktop estimate that was done at Transnet. Now people say that the price increased from R38 billion to R54 billion. That cannot be true because the R38 billion was not a price. It is like if you want to buy a

car and you budget R100 000.00 and you want to buy a specific car. And then when you go out to go and buy the car you find that it is R160.000.00. Do you say therefore that you have just incurred an additional R50 000.00 in buying the car? Just because you estimate your budget was R38 billion or the budget that – that you knew would become public was R38 billion. So – so let us start there. We went out on tender with an ETC of R38 billion. The tenders came back. When they came back they were
10 nowhere near R38 billion. When – when actually we put together – in my affidavit I actually detail this. If I can go to my affidavit? So we went out with R38 billion and the market came back with another number.

ADV MYBURGH SC: I think you might be looking for page 38 Mr Molefe.

MR MOLEFE: 38?

ADV MYBURGH SC: Ja.

MR MOLEFE: Thanks.

CHAIRPERSON: Is his affidavit on Bundle 5?

20 **ADV MYBURGH SC:** Bundle 5.

CHAIRPERSON: Okay.

MR MOLEFE: Yes 39 page 39 paragraph 55. The – the price that we went out with was in fact R38 billion. The suppliers came back with a number. In fact that was between 38 and 49. I am just surprised that I did not catch

it here. But it was about 43 of 44 the number. I am surprised that I did not write it down here. And that was their offer when they submitted the tenders.

CHAIRPERSON: That was the offer of who?

MR MOLEFE: The bidders.

CHAIRPERSON: Ja.

MR MOLEFE: Ja. And so for the...

CHAIRPERSON: Were they all more or less around that figure would you say?

10 **MR MOLEFE:** Around 43 – 43 – 44.

CHAIRPERSON: Ja okay.

MR MOLEFE: Ja that was the number that they gave 43 – 44 that was the number that for the first time we saw what the market was prepared to pay and it was not 38 billion. And that number does not represent an increase from 38 billion it was what the bidders said they could pay. So now they submitted their tenders and they were evaluated and after they were evaluated the – there was further negotiation and the biggest thing in the negotiation was to
20 fix the price so that there are no escalations. After those negotiations of hedging and so on and so forth the final price that the bidders were prepared to pay was 49 billion. To that ...

CHAIRPERSON: Actually the – the final price that they would want Transnet to pay...

MR MOLEFE: That said – sorry that the bidders were prepared ...

CHAIRPERSON: Ja not the other way around.

MR MOLEFE: They were prepared...

CHAIRPERSON: To accept.

MR MOLEFE: To pay with their locomotives for the money.

CHAIRPERSON: Ja. Well it is English Mr Molefe.

MR MOLEFE: Yes it is English Chairperson. But the final price that the bidders were prepared ...

10 **CHAIRPERSON:** To accept.

MR MOLEFE: To receive for their locomotives was R49 billion.

CHAIRPERSON: 49?

MR MOLEFE: 49 billion – 49.547.

CHAIRPERSON: Are you moving away from 43 – 44?

MR MOLEFE: Ja it increased from 43.

CHAIRPERSON: Ja.

MR MOLEFE: 43 – 44 it increased from the original tender price.

20 **CHAIRPERSON:** Ja.

MR MOLEFE: The price of their tenders. If you look at paragraph 57 I show you...

CHAIRPERSON: Well no let me just – let me make sure. First you say Transnet made an estimate.

MR MOLEFE: Yes.

CHAIRPERSON: And the estimate was 38.6billion.

MR MOLEFE: 38 billion that was desktop estimate.

CHAIRPERSON: The tenders came in.

MR MOLEFE: Ja.

CHAIRPERSON: And the prices were ...

MR MOLEFE: Higher than...

CHAIRPERSON: 43 – 44 thereabouts.

MR MOLEFE: Yes.

CHAIRPERSON: And you are now saying the final price...

10 **MR MOLEFE:** After negotiations.

CHAIRPERSON: After negotiations

MR MOLEFE: Ja.

CHAIRPERSON: I assume that that is because – because when you negotiate one would have thought that you would be wanting to bring them down from 43 – 44.

MR MOLEFE: Ja.

CHAIRPERSON: I assume that maybe it is because it took time and they – there was escalation or how did – how did you do so badly instead of bringing them down you
20 00:26:38.

MR MOLEFE: So I was...

CHAIRPERSON: Allowed them to go up.

MR MOLEFE: I was not part of the negotiating team but the biggest issue in the negotiations was you must give us a price that will not change over 7 years. So you cannot

come back and say there was forex, there was this there was this it must be fixed price. And for giving us a fixed price they wanted to be paid more and that was in my understanding that was the main component of the increase and they took it to 49.

CHAIRPERSON: That or they would do – that would explain the increase from 43 – 44

MR MOLEFE: To 49

CHAIRPERSON: To 49.

10 **MR MOLEFE:** Yes.

CHAIRPERSON: Because now you were speaking of a fixed amount over 7 years.

MR MOLEFE: Over 7 years yes.

CHAIRPERSON: Okay alright.

MR MOLEFE: And then on top of that – that was what was going to be paid to the bidders. On top of that Transnet decided to add onto that price. It is money that is not automatically payable. It is called a contingency. So we went to the board and said the price is 49 but we would be
20 allowed an additional 10% for unforeseen things that during the procurement we may require in the locomotives. It is like a contingency. I think it is standard practice.

CHAIRPERSON: Did that not undermine the whole idea of a fixed price?

MR MOLEFE: No.

CHAIRPERSON: They bought the idea of a fixed price to have certainty.

MR MOLEFE: No the – contingency is – no that there was a certainty on what we had agreed on there was a certainty. But then unforeseen is I do not know like what but unforeseen things, acts of God things like that were to happen or whatever could happen that we would have a 10% contingency. Now this is – this is standard practice in projects like this that when you have a project amount you
 10 add onto it a usually 10% contingency. So if for example the procurement even if everything was fixed and so on came to not 49. – 49. 547 but came to 50 or 51 that would be covered by the contingency. So it was approved up to 54. So it is 49 up to 54 the 10% is a contingency. Now Chairperson in paragraph 57 I show you the summary of the per unit price from the bidders. So the pity that this does not translate to the multiplied by the number of locomotives but the price per locomotive – the price per locomotive at – at submit – at the time of submitting the
 20 bid from CSR was for example 32.46. The final price after negotiations was 50.48 it increased by 18.02million per locomotive. The increase from Bombardier was twenty ...[audio cut] million per locomotive, increase. GE was 9 million per locomotive and CMR was R 12.42 million per locomotive. So if you take the BAFO multiply by the

number of locomotives, you will come to the number that I am talking about, about 43. And then if you take the final price multiply by the number of locomotives, you will come to 49.547 billion.

So there is no one, Chairperson, who sat in a room and just increased the price from R 38 billion to R 54 billion, costing the taxpayers 15 billion. Nothing like that happened. It is a fundamental misunderstanding of the process and what happened, which is why I could not
10 understand that MNS does not understand it.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thank you. I think you have explained how the price increased but that was not what I was dealing with at all.

MR MOLEFE: No, I did not explain the... Well, the ETC is not the price.

ADV MYBURGH SC: I understand that Mr Molefe but there are two different things. The first issue that should be determined is whether in truth the Business Case
20 included hedging and escalation or whether it excluded it as was represented to the board. That is what I am dealing with now.

MR MOLEFE: Yes.

ADV MYBURGH SC: We are then going to deal after that with the increase in the ETC. Do not worry. We will come

to that but perhaps to just locate my question better.
Could I ask you to go to Exhibit BB-4(f)?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: Mr Laher's exhibit. I think I have
take you there a little bit earlier.

MR MOLEFE: BB-4(f). Yes.

ADV MYBURGH SC: Yes. And the first part point 1 to
page YIL-17.

MR MOLEFE: Oh, Chairperson, if you may indulge? You
10 have asked me a question that I did not answer actually.
Mr Callard made a calculation.

ADV MYBURGH SC: Yes.

MR MOLEFE: So did Mr Laher and it is in my, I think it is
in my affidavit.

ADV MYBURGH SC: If you could stick with this for a
moment? I am taking you to the actual foundation of
documents.

MR MOLEFE: Okay.

ADV MYBURGH SC: And Mr Molefe, if I could just ask
20 you? We are dealing now with whether there was a
misrepresentation of the ETC in relation to excluding
hedging and escalation.

MR MOLEFE: Ja.

ADV MYBURGH SC: In the Business case.

MR MOLEFE: Yes.

ADV MYBURGH SC: In then initial Business Case.

MR MOLEFE: Yes.

ADV MYBURGH SC: We are going to come in time to how the ETC increased, as you have explained.

MR MOLEFE: Okay.

ADV MYBURGH SC: Now at paragraph 66, and I take you here because I do not want us to misunderstand one another and I want to ...[intervenes]

MR MOLEFE: Page 17?

10 **ADV MYBURGH SC:** Page 17, paragraph 66.

MR MOLEFE: Yes.

ADV MYBURGH SC: Yes.

“In January 2018, Mohamed Moola, Executing Manager of Finance Capital Programme and I... [that is Mr Laher] ...received a request from the then GCFO, Gary Pita, by the TFR CFO, Ms Kolane, to confirm that they have a Business Case pricing included or excluded forex hedging and escalation costs...”

20 But that is the first controversy here.

MR MOLEFE: Yes.

ADV MYBURGH SC: Yes.

“Upon consulting with Francis Callard, ex-Transnet employee, who was key in the original Business Case calculations.

In January 2018 and reviewing the Business Case calculations, Moola and I concluded that the Business Case calculations actually did include forex and hedging costs...”

MR MOLEFE: Yes.

ADV MYBURGH SC: Yes.

“...and that the recommendation within the R 38.6 billion Business Case to the board in April 2013 (that the ETC excluded these costs) was incorrect...”

10

Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: So that is what I am asking you about. They came to the conclusion that was submitted to the board was incorrect. Now what is your answer to that?

MR MOLEFE: The R 38.6 billion?

ADV MYBURGH SC: Yes. The exclusion, the bracketed portion, they concluded was incorrect.

MR MOLEFE: Yes. So my question is. If they say the R 38.6 billion included the forex and hedging costs. What portion of the R 38.6 billion was the forex and hedging costs? And on top of that. What were the assumptions behind the correlation ...[intervenes]

20

ADV MYBURGH SC: Well ...[intervenes]

MR MOLEFE: ...of those costs?

ADV MYBURGH SC: Ja ...[intervenes]

MR MOLEFE: ...because forex and hedging costs, as I pointed out yesterday, depend on – because their future based on ...[intervenes]

ADV MYBURGH SC: Yes.

MR MOLEFE: ...your view of what is going to happen on the future are very difficult to estimate going forward. So, ja, if they excluded or included, if they did make a detailed calculation. What portion of it was this forex and hedging costs ...[intervenes]

ADV MYBURGH SC: But let us just ...[intervenes]

MR MOLEFE: ...on the R 38.6 billion?

ADV MYBURGH SC: Okay but you accept that is what is recorded as the conclusion here? I understand what you are saying ...[intervenes]

MR MOLEFE: That may be ...[intervenes]

ADV MYBURGH SC: But ...[intervenes]

MR MOLEFE: That may be their conclusion but from where I was sitting ...[intervenes]

20 **ADV MYBURGH SC:** Yes?

MR MOLEFE: ...the figure was R 38.6 billion.

ADV MYBURGH SC: Yes.

MR MOLEFE: They would go out on tender. They would come up with numbers. We would negotiate and that will be the final price.

ADV MYBURGH SC: Yes, but from where you were sitting
...[intervenes]

MR MOLEFE: Yes.

ADV MYBURGH SC: ...did the initial Business Case
include or exclude hedging and escalation?

MR MOLEFE: There was no calculation made of exactly
how much the forex and hedging ...[intervenes]

ADV MYBURGH SC: Did it include or exclude it?

MR MOLEFE: There was an assumption that they would
10 be there.

ADV MYBURGH SC: So it included it?

MR MOLEFE: Yes.

ADV MYBURGH SC: But it was represented to the board
that they were excluded. That is the whole point. That is
the whole controversy.

MR MOLEFE: Chairperson, from where I was sitting, the
figure was R 38.6 billion.

CHAIRPERSON: Including?

MR MOLEFE: The 38 ...[intervenes]

20 **CHAIRPERSON:** Point 6.

MR MOLEFE: The ETC was R 38 billion that we went to
the board with.

CHAIRPERSON: Yes.

MR MOLEFE: Ja.

CHAIRPERSON: Yes, but his question is and my

understanding is that you have answered but he just wants to make sure is that. His question is whether that estimate ...[intervenes]

MR MOLEFE: The passage from the Business Case that we read ...[intervenes]

CHAIRPERSON: Included.

MR MOLEFE: ...said it excluded ...[intervenes]

CHAIRPERSON: Yes, yes.

MR MOLEFE: ...forex.

10 **CHAIRPERSON**: Yes, yes.

MR MOLEFE: Yes.

CHAIRPERSON: But what was your understanding?

MR MOLEFE: Ja, my understanding, to put it goodly is, it did not really matter. So the Business Case says it excluded. That was the R 38 billion excluded. That is fine.

CHAIRPERSON: I am not sure how... It is rather surprising to me if you say it did not matter whether it excluded or included because I would have thought that it
20 could significantly – it could make a big difference in terms of your budgeting and how much you could be talking about and it might be...

My assumption is that it would be important to know whether - when you as the management say to us as the board, if I was in the board, when you say your

estimate of what Transnet is going to pay is R 38.6 billion.

MR MOLEFE: Yes.

CHAIRPERSON: Have you taken that count all risks? We know that it is an estimate but you have taken account everything that you should take into account? And if you say: Look, well, it excluded this cost.... Or do you say we included?

Certainly, I would want to know whether it is excluded or included because then I can decide what is the
10 reality I must work on in terms of the amounts.

Because if those costs are bound to come in, maybe I may as well make whatever decision on the basis that this 38 is quite low, you know, in terms of reality because those costs will come in at some stage.

So I am just saying, I would have expected that it should matter whether they are included or excluded. The board should know.

MR MOLEFE: Ja. You see, Chairperson, what we are trying to determine here is whether the R 38 billion was a
20 perfect number, whether it was a number that reflected, really, that what you are trying to determine. Ja. I am saying it did not and it did not have to. Ja. It was a number that we would go out to market with.

CHAIRPERSON: H'm?

MR MOLEFE: The number that reflects reality is the

number that bidders come back with.

CHAIRPERSON: H'm?

MR MOLEFE: Yes. That is what happens. The rest of the things, Chairperson.

CHAIRPERSON: H'm?

MR MOLEFE: Once person can say this locomotive is R 20 million and another says this locomotive is R 25 million. The difference in the five million can be justified using a myriad of reasons. At the end of the day,
10 the question is, the price of the locomotive is what they put to you as and if they are willing to pay for it. That is the final...

CHAIRPERSON: H'm?

MR MOLEFE: If they come up with a number for the price of a locomotive that we are not willing to pay, there is no price. If the bidders looked at our R 38 billion with or without forex hedges and so on and other things...

We could have put in the cost per screw that is in every locomotive, the cost per wheel of a locomotive,
20 the cost per steering wheel, the cost of a breaking system, the cost of...

So we could have detailed it. At the end of the day, what matters is, is the number at the bottom and it was R 38 billion. So it had forex. The Business Case says it did not.

So what I am saying is. This exercise of determining whether the R 38 billion included or did not exclude forex hedging. It does not matter. What matters is, what were the bidders willing to pay?

CHAIRPERSON: Well, Mr Myburgh will continue with his questions but let me put this to you at a, maybe a principle level or a general level. If I am going to drive from Durban to Johannesburg ...[intervenes]

MR MOLEFE: Yes.

10 **CHAIRPERSON:** And I am a former Chief Group Executive of Transnet ...[intervenes]

MR MOLEFE: You are you going to drive?

CHAIRPERSON: [laughs] I am going to drive. Yes.

MR MOLEFE: Yes.

CHAIRPERSON: From Durban to Johannesburg.

MR MOLEFE: Yes.

ADV MYBURGH SC: And not go by train.

CHAIRPERSON: [laughs] It might not matter how much petrol I will have to put in and the tolls, how much I will
20 have to pay in terms of toll charges but for somebody else, if you tell him only about – or her about only the petrol, the cost of petrol for that trip and you do not tell him what – that there are toll charges that will have to be paid and so on and so forth. It might make a big difference to that other person but maybe not somebody else.

MR MOLEFE: Ja, Chairperson, so when you are going to drive from Durban to Johannesburg. What are the costs? So it is petrol.

CHAIRPERSON: Yes.

MR MOLEFE: And tolls.

CHAIRPERSON: Yes.

MR MOLEFE: And what else?

CHAIRPERSON: Well, I do not know if there is any but those are definitely.

10 **MR MOLEFE**: Those are the costs, né?

CHAIRPERSON: Ja ...[intervenes]

MR MOLEFE: So there is wear and tear of your tyres.

CHAIRPERSON: Yes.

MR MOLEFE: There is the cost per kilometre of running your engine.

CHAIRPERSON: Yes, yes.

MR MOLEFE: There is the oil.

CHAIRPERSON: Yes.

MR MOLEFE: Even if it is just a small amount.

20 **CHAIRPERSON**: Ja.

MR MOLEFE: Right? And then in – on the way, your car maybe chipped, the windscreen maybe chipped. There is the damage to the paint. Even if it is small, that is a cost, right?

CHAIRPERSON: H'm?

MR MOLEFE: So what I am saying is that, at the end of the day, the question is. Are you willing to pay R 500,00 to travel from here to Durban or are you willing to pay R 1 000,00. That is what matters. But going – being productive and saying: Ja, but you did not take into consideration the costs of the damage to the paint. I mean, as you have just demonstrated. Even the cost of the tyres was not factored into your own calculation.

CHAIRPERSON: Yes but ...[intervenes]

10 **MR MOLEFE:** And what I am saying is that, the bottom line is. What are you prepared to pay to travel from here to Durban? Prepared to pay to travel from here to Durban, even when you do not know what the costs of the wear and tear of the tyres are. And I am saying ...[intervenes]

CHAIRPERSON: But the cost of the wear and tear of the tyres might be a long-term thing but in the example I am giving you, the issue of the toll charges will have to be paid.

MR MOLEFE: Yes.

20 **CHAIRPERSON:** Petrol, you must have money for petrol.

MR MOLEFE: Yes.

CHAIRPERSON: You might arrive in Gauteng without ...[intervenes]

MR MOLEFE: Ja.

CHAIRPERSON: ...your ...[intervenes]

MR MOLEFE: So those are ...[intervenes]

CHAIRPERSON: So if you do not tell the person about the charges for the toll, you know, it seems to me that that would be critical but you might say ...[intervenes]

MR MOLEFE: Well ...[intervenes]

CHAIRPERSON: You might say the example of the toll might not fit into the locomotives. I am not sure ...[intervenes]

MR MOLEFE: Ja.

10 **CHAIRPERSON**: ...in terms of these costs.

MR MOLEFE: See, you are elevating the hedging costs to the price of the toll.

CHAIRPERSON: Ja, that is why I am saying ...[intervenes]

MR MOLEFE: There are things like the hedge of costs ...[intervenes]

CHAIRPERSON: Ja.

MR MOLEFE: ...are like the wear and tear ...[intervenes]

CHAIRPERSON: Ja, okay.

20 **MR MOLEFE**: ...of the tyres.

CHAIRPERSON: Okay.

MR MOLEFE: And the oil and other things.

CHAIRPERSON: Okay.

MR MOLEFE: So at the end of the day, Chair, you can go and see the car hire companies. They charge different

amounts per kilometre for hiring their cars. So if you were to ask: How do you arrive at this amount?

They would show you different methodologies. And the methodologies are infinite of how those amounts are calculated but at the bottom of it, it is just a gut feel. It is just a gut feel Chair. What matters is, how much are people willing to receive for a locomotive and how much are you willing to pay.

CHAIRPERSON: Mr Myburgh.

10 **ADV MYBURGH SC:** Yes, thank you. Mr Molefe, before you engaged in answering questions as by the Chairperson. I think that the record will reflect that what you said was this. From where I was sitting, I assumed that the Business Case included hedging and escalation. Do you recall saying that?

MR MOLEFE: Yes, I did so but the Business Case, as you pointed out, had then corrected me, said it excludes.

ADV MYBURGH SC: Yes.

MR MOLEFE: But what that reflects ...[intervenes]

20 **ADV MYBURGH SC:** Just ...[intervenes]

MR MOLEFE: What that reflects is that that was not uppermost in my mind.

ADV MYBURGH SC: I am not worried about ...[intervenes]

MR MOLEFE: What was uppermost in my mind was, what will the bidders be willing to pay?

ADV MYBURGH SC: Mr Molefe ...[intervenes]

MR MOLEFE: And to receive.

ADV MYBURGH SC: Just so that you understand, please. Is, that is not what we are trying to determine, to use your language. At the moment, I am exploring with you an allegation, as you know, that you misrepresented the Business case to the board.

And the allegation, as you know, is that you misrepresented the ETC to the board when saying it
10 excluded hedging and escalation when it in fact included it and it seems to be me that you made that concession earlier in your evidence.

MR MOLEFE: Okay Chair, I may well have, yes.

ADV MYBURGH SC: You do not want to change your evidence?

MR MOLEFE: Come again?

ADV MYBURGH SC: You do not want to change your evidence?

MR MOLEFE: I tried to explain Mr Myburgh ...[intervenes]

20 **ADV MYBURGH SC:** Alright.

MR MOLEFE: ...that this thing that you are going on about was from where I was sitting not an important issue. I think we are nit-picking about the wear and tear of the tyres, really ...[intervenes]

ADV MYBURGH SC: Well, let us come to the importance

of that.

MR MOLEFE: ...in the trip from Durban to here.

ADV MYBURGH SC: Alright. I will come to the importance of it because it becomes more apparent. So when Mr Callard and Mr Moola say that they reran the numbers and they came to a conclusion that the original Business Case included forex and hedging, you would agree with that.

MR MOLEFE: No. You see, this is exactly my point.

10 **ADV MYBURGH SC:** Right?

MR MOLEFE: So there was a Business Case of R 38 billion. Mister... Is it Laher?

CHAIRPERSON: Moola and Laher.

MR MOLEFE: Laher?

CHAIRPERSON: H'm.

MR MOLEFE: Recalculated it and came to a calculation of R 43 billion, is it?

ADV MYBURGH SC: No, they did not Mr Molefe. You really are... If you bear with me what happened. You see,
20 these people were asked to two things.

MR MOLEFE: Yes?

ADV MYBURGH SC: Firstly, they were asked to determine, did the original Business Case include hedging and escalation. And you have excepted it did. Then what they were asked to do, is they were asked – and Mr Laher

deals with this: We were also requested to recalculate the ETC in the Business Case adjusted to factors for which we now know ...[intervenes]

MR MOLEFE: Yes.

ADV MYBURGH SC: ...i.e. contract delivering... exchange rate, et cetera.

MR MOLEFE: Yes.

ADV MYBURGH SC: And then they came to that figure. And that related to whether the increase from R 38 billion
10 to R 55 billion was justifiable but what they were first ask to do is to determine whether the initial Business case of 36.8 billion included hedging and escalation. And you have accepted that it did. So I presume, you do not take issue with that part of the evidence?

MR MOLEFE: No.

ADV MYBURGH SC: Alright. And what is also important is. Dr Fine of McKinsey gave evidence before this Commission. Did you have occasion to hear or learn of his evidence?

20 **MR MOLEFE:** No.

ADV MYBURGH SC: Okay. So on Day 322, the 10th of December 2020, Mr Fine was examined by my colleague, Mr Chaskalson ...[intervenes]

MR MOLEFE: But I was issued with a 3.3 or ...[intervenes]

ADV MYBURGH SC: No, no.

MR MOLEFE: ...I was not implicated? Okay.

ADV MYBURGH SC: I am going to read to you what Mr Fine said.

MR MOLEFE: Yes.

ADV MYBURGH SC: At line 20.

10 “There are a couple of point I just want to stress up front. McKinsey predominantly was involved in the Business Case and that Business Case did confirm Transnet’s numbers of 38.6 billion including, and to be precise, including foreign exchange and including escalations...”

 You would agree with that evidence?

MR MOLEFE: Yes.

ADV MYBURGH SC: And then, of course, importantly is the evidence of Mr Choubey. Perhaps we can go that and no doubt you will agree with it as well.

MR MOLEFE: H’m.

20 **ADV MYBURGH SC:** That you will find, and we have been to one of these reports yesterday. Could I ask you, please, to go to Exhibit BB-8(b).

MR MOLEFE: Yes.

ADV MYBURGH SC: Now if I could ask you, please, and this is again something divided into two parts. We are

dealing with part 1. And if I could ask you... Well, let us...
in fact, let us go to page 1.

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: There you will find the affidavit of
Mr Choubey. And if I could take you, please, then to page
7 at paragraph 4?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: Summary of findings, 4.1:

10 “I concluded from the investigations on
acquisitions of the 1064 Locomotives that:

1.1. The variables and assumptions used to
model 18 April 2013 Business Case were
reasonable.

1.2. The ETC of R 38.6 billion included
escalation and foreign currency exchange
rate hedging costs and was an
acceptable estimate for the total cost of
acquiring the locomotives...”

Now you have accepted that, correct?

20 **MR MOLEFE**: Yes.

ADV MYBURGH SC: And then he goes on to deal with
another question and that was that the 41% increase in the
ETC from R 38.6 billion to R 54.5 billion was not in its
totality justifiable. Now that is a different question which
we are going to come to.

MR MOLEFE: No, not only that.

ADV MYBURGH SC: Yes.

MR MOLEFE: It displays mister... What is his name?
Choubey?

ADV MYBURGH SC: Choubey.

MR MOLEFE: Yes. Mr Choubey's lack of experience.

ADV MYBURGH SC: Yes.

MR MOLEFE: ...and unprofessionalism.

ADV MYBURGH SC: No, fair enough. We are going to
10 ...[intervenes]

MR MOLEFE: Because he says the increase in ETC from
R 38.6 billion to R 54.5 billion was not justifiable.
R 54.5 billion is not ETC.

ADV MYBURGH SC: Yes. We are going to come to that
...[intervenes]

MR MOLEFE: So those two numbers, R 38.6 billion is
ETC. R 54.5 billion is something else.

ADV MYBURGH SC: Alright.

MR MOLEFE: R 54.5 billion is based on what the bidders
20 gave us as prices.

ADV MYBURGH SC: Mr Molefe ...[intervenes]

MR MOLEFE: ...he is comparing things that a person with
a minimum of understanding of finance ...[intervenes]

ADV MYBURGH SC: Alright.

MR MOLEFE: ...should not be comparing.

ADV MYBURGH SC: But the only point is. I am still dealing at the moment with the first question that he was asked to examine and there it seems to be common cause between us. So let us then go forward in the chronology. We know that on the 23rd of May 2014, you and Mr Singh and Mr Gama recommended to the BABC that there should be an increase in price. Is that correct?

MR MOLEFE: We recommended that there should be an increase?

10 **ADV MYBURGH SC:** Now we are getting to the 23rd of May 2014.

MR MOLEFE: Can I see that recommendation?

ADV MYBURGH SC: If I could ask you, please, to go to page... Ah, sorry. To Exhibit BB-4(b).

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: I think we have looked at it already.

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright. Are you there?

MR MOLEFE: Yes.

20 **CHAIRPERSON:** Just repeat the page.

ADV MYBURGH SC: Exhibit BB-4(b). And I would like to take you, please, Chairperson to page FQC-714.

CHAIRPERSON: [No audible reply]

ADV MYBURGH SC: So this was the memorandum that I was referring you to. 714. It is to the Board Acquisition

and Disposal Committee and it is from yourself. Correct?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: Oh, sorry. Are you not there?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: Are you there Mr Molefe?

MR MOLEFE: Yes.

ADV MYBURGH SC: Could I ask you, please – you can keep your finger there, but can you turn forward to page FQC-731? It is signature page.

10 **MR MOLEFE**: Yes?

ADV MYBURGH SC: 731.

MR MOLEFE: 731?

ADV MYBURGH SC: Yes, 731.

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: It is recommended by Mr Singh, Mr Gama and you in turn and you signed on the 23rd of May 2014. Is that right?

MR MOLEFE: Yes.

20 **ADV MYBURGH SC**: Could I ask you then to turn back to page 714?

MR MOLEFE: Seven...?

ADV MYBURGH SC: 714.

MR MOLEFE: Yes.

ADV MYBURGH SC: Could you read what the purpose of your memorandum was, into the record, please?

Paragraph 1.

MR MOLEFE: To note the reasons for the increase in ETC?

ADV MYBURGH SC: Yes. That is A. And B?

MR MOLEFE: “To request that the... is recommending an increase in the ETC from 1064 to... from R 38.6 billion to R 54.5 billion.”

ADV MYBURGH SC: So what the purpose was, to request a recommendation of an increase in the ETC. Correct?

10 **MR MOLEFE**: Yes.

ADV MYBURGH SC: So perhaps Mr Choubey is not as incompetent as you thought.

MR MOLEFE: Oh, ja.

CHAIRPERSON: [laughs] I just saw that too.

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright. Let me... let me ...[intervenes]

MR MOLEFE: But can we clarify one thing?

20 **ADV MYBURGH SC**: Can I first go to what was recommended and then I will give you the opportunity. I just want to finish off this document.

MR MOLEFE: Yes.

ADV MYBURGH SC: If you go to page FQC-731.

MR MOLEFE: Yes.

ADV MYBURGH SC: There, it is recommended that, at

108, paragraph B, the BABC ...[intervenes]

MR MOLEFE: Yes.

ADV MYBURGH SC: ...recommends an increase.

MR MOLEFE: Yes.

ADV MYBURGH SC: The estimated total cost ETC for the acquisition of the 1064 Locomotives, Transnet Freight Rail... R 38.6 billion to R 54.5 billion.

MR MOLEFE: Yes.

ADV MYBURGH SC: Is that correct?

10 **MR MOLEFE**: Yes.

ADV MYBURGH SC: Okay. What is it that you wanted to explain?

CHAIRPERSON: Before that. I think Mr Myburgh – to Mr Choubey, you need to say exactly what you meant.

ADV MYBURGH: I am going to come back to Mr Choubey.

CHAIRPERSON: Ja, well maybe that might be too far.

MR MOLEFE: Yes.

ADV MYBURGH: In fact what Mr ...[intervenes]

CHAIRPERSON: What all three of us know nothing about.

20 **MR MOLEFE**: Yes.

CHAIRPERSON: Ja, about the ETC increase and ETC, I think that is what you were talking about.

ADV MYBURGH: Well, Mr Choubey was asked to determine whether the increase in the ETC was reasonable and justifiable and that was the correct question to be

asked based on this memorandum submitted and approved by or recommended by Mr Molefe. Chairperson ...[intervenes]

CHAIRPERSON: Well, maybe we were at cross-purposes and both of you may indicated if I misunderstand something. Mr Molefe had criticised Mr Choubey for talking about an increase of ETC from 38.6 billion to 54 point whatever on the basis that 54 point whatever billion was not ...[intervenes]

10 **ADV MYBURGH:** The ETC.

CHAIRPERSON: The ETC. So but this memo here that has got his signature also talks along the same lines. That is that we were all talking about.

MR MOLEFE: Except that in substance the 54.5 billion is not an estimate, it is the outcome of negotiations.

CHAIRPERSON: No, no, no, you were making the point. My understanding was simply that you were saying he was – well, firstly, using wrong language because 54 is not ETC. But two, you were saying that it reflected a
20 fundamental I misunderstanding on his part.

MR MOLEFE: Yes, yes.

CHAIRPERSON: So at this stage I am simply saying ...[intervenes]

MR MOLEFE: Perhaps, Chairperson ...[intervenes]

CHAIRPERSON: But at least the language seems to be

same as in your memo. Ja.

MR MOLEFE: Yes, perhaps, Chairperson, our using of that same language in this memo reflects a similar ...[intervenes]

CHAIRPERSON: Error.

MR MOLEFE: Amateurism.

CHAIRPERSON: Okay, okay, I think that is fair enough.

MR MOLEFE: That we also heard.

CHAIRPERSON: I think that is fair, that is fair enough.

10 **MR MOLEFE:** But the substance, the substance is that the difference between the 38.6 billion is that the 38.6 billion was an estimate of what the trains would cost, 54 is the actual cost. So actually on reflection this should not have been crafted as an increase in ETC, it was to say that we had budgeted to spend 38.6 billion, the reality is that the trains are going to cost 54.5 billion after the bidder submitted the price and after negotiation. And I think what the memo tries to capture is the differences that led to the increase of 54.5 billion or rather 49 because 5 million of it
20 is contingency. Ja, so the main drivers are what is captured in the memo.

CHAIRPERSON: Mr Myburgh?

MR MOLEFE: So – and these main drivers were the outcome of negotiations.

ADV MYBURGH: Is it a convenient time to take the tea

adjournment, Chairperson?

CHAIRPERSON: We are – we still have five minutes.

ADV MYBURGH: Alright.

CHAIRPERSON: Ja, if you want to use that.

ADV MYBURGH: Yes. Without wanting to be uncharitable to you, Mr Molefe, do I understand you now to say that insofar as there was amateurism it was now on your part, not on Mr Choubey's part.

MR MOLEFE: All of us.

10 **ADV MYBURGH:** So let us then have a look at the reasons for this increase. This is at page FQC 714. Executive summary, paragraph 2:

“In summary, the increase in the ETC of 15.9 billion can be attributed to the following.”

And you will see there that there are four or five different reasons. Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH: And the one causing the greatest increase in the ETC was risk mitigation, forex and escalation. Do you
20 see that?

MR MOLEFE: Yes.

ADV MYBURGH: And do you understand the controversy, controversy is that was actually included in the initial business case.

MR MOLEFE: Yes.

ADV MYBURGH: And you accept then that that accounted for 59% of the increase?

MR MOLEFE: Forex and ...[intervenes]

ADV MYBURGH: Escalation.

MR MOLEFE: Escalations are functions of assumptions that change with time even with the people that are calculating it. So if I was to ask you if they were included in the 38 billion, how much was it and what were the assumptions?

ADV MYBURGH: Can we turn to the next page?

10 **MR MOLEFE:** Yes.

ADV MYBURGH: Page FQC 715, background.

MR MOLEFE: Ja.

ADV MYBURGH: Paragraph 14.

MR MOLEFE: Yes.

ADV MYBURGH: Now perhaps one gets a better sense of the problem:

“The acquisition of the 1064 locomotives was approved by the board of directors in April 2013 at a cost of 38.6 billion. This excluded the following costs.”

20 **MR MOLEFE:** Yes.

ADV MYBURGH: Hedging and escalation. In other words, what is presented to the board is that this massive change in the ETC is attributable by and large 59% to the fact that we initially excluded these costs and now they are being included, which you accept is wrong. Your own case is they were

included initially. Do you see the problem, Mr Molefe?

MR MOLEFE: No, I do not.

ADV MYBURGH: Alright. Okay, so then comes the issue of ...[intervenes]

MR MOLEFE: Chairperson, can I make a point?

CHAIRPERSON: Ja.

MR MOLEFE: With the different assumptions that are being made on the calculation of this ETC. The fact of the matter is that there was a calculation of billion with or without correct
10 hedging and assumptions and so on, there was a figure of 38 billion. Then Mr – is it Laher, was asked to calculate ETC. So he calculated ETC and came to about I think 43 billion, thereabouts. He says in his evidence that I recalculated it and this is what I arrived at and then Mr Callard also made a calculation of the ETC. I not sure what his assumptions were ...[intervenes]

ADV MYBURGH: Yes but, Mr Molefe, what you, with respect ...[intervenes]

MR MOLEFE: No, I am trying to – I am trying to...

20 **ADV MYBURGH:** I am sorry, carry on.

MR MOLEFE: So they were actually of the ETC, so these three calculations are based on the first figure. So the first one is 38 billion unless this agreement or a controversy or representations or misrepresentations that it did or did not include hedging. So that was 38 billion. Mr I think Laher

calculated to 43 billion. Mr Callard made a calculation of the ETC. So what he did is he went back to the desk and recalculated the ETC and his figure was 45 billion and the final figure was 49 billion.

All I am trying to say, Chairperson, is that in the calculation of these ETCs, the negotiations and so on, you are bound to come up with different numbers. But that was not the point of executive decision, executive decisions are can you live with what the bidders are prepared to
10 receive and if you look at the paragraph 7 of this memo, it says:

“The NPV of the business case remains positive at 11.68 billion and 49 billion.”

So the NPV remains positive at 49 billion. From and executive decision point of view that is sufficient to tell us whether or not to proceed with the negotiated 49 billion plus contingencies or not. That is the decision-making process in a transaction like this. We hardly ever got into – or at least at the level of the CEO, into the pedantic
20 calculations of the assumptions behind forex escalations or not. What we want to know is, 49 billion, is it fixed, does it have a positive NPV?

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH: Yes, is this an appropriate time now to take the tea adjournment.

CHAIRPERSON: Oh, yes, ja.

ADV MYBURGH: Thank you.

CHAIRPERSON: Let us take the tea adjournment. We – I am just going to add another five minutes in order to attend to somebody. We will adjourn, we will resume at twenty five to. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

10 **ADV MYBURGH:** Thank you. Mr Molefe, we were dealing with FQC page 714. Are you still there, in EXHIBIT BB4(b). I think you probably have it in front of you there.

CHAIRPERSON: Just repeat that so I can check whether I have got it here.

ADV MYBURGH: EXHIBIT BB4(b).

CHAIRPERSON: Oh, ja. I have got it.

ADV MYBURGH: And page, Chairperson, FQC 714.

MR MOLEFE: Yes.

20 **ADV MYBURGH:** It is your memorandum to the BADC, do you have it?

MR MOLEFE: Yes.

ADV MYBURGH: I just want to turn to one other thing. If you go to page 717, you see at paragraph 23 says:

“The increase in the ETC of 15.9 billion is due to the following reasons.”

MR MOLEFE: Yes.

ADV MYBURGH: I just want to drop down to (d), we have already dealt with others. (d) says:

“The cost of reducing the batch size.”

Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH: And it cross-refers to item (d) of table 2. Could I please take you to that, it is over the page at FQC 718.

10 **MR MOLEFE:** Yes.

ADV MYBURGH: And you will see that if you look on the right hand said then you will see a letter d and on the left of that it talks about batch pricing adjustment, then you get d and the amount attributable to that is 2.7 billion. Do you confirm that?

MR MOLEFE: Yes.

ADV MYBURGH: Alright. Now what we know – so this is a memorandum to the BADC which you sign on the 23 May.

MR MOLEFE: Yes.

20 **ADV MYBURGH:** Would you agree that on the same day you made the same recommendation to the board of directors in another memorandum.

MR MOLEFE: To reduce the batch price.

ADV MYBURGH: Sorry?

MR MOLEFE: To reduce the batch, the batches.

ADV MYBURGH: No, you made exactly the same recommendation that you made here to the BADC at page 714.

MR MOLEFE: Yes.

ADV MYBURGH: Running through to page 731. You made the same recommendation to the board.

MR MOLEFE: Yes, yes.

ADV MYBURGH: Let us go to that document. That document you find in another file, Mr Choudey's file.
10 BD8(b).

MR MOLEFE: Yes.

ADV MYBURGH: Now that file is divided into two parts, we are dealing with part 1, so it's EXHIBIT BD8(b.1). Could I take you please to page – these are red numbers on the right hand side page 165.

MR MOLEFE: Yes.

ADV MYBURGH: Alright, could I just ask you to confirm that this is the same memorandum.

MR MOLEFE: Yes.

20 **ADV MYBURGH:** 165, it runs through where it is signed at 182.

MR MOLEFE: Yes.

ADV MYBURGH: Alright and then I would just ask you to confirm that on the 28 May 2014, a few days later, the board of directors in fact approved your recommendation.

MR MOLEFE: Yes.

ADV MYBURGH: Perhaps I could take you to the Fundudzi report, that is in bundle 6. If I could take you please to page 184.

CHAIRPERSON: Is it bundle 6, Mr Myburgh?

ADV MYBURGH: Yes, bundle 6, Chairperson.

CHAIRPERSON: And page 184 did you say?

ADV MYBURGH: 184, correct. If I could ask you, Mr Molefe, please to have a look at the heading towards the middle of the
10 page, Board Meeting on 28 May and there at paragraph 5.9.12.7:

“On 28 May the board noted the reasons for the increase in the ETC and approved an increase in the ETC for the acquisition of the 1064 locomotives for GFB from 38.6 billion to 54.5 billion.”

Do you confirm that?

MR MOLEFE: Yes. Except, Chairperson, the use of ETC in all these documents is unfortunate. The 54.5 billion was not an estimate, it is what the negotiated actual price was, 49
20 billion plus 10% contingency of 5 billion. So it is really not an increase, the 64.5 billion is the negotiated price for the locomotives and the negotiations had different aspects to them, different things that were negotiated during the negotiations that came – that brought the amount to 64 billion.

CHAIRPERSON: But of course what you sought to do

through these two memoranda, one to the – is it the BADC?

MR MOLEFE: Ja.

CHAIRPERSON: And the other to the board, was you sought to explain to them how come there was such a big gap between the ETC of R38.6 billion that you had told them about ...[intervenes]

MR MOLEFE: And the actual price.

CHAIRPERSON: And the actual price.

MR MOLEFE: Yes.

10 **CHAIRPERSON**: That you sought to explain that.

MR MOLEFE: Yes, I think ...[intervenes]

CHAIRPERSON: And in doing so you brought in the issue of these costs.

MR MOLEFE: Yes.

CHAIRPERSON: And said they had been excluded when in fact they had been included. It think that is where we are.

MR MOLEFE: Okay.

CHAIRPERSON: Ja, okay. Alright. Mr Myburgh?

20 **ADV MYBURGH**: So, Mr Molefe, I just want to put it to you that on your evidence then it seems there is a further misrepresentation made to the board because you represented the [indistinct] increase in the ETC, you did not represent that it was the contract price.

MR MOLEFE: But it is the contract price.

ADV MYBURGH: Yes but you are not listening to my acuity, please. On your own version there is then a misrepresentation to the board, another misrepresentation.

MR MOLEFE: Chairperson, I doubt if anybody understood this, even the use of the ETC to mean that the 54 billion was an estimate, it was the negotiated price, it was the price that we were going to pay for the locomotives.

ADV MYBURGH: so your answer is that – well, do you accept
10 that it is a misrepresentation or not? You made a recommendation. On the basis of your recommendation it was then approved in the exact terms where the board ...[intervenes]

MR MOLEFE: Ja, it would be a misrepresentation if there was anybody in the board who thought that we were still trying to estimate. We were not trying to estimate, this was the actual cost, the use of terminology is unfortunate. But from the board's understanding I am confident that the board understood this to mean this is the price that we are
20 going to pay for the locomotives.

ADV MYBURGH: Where did you tell the board that you had already concluded the contract.

MR MOLEFE: The negotiations, the negotiations were concluded at this point.

ADV MYBURGH: Alright, now ...[intervenes]

CHAIRPERSON: I think Mr Myburgh seems to establish whether in the memorandum you told the board that the negotiations had been concluded, this was going to be the price. You must tell me, Mr Myburgh, if I understood your question.

MR MOLEFE: Yes.

ADV MYBURGH: Yes, correctly reformulated, thank you, Chairperson.

MR MOLEFE: Now, Chairperson, I would have to go and
10 look at the point exactly when the board was told that the negotiations were concluded.

CHAIRPERSON: Ja.

ADV MYBURGH: Could I ask you then to turn back
...[intervenes]

CHAIRPERSON: But maybe – I am sorry – are you going to, among other things, look at the memo to see whether that point was made or you are saying no, I did not make that point in the memo but the board had been told at some stage before the memo that the negotiations had been concluded?

20 **MR MOLEFE:** Ja,. Either at some stage or in the memo, I am not sure.

CHAIRPERSON: Okay, okay.

MR MOLEFE: I will have to go look exactly when the board was told that this was [inaudible – speaking simultaneously]

CHAIRPERSON: Okay, no, that is fine, I just wanted to be sure.

MR MOLEFE: [inaudible – speaking simultaneously] the price.

CHAIRPERSON: I wanted to be sure whether as far as the memo is concerned there is an acceptance that is not there but you will check somewhere but you are saying you will check in the memo and you will check elsewhere. Okay.

ADV MYBURGH: Thank you. Mr Molefe, could I please ask
10 you to go back to Mr Choubey's file, EXHIBIT BB8(b.1) Now if you please to page 36, Mr Choubey deals with the increase in the ETC from 38.6 billion to 54.5 billion and ultimately you will see that if you go over the page to paragraph 9.52 he says:

“Our finding was that the increase argued for in the memorandum to the board...”

This is yours.

“...was unjustifiably high.”

Own emphasis. And then he deals with the reasons for the
20 increase in the STC and he deal with – the ETC, I beg your pardon, deals with all of them. If you go, for example, to page 38, risk mitigation, forex and escalation, Transnet engineering contingencies, he deals with batch pricing.

MR MOLEFE: Yes.

ADV MYBURGH: Page 40 he deals with build-up to the ETC

of 54.5 million (sic), he looks forward, he looks backwards. If I could ask you to have a look at, for example, page 646, forward escalation, how did I arrive at the escalation costs, foreign codes and hedging costs again at 47. How did I compute the FX hedging costs at 48. Deals with contingencies and then this is his conclusions ...[intervenes]

MR MOLEFE: And he is talking about his own calculations, yes.

ADV MYBURGH: Can I ask you please to go – because that
10 is what your – you convinced the board to approve, he is dealing with their approval. Now let us go to the conclusion please.

MR MOLEFE: On page?

ADV MYBURGH: Page 50. He concludes that:

“The deterioration and economic conditions, inflation in foreign currency, warranted an increase in the ETC of 38.6.”

So he says it should have gone up.

“An increase of 15.9 billion...”

20 Which is what you sought approval for.

“...was, however, not justifiable. Barring the additional costs that come from Transnet engineering opine that an 11% in the ETC from 36.6 billion to 42.8 billion would be reasonable allowing for the Transnet engineering cost of 2.6

billion, an 18% increase in the ETC to 45.4 billion would have been reasonable.”

So what do you say to that?

MR MOLEFE: Oh, so this was Mr Callard’s calculation.

ADV MYBURGH: I beg your pardon?

MR MOLEFE: This was Mr Callard’s calculation.

ADV MYBURGH: No, no, this is not Mr Callard’s calculation, this is Mr Choubey the expert’s calculation.

MR MOLEFE: Ja.

10 **ADV MYBURGH**: And we are going to come to Mr Callard. Can you please just direct your attention to this?

MR MOLEFE: Yes.

ADV MYBURGH: Mr Molefe.

MR MOLEFE: Yes.

ADV MYBURGH: I will take you and I know you want to refer to Mr Callard or Mr Laher. We will go there and I am asking you please to address this conclusion. What do you say, is it like what you said yesterday that this is an art and not a science?

20 **MR MOLEFE**: Yes, exactly.

ADV MYBURGH: Okay. Anything else to add to that?

MR MOLEFE: Chairperson, if you look at my affidavit, so the original ETC calculation was 38 billion with – or without some of the assumptions that it had made. In January 2018, paragraph 59 of my affidavit, page 40, it

says:

“January 2018 Mr Francis Callard reviewed and recalculated the ETC. His revised number was 40.457 billion.”

And this is in the statement of Mr Yusuf Laher. And then this number of Mr ...[intervenes]

CHAIRPERSON: Cavi.

MR MOLEFE: No, of Mr Callard. Was further revised by a group of Transnet professionals to 45.8 billion. Now
10 according to Mr Laher, this amount was 3.747 billion lower than the original contracted price. So this amount is 3 billion less than the 49 billion. So the ETC was recalculated by Mr Callard to 40.457 billion, Mr Laher calculated it to 45.8 billion and then Mr Choubey gave another number.

ADV MYBURGH: 45.4 billion.

MR MOLEFE: 45.4 billion.

CHAIRPERSON: Okay, I think you must just repeat that, you were too far away from mic that last sentence.

20 **MR MOLEFE:** Mr Choubey came to a number, 45.4 billion. I think this demonstrates my point that this was not a science, this is a – the oddest number, none of them is wrong, they just used different assumptions. They just used different, assumptions. The question is, Chairperson, and in fact there is a document that has also come to my

attention in the last week that I did not include which is a presentation that Mr Callard made when he was calculating his amounts and I will make it available to – in a presentation called – entitled – the presentation has been compiled to present work done to date into the data analysis investigation of the 1064 locomotives deal at Transnet. It is intended to solicit buy-in for the approach and methodologies proposed to facilitate discussion work-in-progress. Mr Callard observes in a slide in the
10 presentation that:

“The original case was based on high level assumption for price escalation and changes to forex. He also says there were not detailed supplier quotations and thus –supply quotations and thus are not at the same level of detail as the data received post RFQ hence direct comparison to the original business case is not possible.”

This is what Mr Callard says in a presentation on the 22 October 2018, a position that I agree with but my point was,
20 there were several calculations that were made and to demonstrate my point, there is not one calculation – two calculations that came up with the same number of the ETC. They had ranged from 38 billion to 45.something billion. Right?

If you are the CEO, a reasonable CEO, that has to go out to my board. Which number do you go out with? Which number do you permit to be a known number that you are prepared to pay and I will argue 38 billion, that 38 billion is what we are prepared to pay for the locomotives? That is the number that we went out with because I went to the board by putting it in the business case that is the number that we were indirectly communicating. I talked about some time ago a negotiation tactic. If you are going to – if you
10 know that you are going to negotiate and granted, these calculations were not there but if they had been made they would have come with different bundle.

The 38 billion was a reasonable number to go out with. These calculations just show that in fact at 49 billion we were not so far off the mark. The increase was in fact not 16 billion. If you take – even if you take the average of the three numbers and calculate the difference or if you take the range or the midpoint or whatever of the three numbers that were calculated because in valuations actually you do
20 not use one number, you use a range.

So if this was to be taken as a range, the increase from the business case to – or the estimated total cost to the actual number, at worst was about 3 billion. At worst was about 3 billion and yet – and so and the 3 billion was an outcome of negotiations.

ADV MYBURGH: So if I could just take you if I do not mind to...[intervenes]

ADV MASUKU SC: Chair? Chairperson?

CHAIRPERSON: Yes, yes.

ADV MASUKU SC: Mr Molefe referred to a document that he has recently come across, I want to confirm that during break I brought this to the attention of Mr Myburgh.

CHAIRPERSON: Okay.

ADV MASUKU SC: And would appreciate it if it find its way
10 into the bundles of the Commission.

CHAIRPERSON: Okay.

ADV MASUKU SC: This is a presentation that was prepared by Mr Callard.

ADV MYBURGH: Yes, we gave the same undertaking as we did yesterday.

CHAIRPERSON: Ja.

ADV MYBURGH: Once we have a copy we will attend to that.

CHAIRPERSON: Ja.

ADV MYBURGH: Perhaps I could just ask my learned friend if
20 he has an electronic version of it if he could in the interim send it to my junior and we will process it perhaps at lunchtime even.

ADV MASUKU SC: Chair, I want to confirm that I have already sent to Ms Lee.

CHAIRPERSON: Okay, okay.

ADV MASUKU SC: Thank you.

CHAIRPERSON: Okay.

ADV MYBURGH: So can I – Mr Molefe, let me take you to Mr Laher's affidavit.

CHAIRPERSON: That is to whose affidavit?

ADV MYBURGH: That is where you get your figures from that you have been speaking about. Go to EXHIBIT BB4(f) please? BB4(f). Pardon, page YIL18. Now you will see at paragraph 69 at the top.

10 **MR MOLEFE:** Yes.

ADV MYBURGH: Mr Callard's figure of 40.457 billion excluded the impact of using Transnet engineering. Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH: Mr Choubey's figure, if you excluded Transnet engineering, as you know is 42.8. Do you see that? Do you know that?

MR MOLEFE: Come again?

ADV MYBURGH: Mr Choubey's figure and perhaps I could
20 ask you, you have still got his affidavit open in front of you.

MR MOLEFE: Yes, yes, yes.

ADV MYBURGH: Mr Choubey's figure when excluding Transnet engineering is 42.8.

MR MOLEFE: Yes.

ADV MYBURGH: Do you see that? Not vastly different, is it?

MR MOLEFE: Yes.

ADV MYBURGH: And then you see Mr Laher's calculation, paragraph 70, of 45.8, that now includes Transnet engineering. Do you see that?

MR MOLEFE: Yes, yes.

ADV MYBURGH: And do you see that Mr Choubey, he comes to almost exactly the same figure, 45.4 billion.

MR MOLEFE: Yes.

ADV MYBURGH: So maybe it is more of science that it
10 appears.

MR MOLEFE: No, he demonstrated very well but the different assumptions lead to different outcomes.

ADV MYBURGH: Yes. Now – the outcomes are not that different, that is the point that I make, Mr Laher and Mr Choubey, they are very close to one another.

MR MOLEFE: They are not there, they are not – okay, they are close, I agree, they are close but being close – you see, if it was a science it would be precise.

ADV MYBURGH: But you are so far out, Mr Molefe, that is
20 the problem.

MR MOLEFE: No but that is, as I was saying earlier, that is the number that you would go out with. If I had to choose between ...[intervenes]

ADV MYBURGH: You were so far out.

MR MOLEFE: On the low side, yes.

ADV MYBURGH: Well, what did you recommend to the board and what did they accept, an increase in the ETC to what?

MR MOLEFE: No, the acceptance of the negotiated price at 49 billion ...[intervenes]

ADV MYBURGH: No, that is not what they did, Mr Molefe, that ...[intervenes]

MR MOLEFE: But I say it as unfortunate use of terminology to call it ETC. That was a price that was negotiated.

10 **ADV MYBURGH:** Do you understand that you are attributing and talking down to an unfortunate change in terminology what might amount to almost R10 billion?

MR MOLEFE: I do not know if there is a dispute that the 49 billion or the 54 billion was the price that was a negotiated price of the locomotives.

ADV MYBURGH: I think I am going to leave this topic, I need not to examine you any further over it. I want to talk about batch pricing. Now we have seen that 2.7 billion of the 15.0 billion increase was attributable to batch pricing.

20 **MR MOLEFE:** Yes.

ADV MYBURGH: Could I just take you please to the MNS report?

MR MOLEFE: What is batch pricing?

ADV MYBURGH: We are going to go to the MNS report.

MR MOLEFE: Okay.

ADV MYBURGH: Would you please go – and this is in bundle 5.

MR MOLEFE: Yes.

ADV MYBURGH: Now perhaps to answer your question so that we know exactly what I am dealing with, could I ask you please before we get to that document to go back to bundle BB4(b). That is your memorandum to the BADC.

MR MOLEFE: BB4 little b?

ADV MYBURGH SC: Ja, BB4b, and if I could ask you to
10 turn to the table which we have gone to already, at F2C718.

MR MOLEFE: What is the number?

ADV MYBURGH SC: 718.

MR MOLEFE: This is 71?

ADV MYBURGH SC: 718, seven hundred and eighteen.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now you will see we have already dealt with this on the left hand side of the capital letter D in the middle, that pricing adjustment for reduction of batch
20 size to 40%/60%. You see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: There was a reduction of the size.

MR MOLEFE: There was a reduction of?

ADV MYBURGH SC: Of the size of the batches.

MR MOLEFE: Yes.

ADV MYBURGH SC: Right, now if you could then go as I had asked you to do, to the MNS Report at bundle 6.

MR MOLEFE: Bundle 6?

ADV MYBURGH SC: Bundle 6 next there. Now, what MNS do at the foot of page 332 is they quote...[intervene]

CHAIRPERSON: I am sorry; at what page did you say?

ADV MYBURGH SC: Page 332.

CHAIRPERSON: 332.

MR MOLEFE: So what is the red page number?

10 **ADV MYBURGH SC:** Do not worry about that it is very confusing, just stick to the black ones, alright 332 on the left hand side.

MR MOLEFE: I do not have that or number 6, so are looking at file number 6?

CHAIRPERSON: File number 6, just look at the bundles in front of you, bundle 6 on the spine and then the one below that, bundle 6 on the spine.

MR MOLEFE: Alright.

CHAIRPERSON: Okay, looks like they found it, or is that
20 a loan, is that loaned to him or is it his? Okay, page 332 you said Mr Myburgh?

ADV MYBURGH SC: Yes, I just want to place on record one thing at the foot of the page Mr Molefe, are you there 332? **MR MOLEFE:** 332, what is the page number at the top?

ADV MYBURGH SC: 332.

MR MOLEFE: Oh 332.

CHAIRPERSON: Black numbers?

ADV MYBURGH SC: Yes.

MR MOLEFE: Yes.

ADV MYBURGH SC: I just want to read into the record where they say paragraph 4.1.11 under the heading batch pricing, Section 3.1 of the RFP relating to the acquisition of the 465 diesel and 599 electric locomotives, read as follows quote:

“Transnet requires flexibility in exercising options for the acquisition of the locomotives, these options may include suspending or postponing the delivery of the locomotives until a later date or changing quantities. Transnet however does not expect to pay a price premium should it excise any of these options.”

Would you agree that that was the clause in the RFP?

MR MOLEFE: Yes, that was in the RFP.

20 **ADV MYBURGH SC:** Could I then ask you please to go to the Fundudzi Report in the same bundle at page 186. Can I draw your attention then to another issue?

MR MOLEFE: Yes.

ADV MYBURGH SC: It relates to 186 paragraph, third paragraph from the bottom 5.9.12.12. There they talk of

the Transnet delegation of authority framework approved by the Board on 29 August and effective from 1 September states that quote:

“Increasing ETC a project already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%.”

Do you see that?

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:** Would you accept that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Now, was this increase – well I presume you will accept that there was an increase of more than 15%?

MR MOLEFE: Except I would not have called it ETC.

ADV MYBURGH SC: Sorry?

MR MOLEFE: I would not have called it ETC, but yes, it was more than 15%.

ADV MYBURGH SC: However, you see it, it was a lot
20 more than 15%.

MR MOLEFE: Yes.

ADV MYBURGH SC: Right, was that reported to the Shareholder Minister?

MR MOLEFE: Not that I am aware of.

ADV MYBURGH SC: Why did you not ensure that that

happened?

MR MOLEFE: I cannot recall the reasons why it was not reported, or if it was in fact reported or if there was any communication by the companies to the Minister about it.

ADV MYBURGH SC: Just so that we understand it, whose responsibility ultimately would it had been to report this increase to the Shareholder Minister?

MR MOLEFE: Well, this would have come out of a Board decision, right. I suspect maybe company secretariat.

10 **ADV MYBURGH SC:** Not you?

MR MOLEFE: Maybe it was me, I am not sure Chairperson.

ADV MYBURGH SC: But this is not a secretarial issue is it, I mean, it is a very important issue.

MR MOLEFE: Yes. it would have been me Chairperson.

ADV MYBURGH SC: Sorry?

MR MOLEFE: It would have been me.

ADV MYBURGH SC: Yes, now could I take you please to page 326.

20 **MR MOLEFE:** But that issue, that we have just come back from what...[intervene]

ADV MYBURGH SC: Could you please go to page 326 of the same bundle?

MR MOLEFE: Yes.

ADV MYBURGH SC: At paragraph 3.3.6 there is reference

to Section 54.2 of the PFMA, there is reference to the MOI and the DOA and at paragraph 3.3.8 it is:

“The finding is that the failure to seek approval from the Ministerial Shareholder was in contravention of the PFMA, the MOI and the DOA.”

Do you want to comment on that?

MR MOLEFE: No.

ADV MYBURGH SC: When were the - on a different topic, when were the locomotive supply agreement signed?

10 **MR MOLEFE**: Chairperson, I just want to - when we refer to the batch pricing, and the section that you referred to in the PPM, that says that the batch pricing should have been included, as I indicated throughout the negotiation process, there are teams that include Transnet legal and Transnet, audit, internal audit.

They were in fact part of the negotiations and they sat in the negotiations, something like that should because it is detailed, should and would have been picked up by them, and failure for them to have picked it up at that level
20 before they moved on to the next stage during the negotiations, I think something to the effect that while you are negotiating, you must know that you cannot pay for batch prices.

But what came back from the negotiations was that part of what we need to pay for is batch pricing because

we will reduce the batches and so I just wanted to point out that that was a failure at that level during the negotiations of the batch prices.

On the matter of the PFMA it is a compliance issue and Transnet had the compliance, legal and compliance I think to the extent that in this transaction, we were - it was not compliant because it had to be reported to the Shareholder Minister, this should have been pointed out and rectified at that point.

10 But the correct people to advise and tell us to be compliant would have been legal and compliance. They would have – and in fact I think legal was part of the negotiations when they saw that this would trigger reports to the Minister, I think there should have been a recommendation to report the matter to the Minister because I think that although the chief executive takes final responsibility. is final responsibility there.

It is not possible in a complex organisation like Transnet who keep a tab on every little thing one relies on
20 the advice and the recommendations from the different divisions to look at compliance contract. Now I expressed surprise yesterday today about the master services agreement that it had been done that I was not aware of.

ADV MYBURGH SC: Well, I mean, I suppose what is important is you have accepted now that batch pricing and

the splitting of batches was wrong, and you say it should have been picked up by...[intervene]

MR MOLEFE: No, I say it may have been wrong, perhaps when the people that were at the negotiations come here and explain exactly what happened.

ADV MYBURGH SC: Yes, well they have been here, you see, that is the thing I want to get to if you do not mind. So what Mr Laher says and in fact there is a transcript of this exchange...[intervene]

10 **MR MOLEFE:** So Mr Laher was from which department?

ADV MYBURGH SC: Mr Laher was in these negotiations.

MR MOLEFE: Yes, which department?

ADV MYBURGH SC: He was; he was part of the locomotives...[intervene]

MR MOLEFE: Yes, but from where did he work at the time?

ADV MYBURGH SC: Mr Molefe, I do not know the answer to that, can I just tell you...[intervene]

20 **CHAIRPERSON:** Mr Molefe, the Evidence Leader ask questions and you respond, then where it is necessary to get clarification on his questions, you can ask for clarification.

MR MOLEFE: Yes, Chairperson.

CHAIRPERSON: Ja.

ADV MYBURGH SC: If it is important, Mr Laher was from

the finance department, he said he was a chartered accountant or he is a chartered accountant here, and he was part of the negotiating team. Now, I understand there was a locomotive, negotiating team and then there was a Steering Committee, is that right?

MR MOLEFE: Yes.

ADV MYBURGH SC: And who comprised that Steering Committee?

MR MOLEFE: No, it was a team from different parts of the
10 organisation, but it included an assurance team, and the assurance team included people from internal audit and legal, and the point that I was making was that this particular issue should have been picked up assurance.

ADV MYBURGH SC: We are going to come to it.

MR MOLEFE: And so Mr Laher, I am not aware that he was in the assurance team.

ADV MYBURGH SC: Let me just cut to the chase now.

MR MOLEFE: Yes.

ADV MYBURGH SC: Were you not part of the locomotive
20 Steering Committee, you Singh and Mr Gama?

MR MOLEFE: I was that.

ADV MYBURGH SC: Right, so what...[intervene]

MR MOLEFE: But I was not in the negotiating team.

ADV MYBURGH SC: Yes, but who was in the negotiations was Mr Singh.

MR MOLEFE: Yes.

ADV MYBURGH SC: Right, and Mr Laher worked together with Mr Singh.

MR MOLEFE: Yes.

ADV MYBURGH SC: Right, so let me tell you what Mr Laher's evidence is Mr Laher says to Mr Singh - there is a transcript of this:

10 "That batch pricing is contrary to the RFP, we cannot do this not at this late stage, because then we should go out to tender again because the RFP did not provide for it."

Mr Laher told Mr Singh that.

MR MOLEFE: Yes, but...[intervene]

ADV MYBURGH SC: Sorry, if you do not mind just bear with me. Did Mr Singh bring that to your attention?

MR MOLEFE: No.

20 **ADV MYBURGH SC:** Alright, so that is the issue of batch pricing. Now, when we get to the Ministerial authority or approval, do I understand that you can get that ex post facto, do you need to get approval before the increase and the contract or can you just increase it and get approval afterwards?

MR MOLEFE: Oh it is possible to get it ex post facto.

ADV MYBURGH SC: Is it possible?

MR MOLEFE: Yes.

ADV MYBURGH SC: But should it be got before or after?

MR MOLEFE: Well, if it is obtained ex post facto, it has the same effect as it has been obtained before.

ADV MYBURGH SC: But what about if the Minister says no, I do not give approval?

MR MOLEFE: Then there is a problem.

ADV MYBURGH SC: Yes, well that is why presumably, it is wise to do so beforehand.

MR MOLEFE: Yes, it is a problem if it cannot be obtained
10 ex post facto, but once it is obtained ex post facto, it is quantified.

ADV MYBURGH SC: Yes, but that did not happen here, so there remains a very serious...[intervene]

MR MOLEFE: No, you were just asking, I suppose theoretically, in the effect of ex post facto approval.

ADV MYBURGH SC: But Mr Molefe you were the Group Chief Executive Officer, you proposed a massive increase in the ETC. Did you not know that you had to get Ministerial approval?

20 **MR MOLEFE:** Well, I cannot recall what my state of mind was at the time.

ADV MYBURGH SC: Yes.

MR MOLEFE: I knew maybe it slipped maybe, I cannot recall what my state of mind was at the moment, what I am pointing out is that perhaps the legal department or

compliance should have then said, oops, we're missing a spend[?], we need to get approval from the Minister.

You know Mr Myburgh the increase in ETC, well what is now called the increase in ETC, was from R38billion to R54billion, but we also know that the ETC was recalculated by even Mr Choubey.

So, Mr Choubey's calculation if it is to be accepted or Mr Laher or the adjusted calculation by Mr Laher and Mr Callard, so if we take those calculations and say, the
10 R38billion calculation was wrong it should never have been used.

The real calculation would actually be R45billion thereabouts and that the increase in the real ETC, would have been about R3billion, and that is what they say even in the MNS Report, so they say that had the R38billion been calculated properly, it would in fact have been 45 and not 38.

But Chairperson, I submit that the R38billion was convenient and necessary, from a negotiation point of view
20 because if we had gone out with a R45billion known figure that that is where we are starting, we would have paid more.

ADV MYBURGH SC: So Mr Molefe...[intervene]

MR MOLEFE: We would have paid more than R49billion.

ADV MYBURGH SC: If I could take you back to my

question. In relation to Ministerial approval, I take it you would accept that if legal and compliance failed to obtain Ministerial approval, you as the group chief executive must carry that can, it is not something that you can just palm off to legal and compliance you bear the ultimate responsibility obviously.

MR MOLEFE: Yes, I will carry the can, however, I submit that it was not done intentionally, or out of malice.

ADV MYBURGH SC: But how does one forget, sorry I
10 suppose we lucky to have someone like you here to help us with this. Once you - you talking about billions of rand's.

MR MOLEFE: Yes.

ADV MYBURGH SC: How does one forget to get Ministerial approval for an increase of billions of rand's? I mean, yesterday, you pointed out to me just how much a billion or two or three is with reference to Transnet's profits and turnover. How does one forget or not insure, perhaps that is a better way of putting it, that this regulatory compliance is achieved?

20 **MR MOLEFE:** Because I am human Chairperson.

ADV MYBURGH SC: Alright, let me go to something - would you also then accept that if the Chairperson finds that batch pricing was contrary to the RFP and ought not to have been allowed, that you must carry the can ultimately for that as well.

MR MOLEFE: Chairperson, ultimately, I am the chief executive and I should take responsibility. However, I will hasten to mention that none of these things that happened here were happening, because it was a deliberate, intentional outcome that we did not have Ministerial approval that batch pricing is included.

I was actually, I would be at pains to explain that in terms of our there was a failure in our system. In a sense that during the assurance process, these things should
10 have been pointed out.

CHAIRPERSON: I take it that when you – when Transnet teams, different teams, certainly the Group Chief Executive Officer handles a matter as big as this somebody would be tasked with the function to say please highlight to all concerned...[intervene]

MR MOLEFE: Yes.

CHAIRPERSON: ...what requirements or hurdles needed to be taken care of, before this whole thing can be successful.

20 **MR MOLEFE:** Yes.

CHAIRPERSON: And I would have thought that in such a – there would be such a document and somebody would have said, hang on at this stage, we will need to get Ministerial approval.

MR MOLEFE: Yes.

CHAIRPERSON: Do you accept that that is what one would expect?

MR MOLEFE: Yes.

CHAIRPERSON: Yes, but would you say it was not done in this case?

MR MOLEFE: No, that is why I was explaining yesterday that in a procurement process like this that I gave, so it is supposed to be a gain that was not supposed to be open if the batch pricing was not correct.

10 Where assurance was supposed to say, you cannot proceed because you have included batch pricing and you are not supposed to include batch pricing, but the assurance report, and I would be interested to get the different assurance reports at the different gain, including right at the end, where the contract was signed.

 Because even as we are going to sign the contract, the assurance people are supposed to say, go ahead and sign, and I believe that there are reports, the assurance report that said everything was fine.

20 But it would be interesting from an investigation point of view to find out at this different level, what did the assurance people say? Did they not pick these things up, and was there at any point where for example, I was told everything is fine, go to the press announcement and sign the transaction.

So that is my point that between internal audit, compliance legal that there was assurance. In fact, on a transaction like this we even require external assurance, and I cannot remember what all external assurance took, but as far as I remember, assurance given otherwise I would not have moved on it.

CHAIRPERSON: Okay, Mr Myburgh.

ADV MYBURGH SC: Thank you. Can I take you still in bundle 6 please, to page 289, you see there that at the top
10 of 289, this is from the MNS Report?

MR MOLEFE: Yes.

ADV MYBURGH SC: They deal with members of the Transnet Locomotive Steering Committee in 2014. I will just ask you to confirm it was you, Mr Molefe, Mr Singh and with three others?

MR MOLEFE: And then there was a sub-committee of that steering committee, and that was you, Mr Gama and Mr Singh.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** And you say you were not present in the negotiations; Mr Singh we know was would you confirm that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And would he report back to you on the progress of the negotiations?

MR MOLEFE: Yes, yes, he would inform me of what is going on in the negotiations.

ADV MYBURGH SC: And did you expect him to do that honestly and faithfully?

MR MOLEFE: Yes.

ADV MYBURGH SC: And Mr. Gama, was he part of the negotiation?

MR MOLEFE: Yes.

ADV MYBURGH SC: And did he also report back to you?

10 **MR MOLEFE:** Yes, they both came and reported to me what was happening.

ADV MYBURGH SC: Now I doubt that you would have expected him to do so honestly and faithfully as well, obviously?

MR MOLEFE: Yes.

ADV MYBURGH SC: Now, we know from Mr Laher that it took quite a long time to compile these memos that were presented to the BADC and the...[intervene]

MR MOLEFE: Before we move on, what is not clear in this
20 list of people are the assurance - exactly who the assurance people were because it is finance and technical, but I submit that there was legal and internal audit.

CHAIRPERSON: There was?

MR MOLEFE: Legal and internal audit.

CHAIRPERSON: Ja, would assurance always be the same

departments or units, or it could change depending on the subject matter?

MR MOLEFE: They give different types of assurance, as assurance from a legal point of view that everything is fine, then there is assurance from an internal audit point of view, that everything is fine. For example, when the tenders are submitted, and they must be submitted at 12 o'clock. Somebody from internal audit says the tenders were submitted at 12 o'clock, those that arrived at five past
10 12 were...[intervene]

CHAIRPERSON: Were excluded.

MR MOLEFE: ...were excluded. So and that is an assurance that opens the next day.

ADV MYBURGH SC: Thank you. I am sorry, I need just to retrace my steps and please forgive me if it is something that you have already answered. Did you know that you, did you yourself know that you had to get Ministerial approval?

MR MOLEFE: Actually, we had obtained Ministerial
20 approval at the beginning of the process. So Ministerial approval had been obtained before, perhaps maybe what went on in my head was we do have Ministerial approval to do this.

The thing that fell between the cracks was the fact that the increase in the price from what was the approved

ETC to the final price required Ministerial approval, that is perhaps, what fell between the cracks of that we should have been advised on.

ADV MYBURGH SC: Yes, but that is not what I am asking you. Did you know that you had to get Ministerial approval for the increase? I mean, the falling through the cracks is not what I am looking at, did you personally know that you had to get approval?

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:** You did know?

MR MOLEFE: Yes, I knew that we had to get approval for the transaction. We did obtain approval for the transaction, what we however failed to do at the end is to get approval for the increase.

ADV MYBURGH SC: When you got approval for the transaction originally, were you involved in that process?

MR MOLEFE: Yes, I was involved.

ADV MYBURGH SC: Did you sign off the documents as their group chief executive?

20 **MR MOLEFE:** Actually, I cannot remember how the approval was obtained as to who in what form the request went to the to the Minister. I do not know if it went under my hand or under somebody else's hand.

CHAIRPERSON: But such a request I would imagine it would have to go under your hand or the Chairperson but

not somebody junior to you.

MR MOLEFE: No, it would be - actually, I think it may be the Chairperson's hand.

CHAIRPERSON: Ja, no that is fine.

ADV MYBURGH SC: Alright, now let us just deal with one or two other things. We know that CSR, they were awarded 359 of the 1064 locomotives, correct?

MR MOLEFE: Yes.

ADV MYBURGH SC: Can I ask you please to go to page
10 ... 14 of Bundle 6. And could I just direct your attention to a finding made by MNS at paragraph 2.5.2 are you there?

MR MOLEFE: Yes.

ADV MYBURGH SC: It says and I think we have touched on this already.

“Mr Sharma the Chairperson of the BADC and Essa were business associates through inter alia the business interest they had in various companies. Mr Essa on behalf of one of his companies Tequesta concluded a business development service agreement with CSR Hong
20 Kong on 18 May 2015. Salient terms of the business development agreement state that

1. Tequesta was appointed to provide advisory services and particular assist CSR Hong Kong to secure the current electric locomotive tender and revenue will
2. In return Mr Essa would get paid 21% of the contract

value concluded with Transnet.”

That was what the research showed. Would you know anything about that?

MR MOLEFE: No.

ADV MYBURGH SC: Did you know anything about links between Mr Sharma and Mr Essa?

MR MOLEFE: No

ADV MYBURGH SC: And if you had known of them what would you have done?

10 **MR MOLEFE:** Well I did not know of them.

ADV MYBURGH SC: My question is if you had known what would you have done?

MR MOLEFE: I do not know what I would have done at the time but I did not know.

ADV MYBURGH SC: Alright. I want to turn now to another topic because finally we leave the locomotives and the transaction advisors around the locomotives. Can I just ask you when – when those memoranda to the BADC and the board were prepared – just bear with me for a second. And
20 those – those memoranda we have seen – we have looked at them they were – they were approved or recommended in May of 2014, correct?

MR MOLEFE: Yes.

ADV MYBURGH SC: Can you recall whether or which consultants gave input into – into the increase in the ETC?

MR MOLEFE: My understanding is that the increase was an outcome of the negotiations.

ADV MYBURGH SC: But can you remember who the ...

MR MOLEFE: So you asking who was advising?

ADV MYBURGH SC: Yes.

MR MOLEFE: I actually cannot remember who was advising the negotiating team.

ADV MYBURGH SC: Alright.

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:** And you do not know whether this was a point at which Regiments were on the scene to the exclusion of McKinsey or – you do not have a clear recollection of that?

MR MOLEFE: No I cannot recall what was...

ADV MYBURGH SC: Alright. Can we please then turn to another topic and that relates to the Neotel contracts.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now let me just before I take you to the relevant documents and I suppose it is refreshing that
20 here we talking about something else now. I know that you have dealt with this in your affidavit but I just ask you to confirm this before we go to the controversy. Mr Molefe on the 31st of October 2013.

MR MOLEFE: Yes.

ADV MYBURGH SC: Ms Chetty was then she was the acting

Group Chief Executive.

MR MOLEFE: Yes.

ADV MYBURGH SC: And she awarded a contract to Neotel, is that right?

MR MOLEFE: That is right.

ADV MYBURGH SC: And then you reversed this decision and we will come to the reasons why and you appointed T-Systems in a memorandum dated the next month 20 November, correct – 2013? Is that right?

10 **MR MOLEFE**: Yes.

ADV MYBURGH SC: You did that without consulting with Ms Chetty, correct?

MR MOLEFE: Yes.

ADV MYBURGH SC: And you would have seen that she says well all your reasons for reversing her decision was bad.

MR MOLEFE: She says what?

ADV MYBURGH SC: She said all of your reasons for the reversing her decision were bad, you have seen that right?

20 You have seen her affidavit.

MR MOLEFE: Ja I cannot recall exactly what the reasons were according to her.

CHAIRPERSON: Are you looking for her affidavit? Are you looking for her affidavit?

MR MOLEFE: No I am just putting away that file.

MR MOLEFE: Oh okay no I thought you – you wanted to check something before responding to the question.

ADV MYBURGH SC: Ja let me just – I just trying to paraphrase things.

MR MOLEFE: Yes.

ADV MYBURGH SC: Because we are not – we obviously we do not have a lot of time left.

MR MOLEFE: Yes.

ADV MYBURGH SC: Over. So she says that all of your
10 reasons for reversing her decision are bad. I am going to come to your – your position now. Mr Volmink you would have seen also says your reasons for reversing the decision were bad. Mr Van der Westhuizen also gives some evidence about this.

MR MOLEFE: Yes.

ADV MYBURGH SC: What we know then is about six months later on the 6th of June 2014 after opinions had been obtained from the senior counsel and well I understand your external auditors you then revoke your decision.

20 **MR MOLEFE:** Yes on advice.

ADV MYBURGH SC: Alright. So tell us then why you changed and revoked Ms Chetty's award to – to Neotel in favour of T-Systems. Why did you take the contract from Neotel and give it to T-Systems? And you dealt with it in your affidavit. You – I am happy if you go there.

MR MOLEFE: Ja there was – there was in fact a letter that I wrote or a memo that I wrote to...

CHAIRPERSON: To where you gave reasons?

MR MOLEFE: That gave reasons yes. To – to I think it was to Mr Singh – it was one of those instances where I wrote a memo downwards to say I do not agree with your decision and these are my reasons. And the reasons were that Neotel was the incumbent.

Neotel while they were working on Transnet systems
10 that is where they were working – what they were working on we had had a breach of the firewalls under their watch which had cost us some kind of embarrassment because we do not know what information was taken out of the Transnet systems.

There had been security cameras that had been installed at the ports that were not working – it was embarrassing because in terms of our membership of international ports organisation these security systems were supposed to have been working and Vodacom had been for
20 the same tender and had lost but now Vodacom was in the process of buying Neotel.

So I then said this is like giving the tender to Vodacom because they have bid and they have lost and now they are buying Neotel. We have to understand this transaction between Vodacom and Neotel. You – how do you

award a transaction to a company that is publicly on sale? Because the sale could come with its own uncertainties and could result in things that were envisaged in the tender being very different to the outcome.

So those were my reasons. Incidentally when Mr – Ms Chetty also awarded the tender she wrote by hand on her memo of award that Neotel must give us some assurance relating to the Vodacom transactions which in my opinion meant she had put a condition precedent to the award that ja
10 we are awarding but they must first do this.

So she did that on the 31st. And I said for these reasons I feel that we need a new incumbent because of the failures that had happened under Neotel. Of course internal audit and legal after I had written that memo came back and said your reasons do not hold water. This tender has been awarded – oh and then I recommended that the second company on the – on the recommendations should be awarded the tender. Internal audit came back and legal and they said no you cannot do what you are trying to do reverse
20 the transactions it was a recommendation to give it to T-Systems. You cannot do what you are proposing to do.

And they also have opinion of senior counsel who also said that it could not be done. And I agreed and I even said well at least I have told you my concerns about why we doing this thing. If things happen in the future with Neotel it

shall be recorded that I did not come back from where I was and just promised them the decision that I thought was 00:11.12 so that is what happened with the matter Chairperson.

ADV MYBURGH SC: But Mr Molefe you did not need senior counsel to tell you that you cannot just simply take away a contract that had been awarded to Neotel and just give it to T-Systems.

MR MOLEFE: No my interpretation – my layman's
10 interpretation was that the condition.

ADV MYBURGH SC: There was no condition she had issued a letter.

MR MOLEFE: Ja which is why I needed senior counsel's opinion. Maybe you did not need senior counsel's opinion.

ADV MYBURGH SC: You did not what?

MR MOLEFE: That is may – which is why maybe I needed to be told by senior counsel.

ADV MYBURGH SC: You did not need to be told – I mean she had issued a letter of approval.

20 **MR MOLEFE:** Yes.

ADV MYBURGH SC: In favour of Neotel.

MR MOLEFE: Yes.

ADV MYBURGH SC: I mean just to make this very simple here is a woman who was acting in your position.

MR MOLEFE: Yes.

ADV MYBURGH SC: She awards a contract to Neotel does all the paperwork, signs all the letters, properly appointed. You come along a month later without even talking to her...

MR MOLEFE: No, no not a month later.

ADV MYBURGH SC: Well – she – she awards the contract on 31 October.

MR MOLEFE: Yes.

ADV MYBURGH SC: We have gone through the chronology. On 20 November – okay not a month, three weeks later.

10 **MR MOLEFE:** Yes.

ADV MYBURGH SC: You simply take away that contract from Neotel and you give it to T-Systems.

MR MOLEFE: My recollection is that it was conditional. I thought it could be done because I had concerns and I – I tabled my concerns.

ADV MYBURGH SC: Alright well let us go to – let me go to Ms Chetty, her affidavit. I think this is a new file BB6.

MR MOLEFE: Yes.

ADV MYBURGH SC: You have it?

20 **MR MOLEFE:** BB6. Yes.

ADV MYBURGH SC: Alright so if we have a look at page 88

MR MOLEFE: Yes.

ADV MYBURGH SC: SC88 that is your – I think it is the memo that you speak about.

MR MOLEFE: Yes.

ADV MYBURGH SC: This is on 20 November this is the reversal, correct.

MR MOLEFE: Yes.

ADV MYBURGH SC: This is quite a long memo and contains a lot of quoting you see at pages 89, 90, 91.

MR MOLEFE: Yes.

ADV MYBURGH SC: Let us get to the meat of it that is at 92. You say at paragraph 7 and it is eloquently written.

10 “I have the following specific concerns with
 your recommendation and responses to me
 including responses”

Etcetera and you set them out a, b, c, d, e.

 “Counterparty risk and alienation of state
 assets.

 Concentration risk as Transnet is Neotel’s
 largest client.

 BBBEE partners.

 Information Security incident and CCTV
 camera exposures.”

20 And then you go and articulate each of those points.
 Correct?

MR MOLEFE: Yes.

ADV MYBURGH SC: And the balance of this.

MR MOLEFE: Yes.

ADV MYBURGH SC: And you then conclude that due to the

above you were – you effectively revoke then the award and you appoint T-Systems we see that at the foot of page 92.

MR MOLEFE: Yes, yes I also saw that this network is at the heart of the Transnet business and I am of the view that awarding the business to Neotel will expose Transnet for unnecessary risk.

ADV MYBURGH SC: Yes. And then what you also did at 22 at page 94 is you say:

10 “I approve that the R248 million be taken into consideration.”

Right so let us just understand what that means.

MR MOLEFE: Yes.

ADV MYBURGH SC: If you go to – back to page 93 and paragraph 21 at the foot of the page.

MR MOLEFE: Ja.

ADV MYBURGH SC:

20 “Post the close of the final offers being submitted T-Systems indicated that they unfortunately due to the strict timeline set by Transnet only managed to get confirmation from their shareholder on certain pricing elements and that they would be in a position to reduce the price submitted a week before by a further R248 million.”

And you then say:

“I approve the R248 million or that the R248 million be taken into consideration.”

MR MOLEFE: Yes.

ADV MYBURGH SC: As part of T-Systems best and final offer. Is that right?

MR MOLEFE: Yes.

ADV MYBURGH SC: Even though they did not make that offer?

MR MOLEFE: Yes they had indicated that they would – had
10 to reduce their price by R248 million

ADV MYBURGH SC: We are going to come to that. Now...

CHAIRPERSON: Remember not to speak to far from the microphone.

MR MOLEFE: Oh ja. Yes.

ADV MYBURGH SC: Can you just point out to us where in this memorandum do you refer to the fact that Ms Chetty’s approval of the contract contained a condition precedent?

MR MOLEFE: In my bundle.

ADV MYBURGH SC: No in this memorandum? These are
20 your reasons for setting aside Neotel and awarding it to T-Systems where do you see reference here to her approval having contained a condition precedent that you have spoken about?

MR MOLEFE: Oh the fact that I may not have mentioned it in this – in this memorandum does not mean that it did not

exist.

ADV MYBURGH SC: I see. But in your evidence unless I misunderstood you it seems to me that that was the core issue.

MR MOLEFE: No.

ADV MYBURGH SC: Not alright.

MR MOLEFE: The core issue where the risks to the – so I mean there is – there is a different pockets of looking at this. The first one is that I had real substantive concerns with or
10 without the – the condition precedent. So the first one was but how could we give this tender to these people after these risks that we know about?

The second one was could it be done? And I felt that because of Ms Chetty's award was not full and final I do not know how to put it was not – was not unconditionally final that there was something else that needed to be done. I do not know how to put it in words.

CHAIRPERSON: Ja. Ja you say the condition precedent that was understood to be there.

20 **MR MOLEFE:** That was understood. Yes. Yes. Means that there was a window to actually ...

CHAIRPERSON: Get out of the...

MR MOLEFE: Ja. And in fact that – that condition precedent that she put in expresses one of the fears that I had that this company was being sold. And so – and so I

thought that it was possible to reverse this from where I was sitting – from purely a business point of view. However I was later to be proven otherwise by legal and internal auditors.

ADV MYBURGH SC: Alright so...

MR MOLEFE: And Chairperson it is worth noting that when I was advised that what I sought to do here could not be done I did not resist I accepted it.

ADV MYBURGH SC: Well I mean did you have an option Mr
10 Molefe?

MR MOLEFE: No I had no opinion.

ADV MYBURGH SC: You did not have one.

MR MOLEFE: Yes.

ADV MYBURGH SC: Right. So could we go then please to Ms Chetty's affidavit at page 6.

MR MOLEFE: The option that I had was to behave like a bull in a china shop and this is what I did not do.

ADV MYBURGH SC: At page 6 of her affidavit SC006 paragraph 17 she says:
20 "Mr Molefe provides the following...

CHAIRPERSON: I am sorry, I am sorry. Same file what page?

ADV MYBURGH SC: Page 6 Chairperson SC6.

CHAIRPERSON: Okay. Okay I have got it.

ADV MYBURGH SC: She in paragraph 17 addresses each of

your reasons. Counter risk and alienation, concentration risk, BBBEE partners, information security, CCTV issues and then at paragraph 18 she refers to a particular document and she says that clearly indicates that the possible price reductions could not be taken into account as the final pricing had already been submitted. Mr Molefe could not approve that the price reduction be considered as part of T-Systems best and final offer as this prejudices the other bidders and is not considered fair and transparent. And what

10 she refers to there as annexure SC3 that you find at page 37.

MR MOLEFE: Yes.

ADV MYBURGH SC: Just bear with me for a moment because I want to just get a – she refers to a Tear Report T-e-a-r and what that stands for is a Tender Evaluation and Recommendation Report that you find at page 23 could you turn there please? So this is a formal report that is being produced and if I could take you to page 37 you will see that the last third of the page between the second and third

20 schedules.

“After conclusion of the normalisation process a final clarification session was held with the three bidders to double check if they had not admitted anything in their price. Bidder 5 who was T-Systems indicated during

discussions that their joint venture partner may be able to negotiate optimisation with its shareholders which will result in an overall reduction of R248 million on the tendering – sorry the tender pricing. Bidder 2 and 3 also indicated minor possible price changes which would have resulted in slight adjustments in the final commercial proposals”

MR MOLEFE: Yes.

10 **ADV MYBURGH SC:**

“I know as an indication of the pricing changes if the R248 million possible price reductions were to be taken into account in this project even though it is not possible since the final pricing had been submitted.”

You see that that is the Tear Report.

MR MOLEFE: Yes. But if you go to page 43 of that Report.

ADV MYBURGH SC: Yes.

20 **MR MOLEFE:** You will see that Ms Pillay did not approve or not disapprove. She did not approve it and that was – it was sent to her – the last person to sign – signed on the 31st of October so I do not know if there is another report where she actually approves this.

ADV MYBURGH SC: We can have a look into that but Mr Molefe once parties have submitted their final pricing.

MR MOLEFE: No I am not ...

ADV MYBURGH SC: During a tender ...

MR MOLEFE: I am not disputing that I am just saying ...

ADV MYBURGH SC: Cannot – you know that you cannot do this.

MR MOLEFE: She had not – she had not approved this transactions.

ADV MYBURGH SC: But that does not answer the issue that I am putting to you. I mean you know surely that when
10 parties tender...

MR MOLEFE: Mr – Mr – Mr Myburgh you are going back to this patronising you know thing. I would really – I really do not like it.

ADV MYBURGH SC: Okay well let me ask you this.

MR MOLEFE: That you are being presumptuous think that I know things and patronising me in the process.

ADV MYBURGH SC: Well let me put my question this way. Did you think well presumably you thought it appropriate to allow someone a price reduction outside of the tendering
20 process? Did you think that was (talking over one another).

MR MOLEFE: Well I thought it was possible.

ADV MYBURGH SC: But how?

MR MOLEFE: But then I was wrong.

ADV MYBURGH SC: Alright.

MR MOLEFE: I was wrong however what I am pointing out

now.

ADV MYBURGH SC: Yes.

MR MOLEFE: Is that this report that you are referring to was not approved by Ms Sharla Chetty on the 31st of October.

ADV MYBURGH SC: But that does not detract from the concession that I think you fairly made.

MR MOLEFE: It does not...

ADV MYBURGH SC: Does not detract from the concession
10 that I think you fairly made.

MR MOLEFE: No it may indicate to the fact that perhaps this was not this transaction had not been finalised and awarded as it should have been.

ADV MYBURGH SC: Now I could I suppose take you to Mr Volmink's affidavit but I do not suppose it is necessary because I think you accept that ultimately the award in favour of T-Systems was irregular and needed to be reversed.

MR MOLEFE: Yes I accepted that a long time ago.

20 **ADV MYBURGH SC:** Correct.

MR MOLEFE: I accepted it at the time when internal audit and legal.

ADV MYBURGH SC: Yes.

MR MOLEFE: Came to me and said Mr Molefe we cannot do this and I accepted it and I then said we should proceed with

the award to – to Neotel the incumbent. Although I had – I had my own from a business point of view I had reservations. I accepted the advice that I was given that what I sought to do was impossible.

ADV MYBURGH SC: Yes. Mr Chairman I see it is one o'clock.

CHAIRPERSON: Yes. Okay. Let us take the lunch break then and we will resume at two. We adjourn.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV MYBURGH SC: Thank you Chairperson. Mr Molefe, before lunch, we were dealing with Neotel/T-Systems. I have referred you to the evidence of Ms Chetty here who has spoken about Mr Volmink. I would like, for the first time, to take you to the evidence of Mr Van der Westhuizen. That evidence you will find at Exhibit BB-7. There are a number of files. It is BB-7(a).

20 **MR MOLEFE:** [No audible reply]

ADV MYBURGH SC: And if I could ask you, please, to turn to page 7?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: Mr Van der Westhuizen, incidentally, is a Chartered Accountant and at material, it appears to

have been an Executive Manager, Office of the Chief, Information Officer. Now at paragraph 23, he refers to a meeting. He says:

“During November 2013, I was called to a meeting with Mr Molefe...”

And he cites certain other people and he says at paragraph 24:

10 “When we arrived at the meeting, we were requested by Mr Molefe’s personal assistance, if I can recall correctly, to hand over our cell phones to her before we entered his office. We all did so.

I find the request to hand over my cell phone to be strange due to the fact that I have attended at least one other meeting in Mr Molefe’s office on which occasion I was not requested to hand over my cell phone...”

Do you want to just comment on that?

MR MOLEFE: No, I have no comment Chair.

20 **ADV MYBURGH SC**: Did it happen or not?

MR MOLEFE: It did happen.

ADV MYBURGH SC: You did ask him to hand over his cell phone?

MR MOLEFE: Yes.

ADV MYBURGH SC: Why?

MR MOLEFE: Because I wanted to discuss this tender of Neotel and T-Systems. They were IT people and it is known that it is possible to listen to meetings through the cell phones of people or the meeting could be taped(?) by one of the participants. I did not want that... for security reasons. Security of information reasons.

ADV MYBURGH SC: For information leak purposes?

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright. At paragraph 26:

10 “Molefe indicated that he did not support the recommendation to issue a letter intent to Neotel as the preferred bidder and he intended to award the tender to T-Systems as he was of the view that the R 248 million discount offered by T-Systems (refer to Annexure H3) was valued and should have been taken into account. He also advanced other considerations...”

MR MOLEFE: Yes, Chairperson, that was not the main
20 reason for the R 248 million. The main reason was the issues that I advanced in my memorandum.

ADV MYBURGH SC: Then he says over the page at paragraph 27:

“I did not agree with the reasons advanced by Mr Molefe during the aforesaid meeting in this

regard, one, even if the R 248 million discount offered by T-Systems was taken into account, T-Systems would still only have been the second best bidder...”

He says at sub-2:

“I informed the meeting that the objection by Mr Molefe that there should be concentration risk or there would be concentration risk at Transnet, as Neotel’s largest client, was without merit...”

10

He says:

“I explained X, Y, Z...”

And then sub-3:

“Mr Molefe further informed the meeting that it received a letter from one of Neotel’s reportedly partners or shareholders which contained an allegation that Neotel was busy diluting its shareholding...”

Et cetera. Do you want to comment on that?

20 **MR MOLEFE**: Yes, I have a very vague recollection but I think, I may have referred to the fact that there is a corporate action. A corporate action was this sale of... No, from corporate action was a sale of – not Neotel actually, the other one, T-Systems.

Actually, this paragraph does not make sense,

but what I do recall is that there was a discussion of the corporate action involving... No, the incumbents. Who was the incumbent again?

CHAIRPERSON: You are looking for the company who was ...[intervenes]

MR MOLEFE: They had awarded the tender.

CHAIRPERSON: Neotel?

MR MOLEFE: Neotel, yes. It is Neotel, yes.

CHAIRPERSON: H'm?

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

ADV MYBURGH SC: Alright. And then below that, paragraph 28:

“I then realised that my objections are not being well-received. I remember feeling at the time that for me to proceed with the verbalisation of my objections would be tantamount to professional suicide.

In simple terms, it felt that I would be placing my career at risk if I did not shut my mouth there and then.

Upon this realisation, I did not take any further active participation(?) in the meeting...”

Would you like to comment on that?

MR MOLEFE: No, I cannot comment on that.

ADV MYBURGH SC: Now if you go to paragraph 33, he

20

says – and this is at page ...[intervenes]

MR MOLEFE: However, Chair, I would say that there is – the feeling that he had that his career would have been in jeopardy was misplaced.

CHAIRPERSON: H'm?

MR MOLEFE: Because what subsequently happened is that, I was advised by people who were junior to me to proceed with what we are doing and I listened. So it was in the spirit of collaborative management.

10 **ADV MYBURGH SC**: So could I, please, take you back to page 5 at paragraph 15?

MR MOLEFE: 15?

ADV MYBURGH SC: Page 5, paragraph 15.

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: At paragraph 15, Mr Van der Westhuizen sets out that there were five bidders who submitted proposals. We know one was Neotel and then we also know one was T-Systems. That was number 5 – at 15.5. And you see there, T-Systems South Africa (Pty) Ltd.

20 It was a bid made in collaboration with Broadband Infraco.

MR MOLEFE: Yes.

ADV MYBURGH SC: Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: We can now go to paragraph 33 at page 9. He says:

“I wish to highlight the fact that the T-Systems tender was submitted in collaboration with Broadband Infracore.

The company registration document for the latter company shown that Salim Essa was a Director of BBI and resigned as a Director on 14 October 2010...”

I will show you now but that should be 2014.

10 “My understanding is that BBI is a state-owned entity and it was tendering with T-Systems...”

Do you see that?

MR MOLEFE: Yes, Chair. I knew that Broadband Infracore was a state-owned entity.

ADV MYBURGH SC: Yes.

MR MOLEFE: But I did not know that Salim Essa was a Director of Broadband Infracore.

ADV MYBURGH SC: Well, I take it that you will not... I can take you to Exhibit BB-7(b) at page 348. If you want, it is the Supra record. Could you go there?

20 **MR MOLEFE**: Which one? BB-7?

ADV MYBURGH SC: BB-7(b).

MR MOLEFE: Yes.

ADV MYBURGH SC: If you could turn, please, to page 348?

MR MOLEFE: Yes?

ADV MYBURGH SC: It is a CIPC company search. If you turn to page 349, you go to the foot of the page and then you count up ten lines from the bottom. So from the bottom up, you will see reference twice to Mr Salim Essa and you see that he resigned on 14 October 2014. So at this time ...[intervenes]

MR MOLEFE: The 10 on the top?

ADV MYBURGH SC: From the bottom, count up 10.

CHAIRPERSON: I just want to make a note just below
10 2010 at page 9 where 2010 is given instead of 2014 to refer to that bundle and that page Mr Myburgh. So that would be bundle?

ADV MYBURGH SC: Sorry, I beg your pardon. It is Bundle BB-7(b).

CHAIRPERSON: Yes, and the page?

ADV MYBURGH SC: Page 349.

CHAIRPERSON: 349. No, okay that is fine. If previously know ...[intervenes]

ADV MYBURGH SC: I am sorry, DCJ.

20 **CHAIRPERSON:** H'm?

ADV MYBURGH SC: Are you referring to the error in the date?

CHAIRPERSON: Yes.

ADV MYBURGH SC: Yes, I beg your pardon. So that is Mr Van der Westhuizen's affidavit. Have you ...[intervenes]

CHAIRPERSON: Ja, I got it. I just want to refer to make a reference to the bundle where there is the resignation document.

ADV MYBURGH SC: Yes, so that is what I have given you. That is correct.

CHAIRPERSON: Oh, that is what you have given me? Ja.

ADV MYBURGH SC: Yes.

CHAIRPERSON: The page was 349, hey?

ADV MYBURGH SC: Correct Chairperson.

10 **CHAIRPERSON:** Okay alright. Your junior could check if no supplementary statement or affidavit was previously made by Mr Van der Westhuizen to correct this, it will be good if we could get a supplementary statement that can be slotted in behind his affidavit.

ADV MYBURGH SC: We will do that DCJ.

CHAIRPERSON: H'm, h'm.

ADV MYBURGH SC: So Mr Molefe then, at the time that you were dealing with the Neotel/T-Systems issue, you accept that Mr Essa was a Director of Broadband Infraco?

20 **MR MOLEFE:** I did not know that.

ADV MYBURGH SC: No, no. I am asking you, do you accept that he was a Director of Broadband Infraco?

MR MOLEFE: Yes, from the information that is here. Yes.

ADV MYBURGH SC: Alright. Whilst dealing with Mr Essa. Perhaps I can turn to a different topic and that is – and I

suppose importantly, it also still deals with T-Systems but this is the cession from T-Systems to **Zest Galore(?)** **[00:12:52]**.

Now what the evidence shows is that Transnet appointed T-Systems to manage its IT infrastructure and at least some 2200 computers from T-Systems. Do you know anything about that?

MR MOLEFE: Chair, I have no recollection of...

ADV MYBURGH SC: Could I ask you, please, to go to
10 Exhibit BB-3(a), Mr Mohamedy's exhibit.

MR MOLEFE: BB-3?

ADV MYBURGH SC: BB-3(a).

MR MOLEFE: What page number?

ADV MYBURGH SC: 30. Three, zero.

MR MOLEFE: [No audible reply]

CHAIRPERSON: Yes, Mr Myburgh.

ADV MYBURGH SC: Page 30, and at the foot of the page, please, Mr Molefe at paragraph 12.5.2 under the heading T-Systems. Are you there?

20 **MR MOLEFE**: Yes.

ADV MYBURGH SC: T-Systems said:

"Mr Mohamedy, Transnet appointed T-Systems to manage its IT infrastructure. However, there are matters that relate to this contract that I would like to highlight...:

Over the page.

MR MOLEFE: Yes.

ADV MYBURGH SC: Yes.

“Transnet Group Capital was paying for approximately 2200 computers when only approximately 1100 were employed by the divisions...”

Et cetera. Of a particular reference then is paragraph 5.12.3:

10 “They key issue to note is that these computers were all leased through the T-Systems contract which was subsequently ceded initially to Zest Galore and then later to InnoVent Rental and Asset Management Solutions.

I attached Annexure MSN 40, copy of the cession and delegation agreement between Transnet, Zest Galore and T-Systems.

20 Now Zest Galore and InnoVent are partly owned by Salim Essa, a well-known associate of the Gupta’s and a majority shareholder of Trillian Capital Partners...”

Do you know anything about that?

MR MOLEFE: No. No, sir, I do not know anything about that. When was this?

ADV MYBURGH SC: Let me take you to the agreement because you in fact signed it, the cession from T-Systems to Zest Galore.

MR MOLEFE: Oh, ja.

ADV MYBURGH SC: That will you find in Mr Mohamedy's next volume that being Exhibit BB-3(b).

MR MOLEFE: Exhibit BB-3?

ADV MYBURGH SC: Alright. Can you ask you, please, to go to page 581?

10 **MR MOLEFE:** 581?

ADV MYBURGH SC: Ja.

CHAIRPERSON: One second Mr Myburgh. Yes, Mr Myburgh.

ADV MYBURGH SC: Thank you. At MSN-581, you will find a cession and delegation agreement between Transnet, Zest Galore and T-Systems. Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And if I can take you to page 585 at paragraph 3.1 under the heading Cession and Delegation:

20 "T-Systems hereby seize it's right under the Transnet agreement as indicated in Attachment A to Zest Galore..."

MR MOLEFE: Yes.

ADV MYBURGH SC: "And hereby accepts the cession..."

MR MOLEFE: Yes.

ADV MYBURGH SC: And if you then go forward all the way to page MSN 592, you will see that you signed that agreement.

MR MOLEFE: Yes. And just for the sake of completeness. This agreement would have been accompanied by a memo ...[intervenes]

ADV MYBURGH SC: Yes.

MR MOLEFE: ...requesting me to sign the agreement. I do not know if you have it there?

10 **ADV MYBURGH SC:** I do not have a memo.

MR MOLEFE: Oh, okay.

ADV MYBURGH SC: The fact is that you signed it.

MR MOLEFE: Yes, I signed it.

ADV MYBURGH SC: Now, can I take you, please, to Exhibit 5?

CHAIRPERSON: Just... I wanted to check the date of the agreement Mr Myburgh. It is 1 December 2014. Is that right?

ADV MYBURGH SC: That appears correct.

20 **CHAIRPERSON:** Ja, okay.

ADV MYBURGH SC: So this is also something you dealt with in 2014. Can I take you to Bundle 5, please?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: And could you turn, please, to page 405.86?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: Are you there?

MR MOLEFE: Yes.

ADV MYBURGH SC: Now that is a CIPC search on Zest Galore.

MR MOLEFE: Yes?

ADV MYBURGH SC: And if you could turn forward, please, to page 504.89 and right at the bottom of the page, there is a person by the name of Zenad(?) Osmani(?) Do
10 you see that?

MR MOLEFE: Zenad?

ADV MYBURGH SC: Osmani.

MR MOLEFE: On which page?

ADV MYBURGH SC: At the foot of page 405.89.

MR MOLEFE: Yes?

ADV MYBURGH SC: Do you know that person?

MR MOLEFE: No, I do not know.

ADV MYBURGH SC: Well, I just want to put it to you that she is or was at the time ...[intervenes]

20 **CHAIRPERSON:** I am sorry Mr Myburgh. Page 405.8?

ADV MYBURGH SC: .89 Chairperson.

CHAIRPERSON: Oh, that must be... one.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay I have got it.

ADV MYBURGH SC: So I just want to put to you that

Zenad Osmani was Mr Essa's wife.

MR MOLEFE: Yes.

ADV MYBURGH SC: Do you know that?

MR MOLEFE: No, I do not even know Mr Essa, as I have said.

ADV MYBURGH SC: Okay and we are... So that is what I want to put to you. Let us carry on with something else where Mr Essa features. I want to turn now.

CHAIRPERSON: I am sorry. Who was Mr Essa's wife?

10 **ADV MYBURGH SC**: Zenad Osmani.

CHAIRPERSON: Oh ...[intervenes]

ADV MYBURGH SC: The person who ...[intervenes]

CHAIRPERSON: At the bottom?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay I have seen it, ja. Okay?

ADV MYBURGH SC: You would have seen, DCJ, that she was a director in the year 2014.

CHAIRPERSON: Oh, okay. Of T-Systems?

ADV MYBURGH SC: Of Zest Galore.

20 **MR MOLEFE**: No, of Zest Galore.

CHAIRPERSON: Oh, okay, okay.

ADV MYBURGH SC: So there was a cession from T-Systems to Zest Galore.

CHAIRPERSON: Yes, okay.

ADV MYBURGH SC: Mr Molefe signed that contract and

this lady was a Director of Zest Galore and she is Mr Essa's wife.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Now let us move to another topic.

MR MOLEFE: Before, just to put everything in context. Well, I accept that I signed the cession. The reason I wanted to see the memo is I wanted to see the ...[intervenes]

CHAIRPERSON: The background ...[intervenes]

10 **MR MOLEFE:** The background ...[intervenes]

CHAIRPERSON: ...and the reasons.

MR MOLEFE: And the reasons.

CHAIRPERSON: And the motivation.

MR MOLEFE: Yes, but what I do know and recall is that, typically, agreements like that of T-Systems would have a clause and I say this without having seen the actual agreement ...[intervenes]

CHAIRPERSON: H'm?

MR MOLEFE: Or it is maybe attached. Would say that
20 this agreement may be ceded and that when the party that is ceding the agreement wants to see Transnet or the other party may not refuse unreasonable for the cession to happen.

So I would imagine it was in that context but I think that if this was investigated further, maybe that can

be confirmed. But I think, sitting here, that was the context.

CHAIRPERSON: Okay.

MR MOLEFE: Which is why I wanted to see the memo that preceded. Maybe the memo would have said: We cannot unreasonable refuse to...

CHAIRPERSON: H'm, h'm.

MR MOLEFE: Ja.

CHAIRPERSON: Okay.

10 **MR MOLEFE:** And I want to state that I was not... Well, I do not think that I applied my mind to the directors of Zest Galore but I did not know that that the person in question was Mr Essa's wife.

ADV MYBURGH SC: But let us carry on then with another topic, also relating to Mr Essa and that is the Manganese Expansion Project. Now you will remember, we have touched on this at the beginning. Mr Henk Bester, who was then employed by Hatch Consulting, gave evidence about this. Do you remember that?

20 **MR MOLEFE:** Yes and when we are talking about Mr Henk Bester ...[intervenes]

ADV MYBURGH SC: Yes.

MR MOLEFE: ...I think the other day. I kept – I think I kept confusing him with the Bester from Eskom in my head. Actually, I do not recall Mr Bester nor how he looks like or

what he looks like. So I do not ...[intervenes]

CHAIRPERSON: That is the Transnet – that is the one that we are talking about now.

MR MOLEFE: Yes...

[Speakers intervening each other – unclear.]

CHAIRPERSON: Okay.

MR MOLEFE: Yes.

ADV MYBURGH SC: I just want to take you to five paragraphs of his affidavit. That you will find at Transnet
10 Bundle 4 and Mr Bester is Exhibit BB-19.

MR MOLEFE: Yes.

ADV MYBURGH SC: So if I could ask you, please, to turn to BB-19 and turn up page 29?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: So at paragraph 19 and you would have seen this before so I am going to paraphrase it. You will remember that Mr Bester's evidence was that Hatch was tendering and that there were people that made advances in relation to being appointed as its – the
20 supplier development partner.

And at paragraph 19, he talks about a meeting where Padayachee and Reddy, amongst the people that are referred to, indicated their respective companies to form a joint venture if they work with Hatch on phase 1.

Padayachee further explained that they, him,

Reddy and their respective companies, knew everything about the project and people high up in Transnet.

He said:

“I understood to mean the Executives, such as the CEO, CFO and COO. Do you have any comment to that?”

MR MOLEFE: No, I have no comment.

ADV MYBURGH SC: Then at paragraph 23. He talks about a meeting and he says about five lines from the
10 bottom:

“Basson said that they had an early discussion with Anoj Singh, Transnet Group Chief Financial Officer at the time.

As GCFO, Singh was responsible for signing the confinement for phase 1 prior to Molefe giving final approval as the Group Chief Executive...”

Can you confirm that?

MR MOLEFE: No, I cannot comment on that.

20 **ADV MYBURGH SC**: Well, I think we have seen this contract yesterday, actually. But this is the MNPQ(?).

MR MOLEFE: Yes.

ADV MYBURGH SC: The Manganese Contract.

MR MOLEFE: Yes, but I cannot comment on what Basson was saying ...[intervenes]

ADV MYBURGH SC: Sure.

MR MOLEFE: ...to Padayachee and Reddy.

ADV MYBURGH SC: And then at paragraph 29, you will see there is a call from Padayachee, who indicated he would like to see him again. They had a meeting. Padayachee and Reddy advised that the confinement approval was imminent but that Hatch needed to sign the addendum to the MOU before confinement could be finalised.

10 He says, over the page:

“It was clear that they were not happy with Hatch’s proposed amendments.

I understood this to mean, either that Singh would not approve the confinement in order for Molefe to give final approval.

Alternatively, both Molefe and Singh would not give the necessary approvals...”

Do you have any comment on that?

MR MOLEFE: Chair, I have no comment on it and actually
20 I do not know Mr Padayachee and Mr Reddy. I do not – I cannot recall who they are. I have no idea who they are.

ADV MYBURGH SC: Well, let us then deal with paragraph 65. Now this is the meeting that was held at Melrose Arch, JB’s Corner, attended by Mr Essa...

“Essa clearly indicated that he can provide me

with the submitted tender documentation from all the other bidders.

He told me that they have already decided ...[audio cut] Eskom will be Molefe and that an announcement will be made in the newspaper soon."

I have already taken you to that. I assume you have nothing further to say.

MR MOLEFE: Ja and we have spoken about this meeting
10 at length. By the way, who else was at this meeting?

ADV MYBURGH: It was Mr Essa and Mr Bester and I think there were others.

MR MOLEFE: There were others? And the others corroborated this evidence?

ADV MYBURGH: Sorry?

MR MOLEFE: Have the others corroborated this evidence?

ADV MYBURGH: No one else has given evidence about this particular discussion.

20 **MR MOLEFE:** Ja, I cannot comment on it.

ADV MYBURGH: Alright.

MR MOLEFE: But, you know, the Chairperson was at pains to explain that I should be concerned about it so it would be interesting if the Commission could say that from the people that were there, they can confirm that this is

actually a discussion that took place.

ADV MYBURGH: This is a thing that does not concern you.

MR MOLEFE: But it is a discussion that took place in my absence, that does not worry me, that has got nothing to do with me.

ADV MYBURGH: Alright. Then at paragraph 71:

“On 30 November 2014 Molefe signed a letter that awarded the rail tender to...”

10 And this is consortium H to NJV. And then:

“The port N Met project was awarded to Flag consisting of [indistinct], Amacom and Gibb. I suspect that the appointment of Flag was due to Essa’s involvement.”

Do you want to say anything about that?

MR MOLEFE: I cannot comment about his suspicion. I can only say that it was not due to Essa’s involvement. I think that I, if I did award such tender ...[intervenes]

ADV MYBURGH: You awarded the tender, did you?

20 **MR MOLEFE:** Huh?

ADV MYBURGH: You awarded that tender.

MR MOLEFE: Yes, if I did, it was on the basis of a recommendation that had been made after due process.

ADV MYBURGH: Alright and then if I can take you to the evidence of Deidre Strydom, who also testified on this

issue and you will find her affidavit at BB20, in the same file that you are in. So it is bundle 4, BB20.

MR MOLEFE: Yes.

ADV MYBURGH: And if you could please turn to paragraph 35 at page 145 and from paragraphs 35 to 38 she effectively corroborates what she was told by Bester but of particular importance presently is paragraph 35:

“Since the value of the transaction...”

Perhaps in fairness to you I must just indicate to you that
10 Ms Bester (sic) was in charge from Transnet’s side of the MEP.

MR MOLEFE: Of the NMPP?

ADV MYBURGH: Yes, she was at the time I think it was the programme director of the manganese expansion project.

MR MOLEFE: Mr Bester?

ADV MYBURGH: Sorry?

MR MOLEFE: Did you say Mr Bester was?

ADV MYBURGH: No, Mr Bester worked for Hatch.

20 **MR MOLEFE:** Yes, yes, oh ...[intervenes]

ADV MYBURGH: Strydom, Deidre Strydom.

MR MOLEFE: Yes.

ADV MYBURGH: Alright, so she says at paragraph 35:

“Since the value of the transaction...”

And she is talking about his confinement.

“...was below 250 million final approval of the confinement resided with Mr Molefe the then GCE. Mr Rudi Basson, ECPG, and told me that the ETC value was reduced to fit in with the GCE’s delegated authority, i.e. within Molefe’s monetary mandate. This meant that he had the delegated authority to authorise the expenditure without approval required from the board acquisitions and disposal committee. I annex hereto marked DS3
10 the approval of the confinement of phase 1 to Hatch and an approved contract value of 220 million.”

The delegation of authority that was applicable at the time.”

Do you want to comment on that?

MR MOLEFE: I cannot comment on the discussion that Rudi Basson had with Deidre Strydom.

ADV MYBURGH: Sorry?

MR MOLEFE: I cannot comment on the discussion that Rudi Basson had with Deidre Strydom on the corridor.

20 **ADV MYBURGH:** But did you fit this contract in your mandate?

MR MOLEFE: No, no.

ADV MYBURGH: So you can comment.

MR MOLEFE: I did not fit any contract into any delegation.

ADV MYBURGH: And then at paragraph 36 over the page, 146:

“The confinement was structured as a fixed cost contract with specific and very high supplier development targets to be achieved by Hatch. Singh increased the SD targets further during the approval process. I know this because I had to get Gama to sign the approval and at that stage the SD value was 40%. The final value of SD that was submitted to Molefe for final approval was 50%.”

This seems high to you or not?

MR MOLEFE: I cannot recall this specific transaction like that. But what, is the 50% that you find offensive?

ADV MYBURGH: Ja, I am saying is that high? Does it sound high to you?

MR MOLEFE: I do not know in the context of this transaction. I would have to look at the memo that was sent to me to approve what I approved but looking at it like this, it does not make – it does not ring any bells.

20 **ADV MYBURGH:** Alright.

MR MOLEFE: It also does not look like there is anything wrong that was happening here.

ADV MYBURGH: Well, Mr Molefe, there was a lot wrong that was happening here.

MR MOLEFE: Huh?

ADV MYBURGH: There was a huge amount wrong that was happening here.

MR MOLEFE: Yes, what was it?

ADV MYBURGH: Well, there were attempts by skills development partners and Essa to force Hatch to appoint them.

MR MOLEFE: Was Essa forcing Hatch to appoint them?

ADV MYBURGH: Well, this is – let us just go back to – I have told you about the meeting at the Melrose Arch, I
10 have read to you what happened.

MR MOLEFE: Yes, yes.

ADV MYBURGH: And the fact that he referred to you.

MR MOLEFE: Yes, I am not aware of that.

ADV MYBURGH: So when you say – I mean, I am just trying to explain to you – do you see this is very serious thing that was happening here.

MR MOLEFE: No.

ADV MYBURGH: No?

MR MOLEFE: No.

20 **ADV MYBURGH:** Alright.

MR MOLEFE: Because I am not aware of all of these that were happening.

ADV MYBURGH: No, no, I am not suggesting you here were aware but do you see how prevalent it seems corruption was within the organisation because what we

have done in the last half an hour, how many times have we seen reference to Mr Essa?

MR MOLEFE: Yes, yes, I have noticed that.

ADV MYBURGH: Ja, it is really a lot of times.

MR MOLEFE: Yes.

ADV MYBURGH: So when P Systems is contracting with a party that Mr Essa is a director to, you are ceding a contract where Mr Essa's wife is a director, you are referred to her by Mr Essa as being the next CEO of Eskom
10 in the context of skills supply development partners being foisted on Hatch and we know that is, certainly from the money flows evidence, it is through supply development partners that so much of this money laundering happened.

MR MOLEFE: Yes, those are your findings or observations that you are making and I choose not to comment on them.

ADV MYBURGH: Sure. Well, it seems –it is what the evidence points to, it is not my finding, I fortunately do not need to make any findings.

20 **MR MOLEFE:** Yes, that is what you are observing that the evidence is pointing.

ADV MYBURGH: But it is troubling is it not? It must be to you.

MR MOLEFE: Well, you know, it would be troubling if I knew that I had done something wrong. So, I mean, this

was happening in the background, I was not aware of it and if these people have anything to answer to, let them answer to it, all I am pointing out is that I was not aware of this.

ADV MYBURGH: Yes but what I am trying to get at is even now when you see this, is it not troubling to you?

MR MOLEFE: I would trouble me if my conscience knew that I had done something wrong.

CHAIRPERSON: Well, Mr Molefe...

10 **MR MOLEFE:** I think we have traversed this, Chairperson.

CHAIRPERSON: We have and maybe one should take what you have said before and say you would say the same thing but one wants to be sure. I would expect that if – assuming that the evidence that Mr Myburgh is talking about were to be true, it is what was happening, it would mean that in the organisation where you were Group Chief Executive Officer there was a lot of corruption and money laundering that may have been perpetrated by certain people and assume for present purposes that you were
20 innocent and you did not know but just hearing about it to say is this what was happening while I was there? I would expect that it would be of concern to you, not to say necessarily that you had anything to do with it. Just the fact that it may have been happening or if the evidence is true it was happening, taxpayers' money, people were

using all kinds of vehicles to get money illegally.

MR MOLEFE: Chairperson, then if it was indeed happening I am concerned.

CHAIRPERSON: Yes, okay, alright.

ADV MYBURGH: Alright and then to another topic, the New Age. I think you have accepted that under your watch investments

CHAIRPERSON: So this file can go [inaudible – speaking simultaneously]

10 **ADV MYBURGH:** Yes, it can go back, thank you, Chairperson. Mr Molefe, I think that you have – that under your watch Transnet sponsored The Big Interview in the New Age.

MR MOLEFE: Yes.

ADV MYBURGH: And you did that for a number of years?

MR MOLEFE: Yes.

ADV MYBURGH: And I see that in 2016 the cost of that advertising was R450 000 per month.

CHAIRPERSON: Should I have any bundle in front of me?

20 **ADV MYBURGH:** Well, the difficulty, DCJ is that this ...[intervenes]

CHAIRPERSON: Oh, you will mention when I need to have one?

ADV MYBURGH: Yes.

CHAIRPERSON: Okay, alright.

ADV MYBURGH: The difficulty with this and the exhibit is that this comes from another stream, it is MM.

CHAIRPERSON: That is fine, when – it may well be, you will assess it, I need to have a file in front of me.

ADV MYBURGH: We do have – your registrar has it but I want to try and short-circuit all of this. Mr Jackson – you have been referred to this.

MR MOLEFE: Ja but you said in 2016.

ADV MYBURGH: Well, attached – I have been looking
10 through the invoices and I see that in 2016 it was 450 000 per month.

MR MOLEFE: Yes but in 2016 I was not at Transnet.

ADV MYBURGH: Yes, okay, fair enough, I accept that. What Mr Jackson says and you have been asked about this and you have asked to comment is that he thought that this was not at all valuable or really in the interests of Transnet. Do you want to comment on that?

MR MOLEFE: I have in my affidavit, Chairperson, pointed
20 to Mr Jackson's evidence but when I arrived at Transnet we were actually advertising in the mainstream media, paying a lot of money on the rail crossing campaign and this was to alert people to the dangers of rail crossing. It was a noble campaign. But the way that it was done is that there were very gruesome pictures that were printed and even played on TV of trains hitting cars and I felt that this is not

– and we were paying for that, this advertising, I do not know if maybe the investigating team has cared to quantify how much we paid for that, for those advertisements in the mainstream media.

And what I said to the branding team was that this is not good for the brand to be seen – for our trains to be seen to be smashing cars. This is what remains in people’s minds. I even said that, you know, when children associate our trains with the collisions with minibus taxis,
10 that is what will stay in their mind and they may not want to work for Transnet when they grow up, so we have to find another positive way of doing it and I also said we must desist from advertising where we pay for a message because people read through it. So if we say we are the most effective and efficient transportation company in Africa and we have paid to say that, it is not as effective as the same message being in the news, in the news, as part of the main news. So we have to move from paying for adverts, paying for adverts and move our brand into the
20 mainstream news, find a way of moving our brand into the mainstream news and The Big Interview was an opportunity to do that. Even though the people, when we sponsored The Big Interview, the people that spoke at The Big Interview spoke about news, about topical issues and not Transnet is an effective and efficient organisation. So now

we were building partners here with people that were speaking at The Big Interview to support our messaging later but also, whenever possible, putting in our newsworthy issues onto the news through The Big Interview and this is the shift that I asked to be done from a branding point of view, we should be seen in the news and not in the advertising pages from a branding point of view. So this is a discussion that I had, Mr Jackson I think was present and he agreed and we agreed that on this

10 philosophical or doctrinal issue this is how we were going to move forward and that was the reason for supporting The Big Interview.

CHAIRPERSON: Well, maybe we will talk more later on on the matter, you may or may not know that when some of the Transnet witnesses, who talked on this issue, came to give evidence, I had lots of issues, questions to them. I would have thought that if the best way to promote your brand is to be in the news is to do things that are newsworthy and you are therefore in the news for good

20 things.

MR MOLEFE: Yes.

CHAIRPERSON: Yes as opposed to what you have just mentioned, which was mentioned by those witnesses too, that in these breakfast shows very often the speakers would not be speaking about Transnet.

MR MOLEFE: Yes.

CHAIRPERSON: They would be talking about whatever had been planned to talked about.

MR MOLEFE: Yes.

CHAIRPERSON: And then it did not seem to me that the idea that it was promoting Transnet's brand was as clear as it might be to you.

MR MOLEFE: Yes, Chairperson, and the idea was actually very subtle because these people were newsmakers and
10 what we were implanting in them is a positive view of Transnet. We were engaged in the MDS. At the same time we were a lot in the news about the MDS but the idea was that whenever, for example, we have a project that comes onto the news, these newsmakers would then help to promote the positive news on the other things that we were doings. I do not know if you understand what I mean. So there would be a friendly force.

CHAIRPERSON: Well, as you speak, the point that comes to my mind is that if you have done something that is
20 newsworthy, the media houses will not even pay because that is newsworthy.

MR MOLEFE: Yes.

CHAIRPERSON: They will want it and you will be talked about in favourable terms without you paying, you know?

MR MOLEFE: Yes, yes.

CHAIRPERSON: So it seems to me that if you or Transnet engaged in activities that were seen as good by the community and as newsworthy, that is when you would get – you promote your brand and you would do so without paying.

MR MOLEFE: So, Chairperson, let us for example, nè, take that we sponsor a news – this programme and the person that is being interviewed is the Premier of Mpumalanga and she is going to talk about her successes
10 as the Premier of Mpumalanga. So that is fine, she talks about her successes as the Premier of Mpumalanga but we operate in Mpumalanga. The day that we have a newsworthy item and she gets an opportunity to be interviewed about a matter that involves Transnet we can be sure that she will go out of her way to make sure that she portrays us in a very good light. That was the whole point.

CHAIRPERSON: Well, I will let Mr Myburgh take it from there but if you have done something that is seen as good
20 by the community or by the society, the news people will be there, you will not need somebody else, you ...[intervenes]

MR MOLEFE: Which news people, Chairperson? The media? These ones?

CHAIRPERSON: Yes.

MR MOLEFE: No, Chairperson, we live in two different

countries.

CHAIRPERSON: Well, maybe Transnet was not doing those things that it should have done.

MR MOLEFE: We were. We were executing the market demand strategy, we were announcing all sorts of good news every week. Government was - generally, the problem in government is that despite the overwhelming negative publicity there are a lot of things that are good that government has done that have not made it into the
10 news. The attitude of our media is that if somebody has not died, if there is no scandal involved, they are not interested and so this was – I mean, you can talk to all the communicators from government, this was a big problem for the nineties right through the 2000 and even up to now I can say that our media finds it difficult to portray our government in a positive light. That is – there are very few people who would argue against that kind of statement, it is a – and I experienced it in my entire career that we have done spectacular good things but the media was no
20 interested in it.

CHAIRPERSON: Ja, no, no, that is fine. I will mention one example of my own experience. I think about two years ago I went to the area, the village where I grew up.

MR MOLEFE: Yes.

CHAIRPERSON: And went to the primary school that I

attended because the Zondo and Bux Educational Trust that was established a few years ago had spoken to another trust about the situation in the school which I attended of toilets and so on and that trust organised funding and they sorted that out and we went there to have a function and to say this is what has been done and I think somebody must have told the media and some journalists went to that rural area and they were there and the story was in a number of newspapers about the toilets
 10 that had been built for the school and a school hall in the high school in the area. We did not pay anything to the media for them to put us in the newspapers.

MR MOLEFE: Yes.

CHAIRPERSON: But I am just mentioning, I think it might be a matter of degree. I am just mentioning one example. Mr Myburgh?

ADV MYBURGH: Yes, thank you.

MR MOLEFE: I was going to give another example that involves you but I will leave it.

20 **CHAIRPERSON:** Okay, okay.

ADV MYBURGH: Mr Molefe, I am just going to read to you, I do not think you have this exhibit before you but this is just one paragraph, it is EXHIBIT MM5 at page 10 paragraph 47. Mr Jackson says this ...[intervenes]

CHAIRPERSON: Page?

ADV MYBURGH: Page 10, JFJ10.

CHAIRPERSON: Okay.

ADV MYBURGH: Mr Jackson says this:

“My own view was that the decision to participate in The Big Interview was not justifiable given that TNA was a new publication with no readership or circulation data and a completely unknown demographic reach. This meant that it was impossible to evaluate the newspaper’s reach insofar our stakeholders are concerned and constituted a significant risk considering the amount of money involved.”

Do you want to comment on that?

MR MOLEFE: Does he indicate that he raised this during our debates because my recollection is that when we had this debate about the repositioning of the brand advertising he agreed. As I say in my memo, maybe it was just because to buy my face as he is trying to buy the face of his new bosses now. It is just a reflection of the person that he is but I cannot recall that he raised that issue either in a memo or in a debate on this matter.

ADV MYBURGH: Alright. I would like to move to another topic please. Chairperson, you can dispense with that file and if you could now be provided with Transnet bundle 1, EXHIBIT BB15 and I would like now to address briefly the

topic of Mr Gama's legal fees.

MR MOLEFE: Yes.

ADV MYBURGH: And I would like to start – I think I am going to refer you only to two documents. Can you please go to BB15, you should have a tab 2.

MR MOLEFE: BB15, 2?

ADV MYBURGH: And I see it is consecutively numbered so perhaps you can go directly to page 142. You will see at 142 there is a memorandum to you.

10 **MR MOLEFE:** Yes.

ADV MYBURGH: From a Mr Mapoma, general manager Group Legal Services.

MR MOLEFE: Yes.

ADV MYBURGH: And it deals with legal fees, Mr Gama versus Transnet.

MR MOLEFE: Yes.

ADV MYBURGH: Let me direct your attention to paragraph 4.

MR MOLEFE: Yes.

20 **ADV MYBURGH:** You refer to a settlement and it says:

“The relevant clause of the settlement agreement is clause 3.5 which provides that Transnet will make contribution equivalent to 75% of Mr Gama's tax costs incurred during his High Court application and in respect of his unfair dismissal dispute referred to

the bargaining council.”

MR MOLEFE: Yes.

ADV MYBURGH: Do you see that?

MR MOLEFE: Yes.

ADV MYBURGH: So 75% of the costs in his High Court application and 75% of his costs in the unfair dismissal dispute referred to the bargaining council.

MR MOLEFE: Yes.

ADV MYBURGH: Now if you can skip to paragraph 7 at
10 page 143 or in fact let us go to 6:

“Mr Gama incurred legal costs in two matters.”

You would have seen that from the settlement agreement as well.

“The first is his application in the High Court in which Transnet used two sets of attorneys, Bowman Gilfillan...”

It says Deneys Reitz but that should actually, I think, be Eversheds.

20 “The second matter in which he incurred costs
...[intervenes]

MR MOLEFE: I think it should say Eversheds?

ADV MYBURGH: It should say Eversheds, yes.

“The second matter in which he incurred costs is the labour matter.”

And then it says:

“The costs in the High Court were granted in Transnet’s favour by the court.”

Do you see that? So you won that case.

MR MOLEFE: Yes.

ADV MYBURGH: Alright.

“These costs were supposed to have been paid by Mr Gama.”

Do you see that?

MR MOLEFE: Yes.

10 **ADV MYBURGH**:

“On reaching settlement with Mr Gama, Transnet sought and obtained the taxed bills from these two firms of attorneys and paid 75% of the total amounts.”

MR MOLEFE: Yes.

ADV MYBURGH: Does that make any sense to you? So you win, he owes you costs, what you land up paying him are your costs.

MR MOLEFE: Come again?

20 **ADV MYBURGH**: You win with costs.

MR MOLEFE: No, I was not there.

ADV MYBURGH: But this memo was sent to you, I am trying to ask...[intervenes]

MR MOLEFE: Yes, this memo was sent to me and all I did was to note it.

ADV MYBURGH: Okay.

MR MOLEFE: Yes.

ADV MYBURGH: You just noted it?

MR MOLEFE: I just noted it, I just – so there must have been a request from me to say please apprise me of the Gama matter.

ADV MYBURGH: But when you note – perhaps I misunderstand things, but you noted it - whether you approved it or not, did you read the nonsense in paragraph
10 7?

MR MOLEFE: Well, I read it, but I cannot comment on it even now.

ADV MYBURGH: But, Mr Molefe, just let us have a look at what it says. The costs in the High Court were granted in your favour.

MR MOLEFE: Ja.

ADV MYBURGH: These costs were supposed to be paid by Mr Gama, your costs.

MR MOLEFE: Ja.

20 **ADV MYBURGH:** On reaching settlement with Gama, Transnet sought and obtained tax bills from these two firms of attorneys. Your attorneys.

MR MOLEFE: Yes.

ADV MYBURGH: And then paid to Mr Gama their fees.

MR MOLEFE: Yes.

CHAIRPERSON: So the question really, Mr Molefe, is you may or may not have approved but you noted and you read.

MR MOLEFE: Yes.

CHAIRPERSON: Did you pick up this very absurd idea?

MR MOLEFE: ...and – ja, so I requested, I must have requested – there was, I think there was a query from the Director General about this matter that I knew very little about and I asked to be appraised and this is the memo that was sent to me and then I read it but it is a matter that
10 was handled by the Board, it was handled by the Board and I read this memorandum and these were facts that were being presented to me.

I don't know if there was expectation that I should do anything about it or challenge it or say, I don't approve but it was done at the Board and this was a memo from Mr Mapoma who's a General Manager Group Legal Services and he was talking about tax costs and 75% and soon.

I can't say that I really understood what he was saying, I just noted that there was an agreement that the
20 costs would be settled in a particular way.

ADV MYBURGH SC: So, if you were asked to approve this would have looked at it more carefully, is that what you're saying or not?

MR MOLEFE: No, I can't speculate on what I would have done if this had come to me for approval. Perhaps I would

have sought more clarity.

ADV MYBURGH SC: Well, let's look at page 104.

MR MOLEFE: 104>

ADV MYBURGH SC: Yes, because earlier in the year you had, in fact, approved this.

MR MOLEFE: Earlier?

ADV MYBURGH SC: 104, so this memo is dated, that I took you to at 142, it's dated 17 August 2011. Let me take you to the memo at 104, this is no 23 March 2011.

10 **MR MOLEFE:** Yes.

ADV MYBURGH SC: You see, it refers there, at the bottom of the page, the same 3.5 of the settlement agreement.

MR MOLEFE: Yes.

ADV MYBURGH SC: And then it says, "Financial Implications", over the page,

"75% of the attached invoices have been paid to Mr Gama",

And then those attached invoices are invoices you
20 see over the page Eversheds Attorneys and Bowman
Gilfillan Attorneys.

MR MOLEFE: Yes.

ADV MYBURGH SC: And that you approved.

MR MOLEFE: Yes, because, as you see in paragraph 2 of the memo, the – so this is an agreement that the Board

had entered into and had agreed to pay and my approval, really, was as a functionary who effected payment of a Board agreement, basically.

ADV MYBURGH SC: But I'm still – I'm not sure that I – in other words, if something is put before you for approval you can just sign it?

MR MOLEFE: Well, if the Board has entered into an agreement that a certain payment will be made, and I do not see why I would be standing in the way of the payment
10 being made.

ADV MYBURGH SC: But the thing is the Board hadn't entered into that agreement.

MR MOLEFE: The Board hadn't?

ADV MYBURGH SC: No, because have a look at...[intervenes].

MR MOLEFE: The settlement negotiations were sanctioned by the Transnet Board and the Chairman of the Board.

ADV MYBURGH SC: Correct ...[intervenes]

20 **MR MOLEFE:** ...[indistinct] Mkhwanazi was mandated to conclude such a negotiation.

ADV MYBURGH SC: Correct, Mr Molefe, but the point is, if you go to 3.5 the clause, Transnet will make a contribution equivalent to 75% to Mr Gama's tax costs incurred in the High Court and in the labour matter. What

this memorandum lands up doing, is authorising Mr Gama to receive your costs.

MR MOLEFE: Yes, but this was in terms of the agreement...[intervenes].

ADV MYBURGH SC: No, it wasn't the terms of the agreement was that he would get his costs, that's what I'm taxing you about, ...[intervenes].

CHAIRPERSON: Let me explain it Mr Molefe. Mr Gama, I think when he was suspended, brought an urgent
10 application in the High Court against Transnet and various...[intervenes].

ADV MYBURGH SC: When he was suspended?

CHAIRPERSON: When he was suspended against Transnet as an entity as well as a number of members of the Board, maybe all of them, I'm not sure but a number of them to, effectively, get the suspension set aside. Transnet and various Board members opposed that application and the High Court dismissed that application and said he must pay Transnet's costs as well as the costs
20 of those members of the Board who had opposed the application, that's what the Court ordered. Now, Transnet and the Board members had gone to lawyers and briefed lawyers to oppose this application, so Transnet had incurred costs. So, the order of the Court as far as the costs were concerned, was to the effect that Mr Gama must

pay Transnet and the Board members, their legal costs. Now the – what, ultimately happened, which is what Mr Myburgh is talking about is that Transnet – the settlement agreement said that Mr – Transnet must pay, I think 75% of Mr Gama's legal costs.

MR MOLEFE: That's what the settlement agreement said?

CHAIRPERSON: Yes, that's what the settlement agreement says, even though he had lost in the High Court.

10 **MR MOLEFE:** So, that was the settlement agreement that was entered into with Mr Mkhwanazi?

CHAIRPERSON: Yes, yes but leave aside whatever you may think of that part of the settlement agreement.

MR MOLEFE: Yes.

CHAIRPERSON: What the memorandum – what was, ultimately done, was not to look at 75% of Mr Gama's legal costs but to take at the legal costs of Transnet and say what is 75% of the costs that Transnet and its Board members have incurred in this litigation and then say, we
20 will pay Mr Gama 75% of our legal costs. So, that's what he's talking about to say, that's something very, very strange.

MR MOLEFE: Ja, Chairperson, to be honest with you, my understanding of this matter was that Mr Gama had been dismissed and that the matter went to Court and now we

have entered – or the Board or Mr Mkhwanazi] has entered into an agreement to pay his costs – entered into an agreement to pay his costs and that this was the payment in line with that agreement. I would expect that, if there was anything untoward the legal people would have picked it up because, in fact, this recommendation came from the legal department that we should make a payment, in this fashion. Mr Mapoma was the General Manager Legal Services compiled the memorandum and it was
 10 recommended by the Head of legal at Transnet, Ms Zola Stephen. I took it that it was a payment in line with what has been agreed, I must confess that I did not go into the intricacies of how this thing - in any case this thing of the legal cost is something that I'm yet to understand because you know people talk about tax costs, but it doesn't involve SARS and – so I – tax costing is not something that I'm confident with.

CHAIRPERSON: [Laughter], no, not the tax cost's part I can understand, from a lay person's point of view when you
 20 say tax costs, where is SARS here but of course, obviously, I think if you are required to approve anything and there's something you don't understand you need to ask because you don't want to approve something that's wrong.

MR MOLEFE: Yes, but also when it comes from the Head

of Legal and the General Manager Legal Services and it is referred to an agreement that was entered into, even before my time and – ja the case numbers are quoted there. If you look at the recommendation Chair, it says,

“Based on the motivation above, I recommend that the contribution to the legal fees must be paid as per the settlement agreement”,

For me there was nothing to argue, if, indeed it was as per the settlement agreement.

10 **CHAIRPERSON:** Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Let's turn to another topic please and that is Abalozi, could I ask you to go to Transnet Bundle 3 and to Exhibit BB17. Right, now could you please turn to page 499.

CHAIRPERSON: You say, 499?

ADV MYBURGH SC: Yes, Chairperson, 499.

CHAIRPERSON: Okay, I hope I didn't misrepresent anything, Mr Myburgh about what happened with regard to those costs, to Mr Molefe?

20 **ADV MYBURGH SC:** That is, as I understand it – look I understand that Mr Gama, I checked with my junior, in his affidavit's he's dealt with costs, but he doesn't seem to have said much I understand that he may have a version that he will give and that might change things but as the evidence stands now, it's correctly so.

CHAIRPERSON: Ja I think I saw that in his affidavit he said that High Court costs and costs in regard to the labour matter, that's how he puts it, but I just saw in the settlement agreement or the quoted paragraph in the memo that you referred us to, it doesn't say labour matter.

ADV MYBURGH SC: No.

CHAIRPERSON: It says, it's specific, the matter unfair dismissal matter.

ADV MYBURGH SC: Yes, the referral to the Bargaining
10 Council.

CHAIRPERSON: Yes, ja.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay, alright.

MR MOLEFE: But it will be interesting to see what Ms Stephen and Mr Mapoma also say.

CHAIRPERSON: Well, he has given evidence and – ja but certainly there is evidence and if you'd like to have a look at it, it will be available, the transcript.

MR MOLEFE: Yes.

20 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: So, Mr Molefe, can we turn to page 499, are you there?

MR MOLEFE: Yes.

ADV MYBURGH SC: So, we're dealing now with Abalozi and you would have seen these paragraphs. Mr Tadu was

instructed by Bowman Gilfillan he was one of the attorneys dealing with the matter and you know up to this point litigation had been entered into, Transnet had sued Abalozi. He says that,

10 “I was subsequently invited together with one of my partners and counsel to attend a meeting with the Group CEO, Mr Molefe. I prepared a note in anticipation of the meeting which briefly summarised the key message that I intended to communicate to Mr Molefe. Then he goes on to say at 43, the meeting with Mr Molefe duly took place, Mr Molefe informed us that the litigation was sensitive and that he had been receiving calls from a person he did not identify by name, but I assume from the context was General Nyanda, asking why Transnet was assisting with the litigation against Abalozi”,

Do you want to comment on that?

20 **MR MOLEFE:** I can’t recall but I said in the meeting that I had been receiving calls from anyone, I can’t recall that.

ADV MYBURGH SC: Right, then at 45, shortly before this meeting it appears that Mr Selinga had addressed a memorandum to Mr Molefe in which he motivated for and recommended the rescission of the decision that had previously been made to exclude GNS/Abalozi from doing

further business with Transnet effectively a blacklisting, is that correct?

MR MOLEFE: That is correct, Chair, and if I can explain this. I was informed that Abalozi had been blacklisted and then I asked, what process was followed to blacklist them, and no process had been followed at all and I do know that before anyone is blacklisted there has to be a process and the person has to be heard and everything must be recorded. Even in the Treasury instructions but also, I've
10 been dealing with Mr Selinga and the legal department, I mean they should have known that it's a requirement that people have to be heard before you blacklist them. So, I said, if that blacklisting is challenged, we will not be, so we must rescind it immediately because it is illegal and so that is how that memo came about.

ADV MYBURGH SC: Because they hadn't been afforded a fair procedure?

MR MOLEFE: Yes.

ADV MYBURGH SC: So, why didn't you just give them
20 one?

MR MOLEFE: Well, the blacklisting had happened some time before I arrived.

ADV MYBURGH SC: That I understand but did you ever enquire into why they were blacklisted?

MR MOLEFE: Yes.

ADV MYBURGH SC: And what did you discover?

MR MOLEFE: Because they said that they had done work – they claimed to have done work which they had not done. They said – so it was a contract – I think it was a guarding contract and it was about providing personnel for the guarding of – I think it was trains and that Transnet was saying they did not do the work, however, our head of security at the time, Major General Baduza [?] had come to me and said to me that Abalozi had not done work is not
10 true, Abalozi has copies of the work – proof of the work that they have done and somebody here at TFR is hiding that, so that they don't get paid and so it appeared that Abalozi was not being treated fairly. In my affidavit I do say, - I did talk about this story and say that subsequent to informing me about this, General Dukkha brought the information to me and I took the information to Transnet's Risk Committee as well as – I can't remember which other committee, two committees of Transnet and the decision there was, then we should settle this matter and I was
20 given a mandate to go and settle this matter out of court because it would be embarrassing that we have actually been hiding proof that Abalozi had done work.

CHAIRPERSON: Did you actually establish that there was proof that Abalozi had done work?

MR MOLEFE: General Dukkha brought it to me, and he

said to me, he interviewed people at Transnet that had knowledge that the work had been done and that there are certain people that are hiding that evidence from Transnet – ja from the Management at Transnet. He investigated the matter and brought the proof to me.

CHAIRPERSON: Now – so did he bring you statements by people who claimed to have witnessed Abalozi perform the work, what actually did he bring to you?

MR MOLEFE: It was files of timesheets and
10 ...[intervenes]

CHAIRPERSON: Yes.

MR MOLEFE: Timesheets that were signed.

CHAIRPERSON: But timesheets can be made without somebody working...[intervenes].

MR MOLEFE: Well, he said that it was proof and that there are people at Transnet – he mentioned by name the people that were prepared to make a statement to say that the work has in fact been done but from what was presented at the time, I was convinced that that it was,
20 indeed, true that Transnet had done the work.

CHAIRPERSON: But did you ask that statements be obtained from people who were prepared to append signatures to say, we did see Abalozi perform work there, there, and there that day and that day, did you get that – then it would mean certain people who were prepared to

stand up and give evidence to say, yes, did you get that?

MR MOLEFE: No, I did not ask for the statements to be obtained from the people.

CHAIRPERSON: Yes.

MR MOLEFE: Part of the problem may have been that these were people that General Dukkha considered to be sources. General Dukkha's background was Crime Intelligence, he had come from Crime Intelligence so, I mean, perhaps – ja maybe he should have
10 advised...[intervenes].

CHAIRPERSON: Yes, because you don't need Crime Intelligence for this. If Abalozi's work for example was that they must send security officers or certain people to be in certain guarding's during certain times or to guard Transnet's buildings in certain places or whatever the work was then there ought to be people who were employed by Transnet who were supposed to sign whenever there was somebody – the guard was there and so on.

MR MOLEFE: That is the files that were brought to say
20 that this is proof of work done.

CHAIRPERSON: Yes, but the question is, do you know whether, what you were provided with...[intervenes].

MR MOLEFE: Was not fraudulent?

CHAIRPERSON: Well, let's leave out the fraud it may be fraudulent. Did it contain documents where people who

had witnessed Abalozi doing what they were contractually obliged to do, in other words there were signatures where people say, yes...[intervenes].

MR MOLEFE: Yes, that was the nature of the evidence. What I was thinking you were asking is, did they make the statement, they did not make statements, but these were as I said timesheets.

CHAIRPERSON: Ja.

MR MOLEFE: Like these people were here and they
10 signed, these people were here, and they signed.

CHAIRPERSON: Yes, but did you only rely on the General in terms of those people who had signed or was there some investigation...[intervenes]?

MR MOLEFE: Yes, there were two or three people inside TFR that had this information and then there two or three people that knew that this information had – and had copies and gave it to General. What we didn't understand was, why was this being suppressed, why didn't this come out into the open.

20 **CHAIRPERSON:** Did you authorise somebody to investigate who was hiding the information from Transnet?

MR MOLEFE: General did, I can't recall that he ever wrote a report on that but General did...[intervenes].

CHAIRPERSON: Were those people confronted...[intervenes].

MR MOLEFE: I do recall saying that this is a matter that may require disciplinary action if it was, indeed, a Transnet employee that that was hiding the information but people who were at TFR would be able to confirm that this was, indeed, happening.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Mr Molefe you know that, subsequently Transnet appointed a firm of attorneys, HNR to investigate this matter?

10 **MR MOLEFE:** This Abalozi matter?

ADV MYBURGH SC: Yes, in other words to investigate whether – it's their report that gave rise to the withdrawal of the litigation.

MR MOLEFE: Yes, yes

ADV MYBURGH SC: People refer to it often just simply as the Nupen Report, are you familiar with that?

MR MOLEFE: Yes, I'm familiar with...[intervenes].

ADV MYBURGH SC: Are you familiar with the report?

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** Yes, and do you know whether, in that report, there's any reference to timesheets and this information and evidence that you've been telling...[intervenes].

MR MOLEFE: No, that report was compiled as if that information did not exist.

ADV MYBURGH SC: Can you explain why that would be?

MR MOLEFE: I don't know, as I say, it would appear that somebody had been hiding that information even from this investigation...[intervenes].

ADV MYBURGH SC: These are people that you appointed, and they produced a report...[intervenes].

MR MOLEFE: No, they were appointed before my time.

ADV MYBURGH SC: Nupen was appointed, and he gave a report to the Risk Committee, the Risk Committee accepted
10 the report, and the litigation was withdrawn.

MR MOLEFE: Yes.

ADV MYBURGH SC: Do you know whether there's any reference in the Nupen Report to this stock of information...[intervenes].

MR MOLEFE: No, I can't recall that there is.

ADV MYBURGH SC: And if there's no reference in it, then it seems it's quite questionable...[intervenes].

MR MOLEFE: No, I don't recall that Nupen had reference to these timesheets, I can't also recall that he had the
20 information that we had.

ADV MYBURGH SC: And, if he didn't, can you explain why, I mean he interviewed people at Transnet.

MR MOLEFE: Yes.

ADV MYBURGH SC: He conducted a thorough investigation.

MR MOLEFE: Ja.

ADV MYBURGH SC: Do you know what he's key conclusion was?

MR MOLEFE: No.

ADV MYBURGH SC: You don't?

MR MOLEFE: I don't remember what his key conclusion was.

ADV MYBURGH SC: Well, his key conclusion was really that bodies hadn't been provided, people hadn't worked but
10 value had been added or things saved.

MR MOLEFE: Bodies had been?

ADV MYBURGH SC: Bodies had not been provided, warm bodies.

MR MOLEFE: Yes.

ADV MYBURGH SC: But that savings had been affected through certain initiatives.

MR MOLEFE: Yes, by Abalozi?

ADV MYBURGH SC: Yes.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** Do you see the tension, you say you're sitting on a stock of information that proved in your mind that people had worked, and bodies had been provided.

MR MOLEFE: Well, the information that we had was the work had been done and that the people that were

supposed to be provided to do the work had been provided.

ADV MYBURGH SC: By way of timesheets, you saw there were people working?

MR MOLEFE: Ja the nature of the information, timesheets, and reports and so on.

ADV MYBURGH SC: Alright, Mr Molefe one would, I suppose, have to study the report, and then reflect back on your evidence but let me get to another point. Had you been seeking...[intervenes].

10 **MR MOLEFE:** But the fact of the matter is that the information that was brought to us went through the Risk Committee, perhaps it may be worthwhile to look at the minutes of the Risk Committee where this information was presented, that I remember very clearly. The General brought the information and what I did with it, was to go to the Board and say that look, here is this information that we now have...[intervenes].

ADV MYBURGH SC: So, you confirm you were in touch with the General during this time?

20 **MR MOLEFE:** General reported to me...[intervenes].

ADV MYBURGH SC: But not General Nyanda it's another General?

MR MOLEFE: No, not General Nyanda...[intervenes].

CHAIRPERSON: Transnet's General.

ADV MYBURGH SC: Okay, I beg your pardon.

MR MOLEFE: Ja General Dukkha ...[indistinct].

ADV MYBURGH SC: Okay had you been speaking at all to General Nyanda?

MR MOLEFE: Yes, I know General Nyanda, and we may have been speaking on other matters even, sometimes, playing golf, yes.

ADV MYBURGH SC: He's a friend of yours?

MR MOLEFE: He's a friend of mine yes.

ADV MYBURGH SC: Because we know Mr Gama also, I
10 think, played golf with him, he was obviously an avid golfer, the General.

MR MOLEFE: You see he played golf with the General, you see how it went.

CHAIRPERSON: [Laughter].

ADV MYBURGH SC: Is this the General...[intervenes].

CHAIRPERSON: Do you want to find out whether you'd do better than him against the General?

MR MOLEFE: Well, to put it in context, General Nyanda has – or maybe used to have, before Covid, an annual golf
20 day in Swaziland really to raise funds for people that had – in Swaziland that had supported the ANC and Umkhonto We Sizwe in the underground in Swaziland. So, every year – I also used to play in that golf challenge and ja, at least when we went to Swaziland, I did see him, we did talk but even in between we did talk, so yes, I know him.

ADV MYBURGH SC: So, I'd like then to just move forward and wrap up on this. So, the Risk Committee, ultimately on the Nupen Report took a decision that the litigation should be withdrawn.

MR MOLEFE: Yes.

ADV MYBURGH SC: And what we then know is that you signed the settlement agreement.

MR MOLEFE: Yes, and the agreement was that both parties are not proceeding with the litigation.

10 **ADV MYBURGH SC:** Yes.

MR MOLEFE: And that both parties would further negotiate a settlement amount.

ADV MYBURGH SC: So, can I just take you please to the deed of settlement that's at page 789 of the same bundle, Bundle 3 BB16.

MR MOLEFE: Page 89?

ADV MYBURGH SC: 789, are you there?

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** You'll see that at – between the tramlines is "Deed of Settlement", are you there?

MR MOLEFE: Yes.

ADV MYBURGH SC: So, it talks about,

"Whereas Transnet issued summons etcetera, under that, whereas Abalozi issued a counter claim now...[intervenes].

CHAIRPERSON: Mr Myburgh, I know that we are trying to save time, but I think this document is quite important. I would suggest because it's not long...[intervenes].

ADV MYBURGH SC: I'll read it into the record, thank you, I'm indebted to you.

“...Transnet SOC (Ltd) Transnet.”

MR MOLEFE: Yes.

ADV MYBURGH SC: “Issued a summons against Abalozi Risk Advisory Services Pty Ltd Abalozi.”

10 **MR MOLEFE:** Yes.

ADV MYBURGH SC: “Previously known as General Nyanda Security Risk Advisory Services Pty Ltd GNS.”

MR MOLEFE: Yes.

ADV MYBURGH SC: “In connection with security services rendered to Transnet by GNS in the period 2007 to 2009 the service, and whereas Abalozi issued a counter claim against Transnet in connection with the services.”

20 **MR MOLEFE:** Yes.

ADV MYBURGH SC: “Now wherefore Transnet and Abalozi have agreed to settle all disputes between them in this litigation on the following term. One, Transnet hereby withdraws its action against Abalozi. Two, Abalozi hereby

withdraws its counterclaim against Transnet.
Three, Transnet will upon signature hereof
issue a media statement in the form as agreed
and attached hereto marked A. Four, Transnet
will pay all the legal costs incurred by Abalozi,
its directors and the cofounders and directors
of GNS on an attorney and own client scale,
and five the terms of the settlement are
settlement agreement are confidential and
10 shall not be disclosed by any one of the
parties to any third party.”

Are you there?

MR MOLEFE: Yes.

ADV MYBURGH SC: So this was a settlement of all
disputes between the parties in this litigation.

MR MOLEFE: In this litigation.

ADV MYBURGH SC: Claim and counterclaim.

MR MOLEFE: Yes, without going into the amounts.

ADV MYBURGH SC: Yes, well the only amounts that are
20 referred to is the costs.

MR MOLEFE: Yes.

ADV MYBURGH SC: So that had to be computed, the
costs.

MR MOLEFE: Yes.

ADV MYBURGH SC: Have you any idea, and you

negotiated this agreement.

MR MOLEFE: Yes.

ADV MYBURGH SC: Why did you agree that Transnet, first of all why did you agree that Transnet should pay any costs? Transnet had sued Abalozi, Abalozi had sued Transnet. Both parties were calling it a truce, but why should Transnet pick up the tab?

MR MOLEFE: The advice that we got from, which is why I would have said even this agreement must have been
10 exceeded by a memo.

ADV MYBURGH SC: You said you negotiated this agreement, to settle.

MR MOLEFE: Yes, but there was a memo.

ADV MYBURGH SC: You negotiated.

MR MOLEFE: I negotiated?

ADV MYBURGH SC: Yes.

MR MOLEFE: Ja.

ADV MYBURGH SC: Then I am asking you why did you decide that Transnet should pick up the tab?

20 **MR MOLEFE**: Because we were at fault, because we had hidden information. Our people had hidden the information that Abalozi had done the work.

ADV MYBURGH SC: But Mr Molefe, that was not the finding of the Newton report?

MR MOLEFE: Well, that may not have been the finding of

the Newton report, but this is what I knew for a fact.

CHAIRPERSON: Did you, in the negotiations did you offer to General Nyanda that Transnet would pay the cost or did he demand that Transnet will pay the cost?

MR MOLEFE: General Nyanda had that information.

CHAIRPERSON: Yes.

MR MOLEFE: And this is what was going to come out in the cause of the litigation.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** And General Nyanda's position was you guys blacklisted me illegally without going through a process, because of a something, because of information that you had hidden, we as Abalozi had not done anything wrong.

It is you who hid away our report and therefore I think that we were wrong, and unfortunately I had no leg to stand on.

CHAIRPERSON: Mr Myburgh, let me leave it to you to continue.

20 **ADV MYBURGH SC:** Yes, thank you, and then why costs incurred by Abalozi, its directors and cofounders and directors of GNS, why? Were the cofounders, were they even party to this agreement, and the directors of GNS?

CHAIRPERSON: Yes.

ADV MYBURGH SC: Why would you ...[intervenes]

MR MOLEFE: Well Chairperson, that is what was represented to me as the damage that would have been done by the fact that we had been hiding information.

CHAIRPERSON: But Mr Molefe, the business dealings were between Abalozi and Transnet.

MR MOLEFE: Yes.

CHAIRPERSON: They were not between Abalozi and the directors, cofounders of GNS and all of that.

MR MOLEFE: Yes.

10 **CHAIRPERSON:** Yes.

MR MOLEFE: Yes.

CHAIRPERSON: So why would you owe the directors anything on top of owing, let us assume that Transnet owed something arising out of this.

MR MOLEFE: Yes.

CHAIRPERSON: Why would you owe the directors and cofounders of GNS on top of owing Abalozi as an entity?

MR MOLEFE: Chairperson, I mean this is what I understood to have been the damage that we had done by
20 hiding the information. However ...[intervenes]

CHAIRPERSON: What damage? What damage?

MR MOLEFE: Having said that, it would have been helpful if I would have seen the name that I preceded, I was signing this agreement. Typically there would have been a memo that explains everything that is in the agreement and

why we are doing what we are doing.

CHAIRPERSON: But the directors and the cofounders, own founders had not sued Transnet.

MR MOLEFE: Ja.

CHAIRPERSON: On our bundles ...[intervenes]

MR MOLEFE: I do not have a recollection of why the clause was included as it is, as it was.

CHAIRPERSON: Yes, because ...[intervenes]

MR MOLEFE: I do not have a recollection as to the
10 background of that clause now as I sit here. Perhaps if I go and reflect on it I may remember the reason why but what I can think of as I am sitting here is because we were in the wrong.

We had hidden away information and caused a lot of damage to the company.

CHAIRPERSON: What kind of damage did you cause?

MR MOLEFE: Reputational, they have been blacklisted and they have been known that they have been blacklisted.

CHAIRPERSON: Did you publish the blacklisting?

20 **MR MOLEFE:** No, the matter was in court. It was at the courts. It was public.

CHAIRPERSON: Yes.

MR MOLEFE: It was in court, yes.

CHAIRPERSON: Okay.

MR MOLEFE: Ja.

CHAIRPERSON: Did they sue you for it?

MR MOLEFE: They did.

CHAIRPERSON: Yes.

MR MOLEFE: That is what, this is a settlement.

CHAIRPERSON: Okay, that is the counterclaim.

MR MOLEFE: Yes.

CHAIRPERSON: Was that the counterclaim?

MR MOLEFE: Yes.

CHAIRPERSON: Okay, but certainly as you sit here, I
10 mean you, you ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: I hope you do not say I am patronizing
you.

ADV MYBURGH SC: You must be careful, Chair.

CHAIRPERSON: Because I did not say anything but there
was a time when you accused Mr Myburgh of patronizing
you and I thought it was not. When you occupy a certain
position.

MR MOLEFE: Yes.

20 **CHAIRPERSON:** You know, group CEO of Transnet.

MR MOLEFE: Yes.

CHAIRPERSON: You must be taken to have certain
knowledge and so on and so on.

MR MOLEFE: Yes.

CHAIRPERSON: So there are certain things that we can

take it that you cannot be, you cannot not know certain things.

MR MOLEFE: Yes.

CHAIRPERSON: So I am, my reaction when I saw this for the first time, and I can indicate it was, I became aware of it after we had been looking at the settlement of Mr Gama. Between Mr Gama ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: And Transnet. This looked very strange.

10 **MR MOLEFE**: Yes.

CHAIRPERSON: And to me, when I think of you having been CEO of PIC, CEO of ... group CEO of Transnet, I would expect that in litigation such as this, even though you might not be a lawyer, but your general knowledge and experience would have you ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: But if we settle and pay cost, if we are supposed to pay any cost to the entity.

MR MOLEFE: Yes.

20 **CHAIRPERSON**: That should be enough.

MR MOLEFE: Yes.

CHAIRPERSON: You know, we should not be paying the directors and cofounders and all of that.

MR MOLEFE: Yes, ja.

CHAIRPERSON: Am I unfair to expect that kind of

knowledge?

MR MOLEFE: Okay, but let me take you through my decision-making process as I recall it.

CHAIRPERSON: Ja.

MR MOLEFE: The counterclaim was about 95 million. Sitting there, negotiating and finally coming to this agreement, even with this clause my quick calculation was we were not going to get anywhere near 95, and that if the matter proceeded to Court and they were suing us for 95
10 million which they said was the damage, I saw that we had no leg to stand on. We had even the information. So my calculation was it does not matter because it will not be anywhere near 95.

CHAIRPERSON: Did you bother to say let us get a legal opinion as to whether this claim of theirs has got any merits and if so ...[intervenes]

MR MOLEFE: No.

CHAIRPERSON: How close, what risk do we have of paying even half of 95 million.

20 **MR MOLEFE:** Their claim had merits because we had hidden the information. I was ashamed at what Transnet Employees had done.

CHAIRPERSON: Well, you are not answering my question Mr Molefe. You may have thought it had merit but you are not a lawyer.

MR MOLEFE: Yes.

CHAIRPERSON: I am asking you whether you bothered to ask for a legal opinion, people who could say to you in law yes, there is a claim and two, it has got reasonable prospects and if they succeed, will they come close to 95 million.

MR MOLEFE: Yes, which is why I was asking for the name.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** Because my recollection was that this was in fact drafted by us, by Transnet legal department.

CHAIRPERSON: Yes, so are you saying that your recollection is that there was a legal opinion from within the ...[intervenes]

MR MOLEFE: No, not a legal opinion.

CHAIRPERSON: Yes.

MR MOLEFE: But from our side ...[intervenes]

CHAIRPERSON: Yes.

20 **MR MOLEFE:** I was not alone in a small claims bar, we were in Transnet and I sat with the legal department of Transnet, and as far as I recall there would have been a memo saying that here is a matter and we recommend that we settle in this manner.

This document itself was drafted at Transnet by our legal department.

CHAIRPERSON: Mr Myburgh ...[intervenes]

MR MOLEFE: Perhaps in the process of drafting, if they have seen that this was untoward or not possible or unreasonable, perhaps they should have advised and said this does not get done, but from a global view which is where I was, was that well from 95 million to paying cost, it looks like a good deal.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, okay. So from 95 million, thank
10 you Chairperson, to paying cost looks like a good deal. When you negotiated this settlement, did you negotiate it with General Nyanda?

MR MOLEFE: Yes, General Nyanda was there.

ADV MYBURGH SC: I see.

MR MOLEFE: Yes.

ADV MYBURGH SC: So let us have a look at what happened after that. If you go to page 807 you were written a letter. Your reference ...[intervenes]

CHAIRPERSON: What page?

20 **ADV MYBURGH SC:** 807 Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH SC: You had written a letter by Abalozi.

CHAIRPERSON: Yes.

ADV MYBURGH SC: You see that, dear Brian and if you go to paragraph 8 at 808, it says:

“They propose 40 million. The 40 million proposal or settlement was believed to be fair restitution and compensation inclusive of legal costs incurred in this matter. Even the extra information required by Transnet in response and the detail of lost revenue provided in this communication, we think that a settlement of 60 million would be justified. It will be prudent to have this matter concluded.”

10 So what they were asking for, you see here, is cost. They were asking for compensation for lost revenue, etcetera. Do you see all of that at paragraph 8?

MR MOLEFE: 807?

ADV MYBURGH SC: 808, paragraph 8.

MR MOLEFE: 808?

ADV MYBURGH SC: Paragraph 8. Are you sure you are in the right file Mr Molefe?

MR MOLEFE: I do not know if I am in the right file.

ADV MYBURGH SC: You need to be in Bundle 3, BB16.

20 **MR MOLEFE:** Ja, BB16, 808 is a letter to Ningisa Hofmeyer. What is the page number?

ADV MYBURGH SC: Is this the same bundle that you had open when you were looking ...[intervenes]

MR MOLEFE: Sorry, what is the page number?

ADV MYBURGH SC: 808.

MR MOLEFE: Sorry, I was on the right 808.

ADV MYBURGH SC: Okay, ja. It is that time of the day when starts confusing the red numbers with the black numbers.

CHAIRPERSON: Well, it was happening to me yesterday.

MR MOLEFE: Yes, 808.

ADV MYBURGH SC: Okay. So what they say, this is dated 16 October.

MR MOLEFE: Before we did the settlement ...[intervenes]

10 **ADV MYBURGH SC**: No, this is after the settlement.

MR MOLEFE: Yes.

ADV MYBURGH SC: This, okay. So they say:

“The 40 million proposal of settlement was believed to be fair, inclusive of legal cost or whatever, given the extra information required by Transnet and the detail of lost revenue.”

So now they have provided loss revenue.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC**: “We think that settlement of 60 million would be justifiable.”

MR MOLEFE: Yes.

ADV MYBURGH SC: So you see, now they do not just want cost, they also want compensation for lost revenue.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now let us look what you do, is you

respond at 803 and at 803, perhaps I could read this into the record. You address it to Abalozi:

“Dear sir, Transnet / Abalozi Risk Advisory Services. Your letter dated 16 October 2014 herein refers. Without admission of liability Transnet SOC hereby offers you an amount of 20 million ...”

MR MOLEFE: Yes.

ADV MYBURGH SC: “In full and final settlement of all
10 legal claims and costs.”

MR MOLEFE: Yes.

ADV MYBURGH SC: “We will be pleased to receive your response to the aforesaid offer within seven days of receipt.”

MR MOLEFE: Yes.

ADV MYBURGH SC: Now as you have correctly said, as you say, you went from 95 million to cost.

MR MOLEFE: Yes.

ADV MYBURGH SC: But this amount that you settled on,
20 was not settlement for costs. It was something else. It was cost and lost revenue and we do not know what and that is really the problem Mr Molefe, because when you look at the settlement agreement that you concluded ...[intervenes]

MR MOLEFE: Yes.

ADV MYBURGH SC: Transnet's only obligation was to pay costs.

MR MOLEFE: Yes.

ADV MYBURGH SC: They write to you and they say well, we want 60 million.

MR MOLEFE: Yes.

ADV MYBURGH SC: Which includes cost and lost revenue etcetera, and you go back and say well I will give you 20 million.

10 **MR MOLEFE:** Ja.

ADV MYBURGH SC: So what were you paying this money for?

MR MOLEFE: If you look at the document before ...[intervenes]

ADV MYBURGH SC: Yes, which one?

MR MOLEFE: On 801.

ADV MYBURGH SC: Yes.

MR MOLEFE: It says:

20 “The purpose of this submission is to request
the group chief financial officer ...”

ADV MYBURGH SC: Ja.

MR MOLEFE: “To authorize the payment of 20 million.”

Oh, sorry.

ADV MYBURGH SC: Yes, no we have seen this because that came after you had actually made this offer. So they

accepted your offer. That is not unsurprisingly and then Mr Salinga and Singh action payment, but what we need ... what I want to ask you, is what were you paying this 20 million for?

You made the counter offer. It can only be cost on the evidence that you have given.

MR MOLEFE: Ja, Chairperson I think I must have made a mistake here.

ADV MYBURGH SC: Yes, you must have.

10 **MR MOLEFE**: Because what we were supposed to have paid, was the cost.

ADV MYBURGH SC: You gave away 20 million rand actually.

CHAIRPERSON: I can tell you Mr Molefe, I would not be ... I would not be candid with you if I did not tell you that when I read just a settlement agreement, I was shocked.

MR MOLEFE: Yes.

CHAIRPERSON: It is just shocking.

MR MOLEFE: Yes.

20 **CHAIRPERSON**: Those terms of the settlement agreement are shocking. In all the years that I was in practice before I came onto the bench, I had never seen a settlement agreement like this. I have never seen a settlement agreement like the one that Mr Gama and Transnet concluded.

When you settle, because the basis of a settlement is look, we do not know who was going to win or lose in the end, if we proceeded with litigation.

MR MOLEFE: Yes.

CHAIRPERSON: That is the basis.

MR MOLEFE: Yes.

CHAIRPERSON: So let us settle. That is normally the basis. Of course, sometimes there might be other considerations. But normally you would have each party
10 paying its own cost.

MR MOLEFE: Yes.

CHAIRPERSON: But sometimes you do have the one party making some contribution to the cost of the other, usually not all the cost, just some contribution.

MR MOLEFE: Yes.

CHAIRPERSON: But maybe you might have a situation where they pay party and party cost. Okay.

MR MOLEFE: Yes.

CHAIRPERSON: Or one of the parties in a settlement
20 agreement, should pay attorney and client cost.

MR MOLEFE: Yes.

CHAIRPERSON: Is something I have never come across. I do not know about Mr Myburgh.

MR MOLEFE: Ja, Chairperson may I make a request?

CHAIRPERSON: That is apart from what Mr Myburgh has

just drawn attention to, to say the amount was not just for cost, you were paying for much more than that, even though the settlement agreement said Abalozi had withdrawn its action against Transnet.

MR MOLEFE: Yes. May I make a request Chairperson?

CHAIRPERSON: Yes.

MR MOLEFE: Because my recollection of this matter may be very vague.

CHAIRPERSON: Ja.

10 **MR MOLEFE**: That I go and look at this matter again.

CHAIRPERSON: Okay.

MR MOLEFE: And then come back.

CHAIRPERSON: That is fair enough.

MR MOLEFE: Maybe by way of a supplementary affidavit or something like that.

CHAIRPERSON: Ja, no arrangements can be made, even if you come back. I think, because it would not take long. I do not know what Mr Myburgh has to say, but let me ...[intervenes]

20 **MR MOLEFE**: Ja, I would really like to go and interrogate this matter again.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Alright, I am happy to leave it there, thank you Chair.

CHAIRPERSON: Yes, okay.

ADV MYBURGH SC: There is just one other fact that I want to just put to you, and that is Mr Todd if my memory serves me correctly said that the costs could not conceivably been more than a million rand, because very little had happened in this litigation.

There had been an exchange of pleadings and if my memory serves me correctly, I think they might have got to a discovery affidavit stage, but this litigation was not far advanced at all.

10 **MR MOLEFE:** Yes.

ADV MYBURGH SC: Mr Molefe, perhaps that is something that you could think about.

CHAIRPERSON: And just to add onto that, you know if you look at the, the legal costs relating to Mr Gama, I think in their legal cost they had the legal cost of the disciplinary hearing which had involved senior counsel and so on, and had gone on for about 14 days, two weeks.

The cost for that I think were less than four million, less than I cannot remember, but we are not talking about
20 even ten million I think, but certainly not 20 million. Here the matter had not gone to trial. Some pleadings had been exchanged.

Had not advanced much.

MR MOLEFE: Ja, please allow me Chairperson to go and refresh my memory.

CHAIRPERSON: No, no that is fair enough. That is fair enough, ja. That is fair enough. Okay. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. I would like then, it is late in the afternoon Mr Molefe, to deal with the final topic, and that relates to witnesses 1 and 3. Do you have Bundle 14d available?

CHAIRPERSON: Maybe to, maybe to round off the topic of that settlement Mr Molefe.

MR MOLEFE: Yes.

10 **CHAIRPERSON:** And Mr Myburgh, maybe Mr ... there are two ways of dealing with it. One is that after Mr Molefe has studied it and tried to recall what happened, one option is that he can come back and then put his understanding, give me his understanding and explanations, without an affidavit.

Another one is that he could put in an affidavit first to say this is my recollection of how this came about blah blah blah blah and then if need be he could be called after that. I do not know Mr Myburgh if you have any
20 evidence, what do you suggest?

ADV MYBURGH SC: I think the latter route might be preferable.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Because potentially he may not need to be recalled then.

CHAIRPERSON: Yes, yes. Yes, ja.

ADV MYBURGH SC: But we are in your hands
Chairperson.

CHAIRPERSON: Ja.

UNKNOWN: Chairperson, I thought it would also be
prudent that we make a proposal on how ...[intervenes]

CHAIRPERSON: Yes.

UNKNOWN: Or have an input on how we can handle this
matter.

10 **CHAIRPERSON:** Yes, yes.

UNKNOWN: I still have to get instructions. So we will get
instructions Chair, and revert back to Mr Myburgh on what
will be the best way forward.

CHAIRPERSON: No, that is fine. If that could be, if what
the arrangement is going to be, can be finalized, if
possible within the next two days because we do not have
a lot of time. So that we at least to say this is the agreed
way forward.

Then we can take it from there.

20 **UNKNOWN:** Thanks Chair.

CHAIRPERSON: Okay, alright.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Okay Mr Myburgh.

ADV MYBURGH SC: Do you have Bundle 14d? Can I ask
you please to go to ...[intervenes]

MR MOLEFE: But Mr Essa was not a director of Abalozi.

ADV MYBURGH SC: Well, but General Nyanda, your golf partner, was the director of Abalozi. That is a bit closer to home. Alright.

CHAIRPERSON: Well, maybe I should say this. No, maybe I should not say, you will put in whatever you will put in about that settlement and then we carry from there. Ja, okay.

ADV MYBURGH SC: Thanks.

10 **CHAIRPERSON:** You are not being told about Salim Essa in regard to Abalozi. What bundle did you say we should have?

ADV MYBURGH SC: 14.

CHAIRPERSON: Okay.

ADV MYBURGH SC: d, Mr Chair.

CHAIRPERSON: Yes. Thank you.

ADV MYBURGH SC: So ...[intervenes]

CHAIRPERSON: What page?

ADV MYBURGH SC: Page, I think it is 15. One five.

20 **CHAIRPERSON:** Yes, I have got it.

ADV MYBURGH SC: Now Mr Molefe, I mean given the importance of this, I think it may warrant us going through it on a paragraph by paragraph basis almost. Are you in the right file?

MR MOLEFE: Yes. Yes, Chair.

ADV MYBURGH SC: Page 15, witness 1. But perhaps before I pick my way through this affidavit, could I just ask you to give us a summary of what your response is to witness 1's affidavit, and I suppose in particular from page 1 through to, it should be 15 through to 24, up to the heading threats received.

MR MOLEFE: Chairperson, firstly I did not know who witness 1 is.

CHAIRPERSON: I am sorry. Mr Myburgh, I think it might
10 be good for those who are following, to just give a general just of what witness 1 said about Mr Molefe, so that when he gives his own the just of his response, then they can follow or is that going to be difficult?

If it is going to be difficult, it is fine.

ADV MYBURGH SC: Well, I think generally by way of very broad summary. Witness 1 says, is that he was effectively Mr Molefe's driver when he was at Transnet and that he took him on a number of occasions to the Gupta compound in Saxon World and to other meetings with the Guptas, and
20 he gave certain evidence relating to money.

That is ...[intervenes]

CHAIRPERSON: Ja.

ADV MYBURGH SC: As broadly stated as it can be.

CHAIRPERSON: Okay, no that is fine. I just wanted that when Mr Molefe gives his response to this evidence,

people who are listening can understand what it is about.

MR MOLEFE: Yes Chairperson. I do not know who witness 1 is. But I suppose even if I assumed the identity of, who the identity of witness 1 is, it is difficult for me to include motive without identifying witness 1.

ADV MYBURGH SC: Sorry, what did you say?

MR MOLEFE: It is difficult for me to impute motive ...[intervenes]

ADV MYBURGH SC: Yes.

10 **MR MOLEFE:** For giving this kind of evidence without knowing who witness 1 is. But secondly, witness 1 does not say that he saw anybody give me money. He refers to meetings that I had with the Guptas, that I have not denied.

However, he talks about bags and a bag as if those bags had money, but he had no evidence that there was money in the bag. So really there is very little response in the evidence of witness 1.

ADV MYBURGH SC: Okay, we'll let us just accept for a
20 moment that he does not give evidence on your contractual of having seen someone give you money, but apart from that, would you then agree with this statement or what ultimately are you saying?

MR MOLEFE: That somebody gave me money?

ADV MYBURGH SC: No, your analysis of his evidence, is

he says very little. He does not give direct evidence you say of people giving me money.

MR MOLEFE: Yes sir.

ADV MYBURGH SC: But what do you say to the content of his evidence, that he took you to all of these places. What do you say about his observations? Are you saying they are all wrong or are you saying ...[audio cut] that he does not give evidence of someone giving me money.

MR MOLEFE: His observations that he saw me with a bag,
10 may be true but I would deny that it had money in it or that the bag I was carrying, when I went to the meeting and came back from the meeting came back with money. I will deny that.

ADV MYBURGH SC: So let us just go through, if you go to paragraph 10 of the affidavit at page 17. When you say you do not know who witness 1 is, well he says that he acted as your driver for three years.

MR MOLEFE: Did he?

ADV MYBURGH SC: Three or four years.

20 **MR MOLEFE**: Yes, so who is he?

ADV MYBURGH SC: Did you not also say earlier that you know who he is?

MR MOLEFE: Come again?

ADV MYBURGH SC: Did you not also say that you know who he is?

MR MOLEFE: No, I said I could assume who he is.

ADV MYBURGH SC: Yes.

MR MOLEFE: And but assuming who he is, it is not fair, because I cannot impute motive on a person based on assumption of identity.

ADV MYBURGH SC: But what are you saying, a bad motive, that you had a driver who had, who may have had a bad motive for this evidence?

MR MOLEFE: Ja, there is a driver that I know with a bad
10 motive, but I do not think I can reveal what I think was the motive.

ADV MYBURGH SC: No, absolutely.

MR MOLEFE: Because it would identify them number one, and number two, what if my assumption about the identity is wrong?

ADV MYBURGH SC: But then Mr Molefe, can I ask you why did you not exercise your right to cross-examine this person?

MR MOLEFE: Because he did not implicate me in wrong
20 doing.

ADV MYBURGH SC: Okay, so that is really your defence. That there is no implication of wrong doing?

MR MOLEFE: There is no implication of wrong doing.

ADV MYBURGH SC: So are you prepared generally to accept the statement that your main opposition or defence

is it does not implicate me in wrong doing?

MR MOLEFE: It does not implicate me in wrong doing.

ADV MYBURGH SC: Alright.

MR MOLEFE: It just implicates me in sometimes carrying a bag that I always carry that he took a picture of. No, he did not even take a picture of the bag.

ADV MYBURGH SC: Yes.

MR MOLEFE: Downloaded from the internet.

ADV MYBURGH SC: Ja.

10 **MR MOLEFE**: And said that is the bag that I may have been carrying or a similar bag.

ADV MYBURGH SC: Ja. Alright. I might ask you to show me your bag later, but yes.

MR MOLEFE: Mr Myburgh, as I walked into the Commission.

ADV MYBURGH SC: Yes.

MR MOLEFE: I may have been carrying a bag, if I was and if somebody sees me leave the Commission with that bag and says that joh, it looks like it has got money inside, I
20 have to answer to that allegation.

ADV MYBURGH SC: Alright. So let us go through this. He says that or she, I am going to perhaps just refer to he, and I do not mean to disclose the gender of the person, but it will be easier:

“During the abovementioned period Transnet

head offices ...”

So this is 11 to 14:

“Was still in the Carlton Centre in Johannesburg.”

Is that right?

MR MOLEFE: Yes.

ADV MYBURGH SC: Okay, and then it says:

10 “That on a normal working day I would collect Molefe from his home in Irene Pretoria at around six o’clock in the morning, transport him to the office at Carlton Centre and or to meetings during the course of the day and drop him off at home in the afternoon. He often attended meetings and functions till late in the evenings and on many occasions I would only arrive home at around midnight. I also had to work quite a lot over weekends.”

Would that be an accurate description of the work of your driver?

20 **MR MOLEFE**: Yes.

ADV MYBURGH SC: Then he says, the driver says:

“Usually on Friday afternoon Molefe’s personal assistant, PA, would provide me with a printout of Molefe’s diary for the following week which would inform me of his meeting schedule and

movements for that week.”

Would you agree with that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And at 14:

“Due to the long work hours required to transport Molefe to various destinations during the week, I requested one of my other CPO’s, my colleague during late 2012 to assist me with the protection and transporting of Molefe. We used to alternate our working schedules so that one of us would transport Molefe whilst the other one would perform administrative tasks. My colleague continued in this regard until approximately December 2014.”

You agree with that?

MR MOLEFE: Yes.

ADV MYBURGH SC: 15:

“During the end ...”

Sorry:

“Towards the end of July 2014 I was re-deployed as security manager at Transnet Group Capital Division in Durban. I transferred back to the Transnet head office during January 2016.”

What do you say to that?

MR MOLEFE: If it is the guy that was re-deployed to Durban there is a lot to say about that but it would reveal his identity.

ADV MYBURGH SC: Alright. Then 16:

“During the period of providing CPO services to Molefe, the following Transnet vehicles were used to transport him.”

I am not going to read all of them out. There is a BMW, another BMW, Mercedes Benz and an Audio A8.

10 **MR MOLEFE:** Yes.

ADV MYBURGH SC: 17, the driver says:

“I kept log books of trips undertaken with the abovementioned vehicles.”

Would you accept that log books were kept?

MR MOLEFE: Ja, I never looked at them. I knew that they were handed to the head of security, and ...[intervenes]

ADV MYBURGH SC: 18, sorry anything else to say?

MR MOLEFE: No.

ADV MYBURGH SC: Okay, 18:

20 “Used log books from the drivers of Transnet executives were handed to General Toka at the time the general manager of security at Transnet for safekeeping. I kept my log books for audit purposes.”

Any comment on that?

MR MOLEFE: Well, I am not sure whether this was in line with their standard operating processes.

ADV MYBURGH SC: Alright.

MR MOLEFE: But yes.

ADV MYBURGH SC: Then we have the heading meetings with AJ Gupta:

“During the period ...”

And this is now February 2011 to July 2014:

10 “During the period of performing CPO duties for Molefe, I transported him on various occasions to the Gupta residence in Saxon World, Johannesburg, the Michael Angelo Hotel in Sandton, the Protea Hotel Fire and Ice in Melrose Arch and the offices of Sahara Computers in Midrand where he attended meetings with AJ Gupta, AJ.”

Do you agree with that?

MR MOLEFE: Yes. Generally yes, it is true that there were occasions when we went. I do not have a recollection
20 of every single incident.

ADV MYBURGH SC: Sure:

“These meetings were not recorded in his diary.”

MR MOLEFE: I cannot recall that they were or were not recorded in my diary.

ADV MYBURGH SC: “I was either informed by Molefe that he was going to meet with AJ or I actually saw AJ at these venues or both.”

MR MOLEFE: Yes.

ADV MYBURGH SC: Paragraph 20:

“Copies of available log book entries confirming trips undertaken to the locations mentioned above are attached hereto as Annexures W101 to W115, the log book entries are summarized in these tables.”

I do not know if you have had a chance to look at this table?

MR MOLEFE: Yes.

ADV MYBURGH SC: So what the table reflects, is that in the 14 month period between July 2011 and September 2012, the driver took you to Saxon World on 11 occasions, twice to the Michael Angelo, once to the Fire and Ice and once to Sahara.

MR MOLEFE: Yes, I cannot comment on it because I do not have a clear recollection of every single incident, but as I said ...[intervenes]

ADV MYBURGH SC: But it seems, would you dispute what is said here?

MR MOLEFE: No.

ADV MYBURGH SC: Alright. Now you will see that at

page 21 after the schedule references in the log book to Saxon World, Saxon, Saxon World etcetera are all ...[intervenes]

MR MOLEFE: Paragraph 21?

ADV MYBURGH SC: Just above 21. There is a key there where he explains that any reference ready to Saxon or Saxon World is a reference to the Gupta residence. Reference to the Michael Angelo is the Sandton Michael Angelo. Reference to Melrose Arch, presumably it should
10 be hotel, refers to the Protea Fire and Ice, and Midrand Sahara refers to the offices of Sahara Computer.

MR MOLEFE: Yes.

ADV MYBURGH SC: “After September 2012 I no longer transported Molefe to Gupta Saxon World residence.”

Any comment on that?

MR MOLEFE: September 2012?

ADV MYBURGH SC: He says:

“After September 2012 I no longer transported
20 Molefe to Gupta Saxon World residence. My colleague informed me that he has also taken Molefe to the Gupta residence on a few occasions.”

Any comment on that?

MR MOLEFE: Sir, after September 2012 is when he went

to Durban?

ADV MYBURGH SC: Well, he said he no longer transported you.

MR MOLEFE: Ja, but was it because he had gone to Durban?

ADV MYBURGH SC: Not as I understand the evidence. He says it was towards the end of July 2014 that he was re-deployed to Durban.

MR MOLEFE: I see, yes. Ja, okay.

10 **ADV MYBURGH SC:** So you agree with that?

MR MOLEFE: Ja, I cannot comment on that. I cannot really recall when he ...[intervenes]

ADV MYBURGH SC: Then at paragraph 23:

“In relation to trips to the Gupta residence Molefe would tell me that he would have to go and see AJ.”

MR MOLEFE: Yes.

20 **ADV MYBURGH SC:** “On arrival at the Gupta residence I would wait for Molefe in our vehicle to return, as can be seen from the table above the visits to the residence usually lasted between 20 and 45 minutes.”

MR MOLEFE: Yes.

ADV MYBURGH SC: What do you say to that?

MR MOLEFE: Yes, that is a reasonable assessment of

what was happening.

ADV MYBURGH SC: Those are relatively short meetings.

MR MOLEFE: No, I mean ja, 20 to 45 not short. Ten minutes would be short.

CHAIRPERSON: 20 maybe would be short.

MR MOLEFE: Ten minutes would be short.

CHAIRPERSON: And 20 you would say not short?

MR MOLEFE: 45 is about reasonable time to have a meeting.

10 **CHAIRPERSON:** No, no, no I do not have a problem myself about 45 minutes being you know, not an unusual time for a meeting.

MR MOLEFE: Yes.

CHAIRPERSON: I am talking about 20 because I think somewhere he says in his, the log book or whatever he has put in there, reflects like you would come in there, you would go there and spend about 20 minutes and go. I think quite a few times if I am not mistaken.

MR MOLEFE: Ja.

20 **CHAIRPERSON:** And it gives me the impression and this is maybe I must just say, gives me the impression that that might not have you know, serious meetings if it is so short, but ja I may be mistaken.

MR MOLEFE: Yes.

CHAIRPERSON: If it is so short.

MR MOLEFE: Ja.

CHAIRPERSON: Ja, okay. But generally you do not have any quarrel with the kinds of times he gives in terms of the duration whenever you went there, more or less you have no problem with ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: With those times.

MR MOLEFE: Yes.

CHAIRPERSON: Okay.

10 **MR MOLEFE:** Ja, he just does not mention perhaps when there were events.

CHAIRPERSON: When there were?

MR MOLEFE: Events.

CHAIRPERSON: Events, ja okay.

MR MOLEFE: Ja, like a function.

CHAIRPERSON: Yes, ja. When you would be there longer.

MR MOLEFE: Yes, he does not mention those.

CHAIRPERSON: Ja.

20 **ADV MYBURGH SC:** Perhaps if I, sorry Mr Chair are you finished?

CHAIRPERSON: Yes, no maybe you are going to say what I was about to say.

ADV MYBURGH SC: No, no please you are ...[intervenes]

CHAIRPERSON: Okay, no I was saying maybe during the

time that he took you there, there were no events. That is why I have made, that is why ...[intervenes]

MR MOLEFE: I cannot recall Chair.

CHAIRPERSON: Ja, okay. Alright, okay.

ADV MYBURGH SC: Just in that regard, could I take you back to page 20 please? Have a look at this ...[intervenes]

MR MOLEFE: Paragraph 20?

ADV MYBURGH SC: No, page 20. The table. You see the first entry at the top, 29 July at 20H11 Saxon World.

10 **MR MOLEFE**: Yes.

ADV MYBURGH SC: He arrives or you arrive at ten, and leave ... sorry six o'clock in the morning and leave at seventeen minutes past six ...[intervenes]

MR MOLEFE: Yes.

ADV MYBURGH SC: In the morning.

MR MOLEFE: Yes.

ADV MYBURGH SC: And then the fifth entry in the middle of the page, 19th of October you arrived at ten to six in the evening and you left at six o'clock. So that is a ten minute
20 meeting, the first one is 17 minutes.

MR MOLEFE: Yes.

ADV MYBURGH SC: And then if you go over the page, to page 21, the second entry on the 28th of May 2012 you arrive at twenty to seven in the evening and you leave at ten to seven. Ten minutes.

MR MOLEFE: Yes.

ADV MYBURGH SC: What would you have been doing?

MR MOLEFE: That is what he says.

ADV MYBURGH SC: Well, that is what the log books say.

MR MOLEFE: That is, ja but I cannot comment on the accuracy of the log book.

ADV MYBURGH SC: But they, what ... can you think of what you might be doing for only ten ...[intervenes]

MR MOLEFE: I do not remember what it was about. I do
10 not and I cannot comment that these entries are correct.

CHAIRPERSON: Well, I think what you do say based on what you have said before, is you might not be saying they are accurate, but your sense is that they cannot be too way out. They, it is more or less.

MR MOLEFE: Yes ...[intervenes]

CHAIRPERSON: It is more or less what you think.

MR MOLEFE: They may not even have happened in the way that he describes them in the log book, but I have no way of showing that.

20 **CHAIRPERSON:** Ja, ja.

MR MOLEFE: Because well, that is what he wrote in his log book.

CHAIRPERSON: Well, there are times where ...[intervenes]

MR MOLEFE: So when he made these entries in his log

book.

CHAIRPERSON: There are times where according to his log book you were there for a few hours. I see at page 20, second item ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: 9 July 2011, according to the log book, his log book you were there from five to ten past nine.

MR MOLEFE: Yes.

CHAIRPERSON: I think there are times where it reflects
10 you were there for quite some time.

MR MOLEFE: Yes.

CHAIRPERSON: And then there are times when it shows that you were there for a shorter period.

MR MOLEFE: Yes, but what I, you see I do not dispute that he did take me there.

CHAIRPERSON: Yes.

MR MOLEFE: And that maybe he kept a log book.

CHAIRPERSON: Yes.

MR MOLEFE: And I was not aware of. But I am not sure
20 about the accuracy.

CHAIRPERSON: Ja.

MR MOLEFE: Of what is in his log book, and really what his motive was for keeping the log book. I do not know if he ...[intervenes]

CHAIRPERSON: Well, I guess the log book has got to say

when you arrived where you arrived and when you left. I assume that that is part of what they are supposed to do.

MR MOLEFE: Yes, but and then the log book is handed over to his general manager for safekeeping. But he says he kept the log book. So I am not sure what the motive was there because as he says here, it was for audit purposes.

Well, if anybody wanted to audit his log book, it would be found with the general manager of security. So I
10 am not sure what his motive really was.

CHAIRPERSON: Okay, Mr Myburgh?

ADV MYBURGH SC: Mr ...[intervenes]

MR MOLEFE: And in fact he may have been in breach of their own standard operating procedures because the log book was supposed to be handed over to head of security.

ADV MYBURGH SC: Then at paragraph 24, at page 22:

“When he visited the Gupta residence in Saxon World and the offices of Sahara Computers, the security guard would ask who are we
20 visiting and Molefe would inform that we are visiting AJ. I would then relay the name of AJ to the security guard who would then permit access.”

Would you agree with that?

MR MOLEFE: Yes, yes I would normally visit AJ.

ADV MYBURGH SC: 25:

“In relation to the visits to the hotels, I would park the vehicle and accompany Molefe, alternatively meet Molefe at a restaurant when I would at some stage during the meeting see AJ.”

You agree with that?

MR MOLEFE: Yes. Well, I cannot comment on ...[intervenenes]

10 **ADV MYBURGH SC:** Sure.

MR MOLEFE: On who he saw or who he identified as AJ.

ADV MYBURGH SC: 26:

“Molefe usually went into the Gupta residence with a light brown leather back pack that he would carry with him. The picture of the brown leather back pack similar to the one carried by Molefe is attached, Annexure W1-16.”

Can you go to that? That you find at pages 55.

MR MOLEFE: Did he say similar?

20 **ADV MYBURGH SC:** Sorry?

MR MOLEFE: Did he say similar?

ADV MYBURGH SC: Yes.

CHAIRPERSON: I think so.

MR MOLEFE: He is not 100% similar. That is just a back pack.

ADV MYBURGH SC: Okay, that you find sorry at page 66. Did you have a similar brown leather back pack to that one?

MR MOLEFE: Not like this one.

ADV MYBURGH SC: Did you have the one that you have got on the chair next to you?

MR MOLEFE: Yes, it was this one.

ADV MYBURGH SC: It was that one?

MR MOLEFE: My trusted bag, yes.

10 **ADV MYBURGH SC:** There we go.

MR MOLEFE: Ja.

ADV MYBURGH SC: Alright, so that is a brown leather back pack.

MR MOLEFE: Yes, this is a ja, it is a brown leather back pack.

ADV MYBURGH SC: And was that, is that in fact it looks quite worn. Was it the same back pack that you had at the time?

MR MOLEFE: Yes Chairperson I have been everywhere
20 with this bag. I am surprised that ...[intervenes]

ADV MYBURGH SC: It is like my briefcase. It is also falling apart.

MR MOLEFE: I am surprised that it is accused 2 at the Commission.

CHAIRPERSON: You see, the problem might be that where

ever you went, you went with it.

MR MOLEFE: Yes.

ADV MYBURGH SC: Okay, so ...[intervenes]

MR MOLEFE: And I still do.

CHAIRPERSON: Ja, but earlier on you ... I thought you said something like looking at, I do not know which page you were looking at, looking at I think one of the bags, pictures of the bags. That is what you said. It is not similar, but the impression was, the impression that I got
10 was that you were saying there is some resemblance, it might be ...[intervenes]

MR MOLEFE: No, this is a back pack.

CHAIRPERSON: Ja.

MR MOLEFE: It is not quite similar to this one.

ADV MYBURGH SC: Well, that is a brown leather back pack I suppose.

MR MOLEFE: Well, that is why I was saying this is a back pack.

ADV MYBURGH SC: Alright.

20 **CHAIRPERSON**: Ja.

MR MOLEFE: So this is just an [indistinct] back pack.

ADV MYBURGH SC: So Mr Molefe, I suppose if it was not so serious it might be funny, but do I understand you to be saying that that back pack that you have just shown the Chairperson, your trustee brown leather back pack was in

fact the same one that you had ...[intervenes]

MR MOLEFE: Ja, in all likelihood it was this one.

ADV MYBURGH SC: The same one?

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Well, should we not have a picture of this one, so we can compare with the pictures here.

ADV MYBURGH SC: Yes.

MR MOLEFE: No, I am saying it was likely to have been
10 this one.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: So then at 27:

“On other occasions ...”

Sorry, 26:

“Molefe usually went into the Gupta residence with his light brown leather back pack that he would carry with him.”

We have dealt with that. 27:

20 “On other occasions Molefe would go into the Gupta residence without his leather back pack. On those occasions he would then re-appear carrying a sports bag which appear to contain something. I say this because the shape of the bag ...”

CHAIRPERSON: Okay, I am sorry Mr Myburgh.

ADV MYBURGH SC: Yes.

CHAIRPERSON: I may have missed something. 26 this witness refers to a light brown leather back pack.

ADV MYBURGH SC: Yes.

CHAIRPERSON: That description is the same as the bag you say you, is probably the one that you were carrying?

MR MOLEFE: Yes, yes.

CHAIRPERSON: When he said ...[intervenes]

10 **MR MOLEFE:** No, the description ...[intervenes]

CHAIRPERSON: Light brown leather back pack.

MR MOLEFE: Ja.

CHAIRPERSON: It fits that description.

MR MOLEFE: Ja, but his evidence is that the bag that he saw is the one that he took the picture of here.

CHAIRPERSON: Okay.

MR MOLEFE: So let us go with the description that is in this picture then because that is his evidence.

20 **CHAIRPERSON:** Okay. I am sorry, Mr Myburgh, I interrupted you.

ADV MYBURGH SC: Thank you. So he says at 27:

“On other occasions Molefe would go into the Gupta residence without his leather back pack. On those occasions he would then re-appear carrying a sports bag which appear to contain

something. I say this because the shape of the bag suggested it had contents.”

You want to respond to that?

MR MOLEFE: The shape of the bag suggested?

ADV MYBURGH SC: It had contents.

MR MOLEFE: I have no recollection of that Chair.

ADV MYBURGH SC: So this paragraph you do not recall?

MR MOLEFE: Yes.

ADV MYBURGH SC: Then he says at 28:

10 “On 18 January 2012, Molefe instructed me to deliver an empty leather carrier bag to AJ at the offices of Sahara Computers in Midrand. I did so and handed the bag to AJ. The bag was opened when it was handed to me. A picture of the brown leather carrier bag similar to the one discussed here is attached as Annexure W117.”

We go to that. That you find at page 69.

MR MOLEFE: Yes.

20 **ADV MYBURGH SC**: What do you say to that?

MR MOLEFE: I have no recollection of that.

ADV MYBURGH SC: If we go back to 28, the driver says:

“A copy of the ...” ...[intervenes]

CHAIRPERSON: I am sorry Mr Myburgh.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Will you arrange for somebody in your team to write for example in regard to the bag, picture of the bag at page 69 Annexure W117, so that if I read this paragraph, it is easy for me to know this is the one because it is not written ...[intervenes]

ADV MYBURGH SC: Yes, perhaps I referred you to the wrong page. That has been done.

CHAIRPERSON: Oh, okay sorry.

ADV MYBURGH SC: The W1-17. That is a cover page to
10 each of these things. That you will find at page 68.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: I do apologise.

CHAIRPERSON: Oh, okay. Oh, you see it is confusing because you expect the picture to be ...[intervenes]

ADV MYBURGH SC: Yes.

CHAIRPERSON: To be on page 68 when you look at this.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So maybe what should be done is to move, to move this to 69 or to find a way to make sure that
20 if I look at, if I am looking for this picture and I come to 68 and I see there is no picture, I do not think that there is nothing, and then I go back.

Or maybe there should be a reference to say I must look ...[intervenes]

ADV MYBURGH SC: Over the page.

CHAIRPERSON: Over the page, ja.

ADV MYBURGH SC: Alright, we will work on that Mr Chair.

CHAIRPERSON: You know, two months after now if I am working on this I might be confused.

MR MOLEFE: Just out of curiosity, does his diary confirm these trips?

ADV MYBURGH SC: Sorry?

MR MOLEFE: Does his diary confirms these trips?

ADV MYBURGH SC: I beg your pardon? Well, I wanted to
10 take you to the last portion of paragraph 28:

“A copy of the log book entry confirming the
trip ...” ...[intervenes]

MR MOLEFE: Oh, I see.

ADV MYBURGH SC: “Undertaken to the offices of Sahara
Computers is attached as W1-18.”

MR MOLEFE: Okay. I have no recollection of that.

ADV MYBURGH SC: No recollection. Then at 29:

“I recall that I also met AJ in the presence of
Molefe in January 2012, after the African
20 National Congress conference in Bloemfontein,
when I collected Molefe from the airport in
Bloemfontein.”

You have any issue with that?

MR MOLEFE: That he saw AJ at the airport in
Bloemfontein?

ADV MYBURGH SC: Yes. He met AJ, also met AJ in the presence of Molefe.

MR MOLEFE: No, I have no recollection of what happened at the airport in Bloemfontein in January 2014.

ADV MYBURGH SC: If I might just have a second? You have no recollection of that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Then at 30:

10 “I attach a photograph of AJ as Annexure W1-
19 as confirmation that he is the person that I
have been introduced to as AJ.”

I presume you do not have any issue with that?

MR MOLEFE: Yes.

ADV MYBURGH SC: Alright and then people recognized at Gupta residence:

20 “During visits to the Gupta residence on
several occasions I have amongst others seen
the following people outside the Gupta
residence, namely Minister Malusi Gigaba,
former Minister of the Department of Public
Enterprises, and Mr Siyabonga Mahlangu
special advisor to Minister Gigaba.”

What do you say to that?

MR MOLEFE: I cannot remember being at the same time at the Gupta residence with Minister Gigaba or with Mr

Siyabonga Mahlangu. I, no that I cannot remember.

ADV MYBURGH SC: One thing I perhaps neglected to ask you, earlier on in your testimony when discussing your relationship with the Guptas and your visits to the Gupta residence, who would you see there?

MR MOLEFE: Mr AJ.

ADV MYBURGH SC: Yes, but who else?

MR MOLEFE: He is the person that I was discussing the bank with.

10 **ADV MYBURGH SC:** Sorry?

MR MOLEFE: He is the person that I was discussing the bank with.

ADV MYBURGH SC: Yes.

MR MOLEFE: Yes, so I would hardly ever see anybody else.

ADV MYBURGH SC: On those occasions when you did see someone else, who were they?

MR MOLEFE: Sometimes his brother would pop in, phone him or his wife or his children. Ja, they would pop in but
20 the person I really saw and discussed with, was Mr AJ.

ADV MYBURGH SC: So do I take it to be then your evidence that you never saw any politician during your visits there, that you never saw any ...[intervenes]

MR MOLEFE: Perhaps when there were functions. Perhaps when there were functions, but ja I do not

remember being there when there was no function and seeing ...[audio cut] Shareholder Minister.

ADV MYBURGH SC: Alright and then there is a heading saying Molefe in possession of cash.

MR MOLEFE: Yes.

ADV MYBURGH SC: Paragraph 32.

MR MOLEFE: Yes.

ADV MYBURGH SC:

10 “One day whilst attending a meeting in the
 main board room at the Carlton Centre
 Molefe asked me to fetch his cellular phone
 from his bag in his office.”

MR MOLEFE: Yes.

ADV MYBURGH SC:

20 “As instructed I went to his office and when I
 opened his light brown leather backpack to
 take out the phone I was surprised to see
 that the bag was more than half full with
 bundles of R200 notes. I called Mbele to
 Molefe’s office and I showed her the cash in
 his bag.”

Now what do you say to that?

MR MOLEFE: I have no recollection of that incident and I just wonder if he did report – he did write it in his incident report and if he reported it General Thoga but I have no

recollection of that incident.

ADV MYBURGH SC: Well let us go through this presumably you did have meetings on occasion in the main board room at the Carlton Centre?

MR MOLEFE: Yes.

ADV MYBURGH SC: If you had left your cell phone in your bag would it – might you try and retrieve it by asking somebody in the position of your driver to do so?

MR MOLEFE: I might have yes.

10 **ADV MYBURGH SC:** Is it possible that that happened?

MR MOLEFE: It is possible that I might have asked him to retrieve a cell phone during the times that I was working with him from my bag.

ADV MYBURGH SC: From your light brown leather backpack?

MR MOLEFE: Yes.

ADV MYBURGH SC: So the only issue is you say well if I had asked him to do that he would not have come across these bundles of R200 notes.

20 **MR MOLEFE:** No not in the manner that he described them as being this much and stacked and so on and so forth.

ADV MYBURGH SC: But he says:

“I was surprised to see the bag was more than half full with bundles of R200 notes.”

MR MOLEFE: No not half full.

ADV MYBURGH SC: But would you...

MR MOLEFE: I have no recollection of this incident where he says he found half full bag – half full – my bag half full with money I have no recollection of that specific incident. And on top of that it is – I never carried cash like that.

ADV MYBURGH SC: Now he says:

“I called Mbele to Molefe’s office and showed her the cash in the bag.”

Who is that?

10 **MR MOLEFE:** That was my PA.

ADV MYBURGH SC: So just that I have your evidence correctly. Your evidence is you never kept money or any real quantity of money.

MR MOLEFE: Come again.

ADV MYBURGH SC: You never kept money or any real quantity of money in your light – in the bag you have shown us?

MR MOLEFE: Not half full just maybe if there was cash..

CHAIRPERSON: Quarter.

20 **MR MOLEFE:** Sorry.

CHAIRPERSON: Quarter full?

MR MOLEFE: No maybe a R1000.00 maybe R2000,00 I do not know how – how that would fill the bag.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And then in paragraph 33.

“Upon his return from the meeting I approached Molefe about the fact that he was carrying that much cash in his bag which I considered a safety risk. Molefe was visibly upset with my comment and told me that it was none of my business.”

You say to that?

MR MOLEFE: I have no recollection of that and wonder if because he says it is a safety or a security risk whether this
10 threat – security because that is where he worked – it identified a threat according to him was properly recorded and discussed with his superiors.

ADV MYBURGH SC: But Mr Molefe how does one deal with this? I mean here is a driver and you say really that 90% of the statement you do not dispute it is only when the word cash really enters the equation that you say you do not have a recollection. You say you could have been in a meeting in the main board room.

CHAIRPERSON: Well I am sorry Mr Myburgh I am sure you
20 do not intend it there are a number of areas where he said he has no recollection.

ADV MYBURGH SC: Yes.

CHAIRPERSON: But what you – what you are saying is true to the extent that you mean he does not dispute.

ADV MYBURGH SC: Yes I am ..

CHAIRPERSON: Most of these ja.

ADV MYBURGH SC: Yes.

CHAIRPERSON: But that also includes when he says he has no recollection. So – so I thought I would just mention that.

MR MOLEFE: Ja there is no recollection Chair.

CHAIRPERSON: Ja. But basically because you do not have a recollection you cannot dispute but you – there is nothing that you really seriously dispute for most of the part of what he says.

10 **MR MOLEFE:** No I dispute that...

CHAIRPERSON: This particular part.

MR MOLEFE: Of the cash.

CHAIRPERSON: Of the cash ja. No I ..

MR MOLEFE: Where he says he saw cash.

CHAIRPERSON: Ja.

MR MOLEFE: Where he says if he wants or if you – if his desire was to imply that I left the Gupta residence with cash that I dispute.

CHAIRPERSON: Ja, no, no that is fine but other than that...

20 **MR MOLEFE:** But then I notice.

CHAIRPERSON: Ja.

MR MOLEFE: That he never went that far.

CHAIRPERSON: Yes but other than that in terms of what Mr Myburgh has taken you through you do not have any serious issues.

MR MOLEFE: No I mean this narrative is built on real facts that were happening.

CHAIRPERSON: Ja okay.

MR MOLEFE: Yes.

CHAIRPERSON: Ja. Then Mr Myburgh I interrupted you while you wanted...

ADV MYBURGH SC: Yes thank you.

CHAIRPERSON: To put a proposition to Mr Molefe.

ADV MYBURGH SC: Yes perhaps I can re-style it. In
10 relation to this particular incident that he recounts here would you accept that if he had come across a lot of money in your bag it would not have been – it would have been a natural thing perhaps for him to have raised it with your PA.

MR MOLEFE: No. Let me put it like this because he calls it a security threat. If he had come across a security threat he would not have raised it with my PA he would have raised – he would have and should have raised it with his superiors and in this instance it was General Thoga and there would have been a proper incident report.

20 **ADV MYBURGH SC:** Yes but you see what he says is that you were upset and you told him that it was none of your business. He raised it with you directly.

MR MOLEFE: But it did not matter that I was upset about it because his job was security and if he identified a security threat there would have been a particular protocol to deal

with it. And so – and so I cannot recall the incident I am just saying if indeed it did happen this is what would have happened. He would not or should – or – ja he would not have raised it with the PA because he knew that that would start a rumour and exacerbate the threat which means that if he raises it with the PA the PA might then say to somebody else or the next one you will not believe what Mr so and so told me today and then it will be a rumour that goes around. And so a person of his training and his responsibilities the
 10 responsible manner to have handled it would have been especially that he specifically says that it was a security threat or a security risk would have been to raise it with his superiors who would then have called me in and said we have a problem how do we deal with it. That never happened. That never – that never happened. However having said that I – I - ja I dispute that this cash incident happened.

ADV MYBURGH SC: Just that I understand it so this your backpack that you have shown us with your – if you had left
 20 your cell phone in your backpack would that backpack then be in your office? Is that – he say I went to his office because as you said if you had left your phone and you were in a meeting you might ask your driver to go and fetch it from your office.

MR MOLEFE: Yes. Yes.

ADV MYBURGH SC: Is that right?

MR MOLEFE: If I had left it in my office and I said go and fetch my phone – I mean this is hypothetically.

ADV MYBURGH SC: And what your – I take it your secretary or your PA worked close to your office?

MR MOLEFE: Yes, yes right next door.

ADV MYBURGH SC: Then at paragraph 34

10 “I furthermore frequently deposited cash
 amounts on behalf of Molefe at ABSA,
 Standard Bank and Nedbank in and around
 the Carlton Centre in various bank accounts.”

MR MOLEFE: Yes.

ADV MYBURGH SC:

 “Usually between the 28th of the month and
 the 5th of the following month and sometimes
 also around the middle of the month.”

MR MOLEFE: Yes.

ADV MYBURGH SC: What do you say about that?

20 **MR MOLEFE:** It may or may not have happened on some
 occasions that maybe I asked him to make a deposit for me.
 I cannot recall what it was for – with different things. Maybe
 society or I do not know, I cannot recall but ja that may or
 may not have happened. I am not sure about the frequency
 that he is talking about but ja it is true that on one or two
 occasions I may have sent him to go to the bank.

ADV MYBURGH SC: You drew cash to deposit cash.

MR MOLEFE: No not necessarily. Sometimes when we go to a burial society and people donate cash and then I have to take it and bank it. Things like that.

ADV MYBURGH SC: But would it not...

MR MOLEFE: Or sometimes if I am doing it for somebody or – for whatever reasons I had personal reasons.

ADV MYBURGH SC: But why not just make an electronic transfer?

10 **MR MOLEFE:** No but if it was cash that needed to go to the bank you cannot deposit electronically.

ADV MYBURGH SC: So what sort of things would this relate to then?

MR MOLEFE: Like the society – you know society?

ADV MYBURGH SC: Right. What type of society?

MR MOLEFE: Various societies – various societies.

ADV MYBURGH SC: Right what other – what other things?

MR MOLEFE: I cannot recall Chair what other reasons I may have had to have had cash with me but...

20 **ADV MYBURGH SC:** But there could have been...

MR MOLEFE: But – ja there could have been for a number of reasons.

CHAIRPERSON: Was that burial society of which you were treasurer or something?

MR MOLEFE: Yes.

CHAIRPERSON: At that time?

MR MOLEFE: Yes at the time yes I was.

CHAIRPERSON: Hm. What was it called?

MR MOLEFE: Mapala.

CHAIRPERSON: Ma?

MR MOLEFE: Mapala

CHAIRPERSON: M-a-p-h-a-l-a.

MR MOLEFE: L-m-a.

CHAIRPERSON: Hm.

10 **MR MOLEFE:** L-l-a.

CHAIRPERSON: Ja.

MR MOLEFE: p-h-a.

CHAIRPERSON: Yes.

MR MOLEFE: l-a.

CHAIRPERSON: Burial society at the end.

MR MOLEFE: Ja it is actually officially it is called
Investment Society so it is – it is Llaphala - Llaphala

CHAIRPERSON: Ja.

20 **MR MOLEFE:** Was my grandmother's mother so it is all the
children that had descended from that root.

CHAIRPERSON: Yes.

MR MOLEFE: We have a burial society and I was the
treasurer.

CHAIRPERSON: Yes. And you had the treasurer.

MR MOLEFE: Yes.

CHAIRPERSON: Okay. Okay. It is still there, it still exists the burial society.

MR MOLEFE: It still exists but we have not met since Covid and...

CHAIRPERSON: Ja.

MR MOLEFE: There is a big debate now about what we are going to do.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Then the driver goes to say:

10 “The deposit slips and account details had
 been completed by Molefe.”

Is that what you would do if you required of him to deposit cash?

MR MOLEFE: Yes, yes.

ADV MYBURGH SC:

 “The cash amounts would be handed to me
 by Molefe’s PA in envelopes which Molefe
 had handed to her with the instruction that I
 should do the deposit.”

20 Would you agree with that?

MR MOLEFE: Yes.

ADV MYBURGH SC:

 “I handed the deposit slip to either Molefe’s
 PA or Molefe himself after doing the deposits
 at the bank.”

Would you agree with that?

MR MOLEFE: Yes.

ADV MYBURGH SC: And he says – or the driver says at 35

“I would count the money or deposit it varied
in amounts but usually several thousand rand
at a time.”

MR MOLEFE: Yes several thousand yes.

ADV MYBURGH SC: Alright. So it seems that the main area
of disputes then or dispute is 27 the sports bag that you –
10 you deny that you would leave the Gupta residence – you
would reappear carrying a sports bag which appeared to
contain something. You deny that you ever instructed the
driver to deliver an empty leather bag to Ajay and then you
deny this issue in relation to the cell phone and money being
found in the bag. Those are the main areas of dispute.

MR MOLEFE: Yes.

ADV MYBURGH SC: But otherwise by and large I think as
the Chairperson has asked you – you do not seem to take
particular issue with the statement, is that – would that be a
20 fair summary?

MR MOLEFE: Other than to say that the threats that he
talks about I have no knowledge of and I notice that you say
that we do not have a problem with the rest of the statement.

ADV MYBURGH SC: It was – yes I am talking about the
parts that I have taken you to.

MR MOLEFE: Yes. Yes.

ADV MYBURGH SC: Alright. Is this is – As I understand it it was reported in the press that there was an attempt on – on Witness 1's life a few days ago.

MR MOLEFE: Well – a few days ago. Yes.

ADV MYBURGH SC: So have you got any idea I mean the person who made this statement is obviously in a difficult position in his life the driver. There is threats being made on his life. It is a sets out the threats that gave rise to his
10 driver's evidence being given in camera. It – can I ask you to address the question of why – why would somebody put themselves into this position if their version was simply a pack of lies?

MR MOLEFE: Which – which position?

ADV MYBURGH SC: The position of fearing for your life.

MR MOLEFE: Who is threatening his life?

ADV MYBURGH SC: Well the point is that this person and I am not suggesting Mr Molefe it is you but what the – what this driver has done...

20 **MR MOLEFE:** Because I really do not understand that you are saying that because he made the statement his life is now threatened? By whom?

ADV MYBURGH SC: Well you have seen what he says about the threats that were made that caused the DCJ to allow his evidence to be given in camera. You have also

heard about reports that there was an attempt on his life a few days ago.

MR MOLEFE: Yes Chair I would really prefer not to be drawn into these threats and the reasons for the threats and – because I really do not know anything about it and I also do not wish to speculate.

CHAIRPERSON: I think Mr Myburgh wanted to put a different proposition to you in regard to probabilities or...

ADV MYBURGH SC: Yes I just – I mean why would
10 somebody falsely implicate someone like you in circumstances where they fear for their life?

MR MOLEFE: Ja I – I said Chair I could try and impute motive but that would identify the witness.

ADV MYBURGH SC: Right.

CHAIRPERSON: Yes.

MR MOLEFE: But there is motive that I could impute.

CHAIRPERSON: Hm. Well I guess – I guess that if this statement was full of lots of things that you say are false maybe really serious bad things it might – one might look at
20 it in a certain way but having gone through the statement with Mr Myburgh having taken you through the statement up to just before he talks about the threats most of the things that he says about you there you do not identify them as things that somebody would be saying about you that are deliberately false. There are just two or three areas...

MR MOLEFE: Ja.

CHAIRPERSON: Where you say well here this is not true.

MR MOLEFE: Ja so Chair the way that the statement is crafted is that it is generally true except that there is this spice of cash that gets put in and – and that is cleverly calculated to imply – it is not even real evidence – to imply just to cast aspersions that is what I do not understand. This statement is based on things that are true but it is designed to cast aspersions without even offering real
10 evidence of things that – the – the person saw. I remember when he was giving evidence Chair that you asked

“So when you found the money in Mr Molefe’s bag did that money come from the Gupta’s?”

And he said:

“No.”

And so what – when an – when a security guard says my principle gave me an empty bag to go and deliver what is the purpose of making such a – such a statement relating to an
20 empty bag to an august (?) commission such as this one?

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes thank you. I want to take you then to Witness 3.

MR MOLEFE: Yes.

ADV MYBURGH SC: That affidavit you find at page 122.

MR MOLEFE: Yes.

ADV MYBURGH SC: Now Witness 3 says when dealing with these CPO Services to Minister Gigaba.

MR MOLEFE: Yes.

ADV MYBURGH SC: You would have seen that he says at paragraph 22 at page 126.

10 “That whilst waiting in my vehicle for Gigaba
 to return from meetings inside the Gupta
 residence I noticed on different occasions
 people arriving or leaving the premises that I
 recognised. Individuals in this regard
 included and there you see firstly Mr your
 name Brian Molefe.”

What do you say to that?

MR MOLEFE: I cannot comment on that Chair I have no recollection. Actually Witness 3 I even find it difficult to speculate about who he is. So I do not know what he is talking about.

20 **ADV MYBURGH SC:** But it seems to me that I mean you
 would accept that given the frequency with which you went to
 the Gupta residence that it was possible that you would have
 been seen there.

MR MOLEFE: Ja but...

ADV MYBURGH SC: By other people.

MR MOLEFE: Witness 3 was attached to Mr Gama was he

not?

ADV MYBURGH SC: Mr Gigaba.

MR MOLEFE: Mr Gigaba ja I have said I do not recall being at the same time with Mr Gigaba at the Gupta residence. Unless if there was maybe a function but I cannot recall.

ADV MYBURGH SC: So let us then turn to paragraph 46 at page 130. Witness 3 says that this is under the heading Bags received from men of Asian descent at Three Rivers Lodge. Witness 3 says and this is at a time when he is
10 providing services – CPO services to Mr Anoj Singh your CFO. He says at 46.

“During July 2014 Transnet executive management attended a week long strategy session at the Three Rivers Lodge in Vereeniging.”

MR MOLEFE: Yes.

ADV MYBURGH SC: Would you accept that?

MR MOLEFE: Yes.

ADV MYBURGH SC:

20 “I dropped Singh off at the venue early in the week and picked him up on the Friday afternoon again.”

MR MOLEFE: Yes.

ADV MYBURGH SC:

“While I waited for Singh on the Friday

afternoon to finish at the session I noticed four men who appeared to be from Asian descent (they looked like Chinese men to me) standing around a Hyundai H1 vehicle in the parking area. Two of the men appeared to be busy with a conversation on a cell – cellular phone.”

Any comment on that?

MR MOLEFE: I deny that I ever met any Chinese people or
10 Asian men at the Three Rivers Lodge during Transnet strategy planning sessions.

ADV MYBURGH SC: 49.

“The next thing I noticed how the two men (who spoke on the cell phone) took two luggage bags from the vehicle, one black and the other maroon and went inside the Lodge area where the executive management meeting was held.”

MR MOLEFE: I cannot comment on – I cannot comment on
20 that because that is what he saw I – I did not meet the Chinese people at the or Asian men in – at Three Rivers Lodge.

ADV MYBURGH SC:

“At around 15h00 I received a sms from Singh requesting me to come to the

conference room where the meeting was held. As I entered the room the two men who took the luggage bags into the Lodge were in the room together with Molefe and Singh.”

MR MOLEFE: I deny that that happened.

ADV MYBURGH SC: But you were present at this conference with Mr Singh?

MR MOLEFE: Yes there was – although I do not recall the exact dates but I do recall that we once or twice had a
10 strategy planning sessions at the Three Rivers Lodge.

ADV MYBURGH SC: And when you had these weeklong sessions I presume do they finish on a Friday?

MR MOLEFE: Ja.

ADV MYBURGH SC: At what time would you finish up typically with the conference?

MR MOLEFE: Well it depends. It depends on our agenda for the day.

ADV MYBURGH SC: You presumably give people time to be able to travel back.

20 **MR MOLEFE:** Yes.

ADV MYBURGH SC: In daylight hours.

MR MOLEFE: Yes.

ADV MYBURGH SC: And this is in the winter time you know?

MR MOLEFE: This was in the winter time?

ADV MYBURGH SC: Yes well it was July.

MR MOLEFE: Yes, yes.

ADV MYBURGH SC: 2014.

MR MOLEFE: Oh ja because it was July Chairperson it is likely that it was winter time.

ADV MYBURGH SC: Alright.

“Singh pointed to the maroon bag.”

At paragraph 50.

10 “And requested me to take the bag to our vehicle that being his – Singh’s vehicle.”

MR MOLEFE: Aye I do not know anything about that.

ADV MYBURGH SC:

“I took the bag and I put it in the boot of the vehicle.”

Then at paragraph 50.1 over the page; page 131.

“I need to mention that the bag was really heavy I however did not know what it contained at the time.”

Sub 2.

20 “I recognised that the bag – sorry I recognised the bag as one of the luggage bags that the Chinese men had earlier taken into the meeting room.”

Have you any comment on that?

MR MOLEFE: I cannot comment on that – that is...

ADV MYBURGH SC: And then 51.

“While I was seated in our vehicle waiting for Singh after putting the maroon luggage bag in the boot of the vehicle I saw Molefe’s driver I cannot clearly recall if it was Witness 1 or a colleague pulling a black luggage bag from the same Lodge venue to the vehicle that was used to transport Molefe.”

What do you have to say?

10 **MR MOLEFE:** I deny that I met the Chinese people or Asian people at the Three Rivers Lodge. However the – the taking a bag from the Lodge to my car they have maybe something that one of my protectors did and that would have been a bag that I had come with with my clothes. So I mean I will deny that that bag – if there was such a bag that was carried from the Lodge to my car came from the Chinese people. It may have been a bag that I had come with with my clothes inside.

ADV MYBURGH SC: Yes because Witness 3 goes on to say:

20 “I recognised this bag as the other bag which the Chinese men had earlier taken into the meeting.”

MR MOLEFE: No then I deny that there was any bag from the Chinese people that was given to my protectors.

ADV MYBURGH SC: So just so that we – we understand the

facts there are two bags on this version that are taken into the conference centre. One maroon bag, one black bag. On this version a maroon bag goes back into Mr Singh's car and the black bag goes into your car. You see – you follow that?

MR MOLEFE: Mr Myburgh I have just said to you that that incident as far as I am concerned never happened. I do not know where this guy got it from.

ADV MYBURGH SC: Let us see.

MR MOLEFE: I am not even in a position to speculate about
10 this bag and that bag and this guy carried that.

ADV MYBURGH SC: Alright.

MR MOLEFE: I mean the next thing you will be saying ah so you admit that it did happen.

ADV MYBURGH SC: I am just putting the facts to you on this statement Mr Molefe.

MR MOLEFE: I have denied that that incident happened.

ADV MYBURGH SC: Alright. What I was trying to get at if you just be a little bit patient please is I want to track what on this statement happened to the maroon bag. If you have
20 a look at paragraph 52.

“The next Monday Singh drove to the Carlton
Centre with his BMW M3.”

You know Mr Singh to drive a BMW M3?

MR MOLEFE: Ja I just know he is a BMW guy I do not know what type.

ADV MYBURGH SC:

“He left the vehicle in the basement for the week and that Friday afternoon I was about to take Singh’s vehicle to the car wash. As usual I checked that there was no valuables in the boot that could go missing. As I opened the boot I saw the maroon bag that I had collected at the Three Rivers Lodge the previous Friday. When I picked the bag up I realised that it weighed less than before. I opened the bag to see what was inside and I noticed a couple of rolls of R200 notes. I sms’d Singh and informed him that the bag was still in the car. He immediately came down to the basement and collected the bag from me.”

So this is his version as to what happened to the maroon bag. I suppose the question is what happened to the black bag?

20 **MR MOLEFE:** I cannot comment on that. There was no black bag that went to my car Mr Myburgh.

ADV MYBURGH SC: Alright. So I want to just ask you some – some more general questions on this. So the – the evidence and I do not want to overstate it but the evidence of the money flows, him, research that they have done and I

have put these things in fairness to you for the last three days points to a large scale money laundering by

At Transnet. Of course you right that ultimately that finding would have to be made by the Chairperson but that is what the evidence points to.

And what the evidence points to is that it is the procurement system that was abused by Regiments and Mr Essa to facilitate that money laundering.

What the evidence also appears to point to is we
10 know that contracts that you were involved in, confinements that you were involved in, that Mr Singh was involved in and Mr Gama to a lesser extent were contracts that were used as a vehicle for money laundering. I have put all of this to you.

MR MOLEFE: All of them?

ADV MYBURGH SC: No I did not – I said some not all contracts obviously – contracts. And we have been through the evidence.

Now assuming that the Gupta's were involved in money laundering to an abuse of the procurement system
20 presumably those people that allowed that I ask you presumably there would be some kind of quid pro quo if those people were complicit. Would you agree with me?

MR MOLEFE: What did you say?

ADV MYBURGH SC: So I am not suggesting when I put this proposition to you that you were complicit in the money

laundering but if there were Transnet managers that were – that enabled it presumably they needed to be some kind of quid pro quo?

MR MOLEFE: I cannot comment – I do not know.

ADV MYBURGH SC: Because you see ...

MR MOLEFE: Is that an assumption that you making? That there would have been a quid pro quo?

ADV MYBURGH SC: Well I would ask you to – one assumes that if you complicit in money laundering and you facilitating
10 it as a manager you need to get something in return.

MR MOLEFE: Yes.

ADV MYBURGH SC: As a general proposition. Correct?

MR MOLEFE: I do not know how those things work Mr Myburgh.

ADV MYBURGH SC: So just leaving Mr Gigaba aside for a moment and just focussing on you and Mr Singh. He was your CFO, correct?

MR MOLEFE: Yes.

ADV MYBURGH SC: And when the two of you to Eskom you
20 were replaced – swopped with Mr Gama and Mr Peter? Correct?

MR MOLEFE: Yes, yes, yes. I think that is what happened.

ADV MYBURGH SC: Ja and what these three drivers do to a greater or lesser extent is they implicate all of you in ...

MR MOLEFE: Who?

ADV MYBURGH SC: These three drivers. They implicate all of you to a greater or lesser extent in visiting the Gupta's and that did not apply necessarily to Mr Gama but visiting the Gupta's in some instances and...

MR MOLEFE: So what do they implicate me in?

ADV MYBURGH SC: Well there is the statement.

MR MOLEFE: Ja the – what do they implicate me in?

ADV MYBURGH SC: Well what you – and just bear with me for a moment. They all in relation to you put you at the
10 Gupta residence. A man gives some evidence about the fact you say I deny that I came with a pull sports bag back to the car. I deny that I gave Ajay Gupta a leather bag. I deny that there was money in ...

MR MOLEFE: So what – what do they implicate me in I just want to understand that?

ADV MYBURGH SC: What they point to is you carrying large amounts of money certainly in relation to the cell phone issue. What I am trying to get at Mr...

MR MOLEFE: Ah no.

20 **ADV MYBURGH SC:** Yes.

MR MOLEFE: You trying to get to that the Gupta's gave me money?

ADV MYBURGH SC: Just bear with me for a moment. What we – what we do know is they certainly say directly that Mr Singh received bags of money and they say Mr Singh took

the money to Knox Vaults.

MR MOLEFE: To?

ADV MYBURGH SC: Knox Vault. You did not have a safety deposit there?

MR MOLEFE: No.

ADV MYBURGH SC: Mr Singh's replacement Mr Peter driver's also give limited evidence about him going to the Gupta residence but they also speak about bags going to the Knox Vault. That was his replacement.

10 You have read no doubt or listened to the driver's evidence in relation to Mr Gama where that driver gives evidence of lots of cash being found in relation to Mr Gama.

 You have seen that evidence.

 What ties the four of you together is that you had at least some connection with the Gupta's. You had by far the strongest one. And that there is either direct evidence on large money transactions and collections or indirect evidence like in your case where the driver says he had a half full bag of R200 notes.

20 **MR MOLEFE:** But he specifically says it did not come from the Gupta's and I deny that there was ever a large sum of money in my bag.

ADV MYBURGH SC: Were you ever given money by Mr Singh?

MR MOLEFE: No I cannot recall that.

ADV MYBURGH SC: When you say you cannot recall might you have?

MR MOLEFE: No I cannot recall that. I mean maybe for lunch or something I do not know.

ADV MYBURGH SC: No that is not what I am asking Mr Molefe.

MR MOLEFE: No I was never given – like how much?

ADV MYBURGH SC: Well you tell me.

MR MOLEFE: No I was never given money by Mr Singh
10 unless if you are referring to maybe we were somewhere or I needed a R100.00 for lunch or I do not know. But I was never given money by Mr Singh.

ADV MYBURGH SC: Just on this issue of – of replacements. I mean you have seen the drivers statements in relation to Mr Peter. If my memory serves me correctly he took him on I think it is 15 occasions to a restaurant in Turffontein where he had lunch with Mr Essa.

MR MOLEFE: I have not seen that no.

ADV MYBURGH SC: Well let me perhaps take you there.
20 We were dealing with – with Witness 3 let me take you to that – to that paragraph.

MR MOLEFE: So you say Witness 3...

CHAIRPERSON: Well I am sorry we normally take a short adjournment after two hours we have been here for three – just over three hours now maybe we should have a ten

minutes adjournment.

ADV MYBURGH SC: Thank you Chair.

CHAIRPERSON: Okay let us take just ten minutes adjournment. We will resume at twenty five past five. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

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CHAIRPERSON: Okay let us continue. Your mic.

10 **ADV MYBURGH SC:** Thank you. Do you still have the bundle BB-14(d) open, do you?

MR MOLEFE: [No audible reply]

ADV MYBURGH SC: I said I just refer you to the one paragraph that you questioned. Can I ask you to go to page 133?

MR MOLEFE: Of this one, BB-3?

CHAIRPERSON: The one ...[intervenes]

ADV MYBURGH SC: 14(d), the one we have been in.

CHAIRPERSON: The one we were using before the break.

20 **MR MOLEFE:** Yes. Page?

ADV MYBURGH SC: Page 133. You will see at paragraph 64 that... that he transported Mr Pita on approximately 15 occasions to this restaurant in Turffontein for meeting with Mr Essa.

MR MOLEFE: Page 133?

ADV MYBURGH SC: Yes. They would have extended lunches and they would drink a lot of alcohol. There again, you see Mr Essa featuring prominently, not so?

MR MOLEFE: Yes.

ADV MYBURGH SC: DCJ, we have no further questions for Mr Molefe.

CHAIRPERSON: Yes.

MR MOLEFE: Oh, he just wanted to show me that paragraph?

10 **ADV MYBURGH SC:** Yes.

CHAIRPERSON: H'm. Yes. Thank you. We are going to adjourn but you – arrangements will be made and I am inclined to think that to deal with that settlement agreement, you may have to come back but I will allow the Legal Team to compose – teams from both sides to discuss it but it seems to me that might be desirable in which case, to the extent that your counsel might wish to re-examine, that could be done at that stage. Is that fine?

COUNSEL: [No audible reply]

20 **CHAIRPERSON:** Or did you wish to re-examine today if you plan to?

COUNSEL: Chair, I have not consulted with Mr Molefe about the need for re-examination.

MR MOLEFE: Okay, okay. No, that is fine. Then we can hear later on if you think there is a need.

COUNSEL: Certainly.

CHAIRPERSON: You could make the request then.

COUNSEL: [No audible reply] [microphone not switched on]

CHAIRPERSON: Okay alright. Thank you very much Mr Molefe for availing yourself to give evidence. As I say, you probably might come back but your legal team and the Commission's Legal Team will talk about the part that remains that you wanted to get a chance to look at and
10 then we will take it from there but thank you very much for availing yourself.

MR MOLEFE: Thank you Chair.

CHAIRPERSON: Yes.

MR MOLEFE: Thank you.

CHAIRPERSON: We are going to adjourn for the day and tomorrow morning we will start at half-past nine and I will hear Mr Gama's evidence tomorrow.

ADV MYBURGH SC: Thank you Chair.

CHAIRPERSON: We adjourn. I am sorry. I think,
20 Mr Myburgh, is there not something you are forgetting that the secretary wanted to say.

ADV MYBURGH SC: Oh, ja...

CHAIRPERSON: You to deal with. I am sorry. It should not take long.

ADV MYBURGH SC: No, I do apologise for having

forgotten about this.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Mr Molefe, there is one thing that I want to raise with you.

MR MOLEFE: Yes, sir?

ADV MYBURGH SC: And that is. Yesterday you said that – we were speaking, as I recall, about Mr Jiyane.

MR MOLEFE: Yes.

ADV MYBURGH SC: Or someone who you said could give
10 evidence.

MR MOLEFE: Yes.

ADV MYBURGH SC: And it was in that context that you said:

“I will give him your cell phone number, Chair.
Because the secretary is not very helpful
because he has issues. I think it has to do
with the fact that he once lost a tender and
lost the court case...”

You remember saying that?

20 **MR MOLEFE:** Yes.

ADV MYBURGH SC: Now you are speaking of the current Secretary of the Commission?

MR MOLEFE: Reverend Malesela?

ADV MYBURGH SC: Yes.

MR MOLEFE: Yes, it is Professor Malesela.

ADV MYBURGH SC: You understand the seriousness of what you said about him?

MR MOLEFE: Chair ...[intervenes]

ADV MYBURGH SC: “He is not very helpful because he has issues. I think it has to do with the fact that he once lost a tender and lost the court case...”

What ...[intervenes]

MR MOLEFE: Yes, I do think so Chair.

10 **ADV MYBURGH SC:** But Mr Molefe ...[intervenes]

MR MOLEFE: If I can explain?

ADV MYBURGH SC: Yes?

MR MOLEFE: Professor Malesela was part of a consortium of Western House that was bidding for a nuclear project at Eskom. Western House is an American nuclear company that was bidding for work at Koeberg and they lost that deal before I arrived at Eskom.

When I arrived at Eskom, he approached me numerous times to intervene in their favour. Eventually,
20 Western House went to court. The matter went as far as the Constitutional Court. It was held by yourself, actually Chairperson, at the Constitutional Court.

And I think since that time, Professor Malesela has got a something to grind with me because the way I interpreted the subpoenas and the notices as they came

one after another, not responding to our correspondence when we asked about what matter we are coming to talk about. We complaint about the fact that the Commission was not responsive.

My feeling was because of the Western House matter, Professor Malesela is not taking it out during – now during the Commission and that his behaviour, certainly, towards me, in the context of the Commission, is informed by his dissatisfaction that I was not able to intervene on
10 his behalf on the Western House matter. That is how I felt.

ADV MYBURGH SC: So Mr Molefe, just so that I understand this. You say – your – you had bad experiences with Professor Malesela at the Commission. In what respect?

MR MOLEFE: Perhaps my attorney can explain. I mean, when we received the subpoena ...[intervenes]

ADV MYBURGH SC: Yes?

MR MOLEFE: When we received the subpoena in December, for example, we – the subpoena did not say
20 whether it was a Transnet or Eskom matter. And we were not sure what it was about.

In fact, we were still waiting on submitting the documents that were required in terms of Section 10 for both Transnet and Eskom.

And then we got the subpoena and then the

Commission went dead. They did not tell us whether it was Transnet or Eskom. We wrote numerous letters asking: What are we coming to appear here for? And those were not answered, right through December and January.

We appeared here on the 15th of January, after having been told – perhaps about a week before that it was indeed going to be on Eskom. And only the documents that were given to us, were given to us about a week before we came.

10 On the 15th when we arrived here, the first thing he said was: Well, we just got an indication of... I think there was even a meeting with yourself, Chairperson, in chambers to discuss the fact that the Commission had not indicated what this matter was going to be about.

CHAIRPERSON: I cannot remember... Well, counsel will normally come and see me in chambers but I cannot remember whether it was about that or not.

MR MOLEFE: I am not the only one.

CHAIRPERSON: It may have been. I do not know.

20 **MR MOLEFE:** [laughs]

CHAIRPERSON: It may have been. I do not know. H'm?

MR MOLEFE: Yes, but then we – in the end, I remember us sitting around the table and Advocate Masuku saying to Mr Molefe, attorney Molefe, that: Perhaps you should write a letter directly to the Chairperson. And that is what we

did. And that is eventually how we got a response.

But our correspondence to the Secretary to indicate what matter it was about, right through December and January and the manner in which we were treated by the Secretary left a lot to be desired Chair.

And the only conclusion that I could arrive at was because he was aggrieved that he had lost the Western House deal and that I had not intervened as... at that time.

10 **ADV MYBURGH SC:** Could I ask you Mr Molefe? You...
There was a delay in advising you as to whether the summons applied to Transnet or Eskom?

MR MOLEFE: I do not think it is necessary to spring to his defence Mr Myburgh.

ADV MYBURGH SC: Sorry?

MR MOLEFE: I do not think it is necessary to spring to his defence. All I am saying ...[intervenes]

ADV MYBURGH SC: I am not springing to his defence.

CHAIRPERSON: No, no. Mr Myburgh is not springing.
20 He wants to find out exactly what the ...[intervenes]

MR MOLEFE: No, even the fact that I ...[intervenes]

CHAIRPERSON: No, no, no ...[intervenes]

[Parties intervening each other – unclear]

MR MOLEFE: And Mr Myburgh wants to go through them again.

CHAIRPERSON: Hang on. Let us not speak at the same time. He is seeking clarification as to what it is that made you think like this. Yes?

MR MOLEFE: I have just said exactly what made me feel like that.

ADV MYBURGH SC: Well, just... I am trying to understand... So I do understand that you say that there was a delay in telling you as to whether the summons applied to Transnet or Eskom. Ja, I follow and you say
10 that happened in December/January. Then ...[intervenes]

MR MOLEFE: It was not just a delay.

ADV MYBURGH SC: Yes?

MR MOLEFE: It was ...[intervenes]

CHAIRPERSON: No reply?

MR MOLEFE: No response to our communication.

ADV MYBURGH SC: Alright.

MR MOLEFE: Right through the month of December.

ADV MYBURGH SC: Alright.

MR MOLEFE: Which caused a lot of anxiety and what are
20 we doing, what...? And at the same time we had to reply with a Section 10 Notices and yet the... And then, eventually, they said it is about Eskom and then we were requested the documents and ...[intervenes]

ADV MYBURGH SC: Mr Molefe, if you just bear with me, though. I understand that. Then you talk about other

treatment. Is it confined to the failure to respond to that correspondence? That is really all I want to know.

MR MOLEFE: No, it is just the general demeanour from the Secretary's office.

ADV MYBURGH SC: What do you mean the general demeanour?

MR MOLEFE: Exactly that. The attitude relating to our matters at the...

ADV MYBURGH SC: But you need to articulate that. I do
10 not understand. I mean, you do not deal directly yourself.

MR MOLEFE: But the need for articulation is to what end?

ADV MYBURGH SC: The need for...?

MR MOLEFE: To articulate it. To what end? Because I am not instituting any legal proceedings or anything.

ADV MYBURGH SC: But you make a very serious allegation in public ...[intervenes]

MR MOLEFE: Yes.

ADV MYBURGH SC: ...that bears the Secretary
...[intervenes]

20 **MR MOLEFE**: And I will repeat it. And Chair, I will leave it at that.

ADV MYBURGH SC: You want to leave it?

MR MOLEFE: Yes.

CHAIRPERSON: Well, the one thing Mr Molefe is that we need to understand what it is that you are accusing the

Secretary of having done. Firstly, because the statement yesterday was made in public. He also needs to know. But we also need to know so that we can understand. So that... but as I understand it. You are saying, the conduct on his part, the Secretary of the Commission ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: Which has – which prompted you to think that he had a negative attitude towards you ...[intervenes]

MR MOLEFE: Yes.

10 **CHAIRPERSON**: ...because you did not intervene some years back ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: ...when he had ask you to intervene in regard to the Western House matter.

MR MOLEFE: Yes.

CHAIRPERSON: You say the conduct on his part is the fact that he did not over the whole of December respond to correspondence that sought clarification on certain – on the matter of this summons or subpoena.

20 **MR MOLEFE**: Yes.

CHAIRPERSON: That is what prompted you to think like that.

MR MOLEFE: Yes.

CHAIRPERSON: Okay.

MR MOLEFE: And just to... I was not laying a formal

complaint.

CHAIRPERSON: No, no, no.

MR MOLEFE: I am just answering to the questions that you are asking.

CHAIRPERSON: Yes, yes. No, no, that is fine.
Mr Myburgh?

ADV MYBURGH SC: No other questions Chairperson.

CHAIRPERSON: Ja. Ja-no, I think, at least it is clarified what it is or what it is and then we will take it from there.

10 Okay. Thank you very much. We adjourn.

MR MOLEFE: Thank you Chair.

INQUIRY ADJOURNS TO 11 MARCH 2021