

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

20 AUGUST 2020

CLOSED HEARING



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Recording & Transcriptions

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B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 20 AUGUST 2020

REGISTRAR: You are on record.

MS MOLEFE: Can I draw the

ADV SELEKA SC: Thank you yes.

REGISTRAR: Madam do you – please put your names on the record?

MS MOLEFE: Tsholofelo Beatitude Lettie Molefe.

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

10 **MS MOLEFE:** No.

REGISTRAR: Could you consider the oath to be binding on your conscience?

MS MOLEFE: Yes I do.

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

MS MOLEFE: I do, so help me God.

REGISTRAR: Thank you.

20 **ADV SELEKA SC:** Thank you very much. Thank you Ms Molefe, thank you for coming.

MS MOLEFE: Thank you.

ADV SELEKA SC: Today is the 20 August 2020 and we are in a closed session of Ms Molefe in the Eskom work stream. The time is just after nine o'clock. Ms Molefe you confirm that you will testify in English?

MS MOLEFE: I do confirm.

ADV SELEKA SC: Thank you and you do not use an interpretation?

MS MOLEFE: No.

ADV SELEKA SC: Thank you. There is a bundle before you which is the very first bundle. It should be the same as the one I have. The bundle is Exhibit – marked Exhibit U12.

MS MOLEFE: That is correct.

10 **ADV SELEKA SC:** Can you place in your name. It has an index at the cover page an index that has twelve items in it. Can you see that?

MS MOLEFE: Yes.

ADV SELEKA SC: Ja.

MS MOLEFE: That is correct.

ADV SELEKA SC: The first item is your affidavit which you have presented to the commission or submitted to the commission?

MS MOLEFE: Yes.

20 **ADV SELEKA SC:** Do you see that?

MS MOLEFE: Yes.

ADV SELEKA SC: Now your affidavit if you go – is on page – it starts on page 2 of the bundle. I think the page numbers are at the top right hand corner 002/003 [00:02:08] called her last night.

REGISTRAR: Okay you see that?

ADV SELEKA SC: Do you see that, is that the same?

MS MOLEFE: Yes it is all the same.

ADV SELEKA SC: Thank you. Now Ma'am the – your testimony today is intended to cover the issues of suspension of the executives and we understand from your affidavit that you were one of those executives.

MS MOLEFE: Huh-uh.

ADV SELEKA SC: Is that correct?

10 **MS MOLEFE:** That is correct.

ADV SELEKA SC: Thank you. And what was your position as the Executive on suspension at the time?

MS MOLEFE: I was the Group Financial Director of Eskom.

ADV SELEKA SC: What are your qualifications?

MS MOLEFE: I am a Chartered Accountant by profession. I also have a B.Com Honours in – a B.Com Honours.

ADV SELEKA SC: Yews.

MS MOLEFE: As well as a BA Honours.

20 **ADV SELEKA SC:** Yes.

MS MOLEFE: In finance and accounting.

ADV SELEKA SC: Is that what you did with – on page 2 paragraph 3 of your affidavit?

MS MOLEFE: That is correct.

ADV SELEKA SC: Yes. So it reads:

“I am a Chartered Accountant by profession.

I started my career with Coopers and...”

MS MOLEFE: Lybrand.

ADV SELEKA SC:

10 “Lybrand in 1993 as an articled clerk having completed a BA in accounting and finance in the United Kingdom after being awarded a British Counsel Scholarship. Upon completion of my articles I moved to IBM as an internal auditor for two years. I left IBM in April 1998 to join Liberty Life as senior internal auditor. I joined ABSA before the [00:04:11] in 2001 as a senior manager in Audit and Risk Management. I then moved to FNB.”

So this then outlines your career progression?

MS MOLEFE: Yes that is correct.

ADV SELEKA SC: Yes in a nutshell.

20 “I then moved to FNB as a CFO in the personal 00:04:37 segment for a very short while after which I joined Eskom in 2005 as a Finance Manager in the Transmission Division. I was promoted to become a General Manager of Finance and Business Services in the same division, a position I

held for five years before I was promoted to Group Executive of Customer Services Division. I was then appointed as Eskom Finance Director in January 2014.”

Okay is that the position you were in at the time of your suspension?

MS MOLEFE: That is correct.

ADV SELEKA SC: Now let us go into the suspension. So you were in that position from January 2014 do you know
10 how in particular your suspension came about? Were you aware if I may put it that way and I am talking aware formally that you were going to be faced with a suspension?

MS MOLEFE: No I was not aware that I was going to be suspended formally on the day that we were suspended. We had been called for a meeting by the Chairman which was a special meeting. It was a special Board meeting on the 9 March if I recall.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** And that meeting whereby the Chairman had indicated that he had been requested to do an enquiry into the challenges that Eskom was facing which were in the name the Financial Challenges as well as the Operational Challenges including the delays in the real program as well as the power generation issues. He had indicated that the-

there obviously would be a detailed enquiry into that as requested by the Minister and the Board was – they were uncomfortable with the matter and they asked him to call the Minister in so that the Minister could inform them what was the reason for that because they were concerned that it would take too much of the executive time when they should in fact be dealing with the matters at hand and focus on – for resolving them. The matter – the meeting was then adjourned shortly thereafter – after the Board
10 raised their concerns.

ADV SELEKA SC: Now tell me – sorry that I am interjecting. This Board we understand that there was a Board appointed by Minister Lynne Brown in December 2014. Could this have been this Board or is this a different Board?

MS MOLEFE: It was indeed that Board yes. The previous Board had already left by then. Ja. And with the exception of Mr Chwayita Mabude.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** As well as Mr Zola Tsotsi who were then reappointed into the new Board.

ADV SELEKA SC: Yes. So they are appointed in December 2014 and you say this meeting is taking place on the 11 March 2015?

MS MOLEFE: 2015. That is correct.

ADV SELEKA SC: Is this – was this the first board meeting?

MS MOLEFE: If I recall it – it would have been the first board meeting – first formal board meeting although we had had sub-committee meetings of the board.

ADV SELEKA SC: Yes.

MS MOLEFE: To be specific with – we had – we have had the investment committee of the board to give them updates on the financial plan and the financial
10 performance. And I think we had also had a Risk and Audit Committee if I am not mistaken. The formal board meeting of the year would have had to be on the – somewhere around the 26 February if I am not mistaken.

ADV SELEKA SC: Yes.

MS MOLEFE: But that board meeting did not take place. It was postponed.

ADV SELEKA SC: Yes.

MS MOLEFE: After which the Chairman of the board Mr Zola Tsotsi then requested a special meeting on the 9
20 March and which was that meeting where he had indicated that he had been requested to do an enquiry into the state of affairs of Eskom.

ADV SELEKA SC: I see. The meeting of – the meeting scheduled 26 February 2015 you say it was cancelled by Mr Tsotsi were you given the reasons why it was

cancelled?

MS MOLEFE: No we were not given reasons.

ADV SELEKA SC: But were you notified of the cancellation?

MS MOLEFE: We were notified and I really cannot recall how we were notified.

ADV SELEKA SC: Yes.

MS MOLEFE: Because there had become a habit of having meetings being cancelled either by – on text you know
10 through whatsapp or text so I do not recall specifically this one.

ADV SELEKA SC: It far 00:10:47.

MS MOLEFE: Ja.

ADV SELEKA SC: Okay.

MS MOLEFE: It was if I may add it was actually an important meeting and the reason it was important is that we had till the 28 February to submit the financial plan, the business plan as well as the borrowing program for approval in terms of PFMA to the National Treasury.
20 Because the National Treasury in terms of a regulation would require a month before we can start implementing the plan for the new financial year which would have been the 1 April of the new financial year. So it was quite concerning that the meeting was then cancelled because of that.

ADV SELEKA SC: I see. So the approval of the financials I see in your affidavit you talk about these financials having to be approved because you had to obtain international funding or loan.

MS MOLEFE: Ja.

ADV SELEKA SC: Or raise a bond.

MS MOLEFE: Yes.

ADV SELEKA SC: Yes.

MS MOLEFE: So those were the different sets of results.

10 **ADV SELEKA SC:** Yes.

MS MOLEFE: So this approval that I am referring to specifically.

ADV SELEKA SC: Yes.

MS MOLEFE: Was specifically relating to the budget.

ADV SELEKA SC: [00:12:02 mumbling]

MS MOLEFE: For the new financial year.

ADV SELEKA SC: Thank you.

20 **MS MOLEFE:** The – the financials that I had referred to which we required to raise funding were the interim financial statements for September 2014 sorry for the six months ended to September 2014. Those we needed to – because they would have been audited by the auditors.

ADV SELEKA SC: I see.

MS MOLEFE: Who would have had them to prepare for spectra so that we could prepare for a deal road show –

international road show to raise funding?

ADV SELEKA SC: I see.

MS MOLEFE: And those were the results that there was an attempt to cancel – to make sure that we do not go through the results and answering process.

ADV SELEKA SC: I see.

MS MOLEFE: Ja.

ADV SELEKA SC: So the approval of the budget you referring to is that Eskom presenting a proposed budget to
10 the National Treasury.

MS MOLEFE: National Treasury.

ADV SELEKA SC: So the board needed to approve that.

MS MOLEFE: Including the borrowing program ja. So I think it was five years. It is a five year program if I am not mistaken so it would have been from 2015 either three years or five years. Forgive me if I do not recall. It would have been 2015 to 2018 or 2015 to 2020.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja. So we needed that approval before we
20 can start implementing for the new year.

ADV SELEKA SC: I see.

MS MOLEFE: Which would start on 3 April 2015.

ADV SELEKA SC: So that meeting did not take place 26
February 2015?

MS MOLEFE: No it did not take place.

ADV SELEKA SC: Then they convene a meeting on the 11th the debt aspect comes up on the agenda for the schedule?

MS MOLEFE: No it did not. So the first meeting just to correct.

ADV SELEKA SC: Yes.

MS MOLEFE: That that meeting was on the 9th.

REGISTRAR: Oh so the 9th March.

MS MOLEFE: Ja.

10 **ADV SELEKA SC:** Okay.

MS MOLEFE: So when that meeting took place, I had assumed then that the board would take the opportunity to request that we present the new financial plan and the borrowing program.

ADV SELEKA SC: Yes.

MS MOLEFE: But that was the special meeting to request the board to approve an enquiry to take place.

ADV SELEKA SC: I see. Now this is where this document introduces the pit holes of the actual inquiry.

20 **MS MOLEFE:** Yes.

ADV SELEKA SC: So you were present in that meeting?

MS MOLEFE: I was present in that meeting.

ADV SELEKA SC: And yes so you mentioned everything about that then the member of the board said they do not agree with what he was putting on the table. They should

– Mr Tsotsi should be invited to come and explain.

MS MOLEFE: Yes so the – in fact if I recall he was not specific as to who had requested him. But he – I think he had said the shareholder if I am not mistaken. And the board had then said in that case then if it is the Minister that had instructed him to commission an inquiry into the state of affairs then they would like the Minister to come and address them directly because they are concerned that this inquiry needs to take a lot of time out of monetary
10 attention to be dealt with the matters that they should give.

ADV SELEKA SC: I see.

MS MOLEFE: And – ja – so I think he basically obviously heard the concerns from the board members and he then undertook to call the Minister after that meeting and – so that he could understand – you know – obviously get understanding of when the Minister would be able to come and address the – the board.

ADV SELEKA SC: Yes.

MS MOLEFE: And then the meeting was then adjourned. I
20 think about an hour later or so. I think the day after the meeting which would have been the 10th.

ADV SELEKA SC: Yes.

MS MOLEFE: We then got notice of a special meeting by text that the Minister would be coming the following morning which would have been the 11th March.

ADV SELEKA SC: Yes.

MS MOLEFE: To come and address the board on the – their concerns that they have raised regarding the inquiry.

ADV SELEKA SC: Yes.

MS MOLEFE: Yes.

ADV SELEKA SC: Okay you going to go into that but for the meeting of the 9th was any documentation shared with board members prior to that meeting regarding what Mr Tsotsi is going to propose at the meeting?

10 **MS MOLEFE:** It was – he left and meanwhile that he had prepared the – I think it was circulated in the meeting actually it was not a document that if I recall members had been ...

ADV SELEKA SC: Furnished with before.

MS MOLEFE: Ja furnished with before the meeting. And it was essentially just laying out – it was basically more than memo – a memorandum to the board requesting that they consider approving the commission of inquiry to take place. And stating the reasons for such an inquiry taking place.

20 And essentially that was really what it was detailing out what the inquiry would – would entail. Ja.

ADV SELEKA SC: Does your recollection of the contents of the memo...

MS MOLEFE: Ja.

ADV SELEKA SC: Go only to that extent?

MS MOLEFE: Well only to that extent ja.

ADV SELEKA SC: So on the 11th...

MS MOLEFE: If I recall I mean that – that document specifically did not even say anything about any suspensions. So it only touched on the need for an inquiry ja.

ADV SELEKA SC: So then the meeting of the 11th March there is another special meeting with the Minister is present – and the Minister here is Minister Lynne Brown?

10 **MS MOLEFE:** Minister Lynne Brown.

ADV SELEKA SC: Yes. Were you also present in that meeting?

MS MOLEFE: I was present.

ADV SELEKA SC: Can you take us through the events in that meeting?

MS MOLEFE: Ja. So the meeting started as per normal around about nine o'clock. At that meeting the – the then Chief Executive Mr Matona that decided that he would then – because I think he had been with the company since
20 October 2014 – so he had wanted to take the board through his first 100 days or so you know so to speak.

ADV SELEKA SC: Yes.

MS MOLEFE: In terms of what has he identified as the challenges, what has been – what he – what has been occupying his mind and what he had wanted to take you

know through the board in terms of the way forward. So he had started you know putting – he had started presenting a document to you know – it was more like a feedback to the – to the board.

ADV SELEKA SC: Hm.

MS MOLEFE: And I do not even think that he finished the discussion with regards to his first 100 days.

ADV SELEKA SC: Yes.

MS MOLEFE: The Minister then forty-five minutes later
10 they arrived at the meeting. So that obviously had to be postponed. That when the Minister came in the Chairman Zola Tsotsi handed over to the Minister.

ADV SELEKA SC: Hm.

MS MOLEFE: The Minister raised a number of concerns. One of his first concerns was that he is concerned about management in particular the CFO and the CEO not paying attention to some of the key matters that are concerning. And when the Chief Executive asked for further elaboration of what the Minister meant by that she had indicated that
20 we had had a number of documents and papers leaking. And the Chief Executive had requested our security team to you know do some investigation and look at you know sweeping the rooms to understand that it would probably be that – there could have been some bucks in the potholes.

ADV SELEKA SC: Yes.

MS MOLEFE: So that obviously was done. So he explained that he had actually been paying attention to that. It was an issue that had been concerning him and he had done something about it. But the Minister was clearly not – was clearly concerned and felt that it was not receiving the attention that it requires.

He then – she then obviously started saying that I am concerned about the operational challenges, the delay
10 in the bill program as well as the financial challenges. And then – he then said that I would like to talk to the board in camera and asked myself and the Chief Executive Mr Matona to leave – to be recused from the meeting. And that is probably about an hour later if I am not mistaken or about thirty minutes after he had – she had arrived.

And from there on I am not even sure whether the Minister stayed the whole day or whether she left. Because I then went into my office and continued with my work.

20 **ADV SELEKA SC:** Yes.

MS MOLEFE: At some point when I left my office to go and use the bathroom, I think the board members was on a break but I did not see the Minister nor her officials anywhere because she would always be with her officials.

ADV SELEKA SC: Hm.

MS MOLEFE: But it turned out that – I later found out that she had already left I think just before lunchtime. But the board members continued with their meeting without myself and the Chief Executive.

I recall going into the Matona's office at about four o'clock and indicating to him that I think that I am going to pack and leave but I am not sure because I am not sure if the board would still require us to come back with us. It had been sitting obviously for the whole day waiting for
10 them to call us back to the board meeting.

And he had also indicated that he will enquire from Mr Tsotsi because he was also thinking the same. And interestingly that he said to me he did not have a good feeling about this meeting.

ADV SELEKA SC: Hm.

MS MOLEFE: And that is when he said to me he suspects that we may be suspended today based on what he had heard from outside. Ja – so – so I think if you recall in my affidavit I also refer to the fact that I had heard from other
20 sources before the day that we could be suspended.

So I did indicate to him that I would – I had also heard that but I am not sure you know what would be the reason for our suspension. And he said he advised that we maybe should wait a little bit before and he would try and see – and try and – he would attempt to enquire from the

Chairman whether we were still needed.

I think that was around about half past four around there and he then if I recall he then was called around about quarter to five.

ADV SELEKA SC: Yes.

MS MOLEFE: And into the meeting by himself and then after that I was called – after he was called. I think it must have been half past five when I was called back into the meeting. That is when the board had then – Mr Tsotsi left
10 the discussion and he had a document in front of me – in front of him which was my suspension letter.

What I had observed is that some of the board members had already left and if I recall vividly we – we – in the room it was Dr Ben Ngubane, Mr Baloyi, Ms Veneta Klein was in the room, Mr Chwayita Mabude was the – Ms Chwayita Mabude was in the room. Mr Ronnie Khumalo was not in the room. He came in for about ten minutes and he left. The rest of the board members were not there for instance Ms Naidoo was not there. There was another
20 board members Mariam Cassiem I think it is she was not there as well.

Ja so I am not sure who I am missing but if my memory serves me well I had to remember how – you know you never forget certain incidents. I remember where they were sitting, who was sitting.

ADV SELEKA SC: I see.

MS MOLEFE: And Mr Tsotsi sitting right in front of me – next to me sorry.

ADV SELEKA SC: Well you deal with – this is now at the stage where you are – you have been recalled.

MS MOLEFE: Ja.

ADV SELEKA SC: Back into the board meeting. And who called you back into the board meeting?

MS MOLEFE: It was the company secretary who at the
10 time – I cannot remember if it was Mr Phukubje Malesela or
– ja I think it was Malesela who called me into the meeting
if I am not mistaken I cannot recall. Ja.

ADV SELEKA SC: Yes.

MS MOLEFE: I cannot recall if it was him or whether it was Susan Daniels. I cannot recall it was one of the two ja.

ADV SELEKA SC: Yes. You probably had addressed it in your statement on page let us see – page 12. Now on page 12 paragraph 26.

20 “So later that afternoon at approximately
 16.30”

MS MOLEFE: 30.

ADV SELEKA SC:

 “I do not know what I would do”

Is written here.

MS MOLEFE: Ja I did not specify who called me back.

ADV SELEKA SC: Yes okay. Okay it does not matter. So when you go back who addresses you? Who speaks to you about what is about to happen?

MS MOLEFE: The – it was Mr Zola Tsotsi.

ADV SELEKA SC: Okay and who – if you may again go through the names of the persons you say were with him in the board meeting to your recollection. Because I think – I am not sure whether that is dealt with in your affidavit and
10 that you have simply referred to it but anyway this is – the rest says:

“Mr Zola Tsotsi addressed me.”

You have said:

“That Ms Chwayita Mabude was present.”

And you mentioned is it Mr or Ms Baloyi.

MS MOLEFE: Mr Baloyi.

ADV SELEKA SC: Is it Mr?

MS MOLEFE: Mr Baloyi, Norman Baloyi

ADV SELEKA SC: Norman Baloyi was present. You said
20 Mr Ronnie Khumalo was not there but came in briefly and left.

MS MOLEFE: And left ja. Probably five minutes – he probably stayed five minutes not even ten minutes and he left.

ADV SELEKA SC: And left. So he did not sit in for your

meeting?

MS MOLEFE: No.

ADV SELEKA SC: Okay.

MS MOLEFE: He was not in when I walked in. He walked in while I was there.

ADV SELEKA SC: Right.

MS MOLEFE: I think about five minutes and then he left.

ADV SELEKA SC: Ja and he left. We know that Ms Veneta Klein was also there.

10 **MS MOLEFE**: Was also there.

ADV SELEKA SC: Was also a board member. Was she there?

MS MOLEFE: She was there. Dr Ben Ngubane was there.

ADV SELEKA SC: Dr Ben Ngubane. Can you check whether...

MS MOLEFE: So I think Mr Pamensky was not there. Definitely he was not there. I think Ms Naidoo was not there either and Ms Cassiem – if I recall they were not there.

20 **ADV SELEKA SC**: If [00:29:55] of a board meeting just check whether we have.

MS MOLEFE: Oh Mr Khoza sorry I forgot about Mr Khoza. Zethembe Khoza.

ADV SELEKA SC: Mr Zethembe Khoza.

MS MOLEFE: Ja.

ADV SELEKA SC: Was he present or not present?

MS MOLEFE: He was present.

ADV SELEKA SC: He was present?

MS MOLEFE: Ja. Mr Zethembe Khoza was at the meeting.

ADV SELEKA SC: So – but the person who was addressing you was Mr Tsotsi?

MS MOLEFE: Mr Tsotsi addressed me. He essentially indicated why we needed to be suspended. He said that we had done nothing wrong but the Minister had instructed
10 that due to the nature of the inquiry.

ADV SELEKA SC: Yes.

MS MOLEFE: And that they would be looking into matters that certain executives were responsible for they had decided that we need to step aside as those four executives so that they could have unfetter – in his own words, unfetter access to all the information that they required to be able to do an investigation of that nature.

I recall actually responding to him to say I am surprised by this because him having been with the
20 previous board.

ADV SELEKA SC: Yes.

MS MOLEFE: For at least three years he should know what the issues are. These issues that the company is faced with are not new.

ADV SELEKA SC: Yes.

MS MOLEFE: And certainly not new to the board. And interestingly that Mr – Ms Chwayita Mabude actually interjected and said that this is an investigation that is necessary. It has been instructed by the Minister. The Minister is not happy about certain things. So we need to cooperate. I recall ja – so if I remember that was the only person – other person that spoke in the meeting.

ADV SELEKA SC: Okay. So Mr – are you saying that Mr Tsotsi specifically said the Minister has also recorded your
10 suspension? Can you recall that or not?

MS MOLEFE: No he did not specifically say the Minister had requested us to be suspended.

ADV SELEKA SC: Okay I see.

MS MOLEFE: All that he said was that the Minister had instructed the board.

ADV SELEKA SC: Yes.

MS MOLEFE: To investigate these matters. Ja.

ADV SELEKA SC: And then Mr [00:32:48]

MS MOLEFE: Ja.

20 **ADV SELEKA SC:** So did you ask him how is your presence at the work place going to encumber the inquiry>

MS MOLEFE: I do not think I was specific.

ADV SELEKA SC: Yes.

MS MOLEFE: So all I asked is that I am surprised by this inquiry firstly. These – as I indicated the matters are not

new to the board and certainly himself and Ms Chwayita who had been with the board through the previous term. It is the same issues. So I do not understand how an inquiry would even give them a different set of information. But I did not ask specifically how that would – he – because he did explain that they would like to make sure that they have you know un – you know un – no interference or rather unfettered access to all information they required. But I did not ask specifically no.

10 **ADV SELEKA SC:** Yes. But did it not surprise you also that it was being said before I asked her – I mean – in regard to you – to your recollection what concept or word was he using regards the suspension? Did he specifically mention suspension because I am asking this for what you say at that he said to you – you have done nothing wrong. So is it a suspension that he was mentioning it to you or something else?

MS MOLEFE: Ja so he did not specifically use the word the suspension he actually used the word step aside.

20 **ADV SELEKA SC:** He used step aside.

MS MOLEFE: Ja he used the word step aside or both the – I mean in hindsight in fact when I was at home I wondered why I did not ask him because the letter that was then presented to me spoke of a suspension. And he spoke of a step aside if I recall.

ADV SELEKA SC: I see.

MS MOLEFE: Ja.

ADV SELEKA SC: So let us see that we have [mumbling].
Item 5 is the letter [00:35:33] page 227. Do you see it
there?

MS MOLEFE: Ja.

ADV SELEKA SC: [00:35:49].

MS MOLEFE: Ja so it talks about [?] suspension.

ADV SELEKA SC: Yes.

10 **MS MOLEFE:** Ja.

ADV SELEKA SC: So let us see. The letter is dated 11
March 2015 it is on Eskom's letterhead. It is addressed to
yourself. You have seen this letter?

MS MOLEFE: Yes.

ADV SELEKA SC: And is that your signature on the
second page there?

MS MOLEFE: Yes it is.

ADV SELEKA SC: On the 11th March 2015.

MS MOLEFE: Ja.

20 **ADV SELEKA SC:** The time is 19:55?

MS MOLEFE: Shoo I have got my times wrong.

ADV SELEKA SC: Ja I see he is – is clearly visible 19:55

MS MOLEFE: Ja.

ADV SELEKA SC: Mr Tsotsi's ...

MS MOLEFE: So I did not realise it was that time.

ADV SELEKA SC: That it was late – five to eight?

MS MOLEFE: Ja. That is very late.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: And you were still at work.

MS MOLEFE: They – if I recall they – when they called Mr Matona he must – ja I think they spent quite a lot of time with him. But I cannot remember how much time they spent with him. Ja.

10 **ADV SELEKA SC:** As from the time you [00:36:47] to the time you move out it might also have been some time.

MS MOLEFE: Ja.

ADV SELEKA SC: I think you say they were addressing you about.

MS MOLEFE: Ja.

ADV SELEKA SC: Because you say Mr Tsotsi telling you what is about to happen.

MS MOLEFE: Ja.

20 **ADV SELEKA SC:** And you also communicating with him in response.

MS MOLEFE: Ja.

ADV SELEKA SC: It later reads:

“Dear Ms Molefe. A notice of suspension as Eskom found is directed. I refer to the meeting of today 11 March 2015 wherein we

discussed the 00:37:30 concerns regarding this [?] state of the company in the [00:37:33] in the [?] resolution to conduct an independent inquiry into the possibility that a power delivery may be compromised by either intentional or negligent conduct. Due to the nature of this enquiry and the [00:37:44] that we bring free of any influence from leadership in the organisation came to the conclusion of an investigation as these matters you should be placed in suspension without any loss or benefits and pay.”

So it specifically used the word suspension here.

MS MOLEFE: Suspension ja.

ADV SELEKA SC: But you say he did not specifically use that word when addressing you?

MS MOLEFE: No.

ADV SELEKA SC: He said step aside.

20 **MS MOLEFE**: He said step aside ja.

ADV SELEKA SC: Okay. Do you think you had the opportunity to read the letter at the time they were presenting it to you?

MS MOLEFE: I did. Ja it was just very confusing because I obviously knew my rights as an employee and I should

have asked to be given time. But I did not at the time.
So...

ADV SELEKA SC: But I want to ask you a different question. The question is, they are talking here about the enquiry being required for the purposes of the possibilities of power delivery may be compromised. My question is, what does that have to do with you as the FD? That is really my question. Whether it occurred to you to ask them well why are you suspending me for a matter of power
10 delivery or does that fall within your duties at the – as the FD?

MS MOLEFE: No it does not. Ja it does not and I guess if you look at – and I just want to refer back because ...

ADV SELEKA SC: Yes.

MS MOLEFE: Ja so – so it does not but they in the discussion one of the issues that were raised was the power delivery issues and the related impact on the finances.

ADV SELEKA SC: So they verbally raised that incident?

20 **MS MOLEFE:** Ja. Because with the power delivery issues it meant then that we obviously use an expensive amount of diesel which was then impacting on the financials. Ja.

ADV SELEKA SC: So you were the [00:40:26] to it?

MS MOLEFE: Yes. Ja.

MS MOLEFE: In that context why they were tying you to

it?

MS MOLEFE: Ja.

ADV SELEKA SC: Of [00:40:31] matter would – why you were also earmarked to step aside.

MS MOLEFE: Ja.

ADV SELEKA SC: Okay. So Tuesdays I confirm that you advised of the nature and extent of the inquiry. Is that correct? The nature and extent?

MS MOLEFE: Now we – we did discuss and I think he was
10 probably referring to the memo he presented on the 9th
March.

ADV SELEKA SC: I see.

MS MOLEFE: Ja. Because that was then the – the nature and the extent on enquiry that they have informed the board where I would have been present ja.

ADV SELEKA SC: So you had – did you have an opportunity to read that memo?

MS MOLEFE: On the day yes. Ja.

ADV SELEKA SC: So I confirm that you were advised of
20 the nature and the extent of the enquiry and that you were afforded an opportunity to make presentations to the board sub-committee why you should not be suspended [00:41:32]. You were advised that the board sub-committee was considering placing you on precautionary suspension because of concerns that might pose a risk to

the influence pre-requirement of enquiry. So will it be a correct observation if what he says to you is a step aside then what is contained in the letter is explicitly what I refer to as suspension is that [?] reservations of saying well it is either confusing or one is misleading? How would you – how would you have considered this at the time that you are told – I am – I have done nothing wrong, I will step – I am being asked to step aside? But when I do get the letter the letter talks of suspension. How will you deal with this?

10 **MS MOLEFE**: Ja. You see – and I think – I think at the time what – what probably had a – I do not know what to call it. Because I went in there knowing that I was going to be suspended your mind in a certain way you know had already switched off to – ja so it is only when you then go home you reflect on this you look at the letter again. You realise that they are contradicting themselves – number 1. They are obviously – this is not obviously in good faith when they have on the way hand said to you you have done nothing wrong because that is essentially what he
20 had said as well. Please note that the board does not think that the executives have done wrong.

ADV SELEKA SC: Hm.

MS MOLEFE: We are merely asking you to step aside.

ADV SELEKA SC: Hm.

MS MOLEFE: So that we can have unfettered access to

the information that is required for the this investigation. But then as you indicate when you then read this paragraph 2 and 3 you can clearly see that it is misleading firstly and confusing as well. Ja. Ja so in fact what I did and for some reason I cannot find my documents because I moved houses [?]. The first letter that I wrote to them post this was also indicating that can you please clarify because in my letter you say this is not a suspension. You also indicated that I would only be home for three months
10 however we have not heard from you and it has been two months. I think that was sub – one of the letters that I wrote to them to indicate that you know the letter is confusing. The suspension was related to the discussion with it.

ADV SELEKA SC: Just on that I have noticed in your affidavit you refer to a letter or letters from your attorneys and I will find the relevant paragraph. I think it is on page 13 paragraph 29. You were informed [00:46:16].

MS MOLEFE: Yes.

20 **ADV SELEKA SC:** Paragraph.

“We are informed that the inquiry would take three months but two months into the suspensions we have still not heard from the board on whether the enquiry had started. Shortly thereafter I started

engaging my lawyers and we posed questions about the Terms of Reference of the enquiry I was suspended in lieu of.”

MS MOLEFE: Yes.

ADV SELEKA SC: Could that – does not explicitly refer to matters.

ADV SELEKA SC: Ja so – so I think this letter specifically. So the first letter that I – I think I probably wrote three letters if I am not mistaken.

10 **ADV SELEKA SC**: Yes.

MS MOLEFE: But the first one was to just put on paper that you know the – the letter of suspension and what they have indicated at the meeting.

ADV SELEKA SC: Yes.

MS MOLEFE: Was confusing if I recall and misleading. I also indicated to Mr Tsotsi at the time that – because remember that the day after the suspension he appeared on TV and he was being interviewed about the suspensions. So I did indicate to him that you know what
20 he had said publicly and what the board had said to me the day before the suspension where contradictory. So that was the first letter that I had written. And I think this was – if I recall this would have been the second letter where I had – was indicating that I have been sitting at home for too long. Ja.

ADV SELEKA SC: So the first letter would have come directly from ...

MS MOLEFE: From myself.

ADV SELEKA SC: You personally.

MS MOLEFE: Ja.

ADV SELEKA SC: So the second would have been written by your lawyers?

MS MOLEFE: Ja. So I referred – I wrote the letter and then I consulted the lawyers. I said I want to send this
10 letter to the board of Eskom through the channel could they advise. And they did that ja.

ADV SELEKA SC: And you say you think there was a third letter as well.

MS MOLEFE: Ja I think there was – I think the – I think we wrote a third letter but the third letter was then you know about the negotiations that were taking place. Ja.

ADV SELEKA SC: I see. So – so Mr Tsotsi made [00:48:57] what is this? He appeared on TV you say?

MS MOLEFE: Ja so he...

20 **ADV SELEKA SC:** After the suspension.

MS MOLEFE: Ja so after they issued a media statement he was then called for interviews. Ja – on the suspension.

ADV SELEKA SC: Yes. Just go back to the suspension letter page 278. So I [?] was 3 to advise that the board sub-committee was considering placement on

precautionary suspension because of concerns that my posing risk to the influence 3 requirement of the enquiry. These concerns have been discussed with you. I confirm that you have – you made various representations in respect of the aforesaid suspension. We have considered them thoroughly. We have conduct – we have concluded that in view of the serious nature of the above now we consider your representations the company regrets to inform you that it has decided to suspend you on full pay
10 without any loss to benefits to be calculated from today pending conclusion of the enquiry.

Was the suspension with immediate effect?

MS MOLEFE: Yes.

ADV SELEKA SC: So when ...

MS MOLEFE: So – so when I went into the room.

ADV SELEKA SC: Yes.

MS MOLEFE: He did not immediately represent the letter to me.

ADV SELEKA SC: Yes that is what I was going to ask you.

20 **MS MOLEFE**: So he explained the reasons for the suspension then – as I said he indicated it is you know – they are asking us to step aside so that they could have unfettered access for – to the – inspect the enquiry that they need to do.

ADV SELEKA SC: Yes.

MS MOLEFE: We obviously then had that discussion and Mr – Ms Mabude sorry – Chwayita Mabude came in.

ADV SELEKA SC: Yes.

MS MOLEFE: And she indicated that the Minister is not happy about certain things including the financial issues that is why we need to step aside so that this enquiry can go ahead. So after that I then said you know what they must do what they need to do. They did indicate in the meeting that they may call upon us from time to time.

10 **ADV SELEKA SC:** Yes.

MS MOLEFE: While they do the investigation to ask us a few things regarding the enquiry itself. And then after that they then presented the letter to me.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: Well just back on that issue of the media statement and your letter because you say in your first letter which you say you have been unable to find you did point out to the commission [?] misleading of
20 information. The media release from Eskom is dated 12 March 2015 which I will place before you right now but in it is not part of the bundle but it will be inserted in the bundle. The media statement reads:

“That Eskom board has today resolved to commission an independent enquiry on the

current status of the business and its challenges. The board in its quest to address the current challenges faced by Eskom has deemed it prudent to seek and independent view on the status of amongst other things the poor performance of generation plant, delays in bring the new generation plant on stream, high cost of primary energy, cash flow challenges. To ensure that this process is as transparent and uninhibited as possible, said Eskom Chairman, Mr Zola Tsotsi, “the Board has also resolved that four of its senior executives, including the Chief Executive, should step down for the duration of this enquiry”.

10

The executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe, Finance Director, then the others Dan Marokane Group Capital, Mr Matshelo Koko Group of Commercial Technology. One of the current non-executive board members Mr Zethembe Khoza has been asked to assume the position of interim Chief Executive and Mr

20

Khoza will be supported by Ms Nonkkululeko Veleti, Finance, Mr Abram Masango, Group Capital and Mr Edwin Mabelane Commercial and Technology.”

But the focus of the moment was on the words step down for the duration of the enquiry which is not a word they use in the letter.

MS MOLEFE: That is correct.

ADV SELEKA SC: But which you say verbally when he
10 addresses you is the symbol of wording as he used which is to step aside.

MS MOLEFE: Yes.

ADV SELEKA SC: Okay we will have to ...

MS MOLEFE: Yes that is correct. And in fact that is the – if I recall that is why I then decided to write to him – to Mr Tsotsi after seeing the media statement and ja – and that.

ADV SELEKA SC: Did you get a response from him?

MS MOLEFE: No I did not.

ADV SELEKA SC: Thank you. Thank you. So – and what
20 is his explanation – not willing to step aside, for how long?

MS MOLEFE: They said for three months they had anticipated that the enquiry would take three months.

ADV SELEKA SC: Did that happen? Did you – were you suspended for three months – did the enquiry take place – did you come back to Eskom?

MS MOLEFE: Ja. So two months into the suspension they have said that they will update us on how the enquiry is – is progressing.

ADV SELEKA SC: Yes.

MS MOLEFE: Two months into the enquiry we had – well into the suspension we had not heard from them. We – I used to keep in touch with Daniel [?] quite a lot. So we then found out that in fact there were issues with Mr Tsotsi and I think it became public knowledge that he had been
10 asked to – to leave the board.

ADV SELEKA SC: Yes.

MS MOLEFE: So when we wrote – when I wrote rather with my lawyers the second letter that second letter was received by Doctor Ben Ngubane and Mr Tsotsi had already left. But that letter was indicating that it has been two months since our suspension to our knowledge from newspapers that media articles we are reading it does not sound like the enquiry has started and I would like to know what does this mean for me. Because we only had one
20 month left and we have been on suspension for two months. So they – and that is the letter I think I refer to in my affidavit.

ADV SELEKA SC: I see.

MS MOLEFE: And I – I then received an email from Ms Daniels.

ADV SELEKA SC: Yes.

MS MOLEFE: Requesting a meeting with them indicating that the Chairman and Mr Ngubane – Dr Ngubane that requested a meeting with me.

ADV SELEKA SC: Did you – the second letter you are referring to were you assisted by your attorneys? Did it come on your attorney's letterhead?

MS MOLEFE: No it was on my letterhead.

ADV SELEKA SC: It was on your letterhead.

10 **MS MOLEFE:** Because I had not appointed them formally at the time. I was still asking for just – ja.

ADV SELEKA SC: Do you think they will have a copy of that letter?

MS MOLEFE: I will ask them. I will ask them. I will also look in my – so what – two things happened. I moved house and my network broke. And now I cannot open it but I still have it.

ADV SELEKA SC: Okay.

20 **MS MOLEFE:** So I know that the information in that laptop relating to ja – so I will just – ja.

ADV SELEKA SC: Did Dr Ngubane respond to this letter?

ADV SELEKA SC: It was – it was – if I recall I think it was – I do not know if it was an email because they had my gmail address.

ADV SELEKA SC: Yes.

MS MOLEFE: I think it was a gmail from Ms Daniels indicating that Dr Ngubane is requesting meeting with me.

ADV SELEKA SC: Oh I see.

MS MOLEFE: In response to the letter that I enclosed.

ADV SELEKA SC: So your letters were sent to them by email?

MS MOLEFE: I sent them by email.

ADV SELEKA SC: By email.

MS MOLEFE: Ja. I will go back and look. I will go back
10 and look.

ADV SELEKA SC: Yes please.

MS MOLEFE: Ja. Thinking about it I may still have it.

ADV SELEKA SC: Yes. So before we go into what they
called you for you have touched on the fact that before the
day of the suspension you – you had some knowledge that
a suspension was going to going to happen and when you
went to see Mr Matona the CEO after you were excused
from the meeting you will go to his office and he says he
has a bad feeling about this and he mentions to you how
20 he thinks you guys are going to be suspended. And you
also in your talk say you have heard that this is going to
happen. How did you come to know that?

MS MOLEFE: So what – what had happened was – was
that Mr Dan Marokane if I am not mistaken had indicated
that I cannot remember if it was Mr Dan Marokane that

indicated that he had heard that we would be suspended

ADV SELEKA SC: Yes.

MS MOLEFE: But I have not taken that you know seriously but the day before as I indicated as well while I had my strategic session with the finance team at the Eskom Learning Centre Nonkululeko Veleti was called by Matshela Koko to say that there are people that would like to see her urgently at Melrose Arch. But obviously in panic and not understanding what that was about she obviously asked me
10 if I knew anything about it and that she was uncomfortable to go there – can I – why do I not go instead? And I said no I do not know who those people are Eskom does not have any dealings in Melrose Arch. I am not sure why Matshela would be calling you to come to Melrose Arch. I then said to her if Matshela calls back again can she tell Matshela to call me so that I can discuss with him that – we then decided that she was not going to go there. So she then decided she is just going to ignore Matshela's [?] over there. And I think she did that for the day. So – so
20 what happened then the following day while I was waiting after I had been recused from the board meeting on the 11th March while I – while we were waiting to be called back in.

ADV SELEKA SC: Yes.

MS MOLEFE: I got a phone call from one of the general

managers in the company asking me if I am also being suspended. What is this about our suspension? And I said, what are you talking about? He said, there is word out there and from general managers that we are being suspended today. Certain executives would be suspended with that my name was also on the list. So I said to her I do not know about any about any suspensions obviously I was trying to keep it confidential. I am – there is board meeting today I have just been asked to recuse myself so I
10 am waiting for the board to call us back in. So – so that is why I said that clearly when I look at all those you know things together it was quite clear that we were going to be suspended and when Mr Matona later that day before we were called back in said to me he had a bad feeling about this he had heard from outside that we may be suspended. That is when I realised that there might be some truth in the matter ja.

ADV SELEKA SC: Yes. Well we have read this media statement which I want to incorporate into the record. I
20 think it will come right at the end. Could you please pause for a minute? Ms Molefe you are still under oath. You are still under oath.

MS MOLEFE: I am yes.

ADV SELEKA SC: So that document it is now Exhibit – it is part of Exhibit U12 now it is on page 276. That is page

1 – 1. The media release by Eskom dated 12 March 2015. And I have made it – but there is – the last paragraph on the first page of this media release says:

10 “The executives who have been asked to step down while the enquiry is underway are Ms Tsholofelo Molefe (Finance Director), Mr Dan Marokane (Group Capital) and Mr Matshela Koko (Commercial and Technology). One of the current non-executive Board members, Mr Zethembe Khoza, has been asked to assume the position of interim Chief Executive. Mr Khoza will be supported by Ms Nonkululeko Veleti (Finance), Mr Abram Masango (Group Capital) and Mr Edwin Mabelane (Commercial and Technology).”

Are these people being asked to assume the position of temporarily in your places – the places of the executives who have been suspended?

20 **MS MOLEFE**: That is correct.

ADV SELEKA SC: Is that what is happening?

MS MOLEFE: Yes.

ADV SELEKA SC: So the one for finance is Nonkululeko Veleti?

MS MOLEFE: Yes.

ADV SELEKA SC: Is that the person you referred to earlier as having come to you [01:06:29]?

MS MOLEFE: Yes that is the person. And I – I suspect maybe if I may add.

ADV SELEKA SC: Yes.

MS MOLEFE: Just to clarify the point earlier.

ADV SELEKA SC: Yes.

MS MOLEFE: I suspect that she may have been called the day before to be informed that we would be suspended and
10 she would be asked to step in. The – if you recall earlier on I indicated that one of the general managers called me to say there is word that we are going to be suspended.

ADV SELEKA SC: Yes.

MS MOLEFE: The reason they had found out is that my – my understanding is that Mr Masego who...

ADV SELEKA SC: Adrian Masego?

MS MOLEFE: Who would be acting Group Capital.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja. Was the one who was informing certain
20 general managers. I do not know if maybe it was just his colleagues that he had been called to Melrose Arch and he did go to Melrose Arch. And he had been informed that some of the executives would be suspended in particular in his place his boss Mr Marukane.

ADV SELEKA SC: Yes.

MS MOLEFE: And that he would be asked to act in his place. So that is how the general managers got wind of this matter the day before the suspension.

ADV SELEKA SC: Hm. So what was Mr Adrian Masego's position at the time?

MS MOLEFE: He was looking after the Kusile – he was the General Manager looking after the Kusile Dot reporting to Mr Marukane.

ADV SELEKA SC: Yes. I see that you have not disclosed
10 the names of Panda the general manager who phoned you or general managers who knew about this.

MS MOLEFE: Ja so it is because I cannot remember. I think it was Ms – I think it was Ms Marion Hughes who called me. Ja I think it – ja that mentions that a few of them you know were sending texts when – but she particularly was the one I think who called me and then a few of them were sending texts, are you okay? Are you being suspended? So – ja – so that is why I think – but I think it was her who called me specifically.

20 **ADV SELEKA SC:** So it is Marion?

MS MOLEFE: Marion – M-a-r-i-o-n Hughes. Yes she was the general manager in Customer Services.

ADV SELEKA SC: Do you know whether or not she is still with Eskom?

MS MOLEFE: She is still with Eskom.

ADV SELEKA SC: She is still with Eskom. Okay. Ja so during your suspension did you become aware that Ms Veleti is acting in your position?

MS MOLEFE: Yes. It was announced.

ADV SELEKA SC: Oh as it is in this – that is how you became aware?

MS MOLEFE: That is how I became aware.

ADV SELEKA SC: I see.

MS MOLEFE: Ja.

10 **ADV SELEKA SC:** Of course. Did he have a chat with you during that time as to whether or not he did – that he was approached to – to act in a manner that was not above board if I may say so or in a manner that like in this case I am picking up on her saying she has been called by Mr Koko to come to Melrose Arch? Did she hint on anything that could suggest that she would have known beforehand or been informed beforehand [01:10:59].

MS MOLEFE: No not at all because when we spoke the day before we did not – you know following us agreeing
20 that she would not go to Melrose Arch we did not discuss it again. But I remember – I recall that evening I tried to call her but to no avail. I probably called her once or twice but to no avail. And I did not see her again afterwards until you know we were suspended. I did not see her before we were suspended between that time and the time we were

suspended. I did speak to her once while we were on suspension probably three weeks if I recall or so or maybe a couple of weeks into the suspension. But she – she was uncomfortable and I think that came from the fact that they were also informed that you know nobody is to talk about this matter particularly to us. They were informed that they are not to engage with us. And I think she really just called me out of courtesy just to check up on how I was but did indicate that she cannot be long because they have
10 been instructed not to engage with us.

ADV SELEKA SC: Hm.

MS MOLEFE: So that is as far as it went ja.

ADV SELEKA SC: I see. Now you wrote your second letter in response to that letter you get an email from Ms Daniels in which you – she is advising you that Dr Ngubane would like to meet with you.

MS MOLEFE: Ja.

ADV SELEKA SC: Ja so take us from there, tell us what happens? Do you – are you given time and date of a
20 meeting? Did you attend the meeting and what transpired?

MS MOLEFE: Yes. So I – I did receive the time and date of the meeting. The venue of the meeting was not Eskom offices. It was the Protea Hotel I think the Centurion one. The one off Olifantsfontein. At that meeting Dr Ngubane was there. Romeo Khumalo was there. Ms Daniels was

there. And then – I think Zethembe Khoza was there.

ADV SELEKA SC: Ja – [?]

MS MOLEFE: I cannot remember if Veneta Klein was there.

ADV SELEKA SC: Ja.

MS MOLEFE: Because there were two meeting rooms that took place at that hotel.

ADV SELEKA SC: Let us see whether this is the meeting you referring to turn to page 13 of your affidavit. Page 13
10 paragraph 30. So if you – just for context if you could read from paragraph 29. Paragraph 29 says: Are you there on that page? Yes.

“We were informed the enquiry would take three months but two months into the suspensions we have still not heard from the board and whether the enquiry had started shortly without – I started engaging with lawyers and we posed questions about the Terms of Reference of the enquiry. I
20 was suspended in [?]. During the latter part of May 2014 I received a call from them representing the new Chairman Mr Ben Ngubane to discuss a possible amicable exit.”

Okay – well do you know why I am forcing this because the

affidavit says I received a call.

MS MOLEFE: Ja then I said it was an email.

ADV SELEKA SC: Ja you said it was a reply to your email.

MS MOLEFE: Yes and I see that I am – and if I recall I am not sure if it was specific that it was to discuss an amicable exit. But when I got there that was what the meeting was about.

ADV SELEKA SC: I see.

MS MOLEFE: Yes. Ja. I see your point there.

10 **ADV SELEKA SC:** Please.

MS MOLEFE: Ja.

ADV SELEKA SC: Then in paragraph 30 says:

“Present at the meeting was members of the new board who were electors in December 2014”

Could this be the meeting you were trying to recall that took place at Protea Hotel?

MS MOLEFE: That is the meeting.

20 **ADV SELEKA SC:** So then you could read the names of those who were present?

MS MOLEFE: Yes. Mr Veneta Klein. Mr Romeo Khumalo. Mr Zethembe Khoza. Dr Ben Ngubane and Ms Daniels.

ADV SELEKA SC: So this of course was your recollection?

MS MOLEFE: Yes.

ADV SELEKA SC: So then what happens in that meeting?

MS MOLEFE: So interestingly in that meeting the discussions were led by Romeo Khumalo not by the Chairman Ben Ngubane.

ADV SELEKA SC: Yes.

MS MOLEFE: So the – the how the meeting started was that they acknowledged the letters I have sent to Eskom. They acknowledge my concerns. They can see that I am a bit uncomfortable and I need to get clarity on my future
10 that was some of the things that he had indicated. And what they indicated was that they need to be frank with me the manner in which the suspension and this investigation had been approached was not correct. They believed that Mr Tsotsi messed up the process and they therefore would like to inform me that the investigations have – had not started. The enquiry had not started. They do not know how long it is going to take and obviously – they obviously can see that I am concerned about my career and they would like to know whether I want to talk to them about a
20 possible exit. So that is how the meeting went. But I think maybe just to if I reflect he was not forthcoming with the word exit they wanted me to say it. And I was trying hard to say no I want to know where I stand. It has been two months, you have not called me, where is the enquiry. So we were going back and forth and that is when they came

out saying to be frank with you this enquiry and it has not gone according to plan. Mr Tsotsi has messed it up that is why we are taking over. And we can tell you it is going to take a lot longer even though we said in your suspension letter it would only last three months we have not even started. So we do not know how long you will still be at home. That was what was indicated to me. And then they said that would you be willing to look at a possible amicable exit. And I said to them well if that is what the
10 board would like put something on paper which I will then consider with my lawyers. So that and really that is all that happened in that meeting. Romeo Khumalo was the only person who uttered a word in there. None of them including the Chairman said anything in the meeting.

ADV SELEKA SC: Okay. So you parted?

MS MOLEFE: And then we parted.

ADV SELEKA SC: On the understanding that they would put something in writing.

MS MOLEFE: Ja.

20 **ADV SELEKA SC:** For you to consider and come back to them?

MS MOLEFE: Ja.

ADV SELEKA SC: Did they do that?

MS MOLEFE: They did. They did that. They put something together I think within four days and I think the

following week we met again. But in the meeting, it was Mr Zethembe Khoza, Veneta Klein and Susan Daniels. This time Ms Veneta Klein was the one who was leading the discussions. So they had ...

ADV SELEKA SC: Sorry so Mr Ronnie Khumalo was not there?

MS MOLEFE: Was not there. None of – ja – so at the – not 14 – did I not indicate? Ja. Sorry I did not put it in my affidavit I see.

10 **ADV SELEKA SC:** Yes.

MS MOLEFE: Ja I did not put it in my affidavit.

ADV SELEKA SC: Okay. It is alright I think that is one – this hearing is important.

MS MOLEFE: Ja.

ADV SELEKA SC: Okay so that is Mr Zethembe Khoza and Ms Veneta Klein.

MS MOLEFE: Ja. So Susan Daniels, Veneta Klein and Zethembe Khoza.

20 **ADV SELEKA SC:** Thank you. And this time around you say it is Ms Klein who starts the talking?

MS MOLEFE: Ja. So they were presenting to me a proposed exit offer with the detail. So I said to them just looking at it I am not going to accept it. That I will consult with my lawyers and we will come back to them.

ADV SELEKA SC: I see and where is the meeting this

time around?

MS MOLEFE: It is at the same hotel.

ADV SELEKA SC: The same hotel?

MS MOLEFE: Ja.

ADV SELEKA SC: So just to be clear this is a private hotel?

MS MOLEFE: Ja.

ADV SELEKA SC: It is not...

MS MOLEFE: It is the Protea Hotel.

10 **ADV SELEKA SC:** It is not the ...

MS MOLEFE: It is all the ...

ADV SELEKA SC: Ja it is not a hotel owned by Eskom.

MS MOLEFE: No.

ADV SELEKA SC: You are given a proposal and you said you are not accepting it immediately you want to consult with your lawyers. Did that become the end of the meeting?

MS MOLEFE: That was the end of the meeting.

ADV SELEKA SC: Did they motivate for the proposal?

20 **MS MOLEFE:** She basically took me through what you know their – the terms – the proposed terms were.

ADV SELEKA SC: Yes.

MS MOLEFE: I think there was an attempt to motivate. I think it was offering one year salary offer and honestly you know whatever the company made only in regard to you

know leave pay pay-out and so on – and so forth ja.

ADV SELEKA SC: Do you recall the dates for these meetings? Well you say the latter part of May you are – you were called.

MS MOLEFE: Ja it would have been – it would have been in May some time. Ja it would have been somewhere in –

ADV SELEKA SC: Now if you look at your 29 of May.

MS MOLEFE: Ja.

ADV SELEKA SC: I think it is an obvious typographical
10 error here. The last sentence of paragraph 9. During the
latter part of May and it reads 2014 but it should be 2015
is it not?

MS MOLEFE: Oh yes 2015. That is correct ja.

ADV SELEKA SC: Hm.

MS MOLEFE: Thank you for that ja. It was somewhere
in....

ADV SELEKA SC: During that month.

MS MOLEFE: Ja. It was somewhere during that month
because we probably took a lot of three weeks before we
20 could decide on the final settlement.

ADV SELEKA SC: I see.

MS MOLEFE: If I recall.

ADV SELEKA SC: Yes.

MS MOLEFE: Almost a month before we could...

ADV SELEKA SC: Yes.

MS MOLEFE: Agree on the final settlement.

ADV SELEKA SC: Do did you approach your lawyers with this proposal given to you?

MS MOLEFE: Yes I did. And I think we wrote to them and refused it in writing.

ADV SELEKA SC: Okay.

MS MOLEFE: We wrote to them and refused it in writing. I cannot think it has been a while. And then I think I – interestingly I received a letter from I think somewhere
10 around June – 5 June. Why I remember that somewhere around that week.

ADV SELEKA SC: Yes.

MS MOLEFE: Because then I think Eskom was – had a media leak. I think it was a – I do not know if it was the result that was leaked or whether it was a state of the power system update to media.

ADV SELEKA SC: Okay.

MS MOLEFE: In that meeting already – so the reason I remember it because I received a call from a journalist to
20 say that they were at Eskom's premises today. They believe that we are negotiating a settlement with Eskom.

ADV SELEKA SC: I see.

MS MOLEFE: Can I confirm that that is correct.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja – so and I said the first time I hear of

this who did you hear it from? And he said I heard it from Dr Ben Ngubane himself. So what then happened if I recall so from the first meeting at Centurion that we had with Romeo Khumalo when I left he said if there is anything you know I need or like to discuss I must call him – I can call him.

ADV SELEKA SC: Yes.

MS MOLEFE: So I took that opportunity to call Romeo Khumalo to say what is this about we have not agreed on
10 anything and I believe I have just received a phone call from the – after [01:25:16] call from the – from the...

ADV SELEKA SC: From the journalist.

MS MOLEFE: From the journalist. He then said he would get back to me. And when he came back to me, he actually asked me for a meeting. So I think I met him if I recall - please [01:25:38] I think I met Romeo Khumalo for coffee at Tintswalo which is now – what – Robbie Villa I think it is called. And ja – and essentially, he was saying that this thing is bigger – is – he was essentially reiterating what he
20 had said to me at the meeting in Centurion.

ADV SELEKA SC: The first meeting?

MS MOLEFE: Ja saying that obviously there are bigger things at play here. He – I need to seriously consider the offer that they have given me. I – they – ja so he said I must too – seriously consider the offer they had given me

for my own career. I still have you know I can still you know obviously progress in terms of my career. I do not want to mess it up with Eskom. And obviously being emotional and angry at that time I said well I am going to fight this. Then he said to me you do not want to fight the state. And I said why would I be fighting the state? This is between me and Eskom. And he says well Eskom is a state owned entity so – and he started telling me about his experience at the SABC. So – but – ja so that it was really
10 an amicable discussion. It was not – and he was just saying look I am here I am not representing Eskom. I am bringing here nobody asked me to approach you. I just thought you know let me just give you advice. Do not take this on. It is bigger than you. Do not get yourself tangled up just you know if you can settle with these people and move on.

ADV SELEKA SC: Would that have been after you and your lawyers refused their written proposal?

MS MOLEFE: Yes it was.

20 **ADV SELEKA SC:** It was.

MS MOLEFE: But it was also after they had said that we – that said on media currently Dr Ngubane had said that we – we are in agreement to settle so to speak.

ADV SELEKA SC: I see.

MS MOLEFE: Ja I think the media may have put questions

about them around our suspension.

ADV SELEKA SC: Yes.

MS MOLEFE: And when are we coming back.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: And that – well when you learnt of the media announcement or reporting you had not yet accepted?

MS MOLEFE: No I have not accepted.

10 **ADV SELEKA SC:** You had in fact if you can recall you had in fact at that time just rejected their offer?

MS MOLEFE: Yes.

ADV SELEKA SC: Okay.

MS MOLEFE: Ja.

ADV SELEKA SC: Then you get a call from Mr Khumalo for this meeting, is that correct?

MS MOLEFE: Ja. But – and he did indicate that he is not representing Eskom.

ADV SELEKA SC: I understand.

20 **MS MOLEFE:** He really just wants me and him to talk.

ADV SELEKA SC: Yes.

MS MOLEFE: On a personal level.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: I want to ask you whether did that

change your position but I also want to ask you whether did you receive a response from Eskom to your refusal? So whichever one you want to deal with first it is because I do not want to forget.

MS MOLEFE: Ja.

ADV SELEKA SC: I cannot when I ask you – well first let us deal with whether you received a response from Eskom.

MS MOLEFE: I – if I recall I did not receive a response at all. Ja I did not receive. So in fact, what happened is that
10 they approached me first and during that time that they were approaching me I do not know if you would recall from Mr Mathola's testimony if at all they – he had taken them to court.

ADV SELEKA SC: Yes.

MS MOLEFE: So he was already in the negotiations with them at the time. So he had been to court. I do not know whether... obviously, what had happened or what was the outcome of the court case and whether he was starting to have... negotiate a settlement agreement with them or not at
20 that time but I know that he had been engaging with them already ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ... by the time they approached me. I am aware that they had not approached Mr Marokane [?] at all but during that time that I had been... you know, after I had,

you know, sent them a message to say, you know, this is not good enough, then ...[intervenes]

ADV SELEKA SC: This is not...?

MS MOLEFE: [No audible reply]

ADV SELEKA SC: Not good enough?

MS MOLEFE: Ja, ja.

ADV SELEKA SC: Yes.

MS MOLEFE: So when I said: No, I did not ask, I said this does not address the issues. And they... well, I had
10 expected them to respond to me but I think they did not but what happened, that they started approaching Mr Marokane(?) 01:30:53].

ADV SELEKA SC: Yes?

MS MOLEFE: They approached Mr Marokane and, in fact, I think he decided to take that document but I am not, obviously, privy to what they settled within.

Or they... then he sort... he settled with them before I did while I was, obviously, pushing back to the settlement agreement that they had proposed.

20 So for a while they, I think, started to focus on me and focus on, you know, settling with Mr Marokane. And I think one thing he, obviously, settled with him. I started getting agitated that, you know, they have settled with him.

I have written to them. I have had no response from them. So I started asking my lawyers because they were not

responding. And I think at that time, I was considering actually taking the matter to court ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...instead of, you know... ja. So I had considered that. We have started looking at, obviously, the papers. In fact, we started engaging with the advocate at the time but ...[intervenes]

ADV SELEKA SC: You had started preparing the papers to go to court?

10 **MS MOLEFE:** Yes.

ADV SELEKA SC: Okay.

MS MOLEFE: Ja, so we had already engaged an advocate initially.

ADV SELEKA SC: Yes.

MS MOLEFE: But I then had a change of heart and really because my mother was not this taking as a result. So I knew that it would be on the newspapers. She was not... obviously, she was afraid and I was afraid and she just was not taking it well.

20 So I then decided that, you know what, let me ask the lawyers to probably just consult with Eskom so that we can then get into, you know, proper negotiations about this.

And I think at that time Mr Zethemba Khosa was now acting Chairman. I am not sure what was happening. Whether he was Acting Chairman at the time ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...or was he acting CEO. No, no, no. He was acting CEO. Dr Ngubane was there. And I think he had been tasked now to lead the matter, Zethembe Xhosa because he then met with my lawyer to discuss the matter.

ADV SELEKA SC: Yes.

MS MOLEFE: Because I have been so... ja. So that is how we then started, you know, putting together agreement and so forth. So I left it to my lawyer.

10 So I basically discussed with my lawyer one of the things they should take into account, obviously, the fact that, you know, the public does not what has transpired. Any company that seeks to employ me or not employ me, he may not... I may not be successful in my quest to find employment because it was not known what we had done or not done.

ADV SELEKA SC: H'm.

MS MOLEFE: So I had asked them to take those things into account. It maybe take some time before I can be re-
20 established my career. So I think... so I left it to him to then go back to Eskom ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...and negotiated those issues for me. It had become quite clear that there was no intention on the part of Eskom to call us back. They had wanted... and really for

me, I think at the first meeting at Centurion, that is when it got quite clear but they were not forthcoming.

ADV SELEKA SC: H'm.

MS MOLEFE: They wanted negotiations to establish a negotiated settlement arrangement to take place as opposed to calling us back to our ...[intervenes]

ADV SELEKA SC: Posts.

MS MOLEFE: ...posts. I think, I took into account also that if I had to even come back and report to the same board, it was an issue of trust that I would have.

So I also considered, you know, for my own sake: Do I fight going back to my job or do I fight for, you know, a reasonable settlement?

Because there were issues of... you know, if I go back, I will still have to deal with the same board and talk to the same. So that is why I decided maybe the best thing is to negotiate a settlement agreement.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: Ja. So my second question was, whether did your meeting with Mr Khumalo and what you said to him in that meeting changed your stance? Could the change of your stance ...[intervenes]

MS MOLEFE: Ja.

ADV SELEKA SC: ...be attributed to what he said?

MS MOLEFE: No.

ADV SELEKA SC: No?

MS MOLEFE: Ja. No, I mean, I was actually very stubborn. I think I was still quite emotional at that time. So.

ADV SELEKA SC: So you wanted to go back?

MS MOLEFE: Yes. I mean... well, I said either they pay me very well or I am going back. Those are my words to him, to say: I am prepared to go back to my job but if they do not want me to go back, then... ja. So. And I think that was the

10 issue ...[intervenes]

ADV SELEKA SC: Ja.

MS MOLEFE: That we had... and I said... ja, I remember saying to them that the state is not the law.

ADV SELEKA SC: H'm.

MS MOLEFE: Or they said to me I am not in a fight with them. Ja, so.

ADV SELEKA SC: Yes.

MS MOLEFE: I have been mentioned to say a lot of things. [laughs]

20 **ADV SELEKA SC:** Ja, that is alright, the reason I am asking is because whether you wanted to go back is because... I want to read to you what Veneta Klein says in her affidavit ...[intervenes]

MS MOLEFE: Ja.

ADV SELEKA SC: ...which is part of your bundle because

there she says the executive asked... their approach...
Eskom then asked for the board to be released.

MS MOLEFE: [laughs] That is not correct.

ADV SELEKA SC: That is not correct?

MS MOLEFE: Well, I cannot speak for Mr Matona.

ADV SELEKA SC: Yes

MS MOLEFE: And I cannot speak for Mr Marokane.

ADV SELEKA SC: Yes, so you are separating there to be
...[intervenes]

10 **MS MOLEFE:** Or for myself.

ADV SELEKA SC: Yes.

MS MOLEFE: Unless, you know, they call me to
...[intervenes]

ADV SELEKA SC: I will get to the reference in a moment.

MS MOLEFE: Ja.

ADV SELEKA SC: Yes. So for yourself, you were saying?

MS MOLEFE: For myself. When they called me to the
meeting at the Centurion office ...[intervenes]

ADV SELEKA SC: Yes?

20 **MS MOLEFE:** ...one could clearly see that they threatening,
that it is going to take a lot longer than is expected
...[intervenes]

ADV SELEKA SC: Well, let me ...[intervenes]

MS MOLEFE: ...except for ...[intervenes]

ADV SELEKA SC: Let me address this direct statement.

She says that the executives approached Eskom and asked to be released. Asked for settlement agreements. Now in your choice, is that what happened?

MS MOLEFE: No, that is not correct. So if I ...[intervenes]

ADV SELEKA SC: Just hold on.

MS MOLEFE: [laughs]

ADV SELEKA SC: [laughs]

MS MOLEFE: They approached me.

ADV SELEKA SC: Ja, [Indistinct 01:38:04] the reference to
10 it in a short while. So while I am doing this... doing that, I
found the emails that Daniel's affidavit. Item 10 in the
bundle where she deals with this because you would have
said she was not present in the meetings. So go to Folder
10.

MS MOLEFE: Folder 10?

ADV SELEKA SC: Yes. Page 472. Yes, now just before I
read that one, I think have found the passage in these
documents ...[intervenes]

MS MOLEFE: Okay, okay.

20 **ADV SELEKA SC**: ...is the folder before that. If you can
just put your pen on that page. And then you go to page
427.

MS MOLEFE: 427?

ADV SELEKA SC: 421, I beg your pardon. No, 421. Are you
on that page? Paragraph 13.

MS MOLEFE: 427?

ADV SELEKA SC: 421.

MS MOLEFE: Oh, 421?

ADV SELEKA SC: Yes.

MS MOLEFE: Yes.

ADV SELEKA SC: So paragraph 47... Yes, paragraph 47 but I would... what I want is in paragraph 49, that it is interesting what she says in the two proceedings paragraphs. She says:

10 “To my understanding, none of the suspended...”

Remember, you said that she was in the meeting where Mr Tsotsi is telling where you were going to be asked to step aside ...[indistinct 01:40:25]

MS MOLEFE: Yes.

ADV SELEKA SC: And ultimately giving you the letter of suspension. So she says:

20 “To my understanding, none of the suspended executives were given reasons for their suspensions. Instead, they were simply told that they were required to step aside in order for the inquiry....”

She is using the wording that you have said earlier.

“...in order to require which speedy the conclusion and that they were not informally charged...?”

To paragraph 48:

“It is worth remembering that none of the suspended

executives were ever charged with specific wrongdoings. The reason for their suspension was duly described as guided by Mr Toste in that maybe that they might have interfered with the inquiry...”

49 then says:

“Besides Mr Ngubane and Mr Koko, I was then asked that they remain ...[indistinct 01:41:26] namely mister...”

It should be Marokane, hey?

10 **MS MOLEFE**: Ja, Marokane.

ADV SELEKA SC: Marokane.

MS MOLEFE: H’m.

ADV SELEKA SC: “...and Ms Molefe...”

That is yourself.

“...approach Eskom with their intention of certainly with the intention that they will resign from their respective positions as set in in the exit package”

Alright. Let us get ...[intervenes]

MS MOLEFE: Ja, it is very concerning that ...[intervenes]

20 **ADV SELEKA SC**: The first issue. Is it correct or not?

MS MOLEFE: I mean, ...[indistinct 01:41:58], it is very concerning. So ...[intervenes]

ADV SELEKA SC: Just repeat that?

MS MOLEFE: No, I am saying it is very concerning that we actually have officials like these on boards of such stature.

Such group of companies of such stature.

ADV SELEKA SC: And what do you mean?

MS MOLEFE: No. And the reason I say that. She was in the meeting when I was suspended. So. And I would be concerned, therefore, that before they called me, they did not see the contents of my suspension because they had a fiduciary responsibility as the board.

ADV SELEKA SC: Yes.

MS MOLEFE: So it was not the responsibility of Mr Tsotsi
10 alone as the chairman. All of them who were there should have taken it up on themselves to understand what are the reasons for the suspension. Why, because all of them there.

I do not believe that it was Ms Tsotsi who was suspending me. It was the board. So it is quite concerning that we were simply told that they would be required to step aside. Why did not she ask to see the letter?

ADV SELEKA SC: How do you explain this with the director's suspension? How did it get to ...[intervenes]

MS MOLEFE: Yes?

20 **ADV SELEKA SC:** Help me understand it.

MS MOLEFE: Ja, I mean, it did concern me but I... what I see, I see somebody that is also washing her hands out, you know, off this whole matter, you know, as well.

When, in fact, she was in my suspension letter. She was in the meeting where I was called. And I am not sure why it

was Mr Khumalo who was leading the discussion but all of them were there and they heard what Mr Khumalo said.

He specifically said, when I was pushing, to tell the earnest truth where, unfortunately, I am not happy with the manner in which the process is taking place.

Mr Tsotsi did not follow the right process and we have not even started with the inquiry. She was there. The second meeting where they asked me... so it may well be that this is what she was told but she should have asked the
10 right questions.

ADV SELEKA SC: Ja. Just for the purposes of the record. When somebody reads it and he hears... her or she hears you say, It is concerning to have a person like that on the board. I do not want the person to wonder: What does she mean?

MS MOLEFE: H'm.

ADV SELEKA SC: So I want you to explain to that person, this is what I mean when you say it is concerning. Because we have read these three paragraphs. The first paragraphs
20 deals with the suspension at the suspension stage. The first two paragraphs deals with the stage of suspension.

The third paragraph I read deals with the at the stage of settlement, separation agreement which you have lodged with the... with Eskom.

Let us focus. I have wanted to you to take... I have

wanted to take you to the last but then we saw the first part. Let us deal with the first part in relation to what is written in your letter of suspension. What do you say about this?

The letter says you are being suspended. Ms Veneta Klein claims, who you said was part of the meeting where you were suspended, she says to her knowledge, the reasons for suspension... well, for suspension were not given.

And in fact, you were not been suspended. You have
10 been asked to step aside. How do you reconcile this thing?

MS MOLEFE: Ja. So. And I mean, and I guess that is why I made the statement because if you recall, we go back to the 9th of March board meeting.

ADV SELEKA SC: Yes.

MS MOLEFE: Even though that meeting did not talk about the suspensions but it clearly stated that there has been a request for the board to do an inquiry to the state of affairs for Eskom and it clearly stated out what were those things that needed to be investigated even though the board were
20 not happy with that but they received that memo.

ADV SELEKA SC: Yes.

MS MOLEFE: They requested the minister to come back and explain why this inquiry is important and the minister gets back. She came back and for whatever reason, she did explain to them that she wants this inquiry to proceed.

And on the same day that the minister addressed them, we were then called later that day to be suspended so that this inquiry could take place.

Ms Veneta Klein was in all these meetings. So I am quite surprised by, to my understanding, now the executives were given written for their suspensions.

We were told, whether it was suspension or step aside, we were informed that the board would like to do an investigation without us interfering in that suspension. That
10 is the ...[intervenes]

ADV SELEKA SC: Doesn't this bring the confusion you referred to earlier?

MS MOLEFE: Absolutely.

ADV SELEKA SC: Yes.

MS MOLEFE: It is quite confusing.

ADV SELEKA SC: When you say confusing and misleading?

MS MOLEFE: Yes, it is confusing and misleading. She, obviously, uses the same words that Mr Tsotsi used that said we are required to step aside.

20 **ADV SELEKA SC:** Yes. And then the last parties that you approached, Eskom, with the intention that you should settle. That you, you approached Eskom.

MS MOLEFE: Yes. That is not correct. As I indicated, at the meeting that took place in... at the Protea Hotel ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...they put the matter on the table for me at..
on the table in front of me.

ADV SELEKA SC: As you said... well, answering
...[intervenes]

MS MOLEFE: There was never a discussion.

ADV SELEKA SC: With your counsel. Ja, as you said
...[intervenes]

MS MOLEFE: Yes.

10 **ADV SELEKA SC:** ...they actually called you for the
meeting.

MS MOLEFE: Yes. Ja.

ADV SELEKA SC: Now let us go to where your attorneys in
which is the affidavit of Ms Daniels, page 472. The heading
on that page is said in the meetings for suspended
executives. Can you see that?

MS MOLEFE: Ja.

ADV SELEKA SC: So let me read you what Ms Daniels says
because you said she was also present in the meetings for
20 settlement discussions.

“It was further clear (she says) that the exit of the
executives was the ultimate aim as the board
reiterated that Dentons review will continue.

It was a separate inquiry and its outcomes were
indeed independent of the four executives.

The board, at this stage, will really anticipate that the executives would resign to avoid charges. I was tasked with coordinating the meetings with the executives...”

And indeed, you do say, you either want a call or an email from her. This is not the reading but a reflection on this, you said.

MS MOLEFE: Yes.

ADV SELEKA SC: If... I would like you to confirm it verbally
10 what like wordings so that it is recorded.

MS MOLEFE: [laughs] Can you, Chairman, repeat again
...[intervenes]

ADV SELEKA SC: I was saying and you did say she was the one who contacted you?

MS MOLEFE: That is correct.

ADV SELEKA SC: Yes. So because, yes you say she was tasked with coordinating the meetings with the executives and the board during this time.

20 “I attended some of the meetings to take notes and keep that in regarding a place of proceedings.

The first meeting that I attended regarding one of the suspended executives was on 4 May 2015 where Ms Veneta Klein, Ms Molefe resigned, Dr Ben resigned met with ...[indistinct 01:50:29]...”

So she put it ...[indistinct 01:50:31] than that. I

understand, you did not keep record.

MS MOLEFE: Ja.

ADV SELEKA SC: But she did.

MS MOLEFE: She did, ja. She...

ADV SELEKA SC: This meeting took place in the Protea Hotel in Midrand. So that ...[indistinct 01:50:44]

MS MOLEFE: That is correct, yes.

ADV SELEKA SC:

10 “The introduction of the meeting... the introduction of the meeting by Ms Klein set the tone.

She advised Ms Molefe that the board had mandated obligation, that is her, Mr Khumalo and Dr Ngubane to interact with the executives and the question was: “How do we amicably find a solution?” (In quotation marks.)

Ms Molefe highlighted to the board members, firstly, that there was a clear contradiction to what had been communicated to them and was reportedly in the media...”

20 **MS MOLEFE:** That is correct.

ADV SELEKA SC: That is correct.

MS MOLEFE: Yes. What ...[intervenies]

ADV SELEKA SC: But is it not what we see when you read this, the passages I have read of Ms Klein and the contents of the letter of suspension?

MS MOLEFE: That is correct.

ADV SELEKA SC: You wanted to say something?

MS MOLEFE: Ja, she indicates here that Ms Klein sets the tone.

ADV SELEKA SC: Yes.

MS MOLEFE: I may have forgotten but I do not recall that but I do recall that the meeting discussion was led by Mr Khumalo.

ADV SELEKA SC: I see. Indeed so. She... I think she will
10 come to that point. She emphasised that in the eight weeks since her suspension she had not had any communication from you both or a response to her correspondence.

She had to enquiry as to what was the position not before at that point in time. At this point, Ms Klein had already directed convention(?) 01:52:22] with Ms Molefe without prejudice and reserving the rights of Eskom.

The Terms of Reference for the review with ...[indistinct 01:52:32] committee and that this was a separate discussion. He further went on to say: Can we find a way of amicably
20 parting ways?

Well, you may not recall but remember she says is taking notes.

MS MOLEFE: Yes, she is taking minutes.

ADV SELEKA SC: Ja. So according to her, there was ...[indistinct 01:52:54]

MS MOLEFE: Yes and he did indicate that it had taken longer than they indicated and that it has ever indicated it had not gone according to plan. So they do not know.

Because I kept on saying: You have kept me for two months. You said it was going to take three months. We are almost at the end of the three months.

And he said, We have not even started. So we do not know how long it is going to take. And, in fact, that is why he was saying, you know, would you consider us parting
10 amicably?

ADV SELEKA SC: Amicable parting, yes.

MS MOLEFE: Yes.

ADV SELEKA SC: So you confirm that?

MS MOLEFE: [No audible reply]

ADV SELEKA SC: Yes?

MS MOLEFE: Okay.

ADV SELEKA SC: You confirm that?

MS MOLEFE: I confirm that, yes. [laughs]

ADV SELEKA SC: [laughs] The parties would like to avoid
20 the legal wrangle on each side. Would you consider a managed parting of the ways? Would you be open to this discussion and also the public management thereof?

Ms Molefe responded that:

“Eskom had already appointed lawyers in the matter and that it put them at an unfair advantage. The trust

issues are so deep. So it will be something I would consider.

She further requested time to appoint legal representatives and time to consider the proposal. She also stressed that she had professional integrity, I think, in tuned by her suspension and that her integrity as a chartered accountant was critically important to her...”

Your comment? Anything to say on that?

10 **MS MOLEFE**: That is correct Chairperson. That is the true reflection of some of the discussions.

ADV SELEKA SC: Okay. Next paragraph, Mr Khumalo confirms that:

“The delegation will put and without prejudice offer on the table. She emphasised that the board would work with her to manage her exit. It was agreed that her former offer would be put to Ms Molefe by the end of that week...”

Then she goes to something else. Turn the page.

20 Paragraph 64 says:

“The delegation subsequently met with miss...”

Okay, that is just ...[indistinct 01:55:09]

MS MOLEFE: [Indistinct 01:55:09]

ADV SELEKA SC: Yes. Okay, where are we? Paragraph 16.

MS MOLEFE: Yes.

ADV SELEKA SC: Ja, let us carry on.

“On the same day, Mr Khumalo opened the discussion...”

Okay that is Mr Matona, let’s go to the next one. Paragraph 65, it still talks about Mr Matona.

Paragraph 66:

10 “The second meeting with Ms Molefe took place on the 7 May 2015, where an offer was tabled to her. She undertook to consider that.

It must be noted that I do not include these details in my testimony to cause harm to any legal ...[indistinct 01:55:56] involved, but to give this Commission a sense of the careful orchestration of events on the part of the Board to ensure that they identify persons which not return to Eskom...”

Did you have... or what impression did you have at the time?

20 **MS MOLEFE:** In the first meeting that I had with them where Mr Khumalo had indicated how things had turned out and putting that suggestion on the table, it had become clear to me that they have no intention of calling us back to our positions and that they wanted us to exit.

ADV SELEKA SC: I see. Thank you. So your instructions to your attorneys, your lawyers is that they should engage

with Eskom and you appearing on the mandate to negotiate a settlement, now this is after all said and done. You have stated that they meant or had meetings with Mr Sinethemba Khosa.

MS MOLEFE: That is correct.

ADV SELEKA SC: And what was the outcome, ultimate outcome?

MS MOLEFE: We met at the... at my lawyer's offices with Mr Khosa, in fact, one evening. I think it was the evening of the
10 28th or the 29th of June. If I recall somewhere there.

Obviously, my lawyer would have had discussion with Sinethemba Khosa on what... ja, so let me just step back a little. So because, obviously, they no longer have been giving me feedback.

So in his discussion with Mr Khosa, he actually cautioned them that they are playing with fire. This is one person out of all the executives who, if she went to court, has a lot of information about, you know, some of the things that had been happening in the company.

20 Remember, at the times, the issues around Regiments, the issues about the TMA were not public. So I had confided in him around what had expired... what had... sorry... had happened.

And, of course, he wanted to know: Why do you think you would be a target if you could just think what could you

have done? Why would they...? Because this inquiry they are talking about, it does not make sense.

So I had indicated to him some of the things that had been happening, like push-backs and so forth. So what he was essentially saying to Mr Khosa:

You know be careful because if she goes to court there is information that she might reveal in court which you would not want for the Board of Eskom at the time.

So he then played that back to me, you know, to say...
10 he was trying to say to them: Let us... you know, we have to find a solution.

She decided, you know, after all of these facts, the first thing to do is not to go to court because it is a taking a toll on her family but let us sit down and negotiate. So they then started the negotiation process. They put the agreement together in phase and we started, obviously, having that conversation.

And then we met finally with Mr Khosa as the various process to go through the agreement and around the
20 settlement agreement.

And, obviously, it was better than the original agreement. The original offer, sorry, that they had put from the table. And there, I think, we had also requested that they make it public. They would issue a media statement that we had done nothing wrong, absolutely.

And that they would give us a letter that we could use as a reference in that we were good leaders in the company so that when I, you know, start looking for employment, I can provide that to, you know, potential employers going forward.

So those were the things that we put into the agreement essentially including the settlement and agreement. I do not know if you want the detail of, you know, how many years we settled and so forth.

ADV SELEKA SC: H'm..

10 **MS MOLEFE:** Ja. So we put some of those conditions into the settlement agreement. We went through it but they also in return requested us not to lack out this information to the public.

That was the condition they put on the table while this matter is under investigation because they did indicate that ...[indistinct 02:01:23] had been appointed Dentons had been appointed to do the investigation. So they did not want to, obviously, compromise the investigation process.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** So we said fair enough. We agree to that. So we then signed. So once we, you know, we obviously would clear that that evening. We signed... I signed the agreement, rather, but it looked like Mr Khosa did not have the mandate to sign. So he needed to give it Mr Ngubane to sign the agreement.

What was interesting was that the following day before I received the signed agreement from Eskom, they had issued a media statement that I had resigned from Eskom before I received the signed agreement from them.

So I called my lawyer to say: Can you call Mr Khosa? Because this is obviously not kosher. It is fine other times.

ADV SELEKA SC: Yes.

MS MOLEFE: But I am, therefore, assuming now that they have released the statement that I have resigned, I am
10 assuming that they are happy. Nothing has changed.

So my just wanted to make sure that there were no disagreements, whatever, it is signed but they have not received a signed agreement ...[indistinct 02:02:49] but later that day they then sent it to... through to my lawyers. Ja.

ADV SELEKA SC: I see.

MS MOLEFE: But I think it was... it was very... really towards the end of the month.

ADV SELEKA SC: Yes.

MS MOLEFE: If you go into that pack here for the 29th, it
20 was done around that time on the release stage, the statement that I had resigned.

ADV SELEKA SC: Ja, let us see whether this is not excluded. Folder 4 at page 262.

MS MOLEFE: The page again, please?

ADV SELEKA SC: 262.

MS MOLEFE: [No audible reply]

ADV SELEKA SC: 262.

MS MOLEFE: Oh.

ADV SELEKA SC: Ja, 262. Ja, this is ...[intervenes]

MS MOLEFE: Okay, the 23rd.

ADV SELEKA SC: Ja, remember this is the statement that you quickly talking about. It is ...[intervenes]

MS MOLEFE: Ja.

ADV SELEKA SC: They are told Eskom finds directors
10 02:04:20] resigns, the date is 25 June 2015. Does this look familiar to you?

MS MOLEFE: It does because this statement was sent to us with my lawyer to make sure that we are comfortable.

ADV SELEKA SC: This very ...[intervenes]

MS MOLEFE: If I recall. Ja.

ADV SELEKA SC: Okay.

MS MOLEFE: Because in our agreement we had requested that they make it clear publicly that we had never said or we were asked... we were never suspected of any negligence,
20 misconduct or wrongdoing. We specifically requested that they say that.

ADV SELEKA SC: Okay. Then it let me read for you quickly. It says:

“Eskom and its ...[indistinct] director, director (and he is referring here to Ms Molefe) had mutually agreed

to part ways on a need to go basis. Eskom reiterates that Ms Molefe is and was never suspected of any negligence, misconduct and wrongdoing...”

Okay there we go.

“Both parties believe that the agreement to separate is in the best interest of Eskom to allow the board to sue its clients for company under the current leadership.

10 With the separation, the inquiry initiated by board onto the state of affairs of Eskom will continue as planned and as Ms Molefe’s suspension falls away. The separation is also by no means in anticipation of the outcomes of the inquiry. The latter is objective is to enable the organisation to deal with its challenges. Ms Molefe joined Eskom in July 2005 executive leadership roles in consummation, clients, customers services who are making this funds direct.

20 Eskom thanks Ms Molefe for her contribution during her term at Eskom and wishes her well in her future endeavours...”

And that is the end of it. So you have seen this before?

MS MOLEFE: Ja.

ADV SELEKA SC: This is the one you are referring to?

MS MOLEFE: Yes, that is correct.

ADV SELEKA SC: So you say this was released before you

were provided with the signed settlement agreement?

MS MOLEFE: Agreement. That is correct.

ADV SELEKA SC: Okay. Now and the end result is that your affidavit on page 14, one four, where you say, the last sentence or the last two sentences:

“That is what essentially happened. I subsequently left the employ of Eskom after signing the agreement of exit on 30 July 2015...”

MS MOLEFE: Yes.

10 **ADV SELEKA SC:** So this was after the publication?

MS MOLEFE: Ja, that it had been... ja, essentially, a few days after but I had never gone back.

ADV SELEKA SC: I see.

MS MOLEFE: So it was just the necessary admin issues to be resolved.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: Are you still precluded from sharing your settlement agreement?

20 **MS MOLEFE:** I have thought about it and I have actually not consulted with my lawyer in that regard. I will check. But I believe, I think we need to look at it ...[intervenes]

ADV SELEKA SC: Okay.

MS MOLEFE: ...specifically to see what it says.

ADV SELEKA SC: Ja, well, we will assist you in that.

MS MOLEFE: Because obviously are not going ...[indistinct]
[laughs]

ADV SELEKA SC: Ja, that is alright.

MS MOLEFE: Ja.

ADV SELEKA SC: We will attend to that.

MS MOLEFE: Ja.

ADV SELEKA SC: After this. We could take a short break.
We are done with the suspension.

MS MOLEFE: Okay. No problem.

10 **ADV SELEKA SC:** And we must quickly deal with how you
met with ...[indistinct 02:08:25] ...[intervenes]

MS MOLEFE: [Indistinct]

ADV SELEKA SC: ...very briefly.

MS MOLEFE: Okay.

ADV SELEKA SC: And that will be the end. So let us rather
take a short adjournment ...[intervenes]

MS MOLEFE: Okay.

ADV SELEKA SC: ... in order to proceed there. What is the
time?

20 **CLOSE HEARING RESUMES:**

ADV SELEKA SC: The time is 11:30. We are back from the
short adjournment. Ms Molefe, you are still under oath.

MS MOLEFE: Okay.

TSHOLOFELO MOLEFE: (s.u.o.)

ADV SELEKA SC: You confirm Mr Seleka?

ADV SELEKA SC: [No audible reply]

EXAMINATION BY ADV SELEKA SC (CONTINUES): Now remember you were talking about the negotiations your lawyers had with Eskom and they specifically said, you know, you do not want this getting to court.

We taking to court by this person, meaning you their client, because there are issues that you were aware of had knowledge of. And one of them you mentioned was Regiments.

10 Now let us move to the your ...[indistinct 02:09:26] before us. I see that you deal with Regiments ...[indistinct 02:09:30] from page 4 of your bundle at paragraph 6.

MS MOLEFE: Correct.

ADV SELEKA SC: It says relating to Regiments D.

MS MOLEFE: Correct.

ADV SELEKA SC: Now is it not that you would like the Commission to know about with respect to your affidavit as well as paragraphs. I think it is paragraph 6 to paragraph 17 but you could summarise them in a nutshell. And who is
20 ...[indistinct – dropping voice], starting off as you go into it.

MS MOLEFE: So Regiments Capital is a consulting firm that provide in the main transaction advisory services. I also believe that they, in working with certain banks, are also able to assist with some sort of capital.

ADV SELEKA SC: Yes.

MS MOLEFE: But they... they got quite a number of state owned entities such as, I think, the City Power and before the South African Airways and Transnet and the likes.

ADV SELEKA SC: Yes.

MS MOLEFE: That I do believe that back in 2005 when... I think 2005. That was before my time, they themselves indicated that they had done some work for Eskom working with Golden Sacks in sourcing some Euro loan for Eskom at the time.

10 **ADV SELEKA SC:** So what did you come to know about ...[indistinct – dropping voice]?

MS MOLEFE: Regiments was introduced to me by Mr Matjila, Collin Matjila through Salim Essa.

ADV SELEKA SC: And how did that come about?

MS MOLEFE: So what had happened is that shortly into my appointment, we were preparing for the board strategy session in the first quarter of 2014 and part of the submissions that I would be making at the board strategy session was Eskom's sustainability, financial sustainability
20 plan.

I presented that document somewhere around April at the board meeting which was held at the Eskom Manage Centre in Midrand.

Having presented that at that meeting, the board members felt that the presentation needed to be enhanced

specifically the financial plan itself needed to be enhanced.

Mr Zola Tsotsi in his own words said that the minister had spoken to him. He is very concerned about Eskom's sustainability and would like the board submit robust financial sustainability plan by June.

I think he indicated that we need to work on this. The Acting CEO at the time Mr Collin Matjila indicated to the chairman that he would work with me to see how we can enhance the plan.

10 Shortly after the strategy session, mister... in fact, on the day of the... at the end of the strategy session, Mr Matjila called me and requested me to meet with them over the weekend. I think it was on a Friday when we concluded the strategy session.

He asked me to meet with him over the weekend. We agreed to meet on a Sunday to discuss the way forward. We met at the... one of the hotels. I think it was SunSquare in Monte Casino.

20 And at that meeting, he did indicate to me, as far as I could tell, the board would like more information or for us to work a lot more detail on the financial planning and he believes that he knows people that can assist us with that.

ADV SELEKA SC: Yes.

MS MOLEFE: And as the matter was urgent as indicated by the Chairman as for the Minister of Public Enterprises.

ADV SELEKA SC: Just before you move on. The paragraph 7 proceeded... that is where the financial plans presented. And here Mr Tsotsi said you had said that the plan was not robust enough. Did he explain to you why he said the plan was not robust? What is meant by robust? Can you recall?

MS MOLEFE: No, he did not give any detail explanation. I assumed and obviously, one would to take feedback as you are presenting, that given the extent of the financial challenges, we probably need to do more in terms of the
10 action plans we are putting in place to turn the ship around if I can call it that to... ja, to turn things around.

So that was essentially, you know, all that was said. And I ended up that I am preventing if the board would like to see more information, more detail or more initiatives included in the plan.

It was, obviously, my duty to listen to the feedback and take it in and to request that we work on it. And that is the minister would have wanted it in three months' time.

ADV SELEKA SC: Ja. The reason for my question is this.
20 He has prepared... he puts together a financial plan. You are told it is not robust. He sent that. Do you know what you were going to do? Or did you have to meet expectations?

MS MOLEFE: Yes, absolutely.

ADV SELEKA SC: You knew?

MS MOLEFE: I knew. I was working with my team, I was working with our financial planner, the Group Financial Controller and the Treasurer on the plan.

ADV SELEKA SC: H'm. So you understood?

MS MOLEFE: So we understood what ...[intervenes]

ADV SELEKA SC: But when it says it is not robust enough, what he meant ...[intervenes]

MS MOLEFE: Well, I understood that he probably says we need to, you know, think of further initiatives to actually turn
10 things around from a financial perspective.

ADV SELEKA SC: Okay, so you made your own assumption?

MS MOLEFE: I made my own assumptions around it, ja.

ADV SELEKA SC: [Indistinct] Okay.

MS MOLEFE: Ja, ja.

ADV SELEKA SC: So Mr Matjila then offers to assist and you meet with him... Let us start with page. On the Sunday at Time Square. Time Square was in terms of... your evidence, that is Monte Casino.

20 **MS MOLEFE:** Yes.

ADV SELEKA SC: In Monte Casino. He says, he knows people who can assist. And remember he was explaining how he came to know about Regiments?

MS MOLEFE: Ja.

ADV SELEKA SC: And how he introduced them to you. So

what happened? He says, I know people who can help you.
And then?

MS MOLEFE: Ja. So as he was saying that I know people that can help us, he... what he was saying that... you know, I did not realise that they were meeting us on that day.

ADV SELEKA SC: The very people?

MS MOLEFE: The very people.

ADV SELEKA SC: Okay.

MS MOLEFE: Because as he was saying, I know people that
10 can help us. He then went ahead and I was not... I thought he was greeting someone but I realised that he was directing someone to come and join us.

ADV SELEKA SC: I see.

MS MOLEFE: Who then joined us.

ADV SELEKA SC: Yes.

MS MOLEFE: And I realised that that was the very same gentleman that I had met previously through Mr Msomi. And I, you know, human nature is something else because we reintroduced ourselves as though we had never met.
20 [laughs] So ...[intervenes]

ADV SELEKA SC: Now just pause there for a moment. You say you had met him before?

MS MOLEFE: I have met him before.

ADV SELEKA SC: So you met who, Mr?

MS MOLEFE: Thami Msomi.

ADV SELEKA SC: Thami Msomi.

MS MOLEFE: Ja.

ADV SELEKA SC: And what were the circumstances at that time and who is this gentleman?

MS MOLEFE: Thamsanqa Msomi ...[intervenes]

ADV SELEKA SC: No, no. The one you are meeting again.

MS MOLEFE: Salim Essa.

ADV SELEKA SC: Is it Salim Essa?

MS MOLEFE: Ja.

10 **ADV SELEKA SC:** And what were the circumstances of the first time of that encounter? Ja.

MS MOLEFE: Ja. So initially when I had met Salim Essa, he had been introduced to me by Thamsanqa Msomi. Thamsanqa Msomi at that time was the Chief of Staff in the Minister of Public Enterprises that at that time the Minister of Public Enterprises was Mr Gigaba.

Because shortly after my appointment as Compliance Director, I think in... probably the first two or first three months we were on a, you know, on a regular basis meeting
20 with the Public Enterprises to go through, you know, a business update.

So he had asked me to come and see me after our meetings when we had been there. And so I went over to his office and ...[intervenes]

ADV SELEKA SC: Is that Minister Gigaba?

MS MOLEFE: No, the Chief of Staff in Mr Gigaba's office.

ADV SELEKA SC: Oh, I see.

MS MOLEFE: Mr Msomi.

ADV SELEKA SC: I see.

MS MOLEFE: Yes. So I went to his office and he then indicated to me that no he just wanted to firstly congratulate me on my appointment and indicated that he is hoping they would have a better relationship with me than they had with my predecessor, Mr Paul O'Flaherty.

10 And I said, how so? And he said, No, he was very difficult to work with. And he hope that, you know, we would enhance our relationship because, you know, it is all, you know, Eskom's best interest.

And I indicated that no problem. You know, I am here, obviously, to serve and it is part of my work. And I understand our relationship with the shareholder is very important.

ADV SELEKA SC: So you say, this is for the appointment into the position ...[intervenes]

20 **MS MOLEFE:** Financial Director.

ADV SELEKA SC: Financial Director?

MS MOLEFE: Ja.

ADV SELEKA SC: That you said, was when? When were you appointed?

MS MOLEFE: So I was appointed January 2014.

ADV SELEKA SC: January 2014.

MS MOLEFE: And a couple of months thereafter.

ADV SELEKA SC: Yes.

MS MOLEFE: I think it must have been around March
...[intervenes]

ADV SELEKA SC: Ja, so you ...[intervenes]

MS MOLEFE: ...2014 that I met with him ...[intervenes]

ADV SELEKA SC: Okay.

MS MOLEFE: ...in the... at the Public Enterprises offices in
10 Pretoria. Acacia, I think it is.

ADV SELEKA SC: Ja.

MS MOLEFE: Ja.

ADV SELEKA SC: So how... well, you are explaining how
...[intervenes]

MS MOLEFE: Yes.

ADV SELEKA SC: ...you first met with Mr Salim
...[intervenes]

MS MOLEFE: Ja.

ADV SELEKA SC: [Indistinct dropping voice]

20 **MS MOLEFE:** So what Mr Msomi then said to me is that one
of their concerns as the shareholder is that, obviously,
Eskom as a state-owned entity needs to play part in terms of
transformation and advancing, you know, black economic
empowerment.

And their concern is that they have... they, on occasion,

received a complaint from small and black owned firms that... say that Eskom does not seem to support their work... they work a lot more with white owned firms.

And I actually indicated to him that on the contrary. In fact, the transformation is one of the key focus and priorities for the board.

It is something that the Chairman of the Eskom has indicated that it is important for the board and they as well is an agenda out at most of the board meetings.

10 **ADV SELEKA SC:** Yes.

MS MOLEFE: And I indicated to him that I have always supported the transformation even during my time when I was Chairperson of the Procurement Committee before I became the Finance Director that I have always supported transformation and objectives in terms of making sure that, you know, we always advance black firms.

He said that, you know, am I willing to meet some of the black owned firms that had great complaints with them as the shareholder.

20 And I said I have no problem with that but please note that I no longer, you know, responsible... at that time even procurement was not under my responsibility.

We had a Chief Procurement Officer. But also, I had exited my responsibility as the Chairman of the... the Chairperson of the Exco Procurement Committee.

ADV SELEKA SC: H'm.

MS MOLEFE: So I said, you know, I can direct you there but I am quite happy as the Finance Director to meet with those firms and hear their complaints.

ADV SELEKA SC: Yes.

MS MOLEFE: And then he said he would organise such a meeting with one of them. He indeed called me later on. A few weeks later if I recall or a month later. I cannot remember.

10 And we... I remember I was on my way to the airport going to Cape Town. And he asked me to just, you know, have a quick meeting with one of these firms.

 And we met at somewhere in Woodmead. I think it is the Barons if I am not mistaken or somewhere there or just outside the Barons at one of the coffee shops there.

ADV SELEKA SC: So who is asking you?

MS MOLEFE: Mr Msomi.

ADV SELEKA SC: Okay.

20 **MS MOLEFE:** Ja. So he came with... he came to the meeting and asked that supplier or the firm to come and meet us there.

ADV SELEKA SC: Yes, yes.

MS MOLEFE: And that was Mr Essa that was introduced to me on the day.

ADV SELEKA SC: So that was the first encounter meeting

with him?

MS MOLEFE: That was my first encounter with Mr Essa. He then indicated that they would like to do business with Eskom but it had been difficult under the then chief who was my predecessor, Paul O’Flaherty.

He said to prefer to work with white owned firms more. And he was not approaching black owned firms and he... when I enquired, you know, he sent what they... and he said, no he helps quite a lot of black owned firms. He did not
10 specify which company, what they do.

ADV SELEKA SC: Yes.

MS MOLEFE: He said that in most cases they also work with other bigger firms such as McKinsey, I think that is what he said if I recall and...

But unfortunately, I could not stay for too long. I had to leave. And we left it there. And Msomi said, Well, if there is a need to meet further for, you know, if you would guys would like to know how the process is...

Because that is what I expect. There is a process.
20 Obviously, from a procurement perspective I am quite happy to direct you to what the Eskom procurement processes are.

And he indicated that, you know, we appreciate that you are in a hurry. We can, you know, organise a follow-up meeting ...[intervenes]

ADV SELEKA SC: Who said that?

MS MOLEFE: Mr Msomi.

ADV SELEKA SC: Mr Msomi?

MS MOLEFE: Ja.

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

MS MOLEFE: So that was my first encounter with Mr Essa.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja. And then the second encounter was when Mr Matjila introduced him to me again at the ...[intervenes]

ADV SELEKA SC: [Indistinct]

10 **MS MOLEFE:** Ja. So I am ...[intervenes]

ADV SELEKA SC: [Indistinct]

MS MOLEFE: That is correct, ja.

ADV SELEKA SC: Monte Casino.

MS MOLEFE: Ja. So I am not sure if Mr Matjila was aware that I had met him before or not but we did not get into that. Ja.

ADV SELEKA SC: I see.

MS MOLEFE: Ja.

20 **ADV SELEKA SC:** So then he ...[indistinct] person. The person comes. It was just one person?

MS MOLEFE: It was just one person.

ADV SELEKA SC: And low behold is Mr Essa.

MS MOLEFE: Salim Essa.

ADV SELEKA SC: And does he recognise you?

MS MOLEFE: We reintroduced ourselves. So. [laughs]

ADV SELEKA SC: Did you recognise him?

MS MOLEFE: I recognised him but I would like to believe he also recognised me as well.

ADV SELEKA SC: I see.

MS MOLEFE: But we reintroduced ourselves. “I am Salim Essa”. Mr Matjila, actually, I think did introduce me to say he is the Finance Director of Eskom. He did indicate that we are seeking help.

We need to put together a financial plan which the
10 minister wants in three months’ time. He then indicated that:
No, we do a lot of work.

He, Mr Matjila, said actually: Salim, I can tell you what they do. He actually said: No, there is a company actually that I can introduce you to.

They, obviously, do a lot of work. They have done great work in unlocking the cash on the balance sheet for normal SOE’s and he mentioned City Power..

He mentioned Transnet and I think he mentioned South African Airways as well. And he then said that firm is
20 Regiments Capital.

I did not recognise their names but as I say, it looked like many years ago and Eskom had contracted them to do some capital raising for them to get ...[indistinct 02:28:42] with Goldman Sachs.

ADV SELEKA SC: Yes.

MS MOLEFE: So he... so I was very quiet. I did not ask any questions. It was really a kind of a thing between himself and Mr Matjila.

Mr Matjila asked when can we meet Regiments Capital so that we can understand what it is that they can do for us. He said if you and the FDR, you know, available tomorrow, then we can.

So he looked at his diary, Mr Matjila, and he said: Are you available to meet? And I said, I am sure I can meet.
10 But I did not have my diary on my phone and I said we can arrange.

And the following day... Collin Matjila, in fact, not only just invited me but also he invited Dr ...[indistinct 02:29:34]. Dr ...[indistinct 02:29:34] was an Exco member who was responsible for sustainability, group sustainability at Eskom.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja. So he was at the meeting as well, the four o'clock meeting the following day.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** So present in the meeting was myself, Collin Matjila, Dr ...[indistinct 02:30:00] and the CEO of Regiments Capital. So Salim Essa was not at that meeting.

ADV SELEKA SC: The CEO is...?

MS MOLEFE: Eric Wood.

ADV SELEKA SC: Mr Eric?

MS MOLEFE: Ja. So Salim Essa did not come to the meeting.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja. So that was my second encounter ...[intervenes]

ADV SELEKA SC: Mr Salim Essa?

MS MOLEFE: Mr Salim Essa on that Sunday when he introduced the Regiments Capital.

ADV SELEKA SC: I see. Was he part of Regiments? Did
10 you know ...[intervenes]

MS MOLEFE: At that time I did not know what the connection with Regiments was. No.

ADV SELEKA SC: And subsequent to that?

MS MOLEFE: I only learnt at the time when that I was reading around. In fact, the first time I had read about it the matter relating to Transnet and ...[indistinct 02:30:53], that I came to know that in fact he, I think, was a co-director or co-owner or the now re-established Premium because out of Regiments I think Premium was established. Ja.

20 **ADV SELEKA SC:** Yes. Just briefly from the finance plans. So you have given us ...[indistinct 02:31:17]. You meet with Mr Salim Essa but now the interventions, they were specifically introduced to you for the purposes of assisting with the financial plans for the minister. Is this Minister Lynne Brown at the time?

MS MOLEFE: It is now Minister Lynne Brown.

ADV SELEKA SC: Yes. Quickly on what transpired. Did they assist with the financial plan? Did they get contracted to do so? What...?

MS MOLEFE: So what happened is that on the day at the meeting on the Monday afternoon, mister... Dr ...[indistinct 02:32:01] and I obviously wanted to know about Regiments. What do they do? And Eric indicated, Eric Wood indicated that they have done, you know, a balance sheet optimisation
10 for ...[indistinct 02:32:15].

ADV SELEKA SC: Yes.

MS MOLEFE: We, obviously, wanted to know, do they have the capacity to do work for a balance sheet as big as Eskom's one? And he indicated that, Mr Eric Wood indicated that they would not work alone.

They normally would work with McKinsey. We then said to them: Okay, can you bring a proposal on the table?

In fact, it was Mr Matjila who asked if they could bring a proposal on the table. And he asked how to... can they bring
20 a proposal.

He indicated that before the end of the week. So we met them on a Monday. So I recall after that, I went to Mr Matjila and said, Look, just to inform you.

We have been receiving numerous requests from other service providers, other firms, like Deloittes and EY and the

likes to do similar work for us.

So we would need to open it up to follow a tender process. And he indicated that: We do not have time for an open tender process, at that stage, having said the minister wanted sustainability plan within three months.

ADV SELEKA SC: Who was responding?

MS MOLEFE: Mr Matjila. When I said to him you would have to open it up.

ADV SELEKA SC: Okay.

10 **MS MOLEFE:** And not just take Regiments' proposal.

ADV SELEKA SC: H'm.

MS MOLEFE: And he said to me that: We do not have time to follow a long-winded process. And I said but we have to because we have received and, in fact, I think at that time, Deloittes has also approached us. That is why I specifically said, you know, firms like Deloittes.

ADV SELEKA SC: Yes.

MS MOLEFE: And he said, Well, you... your Treasury team had also been using the likes of Deloittes and look at where
20 the, you know, the financial status of this company is. Clearly there is a need for a new firm to assist.

And I said, you know, we still have to make sure that everything is above board that we do. And I said to him that I am not comfortable to just go with one firm, you know, that there are others that have approached.

They would say: I can see you are not comfortable. I will sign the agreement. But let us wait for the proposal. So that was, you know, the following... the same day on the Monday.

We did not hear from Regiments Capital until two weeks later when they sent me a draft agreement or what they were proposing to do for us.

So they detailed the cash unlock activities that they would help us with to enhance our balance sheet which is
10 what they were saying is one of their ways to obviously, you know, improve our financial standing or our financial or our financial plans.

They also had in there the draft terms and conditions, including pricing of obviously what we would pay them for the work that they would do for us.

ADV SELEKA SC: Yes.

MS MOLEFE: So when I read it, I was obviously uncomfortable with that but because it was not, you know, a proposal versus the scope of work. Do you agree? It was
20 already a draft that they wanted us to sign.

I do not think it had been signed yet on their side. So when I saw it, I sent an email to... I forwarded it to Mr Matjila and I also copied our Head of Legal.

I think the Head of Legal at the time now – because I think Mr Mohamed ...[indistinct 02:36:07] had already left if I

am not mistaken. I am not sure if he was still there but ...[indistinct 02:36:16] who was then legal was...

Ja, I think both of them could have been there if I am not mistaken because ...[indistinct 02:36:27] mainly was, you know, the Legal Advisor in the office of the Chairman.

But I think he later became the head of legal. So I copied him in on the email and I indicated to Mr Matjila, I am not comfortable with the approach that Regiments has taken.

And we... they have already the draft agreement and
10 they have taken fourteen days to come back to us and therefore we cannot even say that we justify signing a contract with them on the basis of this being an emergency.

That because our procurement policy was quite clear in terms of how we deal, you know, emergency issues. Ja.

ADV SELEKA SC: Ja. I have seen in your statement that you said in the meeting you had with... well, you mentioned Dr Eric Wood was there, Dr Willems(?) 02:37:27], yourself. Was Mr Collin Matjila also there?

MS MOLEFE: Ja.

20 **ADV SELEKA SC:** Yes. That they had undertaken to provide a proposal within a fairly short space of time.

MS MOLEFE: Ja, within ...[intervenens]

ADV SELEKA SC: Can you recall?

MS MOLEFE: Before the end of the week, ja.

ADV SELEKA SC: And you say provided you when?

MS MOLEFE: I think two weeks later.

ADV SELEKA SC: Two weeks later?

MS MOLEFE: Ja.

ADV SELEKA SC: And you said this not proposed on the face of it?

MS MOLEFE: Ja. Yes, on the face of it, it was actually a draft agreement.

ADV SELEKA SC: So it was an agreement?

MS MOLEFE: That obviously detailed the scope, what their
10 fee structure would be.

ADV SELEKA SC: Yes.

MS MOLEFE: And so forth. So that is what it was.

ADV SELEKA SC: I see.

MS MOLEFE: Ja.

ADV SELEKA SC: Ja and was... was it ever signed the agreement? Do you know?

MS MOLEFE: No, not that one specifically because what I did is, I sent it to Mr Matjila. Immediately as I am seated, I sent it to... forwarded it to Mr Matjila.

20 **ADV SELEKA SC:** Yes.

MS MOLEFE: And said that I am concerned that this... we can no longer justify this on the basis of an emergency because firstly, it is taking far too long to come back to us. And I, therefore, suggested ...[indistinct 02:37:27] advises us on, you know, how to proceed from here on.

ADV SELEKA SC: And what is happening? Is it financial ...[indistinct 02:38:59] itself? Because you ...[intervenes]

MS MOLEFE: But we, obviously, in the background as the finance team working ...[intervenes]

ADV SELEKA SC: You continue working?

MS MOLEFE: We continued working in the background.

ADV SELEKA SC: Yes.

MS MOLEFE: Because we knew what needed to be done.

ADV SELEKA SC: H'm.

10 **MS MOLEFE:** Ja. So... I mean... and why I took a concern with that proposal particularly is that, whatever they were proposing ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...the team was already working on at least 150% if I recall. So we did not need a service provider to help us with those things.

ADV SELEKA SC: So ...[intervenes]

MS MOLEFE: Of course, there were one or two that were not part... that we were not working on it. That on the face
20 of it, I was not trying to go forward with them.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: So this in 2014?

MS MOLEFE: This is in 2014.

ADV SELEKA SC: The year 2014?

MS MOLEFE: Ja. This is before... this is even with the... not the... Dr Ben Ngubane's Board, it was the old Board.

ADV SELEKA SC: Yes.

MS MOLEFE: To the old board.

ADV SELEKA SC: That is right.

MS MOLEFE: Ja.

ADV SELEKA SC: So what became of the financial planning phase? Was it going to be approved by the Board or the minister?

10 **MS MOLEFE:** We eventually did, yes.

ADV SELEKA SC: So it was done by yourself.

MS MOLEFE: Yes, not my team. Yes.

ADV SELEKA SC: Not Regiments?

MS MOLEFE: No. We did not sign that one.

ADV SELEKA SC: I see.

MS MOLEFE: So, in fact, we received R 23 billion out of that plan but obviously it came with certain conditions. We are going to use R 23 billion.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** And Telkom must put these things in place and so forth because we had a plan around the pricing, you know the ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: Ja, there would be the structures, the funding and the cost initiatives that we will undertake.

ADV SELEKA SC: Ja. Is that now from Treasury the money you have received?

MS MOLEFE: Yes.

ADV SELEKA SC: Okay.

MS MOLEFE: The R 23 billion but Telkom... I think it was announced late in the medium term expenditure framework ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...of October 2014.

10 **ADV SELEKA SC:** Yes.

MS MOLEFE: The Minister of Finance announced the R 23 billion going...

ADV SELEKA SC: Yes.

MS MOLEFE: Of course, it was lower than what we have asked for because part of the plan was to ask for a quick injection from the shareholder.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** But also undertaking our costs, having initiatives, resuming the price determination for revenue and on all the other things.

ADV SELEKA SC: Did you have to report that Mr Tsotsi meeting with the Regiments officials, Mr Eric Wood given that Mr Tsotsi who was putting pressure on the minister requiring it needs to be done? Did you say within three months?

MS MOLEFE: Yes.

ADV SELEKA SC: And that it was not ...[indistinct – dropping voice]. Was he reporting that to you?

MS MOLEFE: Ja. So, in fact, what had happened was that, obviously, as we were fighting to appoint or not appoint Regiments at this time ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...obviously, Collin was very, you know, forceful ...[intervenes]

10 **ADV SELEKA SC:** Yes.

MS MOLEFE: ...that we are going to sign this contract. In fact, he was forcing me to sign the contract and I said to me that I am not going to sign the contract.

I was in a meeting training with my team at the Eskom Training Centre when he called me. Because what I did is that, following my email to him and saying there are things that were... changes that the legal team need to that document.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** I then printed it and I gave it to Mr Matjila. I left it in his office for his signature. He was not there when I took it and I then left to have a session with my team.

ADV SELEKA SC: Okay.

MS MOLEFE: He called me while I was there. He said: I see you have not sign this agreement. Why is it not signed?

I said: But I did indicate to you that I am not going to sign it.
I am not comfortable.

If you recall, you yourself said if I am not comfortable, you are happy to sign it. That is why I left it in your office.

He said: No, I am not going to do your job for you. And I said: I am not asking you to do my job for me but I am not comfortable with this. We have not followed the process. I then asked Mr Tsotsi for a meeting to resolve the matter.

ADV SELEKA SC: Yes.

10 **MS MOLEFE:** And mister... so , in fact, before I did that, Mr Collin... ja, I asked Mr Tsotsi for a meeting and he said he will get back to me. But Collin had asked me to put it in writing why I do not want to ...[intervenes]

ADV SELEKA SC: Sign.

MS MOLEFE: Sign.

ADV SELEKA SC: H'm.

MS MOLEFE: So I actually prepared a detailed memo of why I did not want to sign. We have not followed the process. Our policy says this. PMFA says this and so forth.

20 In fact, I think I did present that to the Parliament Portfolio Committee. My memo.

ADV SELEKA SC: Oh, what the memo?

MS MOLEFE: If I recall, ja. On my reasons why I did not want to ...[intervenes]

ADV SELEKA SC: To sign.

MS MOLEFE: ...sign. Yes.

ADV SELEKA SC: You think you will still have a copy of this?

MS MOLEFE: I think I will check my records, ja.

ADV SELEKA SC: Thank you.

MS MOLEFE: Ja, I think I will check my records. So I did indicate why I did not want to sign at the time and... so when he said... when he then said: I am going to send a driver to you... you... to sign this. That is when I actually required...

10 **MS MOLEFE:** ask for a meeting with ...[intervenens]

ADV SELEKA SC: Mr Tsotsi.

MS MOLEFE: ...Mr Tsotsi. And I decided to then give the memo as he had requested me my reasons for not wanting to sign and send it to him but I sent it to him, the chairman and I think I sent it to the chairpersons of the sub-committees of the board. It was Mr ...[intervenens]

ADV SELEKA SC: Eskom?

MS MOLEFE: Lukwanazi.

ADV SELEKA SC: Who had information?

20 **MS MOLEFE:** Okay, ja.

ADV SELEKA SC: At Eskom?

MS MOLEFE: Ja. So sub-committee ...[intervenens]

ADV SELEKA SC: So Mr Tsotsi received it and what does he do?

MS MOLEFE: So we then... he then called a meeting, I think

a few days later. There was myself and some of the sub-committees of the board ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...to discuss the matter and he said, well ...[intervenes]

ADV SELEKA SC: Is Mr Collin Matjila also there?

MS MOLEFE: Mr Matjila is there.

ADV SELEKA SC: Yes.

MS MOLEFE: Mr [Indistinct 02:45:48] was there,
10 ...[indistinct 02:45:48] and Dr ...[indistinct] 02:45:52]
Gulu(?) [02:45:52].

ADV SELEKA SC: Okay.

MS MOLEFE: She was Chairman of Sustainability.

ADV SELEKA SC: I see.

MS MOLEFE: Social Ethics and Sustainability.

ADV SELEKA SC: Okay.

MS MOLEFE: And Mr Tsotsi said: Well, he has called the meeting to resolve the dispute between myself and the acting CEO on the appointment with Regiments. So he
20 wanted to hear from me and Mr Matjila before they can then take the way forward.

ADV SELEKA SC: Okay.

MS MOLEFE: So Mr Matjila said: Well, Chairman I wanted to help the ...[indistinct 02:46:24] following the consent rate by the board at the previous meeting regarding the financial

sustainability plan. As indicated, it is urgent.

So if she does not want help, you now the Board needs to guide. So I then said: No, it is not that I do not want to get help. I am happy to get help but as I have indicated in my memo, we have not followed process.

If the board is comfortable with the process that they... we are following, can they give me a mandate in writing that they are comfortable with the process that had been followed to up to... to appoint Regiments Capital.

10 And Mr Tsotsi then said he is very concerned that we are wasting time with long procurement processes as he indicated to us the minister is looking for this plan.

And if I recall, I think we probably had less than a month now before June which is the date that he had indicated that Minister Lynne Brown wanted the plan.

ADV SELEKA SC: Yes.

MS MOLEFE: ...that needed time. So he said we have wasted time and now we only got a month to go. We want to go along in that procurement processes and as we are going
20 too long if this plan is not submitted to the minister by the due date.

The chairperson... I think Mr ...[indistinct 02:47:57] said: Yes, it is important. It is critical. We understand that, you know, the work needs to be done but we have to follow process.

Dr Zulu was very vocal. She was very, very uncomfortable with the Regiments proposed agreement. And actually, in her words said that she is a board member in one of their companies where she has seen an CFO being suspended not because they did not do their job but because they were silent when they saw something wrong taking place.

So, she supports the stance that I have taken. It is important that everything we do is above board and she is
10 not happy with the pricing that she has seen in the agreement as well.

ADV SELEKA SC: Yes.

MS MOLEFE: She does not know that it is contested.

ADV SELEKA SC: Yes. Let me ask you.

MS MOLEFE: Ja.

ADV SELEKA SC: Ms Zulu, she is the chairman of the board?

MS MOLEFE: Ja.

ADV SELEKA SC: She says you guys are wasting time
20 prolonging that procurement processes. Did he want Regiments to be appointment without following process or exactly what did he have in mind when he made that statement?

MS MOLEFE: I ...[intervenes]

ADV SELEKA SC: Well, not what he had mind but what did

he convey to you when he made the statement?

MS MOLEFE: Ja, I obviously cannot say because he did not specifically saying: We need to appoint Regiments. He said that he is disappointed that after telling us the minister wants the plan within three months.

ADV SELEKA SC: Yes

MS MOLEFE: Remember that he had told us in April at the board strategy session, he is concerned that he wants me out over the procurement processes and he wants to fall
10 along in that procurement processes.

ADV SELEKA SC: So what was decided in that meeting?

MS MOLEFE: Say again?

ADV SELEKA SC: What was decided in that meeting?

MS MOLEFE: What was decided in that meeting is that given the urgency of the matter, let us have a look at what Regiments is proposing and maybe ask them to do a high-level just for exercise so that we can check whether what they are proposing, you know, is something that can be implementable. But then the concern was that we have lost
20 a lot of time and therefore if the CEO feels that there are merits in considering some of the items ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: H'm.

MS MOLEFE: Ja.

ADV SELEKA SC: So they... was then Regiments appointed within the time level?

MS MOLEFE: They were appointed together with McKinsey. If you recall that they were going to do the work with McKinsey. They... ja, so they were appointed together with McKinsey.

ADV SELEKA SC: Ja.

MS MOLEFE: And I think high-level exercise probably was about it was less than million rand. It was about nine
10 hundred odd thousand.

ADV SELEKA SC: Ja.

MS MOLEFE: When you look at the agreement, in fact, Telkom would... Eskom, sorry. Would have to pay billions based on what they were proposing.

ADV SELEKA SC: Oh, I see.

MS MOLEFE: Ja.

ADV SELEKA SC: Okay can you recall the exact
...[intervenes]

MS MOLEFE: So ...[intervenes]

20 **ADV SELEKA SC:** ...figure?

MS MOLEFE: Ja, I mean, I cannot recall the figure now
...[intervenes]

ADV SELEKA SC: Approximately?

MS MOLEFE: I am trying to find the agreement as well.

ADV SELEKA SC: Oh, okay.

MS MOLEFE: But they... there was one specific imitative because the structure of their proposal was, obviously, structured fee-base but they... one of the initiatives was actually unlocking in their view as much as R 10 billion for Telkom using Eskom's pro-contract which was one of the initiatives that we were testing with the team even in the operations ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE:in primary energy we were not comfortable
10 with. And but essentially because of the escalation structure of the fee.

ADV SELEKA SC: Yes.

MS MOLEFE: So for up to a certain amount, if they unlock this they pay, you know, I think it was... it started at... I cannot recall. Maybe it was 1%, 2%, 2.5%.

ADV SELEKA SC: Okay.

MS MOLEFE: So I recall that if that would have been as high as half a billion rands, R 500 million.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** Ja.

ADV SELEKA SC: I have got two questions. One is on this term of the agreement. What did that have to do with the financial plan? One. Number two is. The high-level desktop review.

Also, what was the purpose of it if Eskom, yourself,

internally were present working with the client?

And ultimately that produce a client that was approved and on the strength on which you got the... I think you said R 23 billion from Treasury? Okay can you recall the two questions?

MS MOLEFE: Ja.

ADV SELEKA SC: So the first thing is, what does that agreement have to do with what Matjila said would be a service provider who will assist prepare a robust financial
10 plan?

MS MOLEFE: So I mean, in their view, the ... the plan that I had... that we had presented or that I had presented that myself and my team had not... had worked on ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...were sufficient enough to boost the financial standing, improve the financial standing.

ADV SELEKA SC: Yes.

MS MOLEFE: So they felt that we needed to do more in terms of cash release initiatives and some kind of taking
20 initiatives which we had already started embarking on.

ADV SELEKA SC: So the proposed agreement was whether you can do that?

MS MOLEFE: Ja.

ADV SELEKA SC: Okay. Now the... your concern was only towards the figure and that the proposal being... it was not a

proposal to what a type of service they should offer ...[indistinct 02:54:29] approve. It was rather a state of ...[indistinct 02:54:36] than seeking to continue the fully fleshed agreement to be appointed to render a service.

MS MOLEFE: Yes.

ADV SELEKA SC: You want to say more?

MS MOLEFE: Ja, I would like to.

ADV SELEKA SC: Yes.

MS MOLEFE: Remember, my push-back was on a number of
10 things. Firstly it was. If we were to ask, why Regiments
Capital? Can we defend it?

ADV SELEKA SC: Oh okay.

MS MOLEFE: From a price competitive perspective.

ADV SELEKA SC: Yes.

MS MOLEFE: Functional evaluation as well as their
technical capability. And on the basis that we had received
other proposals. I believe that we needed to evaluate all the
proposals we... it was not that we did not need help.

ADV SELEKA SC: Yes.

20 **MS MOLEFE:** Maybe we did need help even though we were
working in the background. If the board felt you need to do
more then let it be married in working with the service
providers. But having followed process, having evaluated all
of them.

ADV SELEKA SC: Yes.

MS MOLEFE: But in this case, this... it marked all the proposals and on the basis without evaluating their capability from a technical functional and competitive pricing perspective, we then sought to just appoint them.

ADV SELEKA SC: Yes.

MS MOLEFE: So that was my concern.

ADV SELEKA SC: Yes okay, thanks. Then the second question was the risk, the high-level risk that you did. Why did they even have to do this given that it seems in that
10 meeting, it is now being resolved that Eskom itself, you and the team, was the plan?

MS MOLEFE: Ja, so ...[intervenies]

ADV SELEKA SC: What reason ...[indistinct 02:56:22]

MS MOLEFE: Ja. So my take was that probably the board was probably still... not from mister... the chairman and even the CEO were not comfortable that whatever we were working on was sufficient.

So in attempting to see whether we could do more and because we had lost time and given that the minister had
20 wanted now, you know, the plan in another four weeks or less than four weeks, there was no time to start the process afresh.

Because, you know, some of the board members had to be comfortable with this. So the agreement was: Okay, let us see given that we have lost time, whether we can look at

some of these initiatives that they are proposing and see if we can help enhance the financial plan we are talking about.

ADV SELEKA SC: Yes.

MS MOLEFE: Ja.

ADV SELEKA SC: So what does entail in high-level desktop review?

MS MOLEFE: So in the number of initiatives that they had suggested it was essentially to work with them and evaluate whether they agree... these will help us or not.

10 **ADV SELEKA SC:** Oh, okay.

MS MOLEFE: So that is what ...[intervenes]

ADV SELEKA SC: High-level?

MS MOLEFE: Ja.

ADV SELEKA SC: Did that happen?

MS MOLEFE: That did take place.

ADV SELEKA SC: [Indistinct]

MS MOLEFE: Ja, that did take place.

ADV SELEKA SC: One last thing. I want to move back to the suspension because I want to read you what Dr Mbane
20 has to say in his affidavit from the 11th. Page 495. 31495.

MS MOLEFE: That is correct. Page?

ADV SELEKA SC: Paragraph 430.

MS MOLEFE: Page?

ADV SELEKA SC: The last paragraph from that page. So he says... Let us... he has related the story of the

suspension with ...[indistinct 02:58:43] and so on. Now he is coming to the exit agreement or separation agreement. He says:

“Mr Ngubane and Ms Molefe had also left the employ of Eskom following settlements that we have reached with each of them as Eskom.

10 These two were handled by the PNG Committee. I am not privy to the details of the settlements. I do not recall whether they too were offered the opportunity to return to Eskom. I was not involved with any such discussions with them...”

Is that correct?

MS MOLEFE: I would say that is not correct because if you recall I have indicated that my agreement, specifically settlement agreement ...[intervenes]

ADV SELEKA SC: Yes.

MS MOLEFE: ...had to be send to him to sign off. And, in fact, by the time Eskom decided to release a media statement, it had not come back from him with his signature.

20 **ADV SELEKA SC:** But you also placed him in the picture on the...[intervenes]

MS MOLEFE: Of the meeting in ...[intervenes]

ADV SELEKA SC: The first meeting.

MS MOLEFE: Ja, at Protea Hotel.

ADV SELEKA SC: So he was there?

MS MOLEFE: So he was there?

ADV SELEKA SC: He cannot claim not to have been there?

MS MOLEFE: He cannot claim. He was quiet at the meeting. I do not recall him contributing to the discussions that he was present in the meeting.

ADV SELEKA SC: Okay. Was he present when you were suspended?

MS MOLEFE: He was present when I was suspended.

ADV SELEKA SC: At that meeting of suspension?

10 **MS MOLEFE:** Yes.

ADV SELEKA SC: Was he present in the second meeting of exit negotiations?

MS MOLEFE: He was not present.

ADV SELEKA SC: He was not. The agreement you received to separate, was it signed by him?

MS MOLEFE: I think it was. I think it was... yes, I think it was ...[intervenes]

ADV SELEKA SC: [Indistinct 03:01:04]

20 **MS MOLEFE:** ...because Mr Khosa could not sign it. In fact,... ja, it had to be taken to him.

ADV SELEKA SC: That you will check ...[intervenes]

MS MOLEFE: That I will check, yes.

ADV SELEKA SC: Well, thank you very much. I think that concludes my questions. Yes, I... let us close up. Thanks, Ms Molefe that concludes my questions to you. Thank you

very much for assisting us. Any further documentation, we will be in touch with you and so that you can provide us with that. Thank you very much.

MS MOLEFE: Okay thank you.

ADV SELEKA SC: What is going to happen is, your... this transcript together with your affidavit and supporting documentation will form part of the evidence before the Commission. So it will be presented to the Deputy Chief Justice Zondo for his consideration.

10 **MS MOLEFE**: Noted. Thank you.

ADV SELEKA SC: Ja. We will provide you with... but I am not quite sure whether we should provide you with the transcript, a draft, so that you see the correct ...[intervenes]

MS MOLEFE: The corrections. Okay.

ADV SELEKA SC: Of the testimony. I will find that out and let you know.

MS MOLEFE: Okay.

ADV SELEKA SC: Ja.

MS MOLEFE: Thank you.

20 **ADV SELEKA SC**: Thank you.

MS MOLEFE: Thank you very much.

ADV SELEKA SC: The time is...?

MS MOLEFE: 12:25.

ADV SELEKA SC: 12:25. Thank you.

MS MOLEFE: Thank you.

SESSION ADJOURNS

SESSION RESUMES

CHAIRPERSON: The time is two o'clock. The date is 20 August 2020. We are proceeding in the closed session, this one of Mr Tshediso Matoma. You can take the oath please.

REGISTRAR: Sir, state your full name for the record please?

MR TSHEDISO MATONA: Tshediso Matona.

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

MR MATONA: No.

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

MR MATONA: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth?

MR MATONA: I do.

20 **REGISTRAR:** So please raise your right hand and say so help me God.

MR MATONA: So help me God.

REGISTRAR: Thank you.

MR MATONA: Thank you.

ADV SELEKA SC: Thank you, Mr Matona. Just by way of introduction, my name is Pule Seleka, I am Advocate on

the Jo'burg Bar, senior member of the bar. I am doing the evidence leading for the Commission. With me is Prenisha [indistinct – recording not clear] also an advocate at the Jo'burg bar and the two investigators, Tshego Mahlangu and Mr Johan H-i-l-e-s. and I believe you are being represented by an attorney, I will ask himself on record.

MR MOPEDI: My name is Lerako Mopedi(?) and legal representative for Mr Mapona from Ledwaba(?) Mazai Attorneys.

10 **ADV SELEKA SC:** Thank you. Mr Matona, you have already been sworn in so the record has confirmed your presence. Mr Matona, there is a bundle in front of you. The bundle is marked EXHIBIT U13. Do you see that?

MR MATONA: Yes.

ADV SELEKA SC: That is a bundle prepared in your matter from your testimony, it has an index with items 1 to 13, one three, a two page index. If you glance – your cast your eyes over the index you will see the first is an affidavit and supplementary affidavit, so 1.1 and 1.2. Your
20 affidavit and then a supplementary affidavit.

Number 2 is [indistinct] with judgment dated 27 March 2015.

Item 3 is your transcript from the Parliamentary Portfolio Committee.

4 is a report of what the portfolio committee on

Public Enterprises.

5 is media articles.

6 is a letter of suspension of yourself.

7 is a settlement agreement.

Do we have that one here? Page 330. It seems we have that one.

Item 8 is a statement and affidavit of Mr Nicholas Nimeya(?).

10 So there are two items under it, 8.1 and 8.2 which is a statement and then an affidavit which he has submitted to the Commission.

Item 9 is an affidavit by Mr Zola Tsotsi to the Commission.

Item 10, affidavits of Ms Venete Klein before the Commission and one to the Hawks.

11 is an affidavit by Ms Suzanne Daniels.

12, affidavit by Mr Ben Ngubane.

13 is a written submission by Mr Motsoala(?).who I think that is the parliamentary portfolio committee.

20 Now the purpose is to have you give your evidence in regard to the events leading up to your suspension, the turn of events during the course of your suspension, the events that followed after your suspension leading up to the settlement or separation agreement and, as we have seen as well, the events after you have left Eskom.

The affidavits to the Commission is the first document in that bundle under [indistinct]. You are free to relate your testimony independent of it or by reference to it. If you have it specifically and you are familiar with – more familiar with the copy you have as opposed to that, we will follow the paragraph numbers, that is if you are happy with this one in the file which is even better, then that is fine.

MR MATONA: Okay.

10 **ADV SELEKA SC:** And your yes or no should be verbalised, not a nod, not a shake of head because of us being on record.

MR MATONA: Okay.

ADV SELEKA SC: Thank you.

MR MATONA: Absolutely. I suppose I have been nodding to say I understand.

ADV SELEKA SC: Yes, alright.

MR MATONA: But where I need to say yes or no ...[intervenues]

20 **ADV SELEKA SC:** No, indeed, I appreciate that. No, that is fine. Do not worry, because we have to tell everyone that.

MR MATONA: Okay.

ADV SELEKA SC: So you will – it is not something that you need to...

MR MATONA: Okay.

ADV SELEKA SC: Mr Matona, if you could start then by briefly telling us what your qualifications are?

MR MATONA: So my highest academic qualifications, a masters degree in Economics from the University of East Anglia, being in the United Kingdom which I obtained in 1995. I think it was awarded in 1995. I have other ...[intervenes]

ADV SELEKA SC: Qualifications.

10 **MR MATONA:** Qualifications, degrees from University of Cape Town, [indistinct] and Politics and of course valid(?) certificates, some international, from several universities.

ADV SELEKA SC: Yes, well, that is fine. We ob know by now that you have been appointed at Eskom as a CEO, as a Chief Executive Officer. Yes?

MR MATONA: Yes.

ADV SELEKA SC: And when was this? When was your appointment?

20 **MR MATONA:** The appointment was actually in 2014 and it is a good thing that you raise that because when I was going through the affidavits I sent I picked up a number of errata for that - perhaps we should agree to correct or you guide me.

ADV SELEKA SC: Yes.

MR MATONA: Ja, because I am not pleased that it said

that the recruitment was conducted by the board of directors of Eskom during 1994, which is not true, it is supposed to be 2014. I do not know if it was a gremlin.

ADV SELEKA SC: Okay, look at page 3, so at the top of the page.

MR MATONA: Page...?

ADV SELEKA SC: It is 003, paragraph 2 of the affidavit.

MR MATONA: Yes, 003, that is exactly what I am talking about.

10 **ADV SELEKA SC:** So there it reads:

“I was appointed...”

Is that the one?

“My appointment ...[intervenes]

MR MATONA: Yes, my appointment was in 2014 but then it described the process below that follows that paragraph.

ADV SELEKA SC: Oh, I see what you are talking about.

MR MATONA: And then it says 1994, as opposed to 2014.

ADV SELEKA SC: Oh, 2014?

MR MATONA: Should be 2014.

20 **ADV SELEKA SC:** Oh, there it is, ja.

MR MATONA: That is the one and whilst we are at it, why do I not just draw your attention to other areas where we need to effect some corrections. The other one is page 8 which will be page 009.

ADV SELEKA SC: Yes.

MR MATONA: Where just after paragraph 18.7.

ADV SELEKA SC: Yes.

MR MATONA: There is a date, that date should actually be 10 March and not the 8th.

ADV SELEKA SC: Okay, let us see.

MR MATONA: There is a heading.

ADV SELEKA SC: Oh.

MR MATONA: There is heading.

ADV SELEKA SC: That heading.

10 **MR MATONA:** The heading, ja.

ADV SELEKA SC: Should be 10?

MR MATONA: 10, 10 March.

ADV SELEKA SC: Yes, okay.

MR MATONA: Then you will see when it starts to – coming to the substance, it is not the correct date but ...[intervenes]

ADV SELEKA SC: I see.

MR MATONA: It is not correct.

ADV SELEKA SC: I see 18.7, yes.

20 **MR MATONA:** That is right. And then the final one or – and then, of course, sorry, what that also raises, as you can see, some of which I did not see at the time is that the next paragraph after the heading should actually be 18.8 because the preceding paragraph is 18.7.

ADV SELEKA SC: Ja.

MR MATONA: And that affects the numbering.

ADV SELEKA SC: Ja, no problem.

MR MATONA: Throughout the affidavit, as it were.

ADV SELEKA SC: Yes, let us leave that, ja. So we have two 18.7s.

MR MATONA: Ja. And then on page 15.

ADV SELEKA SC: Paginated 15?

MR MATONA: It will be 016.

ADV SELEKA SC: Just give me the last number.

10 **MR MATONA:** 016.

ADV SELEKA SC: Yes.

MR MATONA: There, you know, I had used the affidavit that I prepared for the legal challenge.

ADV SELEKA SC: Okay.

MR MATONA: And use that as a basis.

ADV SELEKA SC: Oh, yes.

MR MATONA: And so I tried to adapt it for the purposes of the evidence for the Commission.

ADV SELEKA SC: Yes.

20 **MR MATONA:** But – and there were several respondents which I had removed but that one survived. So ...[intervenes]

ADV SELEKA SC: It was [inaudible – speaking simultaneously]

MR MATONA: So I just raise that for you to understand

the context of respondents.

ADV SELEKA SC: Ja, I did follow what was happening.

MR MATONA: You followed – I am sorry?

ADV SELEKA SC: As I was reading here I followed what was happening.

MR MATONA: You followed. Okay, alright, okay, so ...[intervenes]

ADV SELEKA SC: I saw a reference to the respondent and I went to your affidavit to see whether are you citing
10 Eskom as the respondent and then I understood now its reference to ...[intervenes]

MR MATONA: In the context of, yes, in that context they were the respondent.

ADV SELEKA SC: Yes. No, problem.

MR MATONA: So I just wanted to raise that and why do we not just complete the errata?

ADV SELEKA SC: It is okay.

MR MATONA: In the supplementary affidavit as well.

ADV SELEKA SC: As well.

20 **MR MATONA:** Let me find my copy of that now.

ADV SELEKA SC: That is 25.

MR MATONA: Ja. And that would be page 3, paragraph 12. Paragraph 12 where you might – it is supposed to be in my meeting, it says “I my meeting”, so it is an errata and then ...[intervenes]

ADV SELEKA SC: Which paragraph 12 is that?

MR MATONA: So it will be page 027.

ADV SELEKA SC: Yes. Paragraph 12.

MR MATONA: Yes. It is supposed to be “in my meeting” it says “I my meeting” and then showed me a copy of a letter, it says “signed bearing”, I actually meant to say “bearing” ...[intervenes]

ADV SELEKA SC: Where are you now?

MR MATONA: In that paragraph.

10 **ADV SELEKA SC:** Oh.

MR MATONA: It is not signed ...[intervenes]

ADV SELEKA SC: Oh, that has signed.

MR MATONA: So you have got to delete “bearing”.

ADV SELEKA SC: Oh, that bearing.

MR MATONA: So you have got to delete “signed” because it had a – it bear – it bore the necessary signature but it was something like bear someone’s signature when they actually did not sign it.

ADV SELEKA SC: Yes, I understand.

20 **MR MATONA:** So let us work with bearing. I just wanted to – that is all really that I [indistinct – dropping voice]

ADV SELEKA SC: The Commission [indistinct – dropping voice] Yes, so we were dealing with the date of your appointment.

MR MATONA: Correct.

ADV SELEKA SC: The Chief Executive Officer of Eskom.

MR MATONA: Ja, so the appointment was effective from the 1 October 20 ...[intervenes]

ADV SELEKA SC: Did you on that day or...?

MR MATONA: I started on that day.

ADV SELEKA SC: You started on that day

MR MATONA: I started on that day, ja.

ADV SELEKA SC: So 1 October 2014, you were appointed as the Executive Officer, Chief Executive Officer
10 of Eskom. And how long thereafter were you suspended?

MR MATONA: So ...[intervenes]

ADV SELEKA SC: Do you remember the date of your suspension?

MR MATONA: I remember the date of my suspension and, you know, it is in the affidavit, the 11 March.

ADV SELEKA SC: The 11 March.

MR MATONA: Ja, the 11 March. What does that it make it now? So, November, December, January, February, five and half months, ja, five and half. And I think I am pretty
20 flowing now, I will follow the order at some stage. If you were there for five or so months, five and a half, certainly less than six months, were you told what the reasons for the decision have taken was?

COMMISSIONER: Were you given the reasons why? In that short period of time that you had been at Eskom and

the period overlaps with the holiday in December, so you probably had little work to do during that time. So what reasons are given for this decision?

MR MATONA: As my affidavit outlines in relevant parts of it, this was a most puzzling thing because the reasons were not to do with anything that I have done or not done, absolutely. So there was – it was always clear that there was nothing I had done that warranted that sort of action by the board against me.

10 It was to do with what they described as challenges at the company that needed to be investigated and was that investigation was underway, they preferred for me not to be present in the - you know, in the company to be at work, so to speak. But there was – so I am much more familiar with a suspension where an employer calls and employee and says I have these allegations against you, I am going to undertake investigations and I suspend you whilst I am conducting the investigation but here it is against you.

20 So, in this instance, we had a discussion about but okay, fine, I understand you may – first of all, I disagreed about the need for an investigation on the issues.

ADV SELEKA SC: Okay.

MR MATONA: That they put forward because we had more than sufficient knowledge of those issues that has

gone, operational issues, the nature of issues, they had been investigated previously *ad nauseam*. And on top of that, there had been established at the end of 2014, something which was called war room, within government, you know, in the presidency, that time chaired by the president.

ADV SELEKA SC: We will come to that. So I just wanted to know whether you were – what reasons were you given?

MR MATONA: Ja.

10 **ADV SELEKA SC:** For the decision made.

MR MATONA: Ja, so it was this investigation – so let me complete the – because this investigation which I did not agree with and neither was it made clear why I should not be there whilst this investigation was going on particularly because then the board had stressed that it was not me who was under investigation but it was rather, you know, issues, challenges to do with the company.

ADV SELEKA SC: Yes.

20 **MR MATONA:** The knowledge of that is that, you know, we had a disagreement. I had a disagreement with the board on this move but, of course, I could not prevail, it was either to issue me a letter of suspension on that day, the 11 March.

ADV SELEKA SC: Ja. Now exactly what word was used for – in relation to what they were saying what happened to

you because we have heard the word suspension, we have also heard the work step aside. Can you recall in relation to yourself exactly what word was being used?

MR MATONA: So the very words used, absolutely correct, I would kind of read between the lines that what in fact was being proposed was that I should be suspended or at a minimum, call it phrase, for special leave, as it were. This was in the discussion that we had, there was - you know, one word was recuse, one word was step aside and then at
10 a later stage when I saw the minutes of that meeting, what was described was, you know what was referred to was special leave. But, be that as it may, the letter of suspension actually said letter of suspension, so it was actually letter of suspension.

So there were – there were four arguments in, you know, the board through actually saying exactly what is it that they were doing. They looked – they kind of looked unsure, you know, and almost kind of, you know, asked me to assist them by proposing how I could make sure I am not
20 there, you know, which was a bit funny and, of course, I could not help them because I disagreed with the whole room as it were, ja.

ADV SELEKA SC: I see. Okay. Now that was a prelude, you are there October 2014 and you are aware of the board that gets appointed by Minister Lynne Brown in December

2014, you are aware of that?

MR MATONA: Yes, I am aware of the board members appointed December 2014, yes.

ADV SELEKA SC: So do you know of the board – of the members of the board, did you find the original appointed in October 2014, how many of them remained in the new board of December 2014?

MR MATONA: It was actually two, being the Chairperson, Mr Zola Tsotsi and one other board member Ms Mabude, I
10 think that is her name, ja. Mabude, ja.

ADV SELEKA SC: So the other were all new board members?

MR MATONA: Ja, there was completely new board, ja.

ADV SELEKA SC: So that is December 2014, it is on the eve of the new year, the new year in 2015. You had been there for two and three months, you are – or let me ask you, did you have to attend board meetings as the Chief Executive Officer?

MR MATONA: Of course, the Chief Executive Officer
20 where other members of the board are nonexecutive, the Chief Executive Officer is executive direct of the board, so I had a responsibility to – and a right to attend the board meeting as well.

ADV SELEKA SC: So when was, if you recall, when was the first board meeting in 2015? Now I am talking the

scheduled board meeting.

MR MATONA: So a scheduled board meeting for a board meeting would have been in February, February 2015, was a scheduled board meeting towards the end of that month but prior to that there had been a board induction exercise, you know?

ADV SELEKA SC: Yes.

MR MATONA: Where the board is taken through the protocols and the statutes of the company and so on and
10 so forth which is done by the company itself and there is also participation of the shareholder.

ADV SELEKA SC: So did the board induction take place?

MR MATONA: It did take place. My memory may be vague.

ADV SELEKA SC: Ja.

MR MATONA: But in the normal course of events there would not be a scheduled board meeting of a new board prior to the [indistinct] induction and I think that had to be done to the best of my recollection.

20 **ADV SELEKA SC:** Do you recall whether or not you were present at the induction for the new board?

MR MATONA: I think I was there. I would have been there.

ADV SELEKA SC: Yes.

MR MATONA: You know, I had so many of board

inductions in my life so, you know, I almost had a sense of how they go.

ADV SELEKA SC: Yes.

MR MATONA: So – but I think that I can safely say I was there.

ADV SELEKA SC: Yes. On that occasion, if you attended, would that have been the first time that you interacted with the board members, the new board members?

10 **MR MATONA:** No. So in December, soon after they were appointed, they had a meeting with the minister in the offices of the minister, I seem to recall, and it was pretty much the minister meeting the new board, meet and greet. It was a kind of meet and greet sort of exercise, a brief meeting which really did not discuss much.

ADV SELEKA SC: So you were ...[intervenes]

MR MATONA: I was present.

ADV SELEKA SC: You were present at the meeting.

MR MATONA: Ja, I was present at that meeting.

20 **ADV SELEKA SC:** Okay. So the scheduled board meeting we understand from the other witnesses that it was scheduled for the 26th of ...[intervenes]

MR MATONA: Yes, yes, that is correct.

ADV SELEKA SC: Well, Mr Tsotsi knows that, his affidavit is here.

MR MATONA: Ja, correct and I think I indicate that in my affidavit as well.

ADV SELEKA SC: Did you indicate that in your affidavit as well?

MR MATONA: I indicate – ja. It was supposed to be the 26 February.

ADV SELEKA SC: Yes. Did that meeting take place?

MR MATONA: That meeting did not take place because I seem to recall that it was late in the day, it could even
10 have been after hours when we got notification from the company secretary that the meeting – everything had been postponed, the meeting was not now going to go ahead as scheduled.

ADV SELEKA SC: Yes.

MR MATONA: And in there, in the communication, either the email notification or I may have – it is possible that I may have also have spoken to the company secretary to try and understand but the explanation was that it had been at the request of the minister.

20 **ADV SELEKA SC:** Which minister?

MR MATONA: The minister at the time, that the meeting not proceed as ...[intervenes]

ADV SELEKA SC: The explanation given at the time?

MR MATONA: Ja.

ADV SELEKA SC: So that is dealt with on page 7,

paragraph 18.1. 18.1, under the heading 25 February 2015.

MR MATONA: Ja.

ADV SELEKA SC: It says:

10 “The new board had scheduled their first meeting for Thursday 26 February 2015 and the agenda for that meeting included two items which I was to present on, namely the Chief Executive support and a presentation on the initiatives [indistinct – dropping voice] agreed.”

So that is the date we were looking for.

MR MATONA: Ja.

ADV SELEKA SC: So you were looking for [indistinct – dropping voice]

MR MATONA: Ja.

20 **ADV SELEKA SC:** So the meeting is cancelled on the explanation that it is a request of the Minister and here you are sitting with your report which needed to be presented in that meeting. When then do they give you a chance to present that report?

MR MATONA: So there then was a meeting that was scheduled. I think it was the – why do I think it is the – yes, the meeting of the 11th, the meeting actually had ended up suspending – my suspension on that day.

ADV SELEKA SC: Look at page – let us see – refresh

your memory if you go to page 8, paragraph 18.3.

MR MATONA: Yes. Yes, so whilst the cancellation or postponement of the previous meeting was in place, we now get a communication that there would be a meeting – this is Sunday evening, that there would be a meeting on Monday.

ADV SELEKA SC: Yes.

MR MATONA: Short notice which meeting happens on a Monday the 9th.

10 **ADV SELEKA SC:** Yes.

MR MATONA: It has – so it does not provide with the opportunity to do what I would have done in the normal scheduled board meeting of – that was cancelled, it only has an item called “inquiry” if I remember, but it is discussing a proposal that also had a kind of a draft resolution but a curious thing about that resolution is that typically, you know, board resolutions are prepared by the company secretary and it appeared that he did not have anything to do with this board resolution.

20 **ADV SELEKA SC:** The company secretary?

MR MATONA: The company secretary.

ADV SELEKA SC: Who was the company secretary at the time? Can you remember? This what, March 2015?

MR MATONA: March 2015.

ADV SELEKA SC: [indistinct] check here, persons
[indistinct – dropping voice]

MR MATONA: I think he is also Malesela. Am I right?
Malesela someone, I forget his surname.

UNIDENTIFIED SPEAKER: Phukubje.

MR MATONA: Malesela, ja. So Malesela, when I had a
chat about what is going on, he – there is a further draft
resolution which would bear – that specifically these either
done properly, informally, they are – Phukubje, ja.

10 **ADV SELEKA SC:** So it was not Suzanne Daniels at the
time?

MR MATONA: No, not at the time.

ADV SELEKA SC: Not at the time.

MR MATONA: Not at the time, ja.

ADV SELEKA SC: So I look at this resolution, it speaks
of an enquiry.

CHAIRPERSON: Sorry, let me just read Phukubje for the
record, it is P-h-u-k-u-b-j-e.

ADV SELEKA SC: Thank you, Chair.

20 **MR MATONA:** Ja, so anyway, so this is all looking very
awkward.

ADV SELEKA SC: How do you receive the notification?

MR MATONA: He would have sent – he sent an email.
Ja, he sent an email, to my recollection. In fact, I think he
may have – because it was Sunday evening, he may have

called me to draw my attention that there is an email, you know? Yes, I indicate that he had directed me to an email. When I went to his email I saw his, you know, curious resolution that deals – looks like he had anything to do with but there is a meeting that has been called for the 9th which is the next day on a Monday.

In that meeting then the Chairperson proposed this inquiry, you know, he was addressing the board on [indistinct] for an inquiry but it appeared that the majority
10 of the board's members were called on this day, they were all getting informed, you know, about the need for an inquiry, for a meeting and of course the – you know, some of them said look, you are not giving us sufficient information, you need the inquiry.

Now in a sense, you know, this board has not actually met properly, if you understand, in the normal course of the business of a company, it is – if it is having to meet to deal with this matter of an inquiry and, in a sense, they - you know, I recall that the Chairperson in
20 trying to explain this made reference to a Minister of cabinet, you know, being supportive of this and the board members that were, you know, if it is attributable to the Minister then she must address us properly formally or even come here and come and talk to us. So the meeting then ended, kind of...

ADV SELEKA SC: Yes.

MR MATONA: It was a brief meeting, it ended.

ADV SELEKA SC: Okay, let me ask you before you move on. The proposed resolution, did it contain only the issue regarding an inquiry and nothing more?

MR MATONA: Yes, it did not have any other matter, it was not about any other matter except the inquiry, ja.

ADV SELEKA SC: So that proposed resolution did not make any reference to the suspension of the executives?

10 **MR MATONA:** No, not the version that I saw was not – or I – yes, not version I received. So, I had no – I had no - inkling whatsoever that, you know, there was linked to this – the idea of suspending me.

ADV SELEKA SC: Yes.

MR MATONA: The [indistinct], as it were, certainly not. Certainly not in the resolution nor in the meeting in that board.

ADV SELEKA SC: Yes, talk of the meeting that followed. So the meeting gets adjourned, it is a short meeting
20 because the board members are saying well, if the minister wants this inquiry let her come and address us. So what happens thereafter?

MR MATONA: So what happens thereafter is that the Chairperson, you know, undertakes to convey the sentiments of the board to the Minister.

ADV SELEKA SC: Yes.

MR MATONA: And of course we - you know, we now wait, you know, to be advised as to what is the way forward as required and then I think a day later, this was now Monday, this meeting the time having I was correctly on the 10th.

ADV SELEKA SC: Yes. Page 9.

MR MATONA: Page 9, we received another notice from the company secretary which, you know, [indistinct] the Chairperson was reconvening the meeting for the next day
10 and it also said that the Minister would be present in that meeting.

ADV SELEKA SC: Yes.

MR MATONA: So to all intents and purposes, if I may just add, it is a continuation and a sequel to the meeting of the ...[intervenes]

ADV SELEKA SC: Of the 9th.

MR MATONA: Of the 9th, yes.

ADV SELEKA SC: So how was this notice received on the 10th?

20 **MR MATONA:** It was – typically it would be emailed.

ADV SELEKA SC: Thank you. So paragraph(?) 8 says there:

“The agenda of the scheduled meeting you retained some of the items coming from the cancelled meeting of the 26 February 2015 including the two

items which was to representatives whereas the proposed meeting which were discussed in part at a meeting of the 9 March 2015.”

So then you were notified of the meeting of the 11 March 2015 where the Minister is invited. Were you present at that meeting?

MR MATONA: I was present in that meeting. So it started, you know, as a normal board meeting and dealt with, you know, a business of the company and that
10 allowed me opportunity to present two items. And what I really did, you know, was to inform the board of the state of the company at the time, you know? The matters that, as the executive, we were seized with, in running the business, and of course because the war room, you know, the board members did not participate in the war room. So, you know, I used to go there with the executives. So you know, I then kind of brought him up to speed with what was going on in the war room in terms of support and that government is considering, you know, for the challenges of
20 the company all of which went very well, which went very well, you know, they appreciated the information that was given them and a couple of things, you know, so that, you know, went down well without any issues, they looked and did not even ask any questions of the information I provided them. So typically, a CEO’s report is a standing

item.

ADV SELEKA SC: Yes.

MR MATONA: You know, that allows the CEO to brief the ...[intervenes]

ADV SELEKA SC: The board.

MR MATONA: The board on my activities and the activities of my agenda.

ADV SELEKA SC: Do you have the activities of the war room and what you reported? Do you have a clear
10 recollection that that is how it turned out, that you managed to present to the board your report on, amongst others, because I see your two items was mainly the chief executive's report and a presentation on the initiatives of the war room. Did you manage to address them on those?

MR MATONA: I did. So now that was the part of the meeting where the Minister – so we were then told at the beginning of the meeting that the Minister would join later.

ADV SELEKA SC: Okay.

MR MATONA: So we were expecting the Minister to come
20 to that meeting.

ADV SELEKA SC: Okay, the reason I wanted the assurance in regard to your recollection is because if you say you presented, nobody asked questions, and what did you say? Were they satisfied with the report? The board members, particularly in regard to the war room?

MR MATONA: I considered them to have been satisfied and I – you know, they thanked me for the ...[intervenes] .

ADV SELEKA SC: They thanked you for the ...

MR MATONA: They thanked me for the information. The Chairperson thanked for me for the information that I shared with the board and in a sense the way I saw - the way I saw what actually happened there was that this was still pretty – you know, pretty much new issues, new things for the board, you know, so they were having that – they
10 do not really have much to reference what I was telling them so they took it at face value, it seems to me. So I think that any indication of any feeling one way or the other about information that I shared.

ADV SELEKA SC: Ja, I am going to move on but let us pause for a moment on that aspect because I want to get your views on what we see one of the board members say. So if you – there is an affidavit in the bundle U13 under folio 12. I think 12 is hidden(?) by 11.

MR MATONA: Ja, 12, that is with 541.

20 **ADV SELEKA SC:** That is right.

MR MATONA: Ja.

ADV SELEKA SC: That is right. Go to page 551. Now this is the affidavit – sorry, the affidavit by Dr Ngubane.

MR MATONA: Dr who?

ADV SELEKA SC: Ngubane.

MR MATONA: Oh, okay.

ADV SELEKA SC: That is on page 542, it starts
...[intervenes]

MR MATONA: What page are you referring me to?

ADV SELEKA SC: Okay, the one I am referring you to is
551.

MR MATONA: 551.

ADV SELEKA SC: The very first paragraph. Just to get
your view on this. So it says – if you go to the bottom of
10 the previous page, page 550, at the bottom of 550.

MR MATONA: Ja, 550, yes.

ADV SELEKA SC: 4.16 says:

“The meeting adjourned to allow the Minister to
address the board on these matters. The Minister
came to address the board on the 11 March 2015.
The minutes of these meeting are annexed, marked
BSA2.”

Says then the paragraph:

20 “Although the Minister did not direct the board to
suspend the four executives she raised concerns of
her own against them. The concerns related to the
war room which she suggested, complained it was
not receiving consistent information from
management and therefore it could not develop
strategies to turn around Eskom and stop load

shedding. The Minister felt that the presence of the four executives might hinder the investigation.”

We will come to that but the focus of what I am driving to you now is this alleged complaint by the Minister that she had concerns in relation to the war room suggesting that it was not receiving consistent information from management in order to turn around – develop strategies to turnaround Eskom. Were you aware of any of those things?

MR MATONA: Ja, I became aware that that was sort of a
10 narrative that had been punted after suspension.

ADV SELEKA SC: I am asking you whether you, before your suspension, did they raise concerns of this sort with you?

MR MATONA: No.

ADV SELEKA SC: Not before your suspension?

MR MATONA: Not before my suspension and that is where – you know because I had kind of overlapped a bit with the Minister before I left, I was in the department and then I came to Eskom so she and I had – and of course, I
20 had, you know, long before she became a Minister, when she was a provincial, you know, member of the executive, so she – so I considered that we had an open line, you know, I would call her, you know, I made the point when the lights were going to be off, she did not get it by surprise. So I said Minister, unfortunately we are going to

have to load shed, to a point where I think if there was – if there was something that I was not doing right or where I came short, I think the nature of the relationship I had with the Minister was such that she would be able to say hey, look at this, look at that, you know? So that nobody had - in any way whatsoever brought to my attention, that there were concerns, you know, of any sort.

In fact, you know, we – that war room used to meet weekly, or we need to be present on a weekly basis. We
10 were always present, always ready to provide any information whatsoever.

Now something tells me that it may well be the case that, you know – it maybe they did not – they were not able to interpret information that we were giving them.

ADV SELEKA SC: Yes.

MR MATONA: A lot of this was very technical information.

ADV SELEKA SC: Yes.

MR MATONA: Very technical kind of operational information about, you know, the [indistinct] system and
20 the finances of the company. It may well be that, you know ...[intervenes]

ADV SELEKA SC: Well, just bear in mind, she is saying – this was the Minister, so it is [indistinct].

MR MATONA: Yes, so I am saying, you know, that information that we were taking into the war room, as

Eskom, may not have been understood, appreciated, as it were.

ADV SELEKA SC: But then are they not supposed to tell you?

MR MATONA: Exactly the point. I mean, nobody at any point indicate that.

ADV SELEKA SC: Was the Minister part of the war room?

MR MATONA: In retrospect, as a member, a [indistinct] member. A [indistinct] member.

10 **ADV SELEKA SC:** Ja.

MR MATONA: Some – there were many meetings where she would not be present. Ja, there were many meetings of the war room where the Minister would not be present.

ADV SELEKA SC: Okay. Yes, no, that is fine, I mean, she may not always be there but she was in some of the meetings then – when she was not in others, she would have been in some of them, is that correct?

MR MATONA: It is correct. In fact there was one meeting that we are talking about, there was one meeting where
20 she was present and, you know, her reaction - you know, she was kind of hostile, you know? I saw a demeanour in that particular meeting where she was kind of hostile which confused me because, you know, I do not recall that there were any specific concerns that she had raised. I might – when we met with the executives and tried to understand,

you know, what was all of the issues that were coming out of the war room and it is something which they deal with now, that that issue never really went away, is that the finances of the company, like the operations, changed on an ongoing basis.

ADV SELEKA SC: Yes.

MR MATONA: So if I give you the financial picture now, a month later things have shifted since it is a moving target, as it were, that – and we thought that perhaps that is
10 where there was a bit of a disconnect between us and the war room but ...[intervenes]

ADV SELEKA SC: Did they say that?

MR MATONA: No, not at all. Not at all. Nobody said by the way there is this particular aspect that we do not understand, can you explain or we are not satisfied, will you explain it?

ADV SELEKA SC: Nobody did that?.

MR MATONA: Nobody did that.

ADV SELEKA SC: So Mr – sorry, Dr Ngubane then says
20 in the timeline that he alleged that the Minister raised concerns. As for the management giving the war room information that was not consistent.

MR MATONA: Ja.

ADV SELEKA SC: And they are unable to develop strategies to turn around Eskom.

MR MATONA: Ja.

ADV SELEKA SC: Does the board itself – because this is the meeting of the 11th – does the board itself, after it has met with the Minister, raise this issue with you?

MR MATONA: No, not at all because remember, the next interaction I had with the board on that day – on the day that the Minister had come to inform them, you know, to raise these sort of issues with them is a meeting that ends up with my suspension.

10 **ADV SELEKA SC:** Were you present in the board meeting when the Minister was addressing the board?

MR MATONA: Remember, we were asked to leave, when the Minister arrived.

ADV SELEKA SC: You were asked to leave?

MR MATONA: We were asked to asked to leave the meeting which is another thing that surprised me.

ADV SELEKA SC: And so after you presented your report you presented about the war room, at some point the Minister arrives and you are asked to leave?

20 **MR MATONA:** We are asked to leave – we knew the Minister was coming. Nobody had said to us that by the way, when the Minister comes, you see CEE (sic) and CFO should leave the meeting, that only – that is something that we get told. Upon the Minister – as soon as the Minister is in meeting we then get to – and, you know, that is actually

– the [indistinct] of the meeting is about to start then we are told this, can you recuse yourselves please?

ADV SELEKA SC: And who is asking you to do that?

MR MATONA: It was the Chairman, the Chairman did but I remember the Minister also – I remember the Minister also kind of supported that – I may have said so in my affidavit, I do not remember, but – ja. Ja, so there are other – there is a broader – a bigger group of executives that attended board meetings.

10 **ADV SELEKA SC:** Yes.

MR MATONA: You know, they all did different items. So when exactly management must leave, I understood that referred to those executives but actually it was – it included myself and the CFO having to recuse ourselves.

ADV SELEKA SC: So, okay, when was the [inaudible – speaking simultaneously]

MR MATONA: Ja, so the Minister attended also, yes, the Minister. The Chairman started to say recused but then at that point I thought it was for everybody and then the
20 Minister then said myself and the CFO should leave the meeting. Ja.

ADV SELEKA SC: So you were not in the second half of the meeting, the Minister is present with the board, they go into deliberations that you are not aware of at the time. Were you given the reasons why you needed to excuse

yourself?

MR MATONA: No.

ADV SELEKA SC: No. And for how long then were you excused? At what point do they call you back? Did they ever call you back into the meeting?

MR MATONA: They did call me back. So, you know, I went back to my office and I was very confused. I remember I walked to the CFO's office and I said what do you think is going on? And both of us were like we do not
10 know, this is very strange and at the end of the day with that sort of executive, all kinds of questions going through as to what exactly is going on but, you know, it kind of – it was a day when you felt that things are not normal, this is not kind of normal life.

I had never experienced anything like that since I had been at Eskom, so something was – something was cooking, you know, with both the CFO and I have had that sort of feeling but we waited because we - you know, you recuse yourself with the understanding that you will be
20 called back into a meeting, you know, the board is a right to which – or they call it in-committee without the executives. So it was supposed to be kind of an in-committee meeting but a little bit curious in the way that it happened.

We – and then at about, you know, towards the end

of the day where I thought that now look, it is time to go home now, we got – the company secretary came and said the board has requested us not to leave because they needed to interact with us. So, you know, hang in there until the board is ready to engage with yourselves.

ADV SELEKA SC: So did you – at what point did you go back?

MR MATONA: It was ...[intervenes]

ADV SELEKA SC: Sorry, you may not remember the time
10 but let me rather ask you, take us to the moment when you were called back to the board.

MR MATONA: Ja, so I arrive, now I see that it is not now the entire board that was there at the beginning so some of them had – were not present in the meeting and then I was able to establish that this is the – the members of the board who were there are members of the HR, they call it people in governance ...[intervenes]

ADV SELEKA SC: Committee.

MR MATONA: Committee.

20 **ADV SELEKA SC:** Yes.

MR MATONA: Right, with the Chairperson. And so when I get there, the Chairperson says well, you know, the board has taken a resolution to validate this inquiry. And of course, I knew about the inquiry so it is clear that what had been discussed in our absence was the inquiry because

now they have now taken a decision to proceed with it.

ADV SELEKA SC: You knew it from the proposed resolution.

MR MATONA: Yes.

ADV SELEKA SC: That was preceded by a notice into the inquiry.

MR MATONA: Yes, exactly, exactly, so I knew that this inquiry story had been what was discussed because we had now been talking about an outcome of a discussion.

10 **ADV SELEKA SC:** Yes.

MR MATONA: I cannot tell – I was even wondering whether the Minister, you know, late in the day – I was like wondering, the Minister is still in this meeting, I cannot quite establish, you know, as it were but ultimately the Minister had left – the Minister had left the meeting at a point.

ADV SELEKA SC: Yes, carry on, Mr Matona?

MR MATONA: Ja, so the Minister was not there, neither was a few board members.

20 **ADV SELEKA SC:** Yes.

MR MATONA: But only – if I remember it was Venete Klein. Why do I – I have a blank now but because I remember Venete because I had an exchange with her.

ADV SELEKA SC: With who?

MR MATONA: With Venete in the meeting.

ADV SELEKA SC: Oh, Mrs Klein?

MR MATONA: Yes. Mrs Klein, Venete Klein, yes.

ADV SELEKA SC: Was Mr Tsotsi there?

MR MATONA: Yes, he was chairing the meeting, he was still the chair. So there was Venete, there might have been another board member present at the time.

ADV SELEKA SC: So you do not refer to it in your affidavit.

MR MATONA: H'm, maybe I do.

10 **ADV SELEKA SC:** That is under 11.

MR MATONA: Ja, I say only the members, I do not mention names, I say only the members of the board subcommittee on Human Resources. You know, people ...[intervenens]

ADV SELEKA SC: Give us the page number?

MR MATONA: 010.

ADV SELEKA SC: 010, 10. Paragraph?

MR MATONA: Paragraph 18.13.

ADV SELEKA SC: 18.13?

20 **MR MATONA:** Yes.

ADV SELEKA SC: So it says:

“Sometime around 17.30, 18.00, the company secretary who had also been asked to leave the meeting asked me to return to the meeting. At that point many of the board members had left and only

the members of the board subcommittee and human resources, people in governance, the board subcommittee had remained.”

Then it says:

“The Chairperson informed me that...”

And the Chairperson, you are referring to Mr Tsotsi.

MR MATONA: H’m.

ADV SELEKA SC: ...informed me that the board had

resolved institute an independent inquiry and he
10 asked me to recuse myself as Chief Executive so as
to influence ...[intervenes]

MR MATONA: Not influence.

ADV SELEKA SC: ...the enquiry, which he indicated will
last about three months and requested me to
propose ways in which I could assist in ensuring
that the inquiry would proceed without
influencing...”

That is what you said earlier.

MR MATONA: H’m.

20 **ADV SELEKA SC:** That they wanted you to propose
adequate – what was it, to stay away or...? Can you
remember the [indistinct – dropping voice]

MR MATONA: Ja, we would talk about the various
formulations of that, ja.

ADV SELEKA SC: Yes, what he was proposing to you.

MR MATONA: To recuse – what, leave of absence and another one.

ADV SELEKA SC: Step aside.

MR MATONA: Step aside.

ADV SELEKA SC: Yes.

MR MATONA: Step aside, ja.

ADV SELEKA SC: Okay. So you said Ms Venete Klein also spoke with you on this occasion.

MR MATONA: Ja. Ja, so she – you know, kind of in a
10 brash manner and then I realised that this is not a friendly space now.

ADV SELEKA SC: Thank you.

MR MATONA: Because she says I must tell her why they should not be doing what they are doing.

ADV SELEKA SC: I see.

MR MATONA: But kind of vague as to whether she means undertake an inquiry, which I had already addressed, you know, why I thought this was not necessary, or not – they should not be suspending, or should not be, you know,
20 asking me to step aside. So I said ...[intervenes]

ADV SELEKA SC: Ja. So while asking you to tell them why they do what they should not what they were supposed to – did not tell you why they want to do it.

MR MATONA: Yes, correct, that was...

ADV SELEKA SC: And what was your response?

MR MATONA: I stuck on the points which I had made in August(?) and I remember I strongly indicated that we do not need an inquiry at all, that we could – even prior to my arrival there had been a clarity, a set of mergers that had been agreed and that needed to be implemented.

ADV SELEKA SC: Yes.

MR MATONA: And we had gone through an exercise of affirming these matters, as it were, as a board – as executing in preparation for briefing the new board and so
10 I, you know, I did not support that, you know. Just as I am thinking, you know, Eskom, what I discovered there was that there is imbedded in the company consultants on tech. Remember, I met with all the consultants there, they all had solutions that they identified based on what they understand is going on, so there was no shortage of ideas as to how to turn around the company and I really honestly, you know, did not think, you know, I think it was superfluous, you know, and in fact, you know, probably a waste of resources to start another inquiry on the issues
20 that had been identified, as it were.

ADV SELEKA SC: I see. So what was the outcome in that meeting?

MR MATONA: So then they said, okay, we have you, do not go away but can you excuse us? So I go back to my office and I kind of could see what was now coming, that

they are going to do some kind of action. Before the meeting of which I was not sure.

ADV SELEKA SC: Yes.

MR MATONA: So I come back now, they told me half an hour, I come back, my chair in the boardroom would be next to the Chairperson. So he sits here, the Chairperson, here is me. As I sit like this and I look, I see a letter addressed to me with a heading Suspension, Letter of Suspension and then I thought to myself oh God, I cannot
10 believe this. And so that was a very brief meeting to say look, so we value(?) but now we are proceeding with the suspension here, here is a letter of suspension. Sign now approval of it and I am signing my acceptance, so not approval, received further, I have received this letter.

ADV SELEKA SC: Absolutely.

MR MATONA: I have signed but – I then say there that I am signing receipt but I do not want this to imply that I had been giving a hearing, a proper hearing.

ADV SELEKA SC: Yes.

20 **MR MATONA:** So I signed but I reserve my rights.

ADV SELEKA SC: Yes.

MR MATONA: I signed receipt but I reserve my rights. And then I go to my office and I think they demanded that I – they demanded to take my laptop. That is precisely the point, you know, they demanded to take my laptop.

ADV SELEKA SC: Yes.

MR MATONA: And then I left and I went home. So, as I was leaving, I saw that now they are calling the CFO, she was going in there. So I think I may have briefly told her that I have been given – I have been suspended, I have been given suspension. I then went to [indistinct – dropping voice]

ADV SELEKA SC: We have on page 328, it is folder 6.

MR MATONA: Sorry?

10 **ADV SELEKA SC:** 6, number 6.

MR MATONA: Folder...?

ADV SELEKA SC: 6.

MR MATONA: Ja.

ADV SELEKA SC: It is a suspension letter – this one is unsigned, did you say – did you sign receipt?

MR MATONA: Ja, I signed – I think I – did I not give you a copy that was signed when I met with you? I did, ja. So yes, I am sorry, I had signed it.

ADV SELEKA SC: No, that is fine.

20 **MR MATONA:** And I am just – the reason why I make reference to, you know, reserve my rights is because of point 4 where they say these concerns have been discussed with me and [indistinct – dropping voice]

ADV SELEKA SC: Yes. Okay. So it has been drawn to my attention that we actually have – we actually have that

resolution, proposed resolution which would have been sent to you together with your notice for a special meeting of the 9 March 2015.

MR MATONA: Ja.

ADV SELEKA SC: It is on page 355.

MR MATONA: 355.

ADV SELEKA SC: Ja, that is from the 12th.

MR MATONA: Ja.

ADV SELEKA SC: 355, so that is before the 8, [indistinct
10 – dropping voice] Are you familiar with this document? It is on Eskom – well, the document reads:

“Eskom SOE decision record report 9 March 2015”

And with the heading Resolution and it has six paragraphs. Do you recall this document?

MR MATONA: Ja, I recall – ja, I recall it, Chair, but I mean, it is very badly written, badly formulated.

ADV SELEKA SC: Yes, absolutely. Well, because what I was asking you in regard to it was whether that proposed resolution, did it only contain reference to the inquiry – to
20 an inquiry and nothing more? Whether it dealt with the issue of suspension of the executives. I think you said no, it did not have the suspension of the executives but, I mean, you were talking from memory. Let us look at it. I will read it quickly into the record. Let me read it quickly: Paragraph 4 says that:

“This board resolves that Mr Matona, as I do so, having cast your eyes over the document, do you recall that this is the document that was annexed to the email that gave [indistinct] notification of the [indistinct – not speaking clearly and dropping voice].”

MR MATONA: Ja, it definitely is, ja.

ADV SELEKA SC: It is this one.

MR MATONA: Ja. I see this is - what I do not remember,
10 seeing the terms of reference and that type of thing, it never comes up.

ADV SELEKA SC: I think it is only because of the way the files are arranged now.

MR MATONA: Ja, okay.

ADV SELEKA SC: So that document is actually a single page document but the documents – the bundle has been prepared and the bundle [indistinct – dropping voice]

MR MATONA: Ja.

ADV SELEKA SC: So the relevant document is the one
20 that you were looking at on page 355. So let us look at it, says that:

“This board resolves that there are exceptional circumstances demanding that a necessity for an urgent meeting with the board of directors. [indistinct] that seven days is required due to these

exceptional circumstances recorded in the memorandum, this board resolves to exceptional notice and to receive and consider the notice and resolutions of this meeting; that this board resolves that an external an independent inquiry be set up to investigate and determine the facts relating to the [indistinct] technical combination and structural status in any event and/or admissions that have contributed to the current [indistinct] generating and distribution to customers of Eskom; that the board resolves to appoint a board subcommittee comprising [indistinct] Chairperson of the board any time the [indistinct] Chairperson orders a risk committee and Zetende Khosa(?), Chairman of People and governance committee mandated with the delegated authority of the board to determine the terms of reference of the inquiry. The selection, mandating and contracting of the independent investigators and the oversight of the inquiry, the subcommittee shall have the board's delegated authority to take all such steps and measures that the subcommittee deems necessary to ensure the [indistinct] performing of this mandate. As the board itself would have such power in its service herein. Further, without

limitations to ensure that the environment within the company does not hinder or create a perception of hindering the inquiry and to take all such necessary steps to ensure such; that the board authorises the Chairperson in consultation with the Minister and the Minister of Finance to approve expenditure sufficient and necessary to fund this inquiry; that this inquiry shall be required to present its final report to the board, the Minister and the Presidency no later than 30 June 2015 and the subcommittee shall have the authority to deviate from the requirements of Eskom's procurement policies and procedures, as is necessary, given the targets to complete the investigation within three months (urgency) and to appoint such persons or entities to conduct the inquiry that are independent of Eskom and free of any influence or suspicion for influence or of any party that might have any impact on the inquiry save that the subcommittee shall, if required, provide reasons to the Minister of Finance for any such deviations."

So, as you confirmed, there is no reference to suspension of executives.

MR MATONA: No, not all.

ADV SELEKA SC: Not at all. So there you have been served with the suspension and you were asked to leave with immediate effect. We know from your affidavit that you then brought an application to the Labour Court, you got an urgent application to the Labour Court and what your application for again?

MR MATONA: Well, my application was for a setting aside of the suspension on grounds that was unfair and unlawful.

10 **ADV SELEKA SC:** Yes. Did Eskom oppose that application?

MR MATONA: They did.

ADV SELEKA SC: And what was the outcome of this application?

MR MATONA: The outcome was that – the judgment, if I recall it, I was disappointed by the judgment, I must say, but it did find that Eskom had been less than transparent with me and, you know, therefore the suspension was unfair and referred the matter to the CCMA for myself and
20 Eskom to - you know, to go through arbitration litigation.

ADV SELEKA SC: Yes, did you do that?

MR MATONA: We did that subsequent to the judgment and the long and short of that process was that, you know – Eskom did not want to go through that process, you know, I could sense that they did not want to go through

that process. They asked for postponement, postponement, postponement and then eventually they said – they asked to be allowed to engage directly with me over the matter which I agreed to.

ADV SELEKA SC: Yes. Who represented Eskom at the CCMA? Or, forget the lawyers, I am talking an official of Eskom.

MR MATONA: Oh, Ben Ngubane came. At the first CCMA hearing Ben Ngubane came. Ja, he came with officials of
10 Eskom, the legal officials.

ADV SELEKA SC: The attorneys. Paul [indistinct] he is in the internal legal officials..

MR MATONA: Yes, there could have been, there could have been another law firm that contracted on the matter.

ADV SELEKA SC: Do you say that was on the first occasion?

MR MATONA: Yes, on the first occasion.

ADV SELEKA SC: Is that when he asked for a postponement?

20 **MR MATONA:** Yes, they asked for a postponement and if I recall what Ben said was that look, you know, because the matter pertains to the CEO of the company they would need to get alignment with the shareholder so they were – he was going to discuss the shareholder so that he can then establish then the boundaries of his mandate. Y9ou

know, something along those lines.

ADV SELEKA SC: And did you understand what he was talking about?

MR MATONA: I did not, I did not, I had the feeling that somehow the first hearing of the – of CCMA they were not ready, so they – and he did say that – he did refer to the Minister, you know, needing to talk to the Minister kind of, you know. You are asking me this question, I am thinking, you know, what that could have meant.

10 **ADV SELEKA SC:** Yes, okay.

MR MATONA: But he needed to have some interaction with the Minister.

ADV SELEKA SC: So was the matter postponed on the 1st?

MR MATONA: The matter was postponed and then we – and then there was a second meeting which also – they also asked for postponement and it may have been in this one where they asked if they could engage directly with me, with myself.

20 **ADV SELEKA SC:** So that takes place, the negotiations?

MR MATONA: The negotiation took place so after that, after that I then had an interaction with them, I think then Ncubane subsequently kind of receded from the interactions, so it was ...[indistinct] and Romeo Khumalo who were the kind of ...[indistinct] with myself ja.

ADV SELEKA SC: And that was outside of the CCMA process?

MR MATONA: It was outside of the CCMA process because I recall what the Commissioner had said, was that the CCMA will not prevent parties from wanting to interact and find the mutually acceptable kind of settlement between the [indistinct], you know, if I didn't have any objection to it, to proceeding in that manner, which I didn't at the time, you know, [indistinct]. So – which I repeat,
10 that they left it to us and as I said I interacted with them after that.

ADV SELEKA SC: Let me get your reaction to this, in his affidavit Mr or rather Doctor then Khubane forwarded to us that [indistinct] on the 12th on page 555, 555 paragraph 428 he says,

“Whilst the inquiry was pending Mr Matona had filed a labour dispute with the CCMA against Eskom, following that conclusion of the inquiry, Mr Matona negotiated and settled a dispute out of Court and
20 left Eskom, this process was handled by the PMG Committee, I was not involved with it”.

That being what you're referring to as he received it and you were dealing with Ms Klein and Mr Khumalo?

MR MATONA: Ja, ja.

ADV SELEKA SC: The PMG Committee.

MR MATONA: Ja, look, there's some factual, you know, inaccuracies so...[intervenes].

ADV SELEKA SC: In that paragraph?

MR MATONA: Ja 428, what I actually instituted was a Labour Court thing the CCMA followed from that, it was – alright so that's wrong and then of course what's on this page, I'm seeing 429...[intervenes].

ADV SELEKA SC: Let's read that, it says,

10 “Prior to that I had been tasked by the Board, this is
Dr Ncubane, I had been tasked by the Board to
attend the CCMA proceedings which Mr Matona had
instituted against Eskom. During one of my
interactions with Mr Matona at the CCMA, I
suggested at my own initiative that he should
consider returning to his position, however, Mr
Matona was too upset with the whole saga and
made it clear to me that he would not return to
Eskom”.

20 **MR MATONA:** That's not true, that's not true, when the –
the first appearance, at the first meeting when we
negotiated now, what was made very clear to me, was that
my return to my job was not on the table, that was very
clear, we can talk but we're not talking you coming back,
that's off the table?

ADV SELEKA SC: Was Dr Ncubane in that meeting?

MR MATONA: I can't remember he may – do you recall, I came with some notes, handwritten notes from the meeting I had with them which – where I wrote who was present, ja but anyway...[intervenes].

ADV SELEKA SC: During the adjournment we will try to sort that out with you, maybe Mr [indistinct] and we will deal with it when we take a short break.

MR MATONA: Ja.

ADV SELEKA SC: Yes.

10 **MR MATONA:** The important thing was that, just from the word go, the – it was made clear that I, you know, returning to my job was out of the question. So, you know, it was a question of, what then happens, if I don't return to my job, what then happens and...[intervenes].

ADV SELEKA SC: [Indistinct], sorry Mr Matona, he's making this clear...[intervenes].

MR MATONA: I remember Romeo, so Romeo led the charge after Ncubane, so I want to suggest that it may be possible that in the negotiation, the first – because there
20 were about two or three – three maybe, company meetings, going backwards and forwards, that in one of those Ncubane was present, it's possible that he was present – Ncubane was present, I seem to think that he was present where it was now a question of saying, okay what we then do, how do we make good, you know, [indistinct] as such.

Of course, you know, there was no conclusion at the end, I – we then agreed to meet again after, you know, I just needed to think this through properly because I wasn't, at this stage also you know, I didn't have my lawyers with me, I was meeting with them on my own and I just needed to get some advice and guidance around that – that issue at that point ja.

ADV SELEKA SC: Okay, so would you – well you went to the CCMA, first you went to the High Court, you say
10 [indistinct] you're seeking relief that my suspension is irregular and unfair, clearly you want to go back, is an indication that you want to go back and you could confirm that, yes or no?

MR MATONA: Yes, so my application was that if the suspension is found to have been unfair and unlawful that it should be set aside and therefore, then I go back to my job ja.

ADV SELEKA SC: And I mean your pursuit of the dispute also at the CCMA it was in favour then of that objective.

20 **MR MATONA:** It was in favourment of that objective, however, I had to see...[intervenes].

ADV SELEKA SC: At that stage.

MR MATONA: At that stage yes, so I was hoping that the CCMA outcome is actually the same as the previous.

ADV SELEKA SC: So let's – what we read here by Dr

Ncubane saying, he's suggesting to you, you come back and you say no, I'm not returning to Eskom, cannot be consistent with – in fact what you were doing at the time.

MR MATONA: Ja, no, this is not true, so 49 is not true to my [indistinct].

ADV SELEKA SC: Thank you. Ja, so you are – you're engaging in negotiations with them and you're asking them for time to consider what they're proposing to you, was – did they propose anything in writing to you?

10 **MR MATONA:** No, they did not propose anything in writing so we had those sessions and then – I then asked them to make an offer, you know, to make a proposal so – then the proposal was that, right, then leave, we give you – you leave with 12 months' pay, you know. I – when I went back to my lawyers and said to them, look, this is what these people are saying what do you think, you know, it turned out that the nature of my contract with Eskom was such that, you know, that is probably the minimum I could walk away with.

20 **ADV SELEKA SC:** Well that's 12 months.

MR MATONA: 12 Months ja and that's because I'm a permanent employee so if you're a permanent employee whereas if I had a fixed term – a fixed contract, let's say five years and I – then negotiation could be pay me the balance of my contract, those are the issues.

ADV SELEKA SC: So, how – did you, ultimately, sign a settlement agreement?

MR MATONA: Yes so, I signed a settlement agreement, you know, after – I think they drafted one and then I – I commented on it. Yes, we may have gone through two different versions of it until we got to what was a final version.

ADV SELEKA SC: I see, we have an unsigned copy here, I'm not sure whether this would be the final version or not
10 it's on page 331 [indistinct]. We have – well due to the lock down what we have in this file is the unsigned but I understand the signed one is under lock and key at Eskom, so we will share that signed version.

MR MATONA: Just draw my attention to it in the Bundle?

ADV SELEKA SC: Page 331 folder 7.

MR MATONA: 331?

ADV SELEKA SC: 331 yes.

MR MATONA: Ja, so – ja reading through it, it does look the one I eventually signed, I looked for – I needed to have
20 a copy so I do have a copy, but I couldn't find it in my filing at home, I only managed to find an unsigned electronic version.

ADV SELEKA SC: Yes, well, let's go back to your affidavit, page 19.

MR MATONA: Page 19, 019?

ADV SELEKA SC: Yes, that's right yes. So, you are at the CCMA - paragraph 14 at the first CCMA hearing, you can see that, yes,

10 "At the first CCMA hearing on 13 April 2015 Eskom represented via the Chairperson of the Board, Dr Ncubane requested a postponement to enable Eskom – the Board to consult the shareholder on what Eskom could concede or offer in the CCMA Conciliation process. Eskom requested one or two other subsequent postponements during which time they approached me and requested me to deal directly with me",

So, what, does it mean they didn't want your lawyers to be involved?

MR MATONA: No, not so much that as it was to take it out of the CCMA.

ADV SELEKA SC: I see, paragraph 42 says,

20 "In my interaction with Eskom Board of representatives, Dr Ncubane, Mr Khumalo and Ms Benita Klein, it was clear that the option of my return to my job at Eskom was off the table",

So, this is diametrically opposed to the paragraph we read in [indistinct]?

MR MATONA: Ja, most certainly it is – that...[intervenes].

ADV SELEKA SC: But you said this paragraph is not true?

MR MATONA: Yes. Ja, the only issue being the terms of my separation from the company.

ADV SELEKA SC: So then, ultimately, you came to that agreement [indistinct].

MR MATONA: Ja, I might just want to say about this part of the – in my affidavit and what was going on at the time that – so I have been suspended by this Board, so in a sense, therefore, when you now kind of negotiating with them, it appears that returning to my job is off the table. It
10 didn't surprise me because, after all, they had suspended me, so you know, so they were staying true to what they wanted to achieve. What it then did for me was to say, hey, hold on, even if, supposing I were to, you know, go back to the CCMA and have an outcome that returns me to my job, this is not – I'm not going to enjoy this Board, okay, you know, I mean they'd drawn the line, the Board had drawn the line, you know, so – ja so I – it would only be a matter of time when now they find something else, some grounds again to – so I had to think about that and I
20 also had to think about what it would cost me to continue the legal fight with Eskom over this matter, I'm already up to that point, paying out of my pocket, legal fees, you know, I just realised that you know this might not – you know I might win at the end but I'd be a poor man so I had to make some very tough personal calculations and

somehow I had gone through so much emotional stress, I just wanted to move – to close this chapter, this type of sorry chapter of my life and move on.

ADV SELEKA SC: I see, I'm going to ask you, after – the day of your suspension, we understand that Eskom released a media statement regarding its decision to suspend the Executives, were you aware of that media statement?

MR MATONA: I have to be honest, I was not aware of the
10 media statement *per se*, more than I was aware that the matter was in the media – in the media space, there was a lot of commentary going on ja.

ADV SELEKA SC: So, you would not have known the contents of the media statement?

MR MATONA: I would not have been – no I did not. If it's here I'll be seeing it for the first time.

ADV SELEKA SC: Alright, we have it in the file, we have it in UV12, [indistinct] there is also UV13. I think [indistinct] Mr Matona, U12 because I want to ask you about
20 something page 13 so page 13 on page 276, page 276.1 that's a media release dated 12 March 2015 and it's on Eskom [indistinct], it says,

“The Eskom Board, has today, resolved to commission an independent inquiry on the current status of the business and its challenges. The

Board in its quest to address the current challenges faced by Eskom has deemed it prudent to seek an independent view on the status of, among other things, the poor performance of generation plant delays and bringing the new generation plant on stream, high costs of primary energy, cash flow challenges. To ensure that this process is as transparent and uninhibited as possible, said [indistinct] the Board has also resolved that four of
10 each senior Executives, including the Chief Executive should step down for the duration of this inquiry. The Executives who have been asked to step down, while the inquiry is underway, are Ms Tsholofelo Molefe, Finance Director, Dan Marokane, Group Capital and Mr Matshela Koko, Commercial and Technology”.

So, your name is not mentioned there but your position is mentioned in the preceding paragraph, that the Board has also resolved that four of its senior Executives,
20 including the Chief Executive must step down. Anyway, but you say you were not aware, personally, of this at the time they served this hearing on media discussions [indistinct]?

MR MATONA: That’s correct, so, I was not at Eskom, I didn’t have access to this, I heard – I did hear, however, that there was a media event – a media conference that

had been called by Eskom.

ADV SELEKA SC: Okay, if you would, in the same file U12, go to page 013.

MR MATONA: I'm there.

ADV SELEKA SC: This is an affidavit of Ms Tsholofelo Molefe, just for context, lets read it with the – let's read it from page 12, the bottom of page 12, it says,

10 “My suspension, though difficult to believe and understand did not come as a surprise. A day before my suspension the senior General Manager with Shared Services, Ms [indistinct 1.53.44] also known as Moletsi, came to me and informed me that Mr Matshela Koko called her and requested that she go to Melrose Arch to meet some people. At the time, we agreed that she would not go and that if Koko called her again, she would refer him to me. Later on, the same day, Mr Dan Marokane, Group Executive in Capital Division informed me that he had heard from [indistinct 1.54.17] Executive in the office of Chief Procurement Officer that he, Koko, 20 [indistinct] would be suspended the following day, 11 March at the Board meeting. Before the Board meeting commenced at 9am I went to see Matona in his office and he also informed me that he had heard from outside sources that we were going to

be suspended at the Board meeting later that day”.

Your – do you have any comment on that?

MR MATONA: I did mention that I did have a conversation with the – Tsholofelo it would seem to me that it was actually on the 11th so it would not have been before the 11th, so I had no idea of what was going on before this but what - I remember getting a call from a friend of mine who seemed to have been aware that there was something going on at that point and asked me, what exactly is going
10 on at the time. So, it may not – I may not have been as precise about suspensions as is indicated here by [indistinct 1.55.56] but we did talk about something was cooking on that day.

ADV SELEKA SC: Yes, are you – do you think you knew prior to the meeting of the 11th that you were, and other Executives were going to be suspended?

MR MATONA: Not prior to the day of the suspension itself.

ADV SELEKA SC: Oh okay.

MR MATONA: But, you know, the events of that week,
20 starting on the Sunday, you know, did look like something was brewing which I couldn't quite tell you the character of and where it was going to end. There was a – it was an awkward meeting in terms of the environment of the company and the governance of the company.

ADV SELEKA SC: But you can't say that the suspension

came to your attention?

MR MATONA: No.

ADV SELEKA SC: Okay, so I see Zulu is referring to interactions that she was having, you know, with her fellow what do you call it, [indistinct].

MR MATONA: No that's correct ja.

ADV SELEKA SC: Because she doesn't say that you were contacted.

MR MATONA: Ja.

10 **ADV SELEKA SC**: That's fine, that's all there, and when then, did you leave Eskom, the separation agreement is with effect from which date can you confirm?

MR MATONA: From the 31st of May.

ADV SELEKA SC: 31 May 2015?

MR MATONA: 2015 ja.

ADV SELEKA SC: Now we see in your affidavit, which is on page 21 now that you relate an incident there meeting with Mr Jacob Zuma, can you relay what happened, how does this come about?

20 **MR MATONA**: So about the things which I tried to do, I still believed that what had been done, what had happened at Eskom was so wrong that I – somehow I thought that there could be some – there could be some – there could be currently a political intervention to prevent – to stop that sort of thing, injustice if I may use that word, you

know, and so I tried to talk to – I requested to meet the Deputy President at the time who was the Chairperson – who I had also had tried to get an audience with the President as it were because, you know, I knew him, I knew him from way back...[intervenes].

ADV SELEKA SC: Who the President?

MR MATONA: The President.

ADV SELEKA SC: Mr Jacob Zuma?

MR MATONA: Mr Jacob Zuma yes. So, we had personal
10 acquaintance so he knew me that way, so I thought that I could turn to him, you know, for his intervention in this but I did not succeed to get an audience with the President I'd requested.

ADV SELEKA SC: Can I ask you a question, just there, we understand from Mr Matsosi that his mandate came from the President to do the inquiry, to have the Executives suspended, were you aware that, that was the position?

MR MATONA: I'm aware that's one of the things that he said in the sequence to the suspension, I think I read it in
20 the newspapers that eventually that is what he said, that the President – he got the instruction from the President. I can't tell you – it's possible that when I picked that up it was after I had tried to reach out to the President and I didn't get much success in getting an audience with the President because there was a certain window within which

I had to say, well look, if this – if there's no intervention, if I'm not able to get someone to intervene on this then I'm on my own and the only recourse I have is that I need advice which is when I then proceeded to take – to institute an urgent challenge.

ADV SELEKA SC: So, this would have been after your suspension but before you go to the Labour Court?

MR MATONA: Before the Labour Court, yes.

ADV SELEKA SC: Okay. So, what did you do by trying to
10 get hold of the or reach to anyone, is it telephone?

MR MATONA: No, I called his office, yes I called his office and requested that I'd like to see him, I also, you know, people that know him, I asked them to assist me to get to get an audience because everybody was outraged, you know. People felt that, what's this, how can this be allowed to occur but I didn't, didn't meet with him, of course I proceeded with legal action and then end of May the whole thing, almost kind of, you can say, you know ends so my issues, my battle, my fight with Eskom ends, I
20 move on and it was an extremely difficult time because I had not prepared to find myself in that position where I [indistinct] where to from here, you know and in fact I was not even emotionally ready to even contemplate taking up the appointment [indistinct] I just needed to create some distance between that episode and what next was going to

happen in my life, and then out of the blue I got a call from the President's office to say that the President would like to meet you, are you available and I said to the lady, if the President calls I'll come.

Then the meeting was arranged soon after that call, it could have been a day or so later, I'm not too precise of the dates but I went to see him at his residence.

ADV SELEKA SC: Where?

MR MATONA: In Mahlamba Ndlovu, I think it was
10 Mahlamba Ndlovu yes, his residence.

ADV SELEKA SC: What I'm asking is, we've heard about the residence in Pretoria, residence in Durban.

MR MATONA: Oh, okay so I'm talking about the one in Pretoria, it's the official residence.

ADV SELEKA SC: Yes, okay.

MR MATONA: Yes, the official residence.

ADV SELEKA SC: Okay.

MR MATONA: So I – so he walked in and asked how I was
20 doing and I said, Mr President, okay and – he cracked the joke just to break the ice, you know, he laughs a lot but then eventually we got into business and his question was, so what's going on with my life, what am I doing?

ADV SELEKA SC: I see you say this was in the early afternoon?

MR MATONA: Ja I had to wait for a long time – I had to

wait for him to finish, I think, in other meetings. So, he then saw me and I said to him, look I'm still at home, I've got no other thing that's keeping me busy and so on and then he said, ja, you know, that thing that happened at Eskom by the way had nothing to do with you, it's not a reflection on you, you got caught in a [indistinct] you know. So, it was an engagement – a meeting with the President where I didn't know what he was going to talk about and I couldn't prepare, you know because I had not been told,
10 specifically what he wanted to talk to me about so I took it as it was coming at me and then he said, he would encourage me so they still you know they had high regard for me, in Government has high regard for you and that type of thing and therefore we don't want to lose – we don't want your services to be lost to the public service, so, we will encourage you to think about coming back to the public service. So, ja I remember I left and I – as I was driving back I was – there was a bit of turmoil, you know because ...[intervenes].

20 **ADV SELEKA SC**: You didn't [indistinct].

MR MATONA: [Laughter] no fortunately I didn't but ja I went back and I was like, I don't know how to feel about this, you know, I don't know if I should be happy or not, you know but let me think about it and allowed myself time to think about it because it's kind of a moral time because

– the one point which was a pain for me was that I never thought that I could have a fall out with the State that I accept, you know I thought that things would end that way that my career would end that way that hurt me a great deal and in a sense somehow it was – one of the things I thought about was that look, whatever happens it's important that in the end that it be known that I kind of had a quarrel with the State so anything that puts pay to that you know, I will consider you know but then he said to me,
10 ja okay it's fine I figured that he just wanted – at that point he was just trying to establish where I'm at.

ADV SELEKA SC: To your – sorry I have – I wanted to ask you this question before I go there. Did you understand him, what he meant when he said, your suspension is not a reflection on your character, you were simply caught in the mix or in the middle of a [indistinct], did you understand what he meant?

MR MATONA: I didn't, you know, I didn't, you know, part of what I saw was that he was in a rush so this was not
20 going to be a long discussion and I didn't really have an opportunity to ask, you know. I just formed images of what he could be talking about as he was talking because, you know, Eskom was going through turmoil, it's the only way I can describe that – the window, the five month window that I was exposed to that place it was a turmoil, it was a

turmoil on many levels because it was a turmoil in the governance in the governance of space it was a turmoil financially and operationally, it was one of the most intense experiences – professional experiences I've ever been exposed to the way things are just coming at you. So, his description of spaghetti and what I feel I'd just gone through, you know, there was a resonance as it were, you know, there was no specific kind of meaning, you know, that I could derive from that sort of language that he used

10 at the time ja.

ADV SELEKA SC: Okay, I see that you say ...[indistinct] page 22, paragraph 55, 22, 55.

MR MATONA: Ja.

ADV SELEKA SC: The very last sentence is he referring to the President, Jacob Zuma, 55.

MR MATONA: Sorry, which page again?

ADV SELEKA SC: Page 22.

MR MATONA: 22, ja.

ADV SELEKA SC: I am not reading the zero.

20 **MR MATONA:** Ja, ja, I have established that yes.

ADV SELEKA SC: Page 55, so the very last sentence it is a he, which means he concluded by saying he will contact me again subsequently in due course but that did not happen?

MR MATONA: Ja. So as I said you know it appears like

this was first established where I am entering and then he said ja okay alright look I will call you again and we will have another chat.

ADV SELEKA SC: When you say you knew him from when – are you saying that you knew that as the President at the time?

MR MATONA: No I knew him as my principal if you like at work.

ADV SELEKA SC: At work?

10 **MR MATONA:** Ja, ja, so just to keep giving him the service, so when he was Deputy President and I was still, I was then in the Department of Trade & Industry and I was responsible for International Trade issues, I would be on his, you know he would some international work so I would be part of that, of his delegation.

ADV SELEKA SC: So you knew him in the work environment?

MR MATONA: I knew him in the work environment yes, ja, you know and you know whenever, when he became
20 President and just out of the – my tenure, my long ten year service I would get, he would then ask me for my advice on various issues and I would go and have a chat with him about you know about ...[indistinct] of government and ...[indistinct] so you know it would be that sort of engagement, which I have had with previous presidents as

well.

ADV SELEKA SC: Ja, okay ...[indistinct – microphone off or faulty] I did not have any discussions with the President at his involvement in my suspension, all the reasons behind the suspension, ...[indistinct] the manner in which I was treated in terms of my suspension. I did not discuss with the President whether he had any hand in my suspension or the reasons thereof.

MR MATONA: Yes, that is correct.

10 **ADV SELEKA SC:** Is there, what I want an answer is, is there a reason why you couldn't cross that ...[indistinct]

MR MATONA: Is there a reason why – I couldn't hear?

ADV SELEKA SC: You couldn't cross that question, you didn't get to ask him, this is about ...[indistinct] executors is whether you were involved in my suspension, what are the reasons why I was suspended? What do you mean by I got caught in the middle of spaghetti, or there's no particular reason.

MR MATONA: There is no particular reason and one of
20 which is the fact that to my recollection the President had issued a statement denying that he was involved with the suspensions, I still remember that, definitely that part, but look you know the truth – the truth of the matter was that it – there was a conspiracy, you know there's this whole thing in the way it unfolded suggested that there had been a

conspiracy kind of – that also kind of came up outside of Eskom and to that extent could have involved any number of parties you know. It is difficult to speculate, it is also – so I think in a sense what and when after you know things was coming from an inquiry, the Eskom inquiry everything I had to kind of fit in, it become clear now a lot of the resignations resonated with that spirit ...[indistinct].

ADV SELEKA SC: Did you come to learn about the Dentons report?

10 **MR MATONA:** Yes, so the Dentons report is ...[intervenes]

ADV SELEKA SC: That he didn't find any wrongdoing on the part of the executives.

MR MATONA: Yes, that was the – I was surprised that because I thought having – I was expecting to be interviewed by Dentons, remember I had been there several, we moved from the situation but I think then executives I would contacted to make an input into the enquiry when it does happen, but I was never confronted and I have to say I never even got sent a copy.

20 **ADV SELEKA SC:** Tell me in regard to your settlement, to settle the matter ultimately did you and Eskom agree on the media statement to be released?

MR MATONA: Yes, we did ja.

ADV SELEKA SC: Was it released?

MR MATONA: I never thought to check.

ADV SELEKA SC: When you saw that statement, as a draft.

MR MATONA: I was shown a statement as a draft and I think I made one or two comments to it but it is a good question, I took it in good faith that it would be released so I haven't really pursued this.

ADV SELEKA SC: Well in the case of the Federal Executive ...[indistinct] I mean your statement that was released, but that's in ...[indistinct]

10 **MR MATONA:** Ja.

ADV SELEKA SC: You said that ...[indistinct] was never suspected of any negligence, misconduct or wrongdoing.

MR MATONA: Ja, I think there was wording like that also in mine, ja, in mine.

ADV SELEKA SC: I want us to take a short adjournment and then we will do the last segment, so we will adjourn what is the time now?

REGISTRAR: Twenty five past four.

ADV SELEKA SC: Then let's come back at twenty to five.

20 We adjourn.

SESSION ADJOURNS

SESSION RESUMES

ADV SELEKA SC: Thank you, we are proceeding, the time now is 16:35, thank you. Mr Matona you are still under oath. Still in your bundle, U13, from about 13 at

page 641, now this is I am going to be referring to certain paragraphs in a statement made by Mr Matshela Koko for the Parliamentary Portfolio Committee. Let me start on page 47, paragraph 131, Mr Koko writes:

“During my tenure as Group Executive, Technology and Commercial, I was involved in disciplinary proceedings against three executives being Mr Sam Lehare, Willie Majola and Mabisela ...[indistinct]. Mr Sam Lehare’s position was that of Chief Information Officer, he was well ...[indistinct], competent and based on personal ...[indistinct]. He, I think was a very good friend of mine within the Eskom employment context and, the next page, as Tshediso Matona at the time the Group Chief Executive had received a letter of employment from Mr Mongesi Tsotsi, the Chairman of the Executive Committee, Tender Committee, known as Ex ...[indistinct].”

Alleging that Mr Lehare had not complied with Eskom’s prescribed commercial procedures, the letter dated 13 November 2013 could that be a mistake, because you were not at Eskom at the time.

MR MATONA: Mmm, ja it is a mistake, that was, I think it wants to say 2014, if it is 2014 it is – it will be close to correct but I, ja I vary in the period, ja it sounds like about

right ja.

ADV SELEKA SC: No, but I suppose the question is before we go any further whether you did in fact receive a letter complaining along the lines Mr Koko has said here?

MR MATONA: Yes I did receive the letter from Mr Tsotsi and I refer to that in my affidavit, yes.

ADV SELEKA SC: Let's hear those ...[indistinct] and he then says Mr Matona handed it to me, he asked me to address the complaint and to take it up with Eskom's
10 Industrial Relations Department. I did so and the representatives ...[indistinct] and requested that pending the investigation of the complaint by the department Mr Lehare should be suspended, I on that basis did suspend Mr Lehare. Okay is that count correct that you took the letter, you handed it over to him, to Mr Koko, then you asked, he asked me to address the complaint and to take it up with Eskom's Industrial Relations Department. I did so and the representatives of that department requested that pending the investigation Mr Lehare should be suspended.
20 So you did give him the letter Mr Matona?

MR MATONA: No, that is not how it actually unfolded, so I got this letter, you know from Mr Tsotsi.

ADV SELEKA SC: Yes.

MR MATONA: And I then, when you get a letter like that you don't sit on it, you're ...[indistinct] something to

happen, and I the best place to go to is HR, so my next instinctive is to say this is an HR matter I must proceed on the basis of HR advice. So the one step that is missing in this version is the fact that I am the one who activated HR, Ms Elsie Labule. I called her and I said listen I have got this letter, please have a look at it and assess it and advise.

She went away for a couple of days and then came back and said to me look you know there are matters here
10 that Mr Lehare should answer to, however I will proceed to take it up with his supervisor, in this case being Mr Gogo. I did not have anything to do with that letter ...[indistinct] me myself ...[indistinct]. I did hear that you know Sam was subsequently suspended arising from this, but by that stage it was just for my information you know.

ADV SELEKA SC: Well I think he is responding to ...[indistinct] as I can see from here to allegations made by Ms Bonita Klein, if you look at page 47 of his statement there's a heading ...[indistinct] on the page.

20 **MR MATONA:** Mmm, ja.

ADV SELEKA SC: He seems to be addressing what Bonita Klein, might have said. So let's go to these other paragraphs he has mentioned three persons there, Sam Lehare, Ray Majola and then Mamesela Sika Simbi and that one we think that from page – let's see 49, ja, just to

get – ja page 49, paragraph 27, the preceding paragraph has to do with Mr Majola and it relates to him, 27 says:

“In regard to the disciplinary action taken against Mr Sika Simbi I did play a decisive role. The context was that Mr Tsotsi, then the Chairman of the Eskom Board came to see me during or about June 2014 to request that I should approve payment of a sum of some R69million on the basis of invoices that a Japanese company ...[indistinct] rendered to Eskom in respect of transformers that they allegedly manufactured for Eskom, that Eskom had not taken delivery of. The issue was that Eskom had never contracted with Sumithomo for the manufacture of the transformers or issued a purchase order for the supply of it. My staff in the commercial division was as a result ...[indistinct] to process any payment to Sumithomo . I told Mr ...[indistinct] immediately that I do not recommend or approve any payment to Sumithomo for equipment that Eskom did not contract and issue a purchase order. After engaging that I was not going to intervene with this Sumithomo request for payment had to be dealt with appropriately in terms of the prescribed procedures.”

So he says Mr Tsotsi was not happy with his response at

the end of paragraph 139,. Paragraph 140 he says:

“It subsequently came to my attention that despite the fact that no purchase order had been issued to Sumithomo ...[indistinct] supply of the transformers Mr Sika Simbi played an active part to procure that a letter be sent to Mr Tsotsi in his capacity as the Chairman of the Eskom Board. So Sumithomo Corporation stated that Eskom will pay for the transformers. Such a letter being issued by the
10 Chairman was irregular for a host of reasons and not only that no contract existed or purchase order and the letter went out without the matter having been placed before the relevant committee.”

141:

“In these circumstances I did insist that disciplinary action taken against Mr Sika Simbi, he was a result suspended in March 2015. A disciplinary hearing was convened towards the end of 2015 under the chairmanship of an independent chairperson Andre
20 Katz, of ...[indistinct] he found Mr Sika Simbi guilty of misconduct.”

Then it touches the finding and it says – he later recommended Mr Sika Simbi’s dismissal which recommendation I accepted and effected. Paragraph 142:

“The matter however had adverse consequences for

me because of my resisting Mr Tsotsi's attempts to ...[indistinct] in a manner that was not compatible with Eskom's policies and procedures. While Mr Sika Simbi was on suspension on Sunday 8 March 2015 Mr Tshediso Matona, the CGE, spoke to me, he told me that he had been instructed by the Chairman, Mr Tsotsi, that Sika Simbi had to be unsuspending. I told Mr Matona that there were good reasons for Mr Sika Simbi's ...[indistinct] facing disciplinary proceedings and informed him of what it was it was all about. I conveyed that I was not going to take action to unsuspend Mr Sika Simbi. Mr Matona then informed me that he would then be suspended. My response was that there was no reason whatsoever for my being suspended and I was in any event not going to succumb to any threats in this regard ...[indistinct] in my Executive Chairman. It was this event that led to my and probably Mr Matona's suspension on 11 March 2015, engineered by Mr Tsotsi supposedly to allow Dentons to conduct an unfettered investigation."

Well your comment on paragraph 152 Mr Matona that you spoke with him on Sunday 8 March 2013 and you told him that the Chairperson Mr Tsotsi had said Mr Sika Simbi suspension should be reversed, or should I use the words

should be unsuspending.

MR MATONA: Mmm. Well I recall having a meeting with Mr Matshela, it was in our offices, actually he was in my office at Eskom, so it wouldn't happen on a Sunday, so I think the issue of ...[indistinct] we did work at Eskom on weekends but it is unlikely that we would it would be on a Sunday when I met with Matshela over this matter.

ADV SELEKA SC: Can I ask you, I think the first point here to deal with is whether you had been told by Mr Tsotsi
10 to tell him to reverse the suspension?

MR MATONA: Yes, so Mr Tsotsi was very unhappy and I think there's a broader context there as time went on I realised that there was a tension in that relationship, it just I see that this matter had been – goes back to June so what is it – I saw a date that surprised me, it is the first time that I realise that this matter had been coming that long way as it appears, but Mr Tsotsi had called me, he said to me hey you know this fellow, Matshela Koko, is out of order, and he is – he is running amok and he is a bit of
20 a law unto himself. I was not aware at that stage that Sika Simbi had been suspended so I heard it from Mr Tsotsi to say you know now he has done this thing, he has suspended Sika Simbi and he is just up to no good.

So it appeared that they had interacted but I wasn't there, you know it looks like they had interacted, and so he

was like almost coming to me to involve me you know in the whole matter as it were.

I – he did not, it seems like what is being suggested that he threatened suspension.

ADV SELEKA SC: That he what?

MR MATONA: That he threatened to suspend, he threatened that there would be consequences. I don't recall that, I do recall he was angry, Mr Tsotsi, but I don't recall that he went so far as to say look you know if you
10 are going – you are going to be suspended. He did want however, because he thought he – he said this suspension is baseless and so on and it should be reversed.

ADV SELEKA SC: So when he spoke to Mr Koko did he explain to him the reasons for the suspension ...[indistinct]

MR MATONA: Ja, so I listened to Tsotsi, so I said to him look I will have a chat with Matshela to find out what Tsotsi wants, so now I have the conversation with Matshela, and he claimed, because I may have told him what the matter is about, because I remember that he came with a letter and
20 said to me hey this is what ...[indistinct] has done.

ADV SELEKA SC: Who is that – let's look for the letter?

MR MATONA: Mr Koko, Koko comes to me, we are going to talk about this matter, so he comes with a letter and the letter is the one that ...[indistinct] for Mr Tsotsi's signature. I recognised, I was already familiar with this and I could

see that actually this is – that Zola’s signature in this letter and I must say without having gotten into the merits of the issues, without even having had the full story of what had happened I just ...[indistinct] a chairman can write a letter to a company because that - especially over a contract or procurement issues you know, so the letter just kind of didn’t ...[indistinct] you know what I would expect towards my understanding of corporate governance, but anyway so he then said look this letter commits Eskom to payment
10 where there is no agreement, there’s no contract and it had to do with big transformers as it were.

Of course I did convey to Mr Koko the fact that Mr Tsotsi was very, very unhappy with the situation but having heard his explanation that there is no contract, he established, I don’t know how, but he established that Sika Simbi a letter that Mr Tsotsi signed had been drafted by Mr Sika Simbi which was an irregular conduct or misconduct as far as this is concerned and based on all of that had proceeded to suspend Mr Sika Simbi.

20 **ADV SELEKA SC:** Yes.

MR MATONA: My take was that this matter is much more complex than I would expect because this other part of the letter you know was not something I was aware of, because he had not ...[indistinct] so I realised this is a much more serious matter and therefore it is not, it is not

straightforward kind of get Matshela to unsuspend Sika Simbi so I said to him hey look it is fine, I have to get back to the Chair because you know the information that he – it is quite serious, there is no contract and therefore the letter is irregular, there is an exposure, an exposure has been created for the company, an undue exposure, financial exposure has been created for the company so we had a conversation.

Well I was going to say I never got the chance to go
10 back to Tsotsi and ...[intervenes]

ADV SELEKA SC: ...[Indistinct] that's what I was going to ask you.

MR MATONA: Ja, no I never got a chance, I don't remember how soon after that – if this was the payment it is kind of you know close to when I got suspended, right, the actual dates to be honest with you I can't confirm the actual dates but ...

ADV SELEKA SC: Ja, did you say you had the chance to put ...[indistinct] of that link.

20 **MR MATONA:** No. No, no I saw the letter but Matshela kept it, I didn't have a copy.

ADV SELEKA SC: I see. So Mr Tsotsi I suppose will have to deal with this and so on.

MR MATONA: Say again.

ADV SELEKA SC: I say I suppose Mr Tsotsi then will

have to deal with himself because it was not you committing here.

MR MATONA: That's correct.

ADV SELEKA SC: To payment of the transformers, or the service, because Mr Tsotsi ...[indistinct]

MR MATONA: Ja, no I mean it was a serious, I mean I don't know if you know how it all ended up but you know he had made a commitment, there was no contract, obviously if there is no contract then you know Eskom had a legal
10 defence but you know there was a problem. There was a real problem there.

And it is a kind, so as I say there were tensions already between Koko and Tsotsi so it – if Koko says that in his view, as he does in his affidavit, the relationship with Tsotsi, the state of his relationship with Tsotsi, would have played a fact or the factor, the reason or his suspension. Then I can see that, but I don't recall having been threatened of a suspension by Mr Tsotsi but I mean I made ...[intervenens]

20 **ADV SELEKA SC**: No let me read what this statement says because I also don't understand what he is saying. You understand him to be saying you threatened Mr Koko Mr Koko said you threatened him with suspension, is that how you understand it?

MR MATONA: Yes, no, ja, I thought he says that I was

trying influence him to unsuspend because he did not do nothing and if he doesn't unsuspend then he will be suspended, him and I will be upset, this is how I understand him to be saying..

ADV SELEKA SC: Oh, I see, I see.

MR MATONA: You see.

ADV SELEKA SC: Oh, let me read that paragraph 42 on the matter – so he says well Mr Sika Simbi was on suspension and on Sunday 8 March Mr Tshediso Matona
10 the CG spoke to me. He told me that he had been instructed by the Chairman Mr Tsotsi that Mr Sika Simbi had to be unsuspended. Were you instructed?

MR MATONA: No.

ADV SELEKA SC: What would you call what Mr Tsotsi said to you?

MR MATONA: Well you see I couldn't – I did not suspend Mr Sika Simbi so I couldn't unsuspend him.

ADV SELEKA SC: Yes, no I understand that. That's alright but he is coming to you, because it seems to me
20 that you have been told – ja he had – okay I think I understand what you are saying.

MR MATONA: Ja, so I ...[intervenes]

ADV SELEKA SC: ...[Indistinct]

MR MATONA: I couldn't unsuspend Mr Sika Simbi, what I could do is, which I thought Mr Tsotsi was asking me to do

to say you know have a discussion with my Chair because he is out of order.

ADV SELEKA SC: Yes, so Mr Koko says I told Mr Matona that there were good reasons for Mr Sika Simbi's facing disciplinary proceedings and I informed him of what it was all about.

MR MATONA: I confirm that, definitely yes.

ADV SELEKA SC: I conveyed that I was not going to take action to unsuspend Mr Sika Simbi, Mr Matona then
10 informed that he could then be suspended.

MR MATONA: That we, that we ...

ADV SELEKA SC: Or that we.

MR MATONA: Yes, that we would then be suspended.

ADV SELEKA SC: My response was that there was no reason whatsoever for my being suspended as a chair, I was in any event not going to succumb to any threats I see.

MR MATONA: Ja, no I kind of you know I was trying to exercise – what is that principle, so I hear what you are
20 saying, let me go and hear what the other side is saying and ...[indistinct] the other side I realised that mmm, this is a tall order to have – to get Mr Sika Simbi unsuspended given the issues is a tall order, and if anything in fact the Chair seems to have created a financial exposure for the company.

ADV SELEKA SC: Yes. Did you utter those words that then we are going to be suspended?

MR MATONA: No, no. Look given that Mr Tsotsi was upset I mean I was going to have to deal with that, I was going to have to deal with the fact that listen I can't do this thing and you know my non-delivery of the outcome you are looking for might have obviously consequences for our relationship, because he felt quite strongly about it, he was very upset.

10 **ADV SELEKA SC:** Mr Tsotsi?

MR MATONA: Mr Tsotsi ja.

ADV SELEKA SC: But you say you never got a chance to go back to him.

MR MATONA: No.

ADV SELEKA SC: Thank you, we are done. Thank you. Mr Matona, I think ...[indistinct] that brings us to the end of my questions to you. I thank you very much. As I have explained at commencement of your testimony the transcript of these proceedings will be made and it will be
20 part of the evidence you are presenting before this Commission. I have been – well we have made a decision to recall you to the public hearings is it on – the 11th of September 2020.

MR MATONA: Is it the 11th or the 8th?

ADV SELEKA SC: The 8th, sorry, the 8th, so then there's

– is that a Tuesday? That date is incorrect, the date of the 8th, somebody else is coming there, so we had to make it a different date, but in the same week. But what ...[indistinct] then your public hearing session will be very short, we will take this recording, transcribe it and the bundle that you have, present it before the DCJ as evidence, you will confirm but that is your evidence and ...[indistinct] and the DCJ may want you to address him on certain points relating to this establishment and we will
10 deal with all those things that may interest him and that will be it.

Now we are going to adjourn, well pause, adjourn – what time is it, is it ten past five.

MR MATONA: Thank you.

SESSION ADJOURNED