

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

26 APRIL 2021

DAY 382



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 26 APRIL 2021

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning Chairperson.

CHAIRPERSON: Are you ready?

ADV MYBURGH SC: Yes we are.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Chairperson as you know today has been scheduled for the continuation of Mr Gama's
10 evidence. He last gave evidence I think it was on the 11 March this year; he is here.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And ready to take the oath.

CHAIRPERSON: Okay please administer the oath or affirmation. Good morning Mr Gama.

MR GAMA: Good morning DCJ.

CHAIRPERSON: Thank you.

REGISTRAR: Please state your full names for the record.

MR GAMA: Siyabonga Innocent Gama.

20 **REGISTRAR:** Do you have any objections to taking the prescribed oath?

MR GAMA: No.

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

MR GAMA: Yes.

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

MR GAMA: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you very much and thank you for coming back Mr Gama to assist the commission and availing yourself.

10 **MR GAMA:** Thank you Chair.

CHAIRPERSON: Thank you.

ADV MYBURGH SC: Chairperson the documents that are of particular relevance to Mr Gama's evidence are firstly and principally Bundle 7 Transnet Bundle 7 Exhibit BB28 that is Mr Gama's exhibit and then we will also be referring to Bundle 6 that is Exhibit BB27 the Trans – the so called Transnet POI Reference Bundle.

CHAIRPERSON: Yes okay I have got – I have got both of them.

20 **ADV MYBURGH SC:** Since last ...

CHAIRPERSON: Mr Gama's legal representatives are they still the same?

ADV MYBURGH SC: Yes and they are present.

CHAIRPERSON: Okay alright. For the record Mr Gama is still represented by the same legal representatives. Thank

you. Okay.

ADV MYBURGH SC: Chairperson since the last sitting Mr Gama has provided us with two additional affidavits. He – one of them is contained towards the end of Exhibit 28 the other one was given to us this morning. We have hard copies and at the appropriate time I might ask you to – to introduce that into evidence. We hope maybe at tea times that we can formally get it paginated and added to the bundle. So for present purposes I would like simply to add
10 Mr Gama's – an ultimate affidavit.

Mr Gama could I ask you please to turn to page 250.130. Chairperson the documentation last time went up to page 250. The pagination of the documents that followed are 250.1 and further so not ideal but it was caused by the fact that there is another exhibit that starts at page 251.

CHAIRPERSON: Yes, no that is fine. So the page that you have asked us to go to now is 200 and?

ADV MYBURGH SC: 250.130.

20 **CHAIRPERSON:** Okay.

ADV MYBURGH SC: Are you there Mr Gama?

MR GAMA: Almost. Yes I have got it.

ADV MYBURGH SC: Mr Gama there you will find the commencement of your affidavit that runs up until page 250.175 and then includes a series of annexures which run

from point 176 all the way to point 257.

MR GAMA: Yes.

ADV MYBURGH SC: Do you confirm that?

MR GAMA: I confirm that.

ADV MYBURGH SC: If I could take you back please to page 250.175 do you confirm that you depose to this affidavit?

MR GAMA: Yes I do.

ADV MYBURGH SC: On the 18th of March 2021 and do
10 you confirm the truth and accuracy of this affidavit

MR GAMA: Yes I do.

CHAIRPERSON: Page 250.175 Mr Myburgh being the last page of his affidavit?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Of the affidavit that starts at page 250.130?

ADV MYBURGH SC: Yes and if I could ask you...

CHAIRPERSON: Is that correct?

ADV MYBURGH SC: If I could ask you please to enter that
20 into evidence Chairperson marked Exhibit BB28.5.13.

CHAIRPERSON: The affidavit of Mr Siyabonga Innocent Gama that starts at page 250.130 is admitted as an exhibit and will be marked as Exhibit BB28.5.13.

ADV MYBURGH SC: Thank you Chairperson. Chairperson subject to your direction we have agreed with our learned

friends that the proceedings will commence this morning with Mr Gama reading the balance of his initial opening statement. We have looked at that; we have no objection to him doing so.

CHAIRPERSON: Okay.

ADV MYBURGH SC: You will – you will recall that previously...

CHAIRPERSON: Oh yes, yes.

ADV MYBURGH SC: There was a ruling where he dealt
10 with part of it and just the evidence of the witnesses that he was going to deal with on that day.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So Mr Gama had dealt with the first five and a half pages of his opening statement. I assume that he would want to pick up there and perhaps I could direct your attention please.

CHAIRPERSON: Yes.

ADV MYBURGH SC: To page 250.6. I understand that Mr Gama would like to carry on reading into the record his
20 opening statement. From there he did previously deal with the evidence of Mr Todd and also the conclusion.

Chairperson Mr Gama has then prepared a further opening statement which seems to me to deal predominately with procedural matters. He wants to read that opening statement after he has dealt with this.

We were provided with their opening statement this morning we have got hard copies and perhaps at the appropriate time I can hand it up to you and we will then find a place for it in the bundle.

CHAIRPERSON: Okay alright. Well the previous one I have seen so if there is any new one I would need to see it first.

ADV MYBURGH SC: I can then hand it up to you if I may?

CHAIRPERSON: Ja. Okay. But that one can be dealt with
10 later not now is that right?

ADV MYBURGH SC: Well I think that subject to your direction as I have it and I have just squizzed through it it seems to deal with predominantly procedural issues. Mr Gama has certain complaints that he wishes to level against the legal team which is of course of right and he also appears to take issue Chairperson with the ruling that you made.

CHAIRPERSON: Ja.

ADV MYBURGH SC: In relation to proceedings on Friday.

20 **CHAIRPERSON:** Oh okay.

ADV MYBURGH SC: To the best of my knowledge he seems to deal with those two things broadly.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So we do not have any difficulty – it is not a case of someone being implicated or ...

CHAIRPERSON: Yes.

ADV MYBURGH SC: Anything of the sort. From the legal team's point of view we would have no difficulty.

CHAIRPERSON: Yes.

ADV MYBURGH SC: With Mr Gama dealing with that subject to your direction.

CHAIRPERSON: Ja. Well maybe Mr Gama if it is fine with you I do not think I would have any difficulty to you articulating your concerns but I would like just to read it in
10 advance. Can I give you a chance to deal with this sometime during the course of the day?

MR GAMA: That is fine Chair.

CHAIRPERSON: Would that be fine? When I have had a look at it. But the previous one you can deal with it now if you would like to read it.

MR GAMA: Thank you very much. Thank you very much Chairperson.

As you know I had started with my opening statement on the 11th of March. It should not be construed
20 that I have been reading it since then because then it might become the longest opening statement. I do not want to be in (talking over one another).

CHAIRPERSON: Well you can go into the relevant books of record.

MR GAMA: No thank you very much. I think when we

dealt with it I had indicated that there were various testimonies which were provided by witnesses who have sought to implicate me and to highlight some of the more glaring discrepancies, inconsistencies and improbabilities and falsities I then continue with my statement at page 6 of the statement under heading number 8.

I start with the statement of Popo Molefe and his – his testimony. From Popo Molefe's testimony the commission has learnt how my appointment at Transnet
10 allegedly occurred.

According to Molefe my appointment ostensibly occurred due to the influence of Gigaba. This allegation I believe has been purposed to fit the state capture narrative.

I would like to explain again that as indicated in my affidavit deposed to concerning my history at Transnet I have worked through the ranks and was ultimately appointed as CEO through hard work and dedication and not through the influence and hand of Gigaba as Mr Popo
20 Molefe would have you to believe.

Mr Gigaba was appointed as the Minister of Public Enterprises in 2010. At that time I had already worked at Transnet for more than sixteen years.

The Minister is only ever involved in board appointments and so it is hard to understand how Popo

Molefe could reach the conclusion that Mr Gigaba had a hand in my appointment as a CEO at a division of Transnet which is below board level.

It must therefore be recorded that this is false.

Popo Molefe admitted in his oral testimony under oath that the contents of what he had stated was not within his own personal knowledge. I am dealing there with the Transcript of his testimony to the state capture commission of the 7th of May 2019 at page 6.

10 So his own viva voce testimony when he first appeared at this commission when he was being led by Advocate Paul Pretorius he however went to great lengths Chair to claim that I was one of three architects of state capture at Transnet.

He never defined or explained what an architect of state capture is or even worse the facts on which he relied for such a startling and I must say false allegation.

20 The allegation that I am one of three architects of state capture has never been even remotely substantiated by credible evidence.

On the topics of Regiments, Trillian and Nkonke I have been accused of colluding with the aforementioned entities. The truth of the matter is that each of these entities contracts were terminated by me during my tenure at Transnet.

Such terminations were based on objective evidence placed before me at that time that inter alia Transnet's continued relationship with them would bring the reputation of the SOE into disrepute.

Popo Molefe failed to make mention that the contracts with Regiments and Trillian were terminated by me with the concurrence of the board in October of 2016.

This was approximately nine months before the emergence of the now and famous June 2017 Gupta email
10 trolls that captivated the country for many months.

Terminating contracts is hardly the conduct of a person who is colluding with those said parties. Popo Molefe as non-executive Chairman of Transnet was at pains to point out to the media during October 2018 that Transnet had terminated my contract due to acts of alleged fraud, corruption and misconduct on my part.

In the pleadings with reference to the arbitration that I am having with Transnet Popo Molefe denies that Transnet terminated my employment due to misconduct.

20 The aforementioned arbitration proceedings have not been commenced. Such a turnaround points to

- a. The personal vendetta or incompetence on the part of the board and Popo Molefe or they are dishonest.

Following my dismissal and in a bid to gather evidence that he ought to have collected before dismissing me Popo

Molefe hired a retired bishop and offered amnesty to managers at Transnet if they came forward and indicted that I had asked them to perpetrate a fraud or corruption against the company.

Significant 00:15:59 came forward as the notion of me being corrupt, its falsity that has been created by Popo Molefe and those of his ilk.

Molefe in his affidavit explained that he has initiated civil litigation against me and others at the South
10 Gauteng High Court binding me as a respondent with Regiments and Trillian entities whose contracts at Transnet I had terminated.

During his oral testimony Popo Molefe created the perception that Transnet was struggling financially during my tenure with the SOE. The truth and the facts however are very different in that during my last year at the helm of Transnet and as evidence by the facts not fiction that has routinely reports in our media Transnet remained strong financially.

20 By way of example net profit grew by 75% from R2.8 billion into 2017 to R4.9 billion in March 2018 which was against an 11.3% improvement in total revenue from R65.5 billion to R72.9 billion and an 18% improvement in operating profit from R27.6 billion to R32.5 billion.

This performance indicates that Transnet was

financially independent and did not require any subsidy or guarantee from the state.

Chairperson have the commission and the South African public been misled? What we have witnessed over the past two years at Transnet is extreme sabotage of a SOE.

The intentions are dubious and as I have pointed out before to Popo Molefe the PRASA relation of Transnet is afoot and I have given a foot note Chair in terms of what
10 I have defined as PRASA relation at Transnet.

I coined the phrase 00:18:22 to refer to the phenomenon where Popo Molefe led intensive forensic investigations leading to a state of paralysis and lack of decision making and whilst the board gives the impression of purpose it is an illusion.

The authority of executives is curtailed and the board takes decisions that ought to be taken by General Managers and the main business suffers as a result thereof.

20 In 2020 we witnessed that net profit at Transnet as as at the end of March increased by 34.9% to R3.9 billion. While this is still respectable Chair but because it could and should have been less however suggests that your observers must watch if they will not be a decline leading to a real collapse and profitability over the next three

years when the impact of 00:19:15 fully sets in.

Between 2016 and 2017 Transnet embarked on a process to create a new strategy that insulate it from low domestic growth and penetrate new markets whose growth was in excess of the state in South African domestic GDP growth.

For the year ended March 2018 Transnet announced a 75% growth a net profit of R4.9 billion against an increase of 11.3% to R72.9 billion driven by strong volume
10 growth.

All of the fundamentals tracked positively against South African GDP growth of only 0.7%. These were not the results of a struggling company. Yet in May 2019 Popo Molefe informed the commission that the new board had vetted a financial collapse of the company.

A News 24 report by Lameez Omarjee on the 7th of May 2019 which I have captured. It captures succinctly the false statement that was provided to the commission.

The evidence Chair as I have exhibited is different.
20 I quote he says:

“It was a just a matter of time before Transnet became Eskom not that we like where Eskom is it is serious, it is in serious trouble and because of that the country is in trouble.”

He then also went on to say that when the new board took over in 2018 Transnet had been on the verge of collapse. This is not a correct analysis of Transnet 00:20:53. It was dramatized; it was sensationalised to drum up support with the allegations of illegal activity that was being visited upon people such as myself and other experienced executives who were being purged at Transnet.

I have already Chair dealt with the testimony of
 10 Todd so I am going to skip that and then go to Revenue Management and Cost Containment Strategy.

I then deal with the issues of Nkonki. When Nkonki was hired some of the key projects they were tasked to look at were revenue contracts especially in the coal line and the iron ore line.

This is an area of Transnet's responsibility where established companies dominate the allocation of rail and port capacity to the detriment of emerging miners.

By way of example the most significant of these
 20 contracts is the Kumba Contract which is for the haulage of iron ore from Sishen to Saldanha. This evergreen contract arose Chair arose hastily out of the desire to eliminate an embedded derivative which arose from an 00:22:11 base pricing regime on the contract which was entered into in the late '70's.

Transnet therefore in 2005 had entered into a new 23 year contract that would expire in 2028. It rates that I even the lowest in the world per ton kilometre. The amount to less than 1 US cent per ton per kilometre or 12.8 South African cents per ton per kilometre to haul iron ore for Kumba from Sishen to Saldanha.

So for the 861 kilometre trip Kumani pays R111.00 per ton per while Assmang which is its competitor is charged at a rate of 17.3 cents per ton for the same iron
10 ore production from the Kumani mine in the Northern Cape which amounts to R140 per ton.

This represents a difference of R38 for every ton haul demonstrating a tariff that will not pass muster with our competition laws.

So in 2013 Kumba had initially agreed that its rate needed to be normalised in line with Assmang in accordance with fair business practices.

However in negotiations that we had restarted in 2018 it reported Transnet and its management under my
20 leadership to Minister Pravin Gordhan who attempting to level the playing fields with Assmang and trying to get out of an anti-competitive contract. To this day Kumba pays Transnet approximately R1 billion less per annum than what they ought to pay had its tariff been normalised in line with Assmang tariff which was normalised in 2013.

These anti-competitive behaviour in the super profits being earned by Kumba is said to be condoned until 2028. So any Transnet official who seeks to normalise this earns the wrath of the Anglo American PLC owned Kumba resources.

All efforts to renegotiate these tariffs are stone walled by Kumba. These are the environment where Kumba earns in excess of R20 billion net profit per annum at the expense of a state owned entity and to the detriment
10 of the 00:24:14 of iron ore in the country.

As an example Kumba earnings before interest, tax depreciation and amortisation for the year ended 31 December 2020 increased to a rogue – record R45.8 billion resulting in an 00:24:32 margin of 57% against 52% the previous year which is a remarkable feat indeed.

Chairperson this is the real state capture. The Transnet Kumba agreement is under competitive and exclusionary in that Anglo Kumba has captured the rail and port capacity on the iron ore line and kept out black junior
20 iron ore miners. In fact all black iron ore miners sell their iron ore to Kumba because they have no rail and port capacity all of which has been allocated to those who were in mining prior to 1994 even though mining licences have been issued in the rich iron ore area of the Northern Cape the miners do not have allocation to export manganese or

iron ore in their own names.

So if we then move on to point number 10. A new board was appointed at Transnet in May 2018. Its first order of business Chairperson in June 2018 was to accuse the Group Chief Executive of presiding over maleficence at Transnet.

My attempts to induct the board to Transnet processes, control systems, strategy and challenges and to arm the board members with the necessary information to
10 inform them even to educate them and to allay the allegations were met with huge resistance.

They were armed with no operational knowledge or adequate expertise of the company they directed. Then they set out to achieve their mandate of routing out corruption at Transnet by removing by way of nothing less than a purge the entire top layer of executive management starting with the Group Chief Executive in 2018.

They also failed to appreciate the strategy of Transnet who sought to enhance the market demands
20 strategy and future proof Transnet's existence instead they abandoned and dismantled it without attempting to understand it.

The board completed its mandate of management upheavals in June 2020. The result is that the corporate memory at Transnet has been completely erased. With

every executive with long tenure having been falsely accused, charged or exited in an attempt to bring sweeping changes by what I believe is an ill equipped board.

The pressurisation of Transnet is complete and all that South Africa needs to do is to follow very closely Transnet's future financial and operational performance observe its decline and the erosion of its contribution to the development of state.

So the real collapse Chairperson of Transnet has
10 not yet happened it is just ahead of us.

In the same submission much was made about the recovery of R618 million from China South Rail. The interphase being that this amount was improperly paid to CSR and to the new board's credit look at what is achieved – this is false and misleading.

The facts are that R618 million had been paid to CSR against an advance payment guarantee by CSR issued by a AAA rated bank. The money had been paid on the advice of international company Pricewater House
20 Coopers; it was legitimate and was intended for spares and tools preparing for locomotives that had been supplied since 2015.

This was for the MSA contract which was due to be replaced by a new MRS contract. This so called refund has now resulted in many locomotives being parked in the

system and prejudiced to saying the efficiency of the railway system.

You may have read in recent newspaper reports I just saw in the last month Transnet releasing a statement to confirm that the coal industry indicated that it was dealing with and experiencing operational problems within Transnet. The chrome industry has followed suite. The container industry the same.

The operational problems are self-inflicted
10 Chairperson and they result from not having timeously put in place a maintenance reliability system with the OEM's to have adequate spares and tools because the warranty period for the locomotives that were supplied to the coal line in 2015.

The locomotives are standing idle because there is no maintenance contract in place. The contract was cancelled by the Popo Molefe led board so that they could come and announce that they have recovered R618 million. This was done by persons who simply cannot begin to
20 understand the highly complex network and sophisticated international business which at any given time has enumerable moving parts.

Chairperson there were others such as Mohammady, Calllard and Witness number 2 who have been set up to support or compliment the narrative of alleged corruption

levelled against me at this commission.

I deny Chair in the strongest terms they are false accusations. I deal with these allegations by pointing out the many falsities in their statements in my affidavit. They all have ulterior motive and are driven by the principles to achieve a particular objective. Briefly, I deal with Francis Callard's testimony. Callard was involved in the investment case of the locomotive and was subsequently appointed by MNS at the suggestion of the
 10 Audit Committee Chairman to assist MNS in the investigation.

Callard's testimony to the Commission seems to be that of a man who felt compelled to describe all other people as being guilty of some offence or process step whilst downplaying his own involvement in matters which should have been scrutinised. While Callard seem to have most information available he was quite selective about the information he shared with the Commission and in most instances share many useless items of information.

20 Over and above that, his testimony is full innuendo conjecture and speculation. Many inferences he draws are not supported by fact but by his own rich and fertile speculative mind. It seems that Callard use his appearance at his Commission as a bid to supplement income. He currently has a claim of over R 4 million at

Transnet/MNS he claims that he did for them.

Callard also seeks to downplay his involvement in many issues and in many issues, Chair, where he claims lack of knowledge, I say he knows much more than he led on. However, he also tries to hold himself to be an expert in all things especially financial matters which he is not.

When it comes to Mohammed, his testimony and his statement. Mohammed, he tried very hard to support Pop Molefe but attempts to downplayed to evidence led so
10 that he appears to create the illusion of an objective witness. He distanced himself from events that he was intimately involved in so that he can minimise his role.

Mohammed, he was also not a credible witness before the Commission. I raise this issue as a lot has been said to you without any evidence. During my testimony today I will provide the Commission with factual evidence when I make statements.

Evidence based testimonies are important to bring the truth to the foreground. Any of the assertions
20 that are aided state capture are false and are a cunning calculation which has been carefully crafted to mislead the Commission and so deflect accountability and responsibility.

Again, I will inform the Commission through my evidence in order to reflect the true story. Witness number

2 seeks to accuse me of laundering money on behalf of the Guptas. This is false Chair. Unfortunately, I was not able to comment more on the statement as I have not been favoured with the full copy of my diary but I have dealt with aspects of it which we can deal with it later on today.

I have also requested through my legal team copies of mappings of my own vehicle and my cell phone in order to assist me in determining where I was at relevant times as to provide a proper answer.

10 Chairperson, I am delighted that we have an opportunity to address you on the matters that have been brought to the attention of the Commission and I know that you will distil the truth state of affairs from the falsities advanced before you.

I believe, Chair, that you are endowed with a desire to determine truth and to remove injustice. That you will be fair to all of us who have appeared before you and more so that those who have been unjustly accused who have been identified and defined as enemies worth to be
20 tainted and defamed without providing the Commission with actual evidence, finally have an opportunity to provide to you an honest version of events.

I thank you very much, Chair. We are now in prelude number 2 of my opening statement. The final one, we will deal with it. It is much shorter than this, once you

have had the opportunity.

CHAIRPERSON: No, thank you, Mr Gama. Well, one, what you have just finished reading is – those parts of your opening statement which you were – you did not read last time.

MR GAMA: That is correct.

CHAIRPERSON: So it is one opening statement. Now the significance why I want to emphasise that. The significance is that I have just noticed that the other one
10 that was handed up to me that we talked about earlier, the opening statement, that was handed up to me this morning is marked Second Opening Statement.

MR GAMA: Or find the remarks ...[indistinct]
...[intervenes]

CHAIRPERSON: [laughs] So I know that earlier on without reading it and without having had time to look at it, I said you could deal with it later but now what is – has crossed my mind is. I may be starting a wrong precedent if I start allowing second or first opening statements. There
20 may be third opening statements and they all take time. So, but to the extent that that statement might be dealing with Friday. Is it Friday, the 30th?

MR GAMA: Yes.

CHAIRPERSON: To the extent that you might be wishing to raise concerns about what will happen on Friday, I would

imagine that that could be articulated maybe on Friday. There is nothing wrong with articulating concerns about what will happen on Friday, labelling that as an opening statement might be a wrong label. It might just be articulating those concerns.

So in principle that is one thing. But allowing a second opening statement might be problematic. But maybe we can – you can reflect on that and sometime during the day we can see what we can do. I have – I
10 think my eye did land on some sentence here that suggests what your intentions are about Friday.

I just want to say, to affirm that I want to hear all perspectives. And I want to hear as many people as possible particularly people against whom allegations of wrongdoing have been made. But of course, we operate within certain time constraints. The only thing that has crossed my mind a few minutes ago is that with regard to Friday another option might be because in terms of time it is difficult. It is just difficult.

20 We have for this evening the application – Mr Gigaba's application in relation to Ms Magma's evidence and depending on the outcome of that application, we should or could have Ms Magma's evidence. If the Legal Team could consider whether there is a possibility that Ms Ngoma and Mr Gigaba are available

on Friday morning and if they are available on Friday morning, we could consider proceeding with your evidence into the evening which could then enable us not to lose any time because then we could right into the evening with you which is the time we would have taken on Friday morning and maybe even more.

So that if we do not finish then on Friday morning, I could hear Mr Gigaba's application and maybe Ms Magma's evidence and then hear you in the afternoon.

10 But that would depend on how the Legal Team is with that too. I think Ms Ngoma has been issued with a summons for this evening and that would depend on whether – on their availability.

So, but that is the only thing I could think of but if that does not work, I cannot see any other way of dealing with the situation. But I would allow you in due course preferable on Friday if we still have to proceed in that way to make the remarks you want to make about that point. You understand?

20 **MR GAMA:** Ja. Chairperson, all I am requesting is accommodation on this matter and if you accommodate me, as you are suggesting, there is not even a need for me to address aspects of what I believe could be constitutional rights, you know, being infringed with. So if I could then just deal with the issue of the Legal Team only.

CHAIRPERSON: Ja.

MR GAMA: So, all of us have to be accommodated.

CHAIRPERSON: No, no. I understand.

MR GAMA: ...accommodation that I am not getting from the Commission. That is a problem.

CHAIRPERSON: Ja. No, I understand that. All I would like to – understand is that there are logistical and practical difficulties. Not like one does not want to, you know, just practical. Mr Myburgh, I do not know whether
10 you wish to say anything about what crossed my mind?

ADV MYBURGH SC: I have two other possible proposals.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Maybe my learned friend and I can address you in chambers on that.

CHAIRPERSON: Yes, okay, okay.

ADV MYBURGH SC: There is – as you know, Mr Molefe is set up presently for Thursday evening.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But I am quite sure that he may be –
20 might be easier to move him than to move Mr and Ms Gigaba.

CHAIRPERSON: Yes.

ADV MYBURGH SC: The other thing which we could discuss with you, DCJ, is how deep we could go into the evening on Friday.

CHAIRPERSON: Ja, we cannot go too deep on Friday. In fact, we cannot go into the evening at all Friday and that is one of the problems.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Perhaps at teatime I can ...[intervenes]

CHAIRPERSON: Because... So what it amounts to. I mean, generally speaking, one, between one and two is
10 lunch time.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So if Mr Gama's counsel becomes available at one, it means, generally speaking, starting at two.

ADV MYBURGH SC: Sure.

CHAIRPERSON: And we cannot go beyond four. So it means just two hours. Actually, I have been considering whether on Friday if I should not ask you to talk to Mr Gama's legal team with the view to starting earlier.
20 That was even before I thought, you know, that they wanted us to start at one. So, but maybe during the tea break ...[intervenes]

ADV MYBURGH SC: Yes.

CHAIRPERSON: ...you and Mr Gama's counsel can approach me. But let us take it from there.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: Good morning, Mr Gama.

MR GAMA: Good morning, Mr Myburgh.

ADV MYBURGH SC: On the 11th of March, we have dealt with certain introductory issues, we have dealt with Mr Segang, your MBA. We have dealt with your reinstatement. We have dealt with the issue of GMS and Abelose and certain auxiliary issues.

10 I just want to before going forward to other topics, just ask you a few questions that relate to the things that we have dealt with, broadly, already. In relation to your relationships or your visits to the Saxonwold compound of the Guptas. Were you invited to the Gupta wedding?

MR GAMA: [No audible reply]

ADV MYBURGH SC: It was held, as we have it, on the 1st of May 2013.

MR GAMA: No.

20 **CHAIRPERSON:** Is the answer no?

MR GAMA: No. Sorry. Am I too far from the mic?

CHAIRPERSON: I think you were, ja.

MR GAMA: Okay.

ADV MYBURGH SC: You were not invited?

MR GAMA: No.

ADV MYBURGH SC: And then if I can take you, please, in relation to the evidence you gave about Mr Essa. Could I ask you to turn to page 52 of Exhibit BB-28, Bundle 7?

MR GAMA: [No audible reply]

ADV MYBURGH SC: You will recall that you were asked in the 10.6 about the trip, a Dubai trip in January 2016. I just want to pick up, if I may, at paragraph 32.5. This is at page 52. Are you there?

MR GAMA: Yes.

10 **ADV MYBURGH SC:** You say:

“I did not undertake a trip to Dubai during the period 18 to 24 January.

I travelled to Davos, Switzerland via Dubai on 17 January 2016 for the purposes of presenting logistics and infrastructure related papers at the World Economic Forum as part of the South African Government and Business Delegation which attended for the purposes of promoting South Africa’s interest.

20 During the evening of 22 January, I stopped over in Dubai upon my return from Davos.

After one day’s stay, I departed for Johannesburg on the morning of 24 January 2016...”

Paragraph 36.2.1:

“I arrived at and checked-in at the Oberoi Hotel in Dubai on Friday, 22 January at approximately midnight and I checked out of the hotel on 24 January 2016 at approximately at 08:30...”

So you would have checked out on the Sunday, if I have it correctly. Is that right?

MR GAMA: I do not know the date but it was the 24th of January.

10 **ADV MYBURGH SC:** I see that if Friday was the 22nd, then I assume ...[intervenes]

MR GAMA: Okay. Oh, yes.

ADV MYBURGH SC: ...the 24th was the Sunday.

MR GAMA: Ja, yes, ja. It must be Sunday.

ADV MYBURGH SC: So as I have it, you would have stayed at the Oberoi Hotel then for two nights, the Friday and Saturday night.

MR GAMA: Yes.

ADV MYBURGH SC: The next subparagraph:

20 “Whilst in Dubai, I had a brief meeting with Essa during the late afternoon on Saturday, 23 January 2016 which meeting took place at my hotel.

Essa had arranged the hotel booking on my behalf albeit that I paid for my

accommodation...”

You say in the next subparagraph:

“Our discussions were, for the most part, entered on information sharing concerning his vision to create a majority black owned management consultancy, the details of which he undertook to share with me as his plans developed into something more constructive...”

And then you go on to say:

10 “At no stage did I meet any other people...”

Can I just ask you? How did your meeting with Mr Essa come about?

MR GAMA: It came about because I was stopping over in Dubai. I think he must have called me. I cannot remember whether he knew or that I was stopping over in Dubai but he must have called me because I intended to stop over in Dubai and then he called me to say: Okay, if I stop over, it is fine.

20 I think my biggest problem when I wanted to stop over there was that my office was still arranging for hotel accommodation because I had found that when I was in Davos, what we intended to do I could not do it there. And then I thought that Dubai was actually the best place because it is in the middle of the world. Davos is more of a small town. I needed to buy a dress for a matric dance

for my daughter. So I thought Dubai would be the best place to do it.

CHAIRPERSON: And she would be very happy. I am sure that you got it outside of the country.

MR GAMA: Ja.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So you say he phoned you?

MR GAMA: Sorry?

ADV MYBURGH SC: Mr Essa phoned you?

10 **MR GAMA:** Yes.

ADV MYBURGH SC: And how did it come about then that Mr Essa arranged your hotel booking?

MR GAMA: I think in the course of my discussion, I had said to him: Look, I was not going to stop over for a long time in Dubai but because I did not have the hotel booking, I would not be able to stop over. And I think that is when he suggested that no he will book me into a hotel in Dubai itself. And that is how I got to get to this place called Oberoi Hotel.

20 **ADV MYBURGH SC:** Did you stay there before?

MR GAMA: No, I never stayed there before.

ADV MYBURGH SC: Okay. Did you ever stayed there afterwards?

MR GAMA: No, I had never. I only went there once.

ADV MYBURGH SC: And then you say your discussion,

for the most part, centred on information sharing concerning his vision to create a majority black owned management consultancy. Can you expand on that?

MR GAMA: Yes. I think from what he was indicating and I think that is where it truly and eventually came from, as I understood it later, was that he wanted to create a majority black owned management consultancy because most of the consulting houses that we have are largely international houses that are not owned by South African entities and
10 his desire was that South Africa wanted to create a majority black owned management consultancy of which he thought that if he were able to collect people from different consultancies who were black they would then create that kind of capacity to take on large consultancy assignments in the South African corporate space.

ADV MYBURGH SC: So was he talking about Trillian?

MR GAMA: I suspect that the – what do you call it – the evolution from Regiments to Trillian, I think I must have heard at some point that he may have been behind that
20 Trillian as an owner but I do not really have any facts to adduce in terms of that.

ADV MYBURGH SC: But did you discuss Trillian and Regiments?

MR GAMA: He did not have a name. Remember, he was from Regiments. So, and he was talking about this

evolution that he wanted to created this large black owned management consultancy.

ADV MYBURGH SC: So you did not discuss by name Trillian and Regiments?

MR GAMA: No, no not by name. Not by name.

ADV MYBURGH SC: By this time, did you know that Mr Essa was involved with Trillian?

MR GAMA: No, I did not know.

ADV MYBURGH SC: When did you come to learn of that?

10 **MR GAMA:** At some point, I think towards the end of 2016. Somebody, I think, in our Risk Department said to me: Look, we suspect that Mr Essa owns the majority of Trillian but it was a suspicion. I do not think he had the – I do not think she had the actual information.

ADV MYBURGH SC: Well, we ...[intervenes]

MR GAMA: She had heard it through certain people.

ADV MYBURGH SC: Mr Gama, can I – I did not get the date. What date did you say?

MR GAMA: I think it was around 2016. It was really
20 around the time that we were now considering terminating the contract between Regiments and Trillian. It must have been around September/October 2016.

ADV MYBURGH SC: Sorry? September ...[intervenes]

MR GAMA: September ...[intervenes]

CHAIRPERSON: September 2016.

MR GAMA: October 2016, thereabouts. There was that suspicion from some of our Risk people.

ADV MYBURGH SC: So just so that I can understand the context and I only have, really, one or two more questions. Just so that I understand this. Was Mr Essa suggesting that you should join this black owned management consultancy or was Mr Essa feeding you out as to if this consultancy was established would Transnet give it work or what exactly was the object of this meeting?

10 **MR GAMA:** Ja, the object of the meeting is the latter where he was saying incorporates such as Transnet. Would they be looking at majority black owned, black owned management consultancy with expertise, which would then alleviate the need to use multi-national or international entities that were probably domiciled in South Africa but registered elsewhere.

ADV MYBURGH SC: And what was your response to that?

MR GAMA: Well, he had undertaken to share with me his vision at a later date in terms of what is it that would
20 transpire. So he did not – I think it was a concept. It was conceptual at the time when we were discussing it. He was sounding me out whether we would be, you know, we would as Transnet look at such a consultancy going forward. So I had said to him when he has shaped his thoughts and his thinking around it he could come back to me.

But I also, I think, mentioned at the time that I did not really like having consultants as a general rule. In fact, by the time I had left Transnet I had established an internal consulting capability which I believe still exist to this day because it was precisely for the reason that we had relied too much on and paid too much money to consultants, external consultants. I wanted us to really just bring in consultants for the – for short periods for capabilities and information that we did not have of which
10 was specialised.

ADV MYBURGH SC: So, correct me if I am wrong, but by January 2016, Transnet had already done some business with Trillian, had it not?

MR GAMA: Yes, I think so. Ja.

ADV MYBURGH SC: And we will come later but that relates inter alia to the club loan. Correct?

MR GAMA: Yes.

ADV MYBURGH SC: And there we know that payments were made or a payment was made by – to Trillian in
20 December of 2015. Correct?

MR GAMA: Yes.

ADV MYBURGH SC: So with no mentioned made at this meeting of work that Trillian had already done for Transnet?

MR GAMA: No, no, no. There was no mention. The

predominant entity that had done some work at Transnet in that year or the years before was Regiments.

ADV MYBURGH SC: Alright. And could I take you then, please, back to page 48? And perhaps I could just ask you to have a look at your paragraph 31.3. I do not want to rehash this but I just want to put to you the evidence that Mr Singh gave in response to this paragraph, so to refresh your memory. This paragraph refers to the fact that you saw Mr Singh and Mr Essa together in Mr Singh's office in
10 July or August 2015.

Mr Essa then indicated that he would like to have a meeting with you and you said that he could get your contact details from Mr Singh. And this, essentially Mr Gama, you will recall the background how you came to visit the Saxonwold residence. Do you recall that?

MR GAMA: Yes.

ADV MYBURGH SC: It is not true, to put to you. Mr Singh says that this never happened and that it simply – you have made it up as a convenience, as he puts it, to
20 explain how it is that you came to go to the Saxonwold residence.

MR GAMA: [laughs] No, no Chair. There is no convenience or anything to do with Saxonwold in relation to this meeting. I met Mr Essa at Singh's office and I asked him to give – I asked Sing to give Essa my number

so that he could call me because he said that he wanted to have a meeting with me. So that was the long and short of it. So you never gave Mr Essa your number, he got it from Mr Singh, correct? Ja. And he subsequently called you, correct? Mr Myburgh?

ADV MYBURGH SC: Thank you. Mr Singh made the point that it could not have been in August because you will see your introduction at 31.3 says:

“In or during July/August...”

10 He says it could not have been in August because in August he had been seconded to Eskom.

MR GAMA: As I have said, I do not know the exact dates that is why I said either July/August. So if he says it could not have been August, that is fine, and if he had already gone to Eskom at that time then it means it was July.

ADV MYBURGH SC: Then it means it must have been in July?

MR GAMA: Ja.

ADV MYBURGH SC: So just to end off in relation to Mr
20 Essa. As I understand your evidence, Mr Gama, and please correct me if I am wrong, you are saying that you met Mr Essa four times. The first in 2015 as part of we might call a Regiments’ meeting ...[intervenes]

CHAIRPERSON: I am sorry, Mr Myburgh, before you go away from this particular meeting, I just want to make sure,

Mr Gama, that in regard to this meeting of Mr Salim Essa and Mr Singh where you saw Mr Essa in Mr Singh's office and you came to him, Mr Singh, are you saying you cannot be mistaken about that? You know it happened?

MR GAMA: Yes, no, I cannot be mistaken.

CHAIRPERSON: Ja, ja. And would you have any reason to falsely implicate Mr Singh in having a meeting with Mr Salim Essa in his office?

MR GAMA: No, Chair, why would I? No.

10 **CHAIRPERSON:** And you said it is not convenience, there is no convenience.

MR GAMA: No, I do not see what kind of convenience would that be.

CHAIRPERSON: Ja because he was categorical that it did not happen. Ja, okay.

MR GAMA: I did not go to that meeting because of Mr Singh it was because Mr Essa called me.

CHAIRPERSON: Yes, yes, yes.

MR GAMA: It has got nothing to do with Mr Singh.

20 **CHAIRPERSON:** Yes. Ja, you mean the meeting at Saxonwold?

MR GAMA: Yes.

CHAIRPERSON: Yes, ja. Mr Myburgh?

ADV MYBURGH SC: Thank you. So, Mr Gama, I just wanted to make sure that I have this correct, your evidence

is that you met Mr Essa four times. The first time as part of this Regiments' contingent which you deal with, this is during 2015, you deal with that at paragraph 31.2.1. The second time then in Mr Singh's office you now say that in July of 2015 then in Dubai in January of 2016 and as I recall, you say you saw him on one other occasion casually in a restaurant. Is that an accurate summary of your evidence?

MR GAMA: That is correct.

10 **ADV MYBURGH SC:** Then in relation to the things we dealt with last time, I just wanted to put to you - and an affidavit will need to be produced to this effect but we asked Transnet to search for your payment of the Eversheds' cost bill of about a million rand.

MR GAMA: Over the...?

ADV MYBURGH SC: Of the Eversheds' costs bill.

MR GAMA: Yes.

ADV MYBURGH SC: Remember you say that you paid it in December of 2009.

20 **MR GAMA:** Yes.

ADV MYBURGH SC: Transnet has not been able to find any proof of that. Do you want to comment on that?

MR GAMA: Ja, the difficulty I think that I have is that my bank could only go back 10 years, that is really the only difficulty that I have but I am aware that I paid it. In fact I

sold shares in order for me to be able to pay. The difficulty is that the bank has indicated that they can only go back 10 years so it falls outside, I think it is on year 11 or 12 now.

ADV MYBURGH SC: The settlement agreement itself I take it you would agree does not say anything about you being reimbursed for amounts already paid.

MR GAMA: You want to me to respond on – I think develop it, I am listening.

10 **CHAIRPERSON:** Is that the settlement agreement you are talking about, Mr...?

ADV MYBURGH SC: Yes.

CHAIRPERSON: You want him to comment on the proposition that the settlement agreement does not say anything about him being paid back pay? I think it might not say that but it does say reinstatement, I think retrospectively if I am not mistaken.

ADV MYBURGH SC: Yes, well the provision says that Transnet will make a contribution equivalent to 75% of Mr
20 Gama's taxed legal costs.

CHAIRPERSON: I am sorry, just bring the mic closer, Mr Myburgh?

ADV MYBURGH SC: It says Transnet will make a contribution equivalent to 75% of Mr Gama's taxed legal costs incurred during Mr Gama's High Court application

and in respect of his unfair dismissal dispute referred to the bargaining council. I am simply putting ...[intervenes]

CHAIRPERSON: It is about costs that you are talking about?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Not – oh, I thought it was about back pay.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC:** In other words, I am simply saying that the settlement agreement does not talk about Mr Gama being reimbursed amounts that have already been paid.

CHAIRPERSON: Oh, okay, okay.

ADV MYBURGH SC: That is really the only point I am putting, Mr Gama, if you want to comment on that?

MR GAMA: The settlement agreement talks to ...[intervenes]

ADV OLDWADGE SC: Mr Chairman...

CHAIRPERSON: Sorry, sorry?

20 **ADV OLDWADGE SC:** I think it is only fair to Mr Gama that he present it – is it now for Mr Myburgh to even look at the document? What about Mr Gama, he should have sight of this document, Mr Chair.

CHAIRPERSON: Oh, you want him to refer Mr Gama to the settlement agreement?

ADV MYBURGH SC: I have got no difficulty with that at all.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Mr Gama – Chairperson, for some reason the files are always behind the witness, today I see that they were file boxes on the floor but seemingly have not been brought from storage. I do apologise.

CHAIRPERSON: Do you want to keep the question until later and proceed with other questions?

10 **ADV MYBURGH SC:** Yes, I think I am going to need to.

CHAIRPERSON: Yes and then when the files maybe after tea break be here then you can go back to it.

ADV MYBURGH SC: And then just on this issue of costs. As I understand your evidence, you accept that you did not pay the Bowmans' account or you cannot remember having paid it, is that correct?

MR GAMA: You mean from my personal account?

ADV MYBURGH SC: Yes.

MR GAMA: No, I think at that time I have not paid it.

20 **ADV MYBURGH SC:** And then I just want to put to you that when Mr Mkwana and Mr Mapoma were asked how you came to be paid 75% of Transnet's costs, they were both at a loss for an explanation. Neither of them said well, we were paying Mr Gama to reimburse him.

ADV OLDWADGE SC: Chair, sorry, that is not correct.

The evidence of those two witnesses just named by Mr Myburgh is very clear, their interpretation ...[intervenes]

CHAIRPERSON: Ja, please speak up a bit?

ADV OLDWADGE SC: They were involved – those two persons, Mr Mkwana and Mr Mapoma were involved in the process, unlike Mr Molefe. It is clear what their evidence was in relation to the repayment to Mr Gama of those fees. It is not correct to say that they were at loss, they were part and parcel of that negotiation process so they had
10 firsthand knowledge of what had transpired. I think it is important to put that to Mr Gama.

CHAIRPERSON: Well, the question relates to their response when they were questioned here, irrespective of what they knew. The question relates to how they responded when they were questioned.

MR GAMA: Now I recall that that was the response that I have just placed on record.

CHAIRPERSON: Yes, Mr Myburgh?

ADV MYBURGH SC: Well, it is not how I recall the
20 evidence but I think it can perhaps be something dealt with in argument.

CHAIRPERSON: Ja.

ADV MYBURGH SC: You will remember that both of them were taxed about how is it possible that you landed up paying Mr Gama 75% of Transnet's legal fees?

CHAIRPERSON: Yes, yes, I remember that, ja.

ADV MYBURGH SC: And to the best of my recollection they did not know, that seemed to be something of an anomaly for them.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And also – if you could bear with me for a moment? Yes...

CHAIRPERSON: There is certainly – my recollection is that they certainly had difficulty justifying it.

10 **ADV MYBURGH SC:** Yes. What they certainly did not do, to the best of my recollection is to say this was aimed at reimbursing Mr Gama for monies that he had already paid because that is something – and I am not criticising Mr Gama, that is something that we heard about for the first time when Mr Gama gave his evidence, that is my recollection. So, Mr Gama, when we get the files I will then take you to this single paragraph.

MR GAMA: Ja. Maybe, Chair, just – is it really just a principle issue, the principle was that I would be paid 75%
20 of the tax bill of [indistinct – dropping voice]. There was no discussion or a clause in the actually settlement agreement that talked about okay, the fact that it must be reimbursed, you just had to present the bill and show what the bill was so whether I had already paid for it or not, the issue was that that was the agreement and that I should be

paid that 75%. So, I mean, the issue about the fact that some of it was reimbursement – remember, when you have a legal case you are paying all the time. By the time we had the settlement I had paid close to 5 million of legal costs. So I had been paying, it was not as if – I think the only one that I have not paid was the Bowmans.

CHAIRPERSON: Yes, Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. And then, as I recall your evidence dealing with the MBA, I just wanted to go
10 back to one thing. As I understand, Mr Gama, you must correct me if I am wrong, you say that your [indistinct], that the university conducted an investigation when the allegations about Mr Sagar came to light, is that correct?

MR GAMA: Yes.

ADV MYBURGH SC: And I asked you whether you be prepared to share those documents with us, it probably is my fault, for not having followed up on that, are you still prepared to share those documents with us?

MR GAMA: I have shared those documents with the
20 Commission.

ADV MYBURGH SC: Have you?

CHAIRPERSON: Maybe we should take the tea adjournment now.

ADV MYBURGH SC: Yes, thank you, Chairperson, we can get out the files.

CHAIRPERSON: Yes. It is twenty five past eleven, we will resume at twenty to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you Chairperson. Mr Gama, as I understand it, the files have now been retrieved from the store. Could I ask you please to go to Transnet bundle 3, that is EXHIBIT 16 and 17, Mapoma and Todd. I would
10 like you to go to 16 and if I could ask you please to turn up page 19. I am just going to show you the provision in the settlement agreement.

MR GAMA: 19?

ADV MYBURGH SC: 19. So the relevant clause is clause 3.5, which I read to you. I was requested to show you it in writing. There it is:

“Transnet will make a contribution equivalent to
75% of Mr Gama’s taxed legal costs incurred.”

CHAIRPERSON: I am sorry, I missed the page, Mr
20 Myburgh.

ADV MYBURGH SC: Page 19, one nine.

CHAIRPERSON: ON bundle 7?

ADV MYBURGH SC: No, bundle 3.

CHAIRPERSON: Bundle 3.

ADV MYBURGH SC: EXHIBIT 16.

CHAIRPERSON: I think my registrar is not hearing you. I do not have bundle 3. Bundle 3B?

ADV MYBURGH SC: Bundle 3, EXHIBIT 16.

CHAIRPERSON: Okay. It is only – it is bundle 3, there is no A or B?

ADV MYBURGH SC: No.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So paragraph 3 or clause 3.5:

10 “Transnet will make a contribution equivalent to
75% of Mr Gama’s taxed legal costs incurred during
Mr Gama’s High Court application and in respect of
his unfair dismissal dispute referred to the Transnet
bargaining council.”

Is there anything that you want to add to what you have already testified to?

MR GAMA: No, I think it reads as it reads. I think, as I have said, it was 75% of the legal costs at the High Court as well as the labour dispute.

20 **ADV MYBURGH SC:** Alright. Now, Mr Gama, could I ask
you please to go back to page – bundle 7, page 22, your first affidavit.

MR GAMA: Bundle 22?

ADV MYBURGH SC: Bundle 7. I just want to – I have not led you with reference to each particular paragraph but you will see at page 24 you start this affidavit by:

“Setting out the background to my employment with Transnet.”

A number of these issues you have touched on and they also – some of them are dealt with in your opening statement. Is there anything that you wish to highlight under that heading pages 24, 25 all the way through to 29?

MR GAMA: Highlight as in emphasise?

ADV MYBURGH SC: Yes, is there anything that you feel you would like to deal with at this stage? Of course my
10 learned friend is more than entitled to re-examine you and to take you to anything that he feels has been left out but for present purposes is there anything that you wish to deal with that has not been dealt with?

MR GAMA: No, I think in the interest of time...

ADV MYBURGH SC: Right. And then at page 29 you deal with Mr Mapoma’s statement and that is, we know, relates to your reinstatement and costs. That goes all the way to page 35. Anything you want to deal with there?

MR GAMA: No.

20 **ADV MYBURGH SC:** And then at page 36 you deal with the evidence of Mr Todd and you deal with his affidavit dated the 31 July which deals with your reinstatement and then at page 40 you deal with what is referred to as his second affidavit and that relates more to the GNS issues and that runs through to the end of page 46. Those are

things that we canvassed last time, is there anything you would like to add to that?

MR GAMA: No.

ADV MYBURGH SC: And then at the foot of page 46 you have a heading In General and you then deal with paragraph 29, any political interference, those are paragraphs in the 10.6, 30 that deals with costs, 31 deals with your visits to – or your single visit to the Saxonwold compound and that then runs on to the end of page 30. Is
10 there anything you want to add to that?

MR GAMA: No.

ADV MYBURGH SC: And then you deal with overseas travel at the foot of page 50. The only trip that we have deal with and that we have questioned you about is the January 2016 trip which you deal with – and we dealt with this morning at paragraph 32.5 and further. We went through that this morning.

MR GAMA: Yes.

ADV MYBURGH SC: Is there anything you want to add to
20 that?

MR GAMA: No.

ADV MYBURGH SC: And then page 53, at the foot of the page, the basis for the three payments of legal costs, I think we've traversed most of that. That then takes you to the heading: Request for Outstanding Documents. Is

there anything you want to add in relation to the basis of prepayments of legal(?).

MR GAMA: No.

ADV MYBURGH SC: If I could then take you please – those assisting me have managed to have placed in the file your latest affidavit, the one you gave us this morning dealing with witness two. Could I ask you please to go to page 262? So it's 250.262, right towards the end of bundle 7.

10 **MR GAMA:** 250 point?

ADV MYBURGH SC: Point 262, you will find it, Mr Gama, the last sort of 20 pages or so.

MR GAMA: 262.

CHAIRPERSON: Is it 250.262?

ADV MYBURGH SC: 250.262, yes, Chairperson. Are you there, Mr Gama.

MR GAMA: Yes.

20 **ADV MYBURGH SC:** There you find an affidavit, it starts at 262, it runs to 269 and it includes I think it is four annexures SG1 through to SG4 running from point 270 to point 297. Do you confirm that?

MR GAMA: Yes.

ADV MYBURGH SC: If I could ask you then to turn page to page 250.269, the signature page and although the date is not filled in there it would appear from the police stamps

and I would just ask you to confirm this, that you appear to have deposed to this affidavit on the 26 April 2021, presumably earlier this morning.

MR GAMA: That is correct.

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

MR GAMA: That is correct.

ADV MYBURGH SC: Chairperson, might I ask you then to enter into evidence Mr Gama's affidavit deposed to on the
10 26 April 2021 as EXHIBIT 28.5.15?

CHAIRPERSON: The affidavit of Mr Siyabonga Innocent Gama that starts at page 250.262 is admitted as an exhibit and will be marked as EXHIBIT 28.5.15.

**AFFIDAVIT OF MR SIYABONGA INNOCENT GAMA
STARTING AT PAGE 250.262 HANDED IN AS EXHIBIT
28.5.16.**

ADV MYBURGH SC: Now, Mr Gama, this affidavit deals with the affidavit of witness 2. What I would like to do is to take you to that affidavit and then we will also obviously go
20 through what is in effect your response. But perhaps, if you wish, leave open bundle 7 at page 250.262. Could I ask you to draw out bundle BB14D?

CHAIRPERSON: Mr Myburgh, bundle 6, can I send that away for the time being?

ADV MYBURGH SC: Bundle 6? Yes, you can,

Chairperson.

CHAIRPERSON: Ja, okay. Thank you. Yes.

ADV MYBURGH SC: BB14D. If I could ask you – and I am now going to refer you to the red numbers of the right hand side. Could you turn to page 89 please? Are you there?

MR GAMA: Almost.

ADV MYBURGH SC: Are you there, Mr Gama.

MR GAMA: Yes I am.

10 **ADV MYBURGH SC:** I want to just take you through this affidavit. Witness 2 says:

1. I am employed as a senior security official in the Transnet Group, I have been appointed to this position at Transnet with effect from the year 2019.

2. I was previously employed as CPO personal driver for Siyabonga in his capacity as Chief Executive Transnet Freight Rail and later as Group Chief Executive Transnet.”

20 Are you able to confirm that?

MR GAMA: I confirm number 2, not number 1.

ADV MYBURGH SC: Presumably because you do not have personal knowledge of paragraph 1?

MR GAMA: That is correct.

ADV MYBURGH SC:

“3. For the period January 2018 to December 2019 I was self-employed. In this period I was contracted to perform close protection duties for various business people in South Africa and other African countries.”

Do you have any comment on that?

MR GAMA: Yes, I can comment on that.

ADV MYBURGH SC: You are going to cross-refer to your affidavit?

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

ADV MYBURGH SC: Okay, just give us second, we can balance everything. Chairperson, that is bundle 7, Mr Gama wishes to cross-refer to his affidavit, that is the affidavit at 250.262, bundle 7.

CHAIRPERSON: Okay, I have got it.

ADV MYBURGH SC: Please go ahead.

MR GAMA: I think we now use the black numbers?

CHAIRPERSON: Ja on that one you use black numbers.

MR GAMA: So if we turn to ...[intervenes]

20 **CHAIRPERSON**: I think you will start dealing with witness 2 at page 250.265, it starts on the other page but there is nothing of substance on the other page, if that is what you are looking for?

MR GAMA: Yes. So that page, Chair, 260.265 (sic).

CHAIRPERSON: Ja.

MR GAMA: I record ...[intervenes]

CHAIRPERSON: You start at paragraph 9 and in paragraph 9.1 you deal with paragraphs 1 to 4 of witness 2's affidavit.

MR GAMA: That is correct.

CHAIRPERSON: Ja, okay.

MR GAMA: So if you look at 9.1, 9.2 and 9.3.

CHAIRPERSON: You just want to say that is where you respond – you comment about this.

10 **MR GAMA:** That is correct, Chair.

CHAIRPERSON: Okay.

MR GAMA: It is just a bit far(?)

ADV MYBURGH SC: Alright, well let me take you through that, Mr Gama, I suppose the easiest is ...[intervenes]

CHAIRPERSON: Is the lighting quite bad there or sometimes you see better without the specs.

MR GAMA: Ja. It is closer, ja.

CHAIRPERSON: Okay, alright. Do you want to repeat what you say in the affidavit or you just wanted to refer Mr
20 Myburgh to ...[intervenes]

MR GAMA: I wanted to refer Mr Myburgh in as far as the issue of the period of employment where he indicates that he was self-employed for the period of January 2018 to December 2019.

CHAIRPERSON: Yes.

MR GAMA: That my information is that he was employed at the firm that is recorded there in 9.2.

CHAIRPERSON: Ja.

MR GAMA: For the period 21 August 2018 to 31 January 2020 which I believe is a material and inexplicable omission in terms of what he indicates to you in point 3.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Yes, can I just ask you, what is the source of your information?

10 **MR GAMA:** From the firm itself. I was aware of it and I confirmed it.

ADV MYBURGH SC: Alright and then if I can take you back to witness 2's affidavit who says – witness 2 says at paragraph 5 at red numbers 89:

20 "I have been involved in the close protection industry since 1995 but officially qualified as a CPO in 2007. I am registered as a CPO with the private security industry regulation authority, PSiRA. Through the years I have provide close protection services to various clients in the public and private sectors both locally and internationally."

Do you have a comment in relation to those three paragraphs?

MR GAMA: No, I have no personal knowledge.

ADV MYBURGH SC: Then under the heading:

“Duties as CPO and acting as driver for Gama.”

Paragraph 8:

“The primary objective of providing CPO services to Gama was to ensure that his safety was not compromised.”

Do you agree with that?

MR GAMA: Yes in terms of the job description.

ADV MYBURGH SC: Paragraph 9:

“My duties as ...[intervenes]

10 **CHAIRPERSON**: Just remember not to lower your voice too much, Mr Gama.

MR GAMA: Okay, thank you, Chair.

ADV MYBURGH SC: Paragraph 9:

“My duties as CPO and private driver for Gama included the following:

1. On normal working days I would collect Gama at his residence at around 06h00 in the morning and transport him to the office or to meet in venues during the day as per his diary. It was not
20 unusual to work 15 hour days and on many occasions only arriving home after midnight.”

Do you wish to comment on that?

MR GAMA: No, nothing to add, I agree with that statement.

ADV MYBURGH SC: 9.1.1:

“For the last number of years a colleague assisted me with the protection and transporting of Gama. We used to alternate our working schedules where one of us would be transporting Gama whilst the other one would be performing administrative tasks or having off days.”

Do you wish to comment on that?

MR GAMA: Yes, that is correct but maybe incomplete.

ADV MYBURGH SC: Is there something you want to add?

10 **MR GAMA:** Yes also there would have been occasions where both of them would be in convoy but not necessarily in the same car. If they needed to do some kind of reconnaissance for whatever reason, one would go ahead or be in convoy.

ADV MYBURGH SC: Alright. 9.1.2:

“Other CPOs who assisted with the protection of Gama over the years included a colleague who later on became the CPO for Thamsanqa Jiyane, Chief Procurement Officer at Transnet at the time and a
20 certain Bongani whose name I cannot recall and who later passed away.”

Comment on that?

MR GAMA: It is a CPO for who, Mr Myburgh?

ADV MYBURGH SC: Mr Jiyane.

MR GAMA: I am just thinking in the record you did not – it

should be Thamsanqa.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: I am indebted to you, Mr Gama.

CHAIRPERSON: Oh, I missed that.

ADV MYBURGH SC: Well, it is the DCJ that usually picks me out but please feel free to do the same.

CHAIRPERSON: No, I did not hear it.

ADV MYBURGH SC: But other than that point would you agree with that paragraph?

10 **MR GAMA:** Ja.

ADV MYBURGH SC: We then go over the page, paragraph 9.2:

“I furthermore often transported Gama over weekends on private trips. Some of these trips were to visit his family in Swaziland and Kwazulu-Natal or friends and business people in and around Gauteng. On occasions I transported him to Durban where he owns a flat. Whilst in Durban I used to stay at the Maharani Hotel. I have never been
20 invited to join Mr Gama at his flat.”

Wish to comment on that?

MR GAMA: Ja, I note it.

ADV MYBURGH SC: Paragraph 9.3:

“I was also responsible to look after the maintenance of Gama’s private vehicles. Gama

never made use of official Transnet transport, he always used his private vehicles for official purposes.”

Confirm that?

MR GAMA: No, he was not responsible – he is not a mechanic, so I do not know when he says he looked after the maintenance of private vehicles.

ADV MYBURGH SC: So you say he was not responsible for the maintenance?

10 **MR GAMA:** No.

ADV MYBURGH SC: Was he responsible for making – sorry, DCJ?

CHAIRPERSON: No, no, I am just wondering whether witness 2’s use of maintenance there relates to the job of a mechanic or whether it is something more superficial but of course we do not know, he has used maintenance here. I think we can move on.

ADV MYBURGH SC: Alright. If he was not responsible for the maintenance and the technical would he have been
20 responsible for ensuring that your vehicles were in good order, in working condition?

MR GAMA: No, I never got to watch them and so on. Ja, from time to time the vehicles were dirty then they would be taken to a car wash.

ADV MYBURGH SC: Paragraph 9.4:

“The following vehicles owned by Gama were used to transport him on official and private trips namely:

1. BMW X5. This vehicle was later given to Gama’s daughter.

2. Range Rover Vogue, which a fully armoured vehicle, a photograph of this vehicle is attached.”

Perhaps we could go to that, using the red numbers. Could I ask you please to go to page 104? Do you wish to comment on that?

10 **CHAIRPERSON:** I see some ...[intervenes]

MR GAMA: It could be or not be a picture of the car, I do not know, it is a side picture, so I ...[intervenes]

ADV MYBURGH SC: Sorry, I beg your pardon?

MR GAMA: I am saying it could be or not be.

ADV MYBURGH SC: Alright.

CHAIRPERSON: I wanted to say, Mr Myburgh, for the record I see that some pages in this bundle have got both the black and the red numbers.

ADV MYBURGH SC: Yes.

20 **CHAIRPERSON:** But we will stick to the red numbers throughout, is that right, on this bundle.

ADV MYBURGH SC: Well, for the purposes of this evidence, if we could stick to the red numbers please.

CHAIRPERSON: Ja, okay, okay.

ADV MYBURGH SC: What colour was your Range Rover

Vogue, Mr Gama?

MR GAMA: Black.

ADV MYBURGH SC: Sorry, just so that I ...[intervenes]

CHAIRPERSON: Did you say black?

MR GAMA: Black.

CHAIRPERSON: Black, ja.

ADV MYBURGH SC: Just so I understand your evidence, you say with reference to this photograph this may or may not be your vehicle?

10 **MR GAMA:** Yes.

ADV MYBURGH SC: Alright. Then please go back to paragraph 9.4.3.

CHAIRPERSON: Maybe one can ask – the picture may or may not have been your vehicle but is the picture similar to your vehicle?

MR GAMA: Ja, similar.

CHAIRPERSON: Ja, okay, alright. Mr Myburgh?

ADV MYBURGH SC: Yes and then the third vehicle listed is:

20 “A Mercedes Benz 500 which was often used for trips to Kwazulu-Natal. Fourth vehicle listed, a Mercedes Benz SL63 which was mostly used as a weekend vehicle, photograph of this vehicle is attached as annexure W202.”

That you find at red number page 106. Do you want to

comment on that?

MR GAMA: I agree.

ADV MYBURGH SC: And then the fifth vehicle that is listed is:

“A Mercedes Benz S65 since 2017 this vehicle was used to alternate with the Range Rover in paragraph 942.”

Do want to comment on that?

MR GAMA: No, nothing to add.

10 **ADV MYBURGH SC:** I beg your pardon?

MR GAMA: Nothing to add.

ADV MYBURGH SC: Then over the page, paragraph 9.5:

“Other vehicles that Mr Gama owned over the years were the following.”

Perhaps I can just paraphrase this because it is not of particular importance.

“A Land Rover Discovery, a Lexus 4 x 4, a Lexus Sedan, a BMW 320 and a Mini Cooper.”

Do you have any comment on that?

20 **MR GAMA:** No, I think he is talking about cars that he may have seen over the years.

ADV MYBURGH SC: Alright.

MR GAMA: Whether I owned them or not, I think ...[intervenes]

CHAIRPERSON: Which maybe since he says you owned

them, maybe you might be, maybe you might wish to specify which ones you owned, which ones you did not own because he makes the allegation that you owned them.

MR GAMA: Ja, no, he has made that allegation on all the vehicles but it is not true.

CHAIRPERSON: Oh, okay [laughing] okay.

MR GAMA: He would see my daughter's car and then he says it is my car.

CHAIRPERSON: Ja, well do you want to clarify that, do
10 you want to clarify which ones you own, which ones you may not have owned.

MR GAMA: Like the X5 is my daughter's car.

CHAIRPERSON: Just repeat that.

MR GAMA: The BMW X5 is my daughter's car.

CHAIRPERSON: H'm, did you own it before you gave it to her or you bought it for her without first owning it?

MR GAMA: No, it was hers.

CHAIRPERSON: Okay.

MR GAMA: I just sometimes used it because you could –
20 it is a diesel you can go to Durban and then come back on it, on what it gives you.

CHAIRPERSON: Okay.

MR GAMA: I would not have to fill too much petrol.

ADV MYBURGH SC: So Mr Gama if you look at paragraph 9.5, which of those vehicles did you not own?

MR GAMA: The Lexus four by four, I did not own, the Land Cruiser I did not own, the Mini Cooper was also my daughters.

ADV MYBURGH SC: So just so that I understand it, the Mini Cooper, you say it was my daughter's car, you did not own it?

MR GAMA: Sorry, the Mini Cooper?

ADV MYBURGH SC: Ja.

MR GAMA: I am saying it was my daughter's car.

10 **ADV MYBURGH SC:** Yes, and then the Land Rover Discovery and the Lexus four by four at 951 Witness 2 says Land Rover Discovery, which was later traded to buy the Range Rover referred to in paragraph 9.4.2, do you deny that?

MR GAMA: No, no I have said to you the Lexus four by four I did not own, that is 952.

ADV MYBURGH SC: 952 Lexus four by four which was used by Mr Gama's wife.

MR GAMA: And also the Land Cruiser I did not own and
20 the Mini Cooper I did not own.

ADV MYBURGH SC: Where do I find the Land Cruiser?

MR GAMA: It is on 952, it says an old Land Cruiser.

ADV MYBURGH SC: Alright, Lexus four by four which was used by Mr Gama's wife an old Land Cruiser was traded to buy this. So you say that 952 is wrong in its entirety?

MR GAMA: I am saying I did not own the cars.

ADV MYBURGH SC: Okay.

MR GAMA: I never owned them at the time when they were there. A lot of these cars sometimes he would rightly point out they were there and then they were replaced by other cars but it is not like I have that fleet of cars maybe in - I do not have.

ADV MYBURGH SC: At paragraph 9.6:

10 “Due to the fact that we used Gama’s private vehicles for transport, I did not keep log books of daily trips undertaken by him.”

Do you want to comment on that?

MR GAMA: Ja, I think it is correct.

ADV MYBURGH SC: And then under the heading trips to the Gupta residence, paragraph 10:

 “I can recall that I have transported Gama on four occasions to the Gupta residence at Saxonwold Drive Johannesburg, none of these trips were recorded in his diary.”

20 Do you want to comment on that?

MR GAMA: Ja, no none of that happened it is a fiction.

ADV MYBURGH SC: On the one occasion that you say you went to the Gupta residence did Witness 2, take you there?

MR GAMA: He may have.

ADV MYBURGH SC: So he may have taken you once?

MR GAMA: Yes.

ADV MYBURGH SC: Paragraph 11:

“On arrival at the residence, Gama would go into the house. I would wait for him to return in the vehicle in the parking area inside the premises.”

And comment on that?

MR GAMA: What he could say that is that on arrival at
10 the residence, I went into the house and then I came out instead of saying I would – as if it was a regular thing.

ADV MYBURGH SC: Right, 12:

“Whilst waiting for Gama in the parking area. I have seen Jiyane's, white VW Golf R parked in the parking area on two occasions. I actually saw Jiyane going into the residence on one occasion.”

MR GAMA: No, I cannot comment on that, I know nothing about that.

ADV MYBURGH SC: Paragraph 13:

20 “One day Jiyane mentioned to me in passing, that I was being exposed to the quote “shady stuff that they do.” I did not ask him what he meant and left it at that, on third you referred to his and Gama’s dealings with the Gupta family.”

Do you want to comment on that?

MR GAMA: No, I know nothing about that, sir I deny any reference to any shady stuff but I do not know what he discussed with Jiyane but he says he discussed it with him, whether it happened or not I do not know.

ADV MYBURGH SC: Paragraph 14, on a...[intervene]

CHAIRPERSON: Just one second, the transcribers can they tell me whether they hear Mr Gama clearly, is that a thumbs up or what is that, he must raise his voice? Okay, please try and speak up.

10 **MR GAMA:** Okay, I will get closer to the mic, Chair.

CHAIRPERSON: Ja, ja, let us continue.

ADV MYBURGH SC: Paragraph 14:

“On another occasion whilst waiting for Gama in the parking area at the residence Brian Molefe arrived with his Audi S8 and he went into the house. He drove there on his own, at the time, he had already been seconded to Eskom as CEO.”

You want to comment on that?

MR GAMA: No, I have no knowledge.

20 **ADV MYBURGH SC:** Do you know whether Mr Molefe ever drove an Audi S8?

MR GAMA: Whether he drives an Audi S8, no I thought it was an A8, I am not sure I think he used to have a silver A8, I am not aware of S8, I think an S8 is a different make of car.

ADV MYBURGH SC: And do you know whether Mr Jiyane ever drove a white VW Golf R?

MR GAMA: No, I am not aware.

ADV MYBURGH SC: Then under the heading suitcase collected at Gupta residence paragraph 15:

10 “During or about November 2016, during one of the visits to the Gupta residence, while I was waiting in the parking area in the Range Rover for Gama, he came out of the residence and told me that I should expect the person that would be bringing a bag to me in a few minutes. Approximately 10 minutes later, a man who I think is a relative of the Gupta’s came out of the house with a suitcase in his hand. He came to the vehicle and said that I must open the boot, which I did. He gave the suitcase to me and I put it into the boot. I noticed that it was a polo branded suitcase, a picture of the suitcase similar to one referred to is attached as Annexure W2-03.”

20 Before I – or let take you to that picture and then ask you to comment on the whole paragraph. That picture you find Mr Gama, red number page 108.

MR GAMA: Ja, I see.

ADV MYBURGH SC: What do you say to paragraph 15, do you have any comment?

MR GAMA: Yes, I can comment it never happened, as I have testified to the Commission I did not know any people who stayed in the residence so I do not think they would have given me anything. I have never seen the suitcase, as I have said to you I was there for about 10 to 15 minutes and went in with Mr Essa came out with him. there was no such – this is fiction.

10 **CHAIRPERSON:** I see that he says that is Witness 2, that this was on or about November 2016. I remember from the affidavit of yours that we dealt with earlier that it seems that when you went to the Gupta residence it was around November, was it 2015 or was it 2016?

MR GAMA: It was 2015.

CHAIRPERSON: 2015, yes and we know Mr Myburgh whether during 2015, Witness 2 was providing protection services to Mr Gama because I am wondering if whether we are dealing with a situation where you did go there, there a
20 problem with the dates and then maybe about whether there was a suitcase or not, but whether - because he also refers to November and I think in your affidavit you talk about November but as you say 2015.

ADV MYBURGH SC: For what period of time did Witness 2, provide you with CP0 services?

MR GAMA: I think according to his – there was something in the earlier paragraphs.

CHAIRPERSON: I thought he deals somewhere with the periods when he was providing protection services to you but I do not see it.

ADV MYBURGH SC: He says generally at paragraph 2, you would have seen DCJ,

10 “I was previously employed as a CPO and personal driver for Mr Gama in his capacity of Chief Executive of Transnet and ten later as the new CEO of Transnet.”

Can you remember what period of time he provided you with CPO services?

MR GAMA: I suspect it would have been between 2013 and 2017.

ADV MYBURGH SC: And hence, as you said he might have been the driver who – or he might have taken you to the Gupta residence on the one occasion that you say you went there.

20 **MR GAMA:** Yes, I think he probably did.

ADV MYBURGH SC: Then at paragraph 16:

 “On Gama’s return from the residence he asked me to take him to the Maslow Hotel at the corner of Rivonia and Grayston Drive in Sandton. I dropped Gama at the entrance of the hotel and went to park

the vehicle.”

Do you want to comment on that?

MR GAMA: It never happened.

ADV MYBURGH SC: Paragraph 17:

“After a while I went into the hotel to order something to drink. I noticed that Gama and Jiyane were sitting in the lounge by the bar. A few minutes later Gama called me and instructed me to take the suitcase that he collected from the Gupta residence and to put it in the boot of Jiyane's vehicle. Jiyane gave me his keys and explained to me where his vehicle was parked.”

Do you want to comment on that?

MR GAMA: It never happened.

ADV MYBURGH SC: Paragraph 18:

“As instructed I went to the Range Rover and took the suitcase from the boot and took it to Jiyane's vehicle, a white Mercedes Benz GL, which was parked close to the entrance of the hotel. I subsequently put the suit suitcase in the boot of Jiyane's vehicle, but before I closed the boot, I decided to see what was inside the suitcase. When I opened it, I saw that the bag was stacked with cash. The top layer contained bundles of R50, 00 and R100,00 notes. I locked Jiyane's vehicle and

did not say anything to either Gama or Jiyane of what I had seen inside the suitcase.”

Do you want to comment on that?

MR GAMA: It never happened Chair.

ADV MYBURGH SC: During the time that Witness 2, provided you with CPO services, did you have occasion to visit the Maslow Hotel at the corner Rivonia and Grayston Drive, is it somewhere you would go?

MR GAMA: Yes, I have on occasion many occasions
10 visited that hotel, Maslow.

ADV MYBURGH SC: And then under the heading collections at Melrose Arch, paragraph 19:

“During the period of providing CPO services for Gama I transported him to Melrose Arch in Johannesburg on three occasions, where he collected cash from Salim Essa.”

Do you want to comment on that?

MR GAMA: No, it did not happen.

ADV MYBURGH SC: Did you ever meet Mr Essa at
20 Melrose Arch?

MR GAMA: No.

ADV MYBURGH SC: Did you know where Mr Essa's officers were?

MR GAMA: No, I do not know that.

ADV MYBURGH SC: At paragraph 20:

“Gama introduced me to Essa on a previous occasion, I have learned through media reports that Essa is linked to the Gupta’s. I attach hereto as Annexure W2-04 a picture obtained from the internet as confirmation that this is the person known to me as Essa.”

ADV MYBURGH SC: Could I ask you please to go to red number page 110, one one zero, do you want to comment on that paragraph and the photograph?

10 **MR GAMA:** I can take a picture of DCJ is covered fairly often in the newspaper, it will have his picture and his name and I can say this is the person that is known as Justice Zondo. I do not know what to make of it.

ADV MYBURGH SC: But, do you know, picture at page 110, do you know that to be Salim Essa?

MR GAMA: Yes, I know that as Salim Essa.

ADV MYBURGH SC: Then Witness 2 says at paragraph 21:

20 “I can specifically recall the details of two of the collections which are discussed below.”

And then he starts with a collection on the 13th of June 2017 and he says at paragraph 22:

“In the first instance, which occurred on 13 June 2017, Gama contacted me and requested that I should collect a parcel from Essa at the Melrose

apartments and thereafter pick him up at the African Pride Hotel in Melrose Arch.”

Do you want to comment on that?

MR GAMA: May I request that we take all of it.

ADV MYBURGH SC: Yes, I think that is perhaps best then you can refer to the minutes that you want to or should we go through the whole thing, okay fair enough. And then at paragraph 23:

10 “As instructed I drove to the Melrose apartments where I waited for Essa in the parking area. Sometime after my arrival at Melrose Arch Essa approached me where I was waiting in Gama’s Range Rover. Essa handed over a striped bag with a zip to me, I attach here to a picture of a bag similar to the one that Essa handed to me as Annexure W2-05.”

Perhaps I could ask you to go to page 112 red numbers there you will find a picture of the bag. If we go back to paragraph 23 at the foot of the page 94:

20 “After putting the bag in the boot of the vehicle I drove to the African Pride Hotel where I collected Gama at the entrance. I attach hereto as Annexure W2-06 a printout of Google Maps travel history obtained from my cellular phone as confirmation that I arrived at Melrose Arch at 20h27 and

departed at 21h36.”

Now that Annexure you find at page 114 and there you will see the bottom part of the page reference to Melrose Arch and 8:27 and 9:36pm. We go back to paragraph 24:

“Later that evening I transported Gama to an address in Bryanston where close friend of his swayed.”

See Annexure W2-06 as confirmation that I arrived at the Bryanston address at 22h37 and that I
10 departed from there at 01h57 in the early morning.”

That annexure you find at red number page 117 and then you will see at the foot of the page their reference to a Bryanston address and choose a time 10:37pm and 1:57am. Now and if we go to paragraph 25:

“While after arriving at his close friend’s residence Gama opened the bag inside the boot and I saw that it was stacked with R200,00 notes. I assisted Gama to count the money right there in the boot in the Range Rover. To the best of my recollection,
20 the amount came to approximately R1million.”

Paragraph 26:

“Gama divided the cash amount approximately in half. He took the one half inside the house, we handed he handed it to his close friend. From the other half he counted out R50 000,00 which he gave

me as a present. At the time I was in the process of building my house in Soweto, I used some of this money to buy building material the remaining money was left in the bag in the boot of the vehicle, which he later took from the boot of the vehicle at his residence in Midrand when I dropped him off.”

I think you want to cross refer Mr Gama to your affidavit?

MR GAMA: That is correct, Chair.

ADV MYBURGH SC: Please go ahead.

10 **MR GAMA:** Thank you. So I will deal if 13th of June ne”.

ADV MYBURGH SC: Yes, 2017.

MR GAMA: So on this particular day that he refers to and it is even certain times and the Google Maps. I have attached for your reference what actually transpired on that day. You will see that I was at a meeting in Pretoria and if you reference to my affidavit and I think I have attached minutes also of that meeting.

ADV MYBURGH SC: Alright, well perhaps I could take you through this, so that we can go through it thoroughly, if
20 you would try and assist. You dealing as I understand, correct me if I am wrong, Mr Gama with paragraph 13 at page 250.266 there it says:

“At 13 June 2017.”

Is that right?

MR GAMA: Yes.

ADV MYBURGH SC: And then you say at 13.1.1.

“Witness 2 alleges in paragraph 22 to 26.”

That is what we have been dealing with.

“That on 13 June 2017, I contacted him and allegedly requested him to collect a parcel from Salim Essa at Melrose apartments and that following on the collection of the parcel I allegedly requested him to collect me from African Pride Hotel. As can be seen from Annexure W2-05,
10 Witness 2 arrived at Melrose Arch at 20h27 and departed 20h36.”

You say over the page:

“I was then allegedly transported to a close friend in Bryanston at 20h37 and arrived at my residence at 01h57.”

And you say at paragraph 13.2:

“I deem it prudent to inform the Commission that this is inconsistent with the actual events of the day on 13 June 2017, as I was at a point attending a
20 special Board meeting of Transnet directors in Pretoria, which commenced at 17h33 and ended at 18h03. I annex hereto marked SG2 a copy of the minutes of the aforesaid Board meeting.”

So this was a half an hour Board meetings, is that right?

MR GAMA: That is correct.

ADV MYBURGH SC: Between half past five and 6 o'clock in the afternoon or early evening?

MR GAMA: Yes.

ADV MYBURGH SC: And if we can - I can take you then to SG2.

MR GAMA: So or if you can just finish it.

ADV MYBURGH SC: Oh sorry. From annexure W2-06:

10 “Witness 2 left the meeting in Pretoria at 19h43, one hour and 45 minutes after the meeting had concluded. There would have been no reasonable explanation for me to stay in Pretoria for an extra hour and 40 minutes after the end of the meeting.”

Okay, so let me just take you then to SG2, SG2 is headed minutes of the closed session of the special Board of directors meeting – I beg your pardon this is at page 276, minutes of the closed session of the special Board of directors meeting number 20-17/18FY held at 17:33 on 13 June 2017 at Platinum Boardroom Building 21 CSIR, Marin or Deer Road, Pretoria.”

20 Are those the minutes you referred to? Chairperson, I see that it is 1 o'clock.

CHAIRPERSON: Did you confirm that those are the minutes you are referring to?

MR GAMA: Those are the minutes I referred to Chair.

CHAIRPERSON: Okay, alright, okay let us take the lunch

adjournment and we will resume at two, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV MYBURGH SC: Thank you Chairperson. Good afternoon Mr Gama.

MR GAMA: Good afternoon Mr Myburgh.

ADV MYBURGH SC: We had been looking at SG2 at page
10 250.276 and we saw that that was a special board meeting
that was held in Pretoria CSIR and it started at 17:33 and if I
take you to page – over the page to 277 it finished at 18:03
it lasted approximately for half an hour from half past five
until six, correct?

MR GAMA: That is correct.

ADV MYBURGH SC: So if I understand the point you make
in your affidavit at paragraph 13.3 you say that W206
reflects that Witness 2 left Pretoria at 19H43 – one hour and
forty minutes after the meeting had concluded. You say
20 there was – would be no reasonable explanation for me to
stay in Pretoria for one hour and forty minutes after the
meeting. Is that right?

MR GAMA: That is correct.

ADV MYBURGH SC: If we go please to that annexure at
page 114 – red numbers – 114.

MR GAMA: The other file?

ADV MYBURGH SC: Yes I beg your pardon.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So the first part of it appears to reflect if one follows how the timing works in other instances and explained by Witness 2 that he arrived at CSIR at 9:30 in the morning and left at 7.43 pm. Were you at the CSIR that day?

MR GAMA: Yes I was.

10 **ADV MYBURGH SC:** As you have it though you would have left at approximately what time?

MR GAMA: Probably around 18:15.

ADV MYBURGH SC: And then the second part the fact that you or he arrived at Melrose at 8:37 and departed at 8:36 is that then the sum total of your defence on this issue?

MR GAMA: Ja what I am basically indicating is that he makes assumptions that I may have been with him during all of these time periods but for me it is quite clear from the minutes of that meeting that – and I think that is also the
20 problem that we have with not having the – the full diary which is one of the biggest problems Chair that we have been facing because as I have indicated I would like to have cross-examined Witness 2 and it would have been much clearer. So I am – we are navigating almost at half ...

CHAIRPERSON: Ja there are difficulties.

MR GAMA: Yes, yes.

CHAIRPERSON: Ja.

MR GAMA: Yes well the – I think it would be – it would have been much clearer so I tried to use the information at hand to indicate that I would not have been with him when he left one hour forty minutes after the meeting. The meeting ended – I do not stick around when the meeting has ended I leave. So if he had been there it is possible that he was in a different car and he was not with me.

10 **CHAIRPERSON:** Would you remember whether you would have gone to that meeting in the car he was driving?

MR GAMA: No I do not remember.

CHAIRPERSON: You do not remember.

MR GAMA: I do not remember. That is why I am saying he is showing something from his cell phone that he was there at a particular time. He may have been in the reconnaissance car arriving there very early and then leaving later but it does not mean that he was with me. Ja.

CHAIRPERSON: Okay.

20 **ADV MYBURGH SC:** But you have accepted that you were at CSIR for the whole day.

MR GAMA: I may have been the minutes that I have indicated to you they indicate that there was a special meeting that took place at 17:33 and it ended at 18:03.

ADV MYBURGH SC: But Mr Gama how can you say with

certainty that you would not have – or that you would have left immediately and that you would not have stayed there for another hour and a half or so?

MR GAMA: Because...

ADV MYBURGH SC: How can you say that?

MR GAMA: Because there would have been nothing for me to stay there for.

ADV MYBURGH SC: So what – when you look then at 114 is – is it your case that you –you consider this page here to be
10 a fraud or are you saying well perhaps Witness 2 went to these places but he was not going with me

MR GAMA: It may either be a fraud or he may have gone to those places but he was not with me.

ADV MYBURGH SC: But would Witness 2 have taken you on the 13th of June 2017 to the CSIR in the ordinary course?

MR GAMA: Well you see – you say in all records?

ADV MYBURGH SC: No in the ordinary course of events?

MR GAMA: Oh in the ordinary course?

ADV MYBURGH SC: Yes. Yes.

20 **MR GAMA:** Sorry. Okay. Ja he – he could have but from what I can gather in terms of this navigation schedule it is just entirely impossible that at the end of the meeting I would stuck around on those premises – that is – that is not even our offices so these are not our offices so I could not you know have stayed there for an hour and forty minutes after

we finished the meeting.

CHAIRPERSON: How – how many cars would go with him?

Would there – would you be in one car and then there would be another car that in terms of reconnaissance.

MR GAMA: Yes sometimes – sometimes it would be my car – I am always in my car.

CHAIRPERSON: Yes.

MR GAMA: And then there could be...

CHAIRPERSON: With one or more of the protectors in your
10 car?

MR GAMA: Yes.

CHAIRPERSON: Yes. Okay.

MR GAMA: With one protector in my car.

CHAIRPERSON: Yes.

MR GAMA: Driving and then the other one being ...

CHAIRPERSON: Ja.

MR GAMA: The one who is on the lookout yes.

CHAIRPERSON: Yes and the other one would – would follow you or be in front of your one?

20 **MR GAMA:** We would always – Chair they would...

CHAIRPERSON: (Inaudible).

MR GAMA: They would almost always be in front.

CHAIRPERSON: Ja okay.

MR GAMA: Almost always be in front or in convoy.

CHAIRPERSON: Yes.

MR GAMA: They would not...

CHAIRPERSON: Ja.

MR GAMA: When I have left there is no reason to be staying behind.

CHAIRPERSON: Ja.

MR GAMA: So I do not understand if he is claiming that he was with me or why at the meeting he stayed behind. I doubt it that – it may be a day when he was off and maybe just decided that he was going to travel there because he –
10 he knew that we were working there and then continued with whatever else he was doing there.

CHAIRPERSON: Yes. The – most of the – that day to the extent that this reflects that he was there what is true is that you were also there for most of that day, is that correct?

MR GAMA: Ja for a period yes.

CHAIRPERSON: Ja for a certain number of hours.

MR GAMA: Hm.

CHAIRPERSON: You were in the same place?

MR GAMA: Yes.

20 **CHAIRPERSON:** Ja. Now you – you cannot remember or could – can you whether you would have been – he would have driven your car or whether he would have been in the other one on that day?

MR GAMA: I do not think he drove my car Chair. This is what I am saying.

CHAIRPERSON: Yes. Oh okay.

MR GAMA: This is what I am saying that I do not think...

CHAIRPERSON: On your version he would be in the other car.

MR GAMA: Ja, yes I do not think he drove my car or this is not in sync with reality.

CHAIRPERSON: Yes. Yes. But in terms of practice and what used to happen is the position that the two cars insofar as one of them has got you inside would – would be
10 supposed to be together?

MR GAMA: That is correct.

CHAIRPERSON: Yes.

MR GAMA: So if there was a minute apart.

CHAIRPERSON: Yes.

MR GAMA: That is the normal.

CHAIRPERSON: Yes.

MR GAMA: Discrepancy I would not have a problem with it.

CHAIRPERSON: Yes.

MR GAMA: But an hour and forty minutes is just too much.

20 **CHAIRPERSON:** Is just too much yes.

MR GAMA: Yes.

CHAIRPERSON: Yes. So assuming that is not a situation where he was – okay let us put it this way because I think there are facts that both of you agree upon namely for a certain number of hours you were in the same place on that

day okay. And even on your version he would have been there in his official capacity would have been working he would not be there on his own – on his private you know – for his private purposes alright. Now one would – one would have assumed and you must tell me if that assumption is wrong that he would therefore – because he was at work he would be expected to be there for as long as work required him to be there and would leave when work required him to leave.

10 **MR GAMA**: Ja.

CHAIRPERSON: Unless he decided to do his own things and that I would image maybe you would be aware if he – if he changed and left work at that time. So – so would you – would you accept or would you not accept that the probabilities are that there – there whatever time he was there including the time that you think he would not have been there he is supposed to be connected with – he is not supposed to have started doing his own things, is that a fair assumption?

20 **MR GAMA**: Yes it is supposed to be connected with work and Chair the whole concept of close protection...

CHAIRPERSON: Ja.

MR GAMA: Is that you would be very close to the principle.

CHAIRPERSON: Yes. Yes.

MR GAMA: And you do not wonder away.

CHAIRPERSON: Go (speaking over one another).

MR GAMA: And do other things.

CHAIRPERSON: Yes. Yes.

MR GAMA: And – so that is why I was saying.

CHAIRPERSON: Ja.

MR GAMA: Even if he was in his own car if it was made within a minute.

CHAIRPERSON: Ja that is fine.

MR GAMA: Or two I would then say look we were together.

10 **CHAIRPERSON:** Ja.

MR GAMA: But I do not know from this and I can say without fear of any contradiction Chair that he was not in the same car as me.

CHAIRPERSON: Yes at least that – that – he was on your version he would have been on the other – in the other car?

MR GAMA: Hm and also if he is off Chair he may have gone to – to whatever was being done there.

CHAIRPERSON: Ja. Ja.

MR GAMA: But then stayed behind.

20 **CHAIRPERSON:** Ja.

MR GAMA: Because he was doing something else.

CHAIRPERSON: Ja.

MR GAMA: He would not be required.

CHAIRPERSON: Yes he would not be required yes.

MR GAMA: To – to follow me what I left for home.

CHAIRPERSON: Yes. Yes.

MR GAMA: Ja.

CHAIRPERSON: Well I do not know how categorically you maybe that you left at a particular time or as soon as the meeting ended because one knows from experience sometimes depending on how first one is for time sometimes when meetings finish sometimes people hang around and talk more and so on even though maybe sometimes that amount of time might be unusual.

10 **MR GAMA:** Yes. No it would not have happened Chair. Let us say one was there from midday.

CHAIRPERSON: Ja.

MR GAMA: As an example.

CHAIRPERSON: Ja.

MR GAMA: By the time it is 18:00 and you finish with your meetings you would – there is not.

CHAIRPERSON: You want to go.

MR GAMA: There is no reason to – if it was you know my offices I would then say okay maybe I went back to the
20 office.

CHAIRPERSON: Ja.

MR GAMA: And did some work maybe I had some files.

CHAIRPERSON: Ja.

MR GAMA: But this situation does not arise.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: Yes thank you. So if we go back to the affidavit page 94.

MR GAMA: My one?

ADV MYBURGH SC: No Witness 2's affidavit.

CHAIRPERSON: Of course I am sorry Mr Myburgh – of course Mr Gama this is all on the assumption that the time stipulated in the minutes is correct or when the meeting ended?

MR GAMA: No, no absolutely, absolutely and our
10 secretaries and minute takers they were always spot on.

CHAIRPERSON: Ja.

MR GAMA: In fact if – if they say the meeting started 17:33 it may have been late.

CHAIRPERSON: Okay.

MR GAMA: Because maybe it was 17:13 meeting.

CHAIRPERSON: Ja okay alright. Mr Myburgh.

ADV MYBURGH SC: So do I understand then if you go to page 95 that what you saying is you did not go Melrose Arch – page 95. Red numbers.

20 **MR GAMA:** Where –

ADV MYBURGH SC: At the top of the page. Is that what you are saying?

MR GAMA: That is correct.

ADV MYBURGH SC: Okay. Did you then later that evening go to this address in Bryanston of a close friend of yours?

MR GAMA: I do not know.

ADV MYBURGH SC: Okay let us have a look at what – go back to this annexure at 114. In fact at 115 at the foot of the page it says:

“22 Egland Road, Bryanston.”

MR GAMA: 114.

ADV MYBURGH SC: 114 and the second page of it is 115. It reflects that Witness 2 arrived at this Bryanston address at 10:37 pm and that he left at 1:57 am. Did you go there that evening?

10

MR GAMA: No it is highly doubtful ja.

ADV MYBURGH SC: Sorry.

MR GAMA: It is highly doubtful Chair.

ADV MYBURGH SC: Well would there have been any reason for Witness 2 to go there without you?

20

MR GAMA: Yes sometimes if they were driving – even when I am not there sometimes they would even be at my home waiting for me. Let us say I just an example. If I go to Cape Town and I am coming back on the same day they will drop me at the airport and then they will go to the office for a few hours and sometimes they will go and wash the car and then go to my home and then an hour before the flight arrives then they will come through. Sometimes he will go to his home and come back just before the – so there was a lot of carte blanche in terms of what people could do. If somebody

said okay maybe I needed to go and wait somewhere they would go and wait. I would not know. The biggest problem with this thing is that there are inconsistencies. He talks for a – and I think the main thing he says no there was some money that was exchanged. There was money that got given to him. But none of these things happened it is a fiction.

ADV MYBURGH SC: So Mr Gama I just want to understand this paragraph 24 he says:

10 “Later that evening I transported Gama to an
 address in Bryanston.”

Did he do that or did he not?

MR GAMA: Sorry.

ADV MYBURGH SC: Did Witness 2 transport you to an address in Bryanston?

MR GAMA: I am saying it is highly doubtful. It is highly doubtful because it does not look like he was actually working with me on that particular day and there is nobody who comes on the night shift. You work the whole day and then – and then you finish. Because if he was working why
20 did he stay behind in Pretoria when I left?

CHAIRPERSON: That is on your version?

MR GAMA: Yes.

CHAIRPERSON: Ja on your version.

MR GAMA: Because sometimes if – if a person is not working they will still go if the other one says look the –

there are going to be a lot people that we do not know there and maybe during this time you could be there and then after that you could leave. So if I left say at 18:15 and he stayed behind it could be that he was not at work.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Mr Gama did you have a close friend who resided at 22 Eglant Road, Bryanston?

MR GAMA: Yes.

ADV MYBURGH SC: Not your house?

10 **MR GAMA:** No.

ADV MYBURGH SC: So what would have caused Witness 2 then literally in the middle of the night to go to this address at 10:37 and leave at 1:57?

MR GAMA: Well I mean – one of the things that I have indicated that he – he has not testified to which arose for instance is that he was seen at some point trespassing outside of that particular property. So the – the address could show that the person is there but he is not inside he is just on the verge. He was caught in the cameras trespassing
20 in that particular area at a point so you never know you know what – what was his motive in some of these things.

CHAIRPERSON: Are you – are you saying there is an incident that you know of.

MR GAMA: Yes.

CHAIRPERSON: In terms of which he went to this address

without you and without your knowledge?

MR GAMA: That is correct.

CHAIRPERSON: Okay that is a particular incident. But generally speaking would the position be that in your absence he would have no legitimate reason to go there.

MR GAMA: That is correct.

CHAIRPERSON: As far as you are concerned?

MR GAMA: Yes.

CHAIRPERSON: Correct.

10 **MR GAMA**: Yes.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. And did you – I might have asked you this – did you on the – the evening or the night of 13 June go to this residence of your close friend in Bryanston?

MR GAMA: I have indicated that this is his google map I do not have my own so this is the – this is the problem. If I had the diary I would be able to say there are certain things in there that are just inconsistent and I do not understand – it
20 is his Google Maps that is where he says he was it does not mean that is where I was.

CHAIRPERSON: Just on this issue of the diary because it is the second time you mentioned it. Would that have been your diary that you are looking for that you were using at the time?

MR GAMA: Yes.

CHAIRPERSON: Okay. Is it a diary that would have remained at Transnet when you left or is it a diary that you would have taken with you but you cannot find anymore?

MR GAMA: No it is a diary that remained at Transnet an electronic diary which would have been quite useful

CHAIRPERSON: Yes.

MR GAMA: Because it will tell you the day starts on such and such a time these are the meetings and this is what has
10 happened. You will see Chair that they have tried to give some kind of reproduction which is SG4 but those things are nothing more than ..

CHAIRPERSON: On – in – is that the same bundle?

MR GAMA: Ja on the same bundle.

CHAIRPERSON: What page?

MR GAMA: 250.297.

CHAIRPERSON: Oh I think it is the other bundle. 250.

MR GAMA: 297.

CHAIRPERSON: 297. – 297?

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

CHAIRPERSON: Yes I see that ja.

MR GAMA: So if – if you look at that it is very difficult to see I probably cannot see.

CHAIRPERSON: Ja it is very fine print.

MR GAMA: The end of my options of seeing.

CHAIRPERSON: It is fine print ja.

MR GAMA: But in there it would show a person's name like a meeting request – somebody who requested a meeting. The people to whom that meeting requests was sent to and then it will have the heading in terms of what was that particular meeting. And that is what assisted in some part to say there was a meeting in Pretoria – there was a board meeting in Pretoria and then therefore one was able to call for the minutes and – of that particular meeting. But I cannot
10 say for instance that using that I cannot say was I there from 9:30 like he was there at 9:30 it say. And even his – if you look at which I did not go into – if you look at his

CHAIRPERSON: Affidavit.

MR GAMA: His affidavit the pictures there at – is it 114 that we were referring to?

CHAIRPERSON: Ja I think it was 114.

MR GAMA: So if we can go there Chair.

CHAIRPERSON: Ja.

MR GAMA: It says that before – if you look right at the
20 beginning it says he was driving for three hours forty three minutes in the morning. So I do not know where if you going to Pretoria from Johannesburg you drive for three hours forty three minutes it does not say where that trip started. It is one of those anomalies where I am saying if you look at this thing I do not know whether there is any reliance that you

can place on this particular thing page 114 and 115.

CHAIRPERSON: Yes.

MR GAMA: It – I think if you – I do not know whether but it is miles – it is probably miles and says forty four miles – if it is miles for three hours forty three minutes and then parked from 9:30 which would mean that the person would have left home maybe around five thirty.

CHAIRPERSON: Five thirty.

MR GAMA: Or maybe around – let us say six o'clock and for
10 three hours forty three minutes almost four hours you driving from Midrand to Pretoria. It does not – it does not make sense. And it is all of those things Chair which makes one highly suspicious about whether you can place any kind of reliance on this.

CHAIRPERSON: Okay Mr Myburgh.

CHAIRPERSON: Alright let us go back to page 95 of
Witness 2's affidavit and deal with the second collection he says called on the 13th of July 2017 and Mr Gama perhaps
20 what I will do is I will go through the whole part again I am mindful of the defence that you raise in your affidavit and then you can address me. Paragraph 27:

“The second instance occurred a month later
on 13 July 2017 when Gama instructed me to
drive him to the Melrose Apartments where
Essa stayed. On our arrival I parked the

Range Rover in the parking area at the apartments Gama went inside to meet with Essa. Approximately I presume that and should not be there thirty minutes later Gama walking with Essa returned with a plastic bag which he put in the boot of the vehicle. He then instructed me to drive to the residence of a person he knew in Sandhurst.”

Paragraph 28.

10 “While Gama visited such person inside the house I waited for him in the vehicle. I subsequently decided to check what was inside the plastic bag which he collected from Essa. When I opened the plastic bag I noticed it was filled with packets of R200 notes bound with elastic bands.”

Paragraph 29.

20 “I attach hereto as Annexure W2-07 a printout of Google Maps Travel history on my cell phone as confirmation that I arrived at Melrose Arch at 15H51 and departed at 17H04. The travel history shows that I arrived at 25 Cleveland Road, Sandhurst at 17H26 and departed from there at 19H05. I attach hereto as Annexure W2-08 a printout

from Google Maps indicating that the Sandhurst residence visited is diagonally opposite 25 Cleveland Road as I explained.”

Now those two annexures the first one you will find at page 117 you will see there at the top the first two or Melrose Arch 15 ...[record cut] four. And you will see there is a green circle, Consulate General. At A you will see – you will find a time of 17:26 and 19:05. And then if you go over the page ...[intervenes]

10 **MR GAMA**: Sorry, where do you see 17:26?

ADV MYBURGH SC: Do you see the green circle?

MR GAMA: Yes.

ADV MYBURGH SC: Yes. Where to from here? Consulate General. Opposite that. You see that time there, 17:26?

MR GAMA: Oh, okay. Ja, there is something that says 17:26.

ADV MYBURGH SC: 19:05.

CHAIRPERSON: Well, I am – can you see where it is,
20 17... There is a seven.

ADV MYBURGH SC: One, seven ...[intervenes]

CHAIRPERSON: It appears to be a six ...[intervenes]

ADV MYBURGH SC: Two, six.

CHAIRPERSON: ...point two six. Ja, maybe it is 17 but it is difficult to tell.

MR GAMA: Ja ...[intervenes]

ADV MYBURGH SC: I will ...[intervenes]

MR GAMA: ...eight as well there. I do not – ja.

ADV MYBURGH SC: Perhaps I can ask the investigators, Chairperson. In fact, I have already asked them.

CHAIRPERSON: Yes.

ADV MYBURGH SC: What we have here is an improved copy.

CHAIRPERSON: Copy? Alright.

10 **ADV MYBURGH SC:** I will see if they can perhaps improve this page in particular.

CHAIRPERSON: Yes, yes. Ja.

ADV MYBURGH SC: Maybe there is a different way that it can be printed or perhaps print it in a darker or lighter colour or something so that it can be seen.

CHAIRPERSON: H'm, ja.

ADV MYBURGH SC: And then the Annexure W-208, you will find at 119.

MR GAMA: [No audible reply]

20 **ADV MYBURGH SC:** And there you will see 25 Cleveland Road, Sandhurst.

MR GAMA: [No audible reply]

ADV MYBURGH SC: And then at paragraph 30 you say that:

“Witness 2 says Gama lately...

Sorry.

“...later accused me of stealing some of the money from the bag. He then informed my manager and the supervisor of his suspicion...”

Now this is also something that you address in your affidavit.

MR GAMA: Yes.

ADV MYBURGH SC: Under the heading at 13 July at page
10 250.267, paragraph 14.

MR GAMA: [No audible reply]

ADV MYBURGH SC: You want to go through that?

MR GAMA: 250 point...?

ADV MYBURGH SC: 250.267.

MR GAMA: 267. Thank you. Ja. Once again, as I indicated Chair, I deny this version that he was with me and I have attached minutes of a whole-day meeting that I had attended at SG-3 at 250.278. The minutes will show, Chair, that I was at that meeting up until 15:47. That will
20 ...[intervenes]

CHAIRPERSON: [Indistinct] ...[intervenes]

MR GAMA: ...250.294.

[Parties intervening each other – unclear]

CHAIRPERSON: On my – is it page 294 where it shows when you left or when the meeting ...[intervenes]

MR GAMA: When the meeting ended.

CHAIRPERSON: Okay. The meeting ended – 15.47.

MR GAMA: That is correct.

CHAIRPERSON: Okay. H'm.

MR GAMA: And then, Chair, if you then go back to 250.297 which is the page at the back.

CHAIRPERSON: The one with the ...[intervenes]

MR GAMA: [laughs] Yes.

CHAIRPERSON: [laughs]

10 **MR GAMA:** It is always better on the computer. You can ...[intervenes]

CHAIRPERSON: Yes.

MR GAMA: You can make it a little bit bigger.

CHAIRPERSON: H'm.

MR GAMA: [Speaker moves away from microphone – unclear] I am trying to use – glass(?) here. The – on the computer it will indicate ...[intervenes]

CHAIRPERSON: I do not think I have any chance of ...[intervenes]

20 **MR GAMA:** [laughs]

ADV MYBURGH SC: [laughs]

CHAIRPERSON: Mr Myburgh, maybe you can tell me ...[intervenes]

MR GAMA: What is in what.

CHAIRPERSON: What ...[intervenes]

MR GAMA: ...explain ...[intervenes]

CHAIRPERSON: In it and then if the Commission's Legal Team can check on the computer and see that is true, that it can be placed on record.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So say – although on the hard copy one cannot see, on the computer this is what one can see.

MR GAMA: Yes.

CHAIRPERSON: Ja. Okay. So what is in there?

10 **MR GAMA:** So what is in here, Chair, is an indication that – I had a meeting after this meeting which started at 16:00.

CHAIRPERSON: It is four o'clock?

MR GAMA: Yes, at four o'clock.

CHAIRPERSON: H'm?

MR GAMA: It started at 16:00 to 18:00.

CHAIRPERSON: H'm, h'm.

MR GAMA: So even if he had then said no he was with me to go to this Melrose Arch, if the meeting finished at 15:47, he was in Melrose Arch already in 15:51, four
20 minutes later. It is impossible that I could be – I could have been with him. So I had another meeting with the Chairman of the Board of Transnet with the CFO, Mr Peter, where we were busy with arrangements in terms of a board pack taking the chairman – the chairperson through a board pack for an upcoming meeting.

I could not, Chair, have been in Melrose Arch and also at the same time be at the Carlton Centre. It is just not possible. So I am using this to indicate that there is no reliance that can be placed on the testimony of Witness 2 on either the Google Maps that he talks about or on what he alleges to have happened during those times.

So the team has given us – we took this – we were given this by the Legal Team of the Commission. They have given us these documents. They will be able to
 10 cross that and it will show and it will show that there was that meeting between myself, the CFO and the chairperson of the board.

ADV MYBURGH SC: Well, I – I mean, perhaps a better way to do it is just to ask Mr Gama's attorneys to print this out for us in an A5 or something that we can all read and it can then be attached to his affidavit.

CHAIRPERSON: Ja.

MR GAMA: Ja. I think that could happen.

CHAIRPERSON: Ja, okay.

20 **ADV MYBURGH SC:** Mr Gama, you say that on the 13th of July, you attended this whole-day meeting. If you go to page 278. So this is a meeting that is held at the offices of the TNPA, Transnet National Ports Authority in Parktown. Is that right?

MR GAMA: That is correct, yes.

ADV MYBURGH SC: But the minutes, in fact, reflected that you were not there the whole day. If you go to page 252.85 it reflects that you came there only at 11:03.

MR GAMA: That is correct and I stayed until the end of the meeting.

ADV MYBURGH SC: Well, do how we do we know that you stayed until the end of the meeting?

MR GAMA: Because I was there.

ADV MYBURGH SC: When you read the minutes, it seems
10 to me that you came there and you told the people a series of things from your perspective as the GCE that captured, is it not?

MR GAMA: H'm. Ja, there is no way where it says like that. If I had left the meeting, I had intended to – it was a day when I had intended to be with them the whole day. There was something that took my time early in the morning. I think I only – I joined them an hour later than I ...[intervenes]

ADV MYBURGH SC: Two hours later Mr Gama.

20 **MR GAMA:** ...than I had intended to and I had stayed with them the whole day which is why you will see in the – in the diaries the meeting between me and the chairperson was initially scheduled to start at two o'clock to four o'clock and then it was moved to four o'clock to six o'clock.

ADV MYBURGH SC: Okay.

MR GAMA: So that I could be with them. So if I had left, the people would have recorded that I left before the end of the night.

ADV MYBURGH SC: Can you after – if you go to 285. It says: The GC, Mr S Gama joined the meeting at 11:03. He was welcomed by the chairperson. It says: The GC drew the committee's attention to the following. There is a whole series of bullet points. It takes us to, I think, to 287
10 where it says: The meeting was adjourned at 12:30 and restarted at 12:58. Do you see that?

MR GAMA: Yes, that was for lunch.

ADV MYBURGH SC: Was that your input?

MR GAMA: [No audible reply]

ADV MYBURGH SC: Is it recorded there in those passages?

MR GAMA: I think my input – there are various names of people in terms of they needed to do what.

ADV MYBURGH SC: I think what I will – what I am
20 looking to ask you is. If you have a look above the heading 8.6 at page 287.

MR GAMA: Yes?

ADV MYBURGH SC: You will see that the second last sentence says: The DGCE stated that a meeting should be arranged with PRSA within the next 45-days. Do you see

that?

MR GAMA: At page?

ADV MYBURGH SC: Page 287.

MR GAMA: Yes?

ADV MYBURGH SC: Just above the heading 8.6. It is where it says the meeting was adjourned. Two lines above that – three lines above that you will see there is a sentence that says: The DGCE stated that a meeting should be arranged with PRSA within the next 45-days.

10 **MR GAMA:** Yes, I can read that. Yes.

ADV MYBURGH SC: Do you see any further reference to you in these minutes after that?

MR GAMA: So when I arrived, they gave me an opportunity to speak and I addressed them on a few things and I think I was giving them feedback on certain pertinent matters. And then after that, we sat and they went through some of their normal issues. And we sat through that afternoon with them. Because I had set aside the whole day to be with them.

20 **ADV MYBURGH SC:** Ja, I understand your evidence. I am just asking you if you see any reference to you having said anything after that?

MR GAMA: Well, I [laughs] I do not know whether I needed to say anything except that – all I am saying is that I was at the meeting and I can relate to everything that is

in the minutes because it was discussed in my presence.

ADV MYBURGH SC: So if we go back to Witness 2's affidavit. Did you on this day, the 13th of July, did you go to 25 Cleveland Road?

MR GAMA: I do not know. I can tell you that he did but I do not know. I do not even know where 25 Cleveland Road is.

ADV MYBURGH SC: Do you know anyone who stays at 25 Cleveland Road?

10 **MR GAMA:** No, I do not.

ADV MYBURGH SC: And he says at paragraph 30 that you later accused him of stealing some of the money from the bag.

MR GAMA: No, that is fiction. It is really fiction. It is a lot of it that we are trying to deal with here. I never accused him of stealing any money. There is no money that he would have stolen.

CHAIRPERSON: During ...[intervenes]

MR GAMA: I think he is just putting flavour, you know.
20 You put some Rajah and some Masala in so that your story looks much more colourful and believable.

CHAIRPERSON: In – during the entire time that he was one of your protectors, is there any time, even if it is not in relation to the bag, is there any time when you may have accused him of stealing any money?

MR GAMA: Chair, if ...[intervenes]

CHAIRPERSON: At all?

MR GAMA: If I had occasion to accused him, he would not work for me the following day.

CHAIRPERSON: H'm, h'm, h'm.

MR GAMA: Because I just would not work with that kind of person if I thought that there was something that had happened.

CHAIRPERSON: Okay.

10 **MR GAMA:** So, and I do not know who is this manager of his or supervisor that he says I said that he ...[intervenes]

CHAIRPERSON: [Indistinct] [Speakers intervening each other – unclear]

MR GAMA: ...those are the people who would then – but there are many close protection officers. If you have got one that steals, you ask the Security Department to change that.

CHAIRPERSON: H'm.

MR GAMA: And give you another one.

20 **CHAIRPERSON:** H'm.

MR GAMA: H'm.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: Do you know the address 22 Killarney Road, Hyde Park?

MR GAMA: Not off hand, Chair.

ADV MYBURGH SC: And if you have a look at page 117 of Witness 2's annexure. You will see that it reflects that he then proceeds to 22 Algan(?) Road.

MR GAMA: 117.

ADV MYBURGH SC: 117. Arrives at 19:31. He parks 19:36. Was he not dropping you off at this residence of your close friend?

MR GAMA: Ja, he could have but I do not know this other address?

10 **ADV MYBURGH SC:** I am sorry?

MR GAMA: I am saying he could have but I do not know this other address that he says he took me too. I have not been there.

CHAIRPERSON: Is the one that you know the Bryanston one?

MR GAMA: Yes.

CHAIRPERSON: Okay alright. The one that you do not know is 16 Melrose...

MR GAMA: Yes.

20 **CHAIRPERSON:** That is the one you say do not know?

MR GAMA: Ja, I am saying I could not have been there.

CHAIRPERSON: Ja.

MR GAMA: It says it is African Pride, Melrose Arch.

CHAIRPERSON: Ja.

MR GAMA: According to this.

CHAIRPERSON: H'm?

MR GAMA: I am saying I could not have been there and also be with the chairperson of the board at the same time at the Carlton. These are the times that ...[intervenes]

CHAIRPERSON: That...

MR GAMA: ...that he was there. So it is quite possible that on his off days he went to a number of places and then he then brings this in here and he says this is when he was with me.

10 **CHAIRPERSON:** H'm.

MR GAMA: He could not have been with me when I was with the chairperson of the board.

CHAIRPERSON: H'm.

ADV MYBURGH SC: How do you know that you actually attended that meeting with the chairperson of the board?

MR GAMA: Because it is on the diary.

ADV MYBURGH SC: Yes, but the diary, does that reflect that you attended it or does it reflect an appointment?

20 **MR GAMA:** It reflects an appointment. It even shows when it was moved from one time to the next time. You do not have – when you have meetings with the chairperson of the board, you have meetings with the chairperson of the board. They do not change. If that meeting had changed for any reason as it showed that it moved from two o'clock to four o'clock, it would then go and show that it changed

but it never changed. It remained there.

ADV MYBURGH SC: So Mr Gama, can you think of any reason why Witness 2, if he was not dropping you off at half-past seven on the evening of 13 July 2017, would have gone to 22 Algan Road for five minutes?

MR GAMA: I cannot think for him. I do not know.

ADV MYBURGH SC: You cannot think of any reason?

MR GAMA: No.

ADV MYBURGH SC: Alright. Let us then go back to page
10 96 under the heading towards the middle of the page:
Money found in Gama's vehicles. At paragraph 31,
Witness 2 says:

"I can recall two instances where I found cash
in Gama's vehicles..."

At 32:

"I do not know where the money came from..."

Under the heading: Money in boot, Mercedes-
Benz SL63:

20 "During or about August or September 2015,
Gama went on an overseas trip..."

At 34:

"As part of my normal duties, I would attend to
the maintenance of Gama's vehicles.

In his absence, I went to check on the
condition of his vehicles at his residence in

Pony Lane in Midrand.

Upon inspecting the Mercedes-Benz SL63, I found stacks of R 200,00 notes in the spare wheel compartment of the vehicle.

I estimated the amount to be around R 100 000,00...”

Would you like to comment on that?

MR GAMA: Ja. I think if anybody had found money in a vehicle they would have come to me and said: I have
10 found some money in the vehicle. There was no time when Witness 2 never came to me and said: Go look. I have found some money. I do not think you would see money the way that he kept saying that he sees money. That you would see money and keep quiet, you know.

You would see money and say: Hey, I found money here. Maybe you forgot about it. Or whatever. There was no such. It is all just fiction in his head where he is trying to create some kind of a story. Because what did he do when he found the money? Did he come to me
20 and said: I found some money. Maybe, have you misplaced some money? I have got money now.

ADV MYBURGH SC: Okay. Mr Game, before we get to that. Was there R 100 000,00 in the wheel compartment of your vehicle?

MR GAMA: No, there was not.

ADV MYBURGH SC: Oh.

MR GAMA: Never ever.

ADV MYBURGH SC: Did you go overseas in August/September 2015?

MR GAMA: I do not know.

ADV MYBURGH SC: Right. You stay in Pony Lane in Midrand.

MR GAMA: I think he would know where I stayed, yes.

ADV MYBURGH SC: Alright. And you were at a point
10 driving a Mercedes-Benz SL63?

MR GAMA: Yes.

ADV MYBURGH SC: And would it be unusual for him to check on the condition of your vehicles whilst you are away?

MR GAMA: I not sure if I have asked him. I do not remember asking him to check and the condition. I do not think [laughs] it was necessary for him to check any condition. Why would he travel when I am not there to go and check on the condition of the car when my children can
20 start a car and switch if off it needed to be?

ADV MYBURGH SC: When you were overseas, what did the CPO's that were assigned to you, what would they typically do?

MR GAMA: They normally take leave.

ADV MYBURGH SC: And if they do not take leave?

MR GAMA: Then they would probably be assigned to someone else to work during that time.

ADV MYBURGH SC: Then Witness 2 goes on under the heading: Money in boot of Range Rover.

“On 20 April, I transported Gama to an official diarised meeting at the offices of Denel. Nellmapius Drive, Irene in Centurion.

The meeting was called by the former Minister and in attendance were Chief Executives of state-owned entities.

I can recall that I saw Matjila Koko of Eskom, Minister Lynne Brown and Jiyane at the Denel premises.

I attached hereto as Annexure W2-09 a printout of Google Maps travel history on my cell phone as confirmation that I arrived at the Denel offices at 09:29 and departed there at 12:49.

I waited in Gama’s Range Rover...”

He says at 39:

“...in the parking area for the meeting to finish...”

At 38:

“Whilst waiting for Gama, I decided to do a random inspection of the vehicle.

Inside the boot I saw a red medical aid bag and decided to open it.

To my surprise, the bag was stacked with R 200,00 notes.

I estimated that the bag contained approximately R 100 000,00...”

Now that W2-09, you will find at page 121. Red numbers.

MR GAMA: 121...

10 **ADV MYBURGH SC:** You will see there, Denel Dynamics, towards the middle of the page. Nellmapius Drive, Irene, Centurion. Arriving at 09:29, leaving at 12:49. I want you to comment on these three paragraphs, 36, 37 and 38.

MR GAMA: Ja. My comment is as follows. The – there could have been that meeting but if it was a meeting of state-owned enterprises, Chief Executives with the Minister and it was also normally between – with the Minister and the chairpersons of those SOE’s. The presence of Jiyane is odd because Jiyane is not – or was not an SOE, Chief
20 Executive. He worked at Transnet but he was not the Head of Transnet.

So that on its own, I think for him it gives some kind of a flavour but he would not have been invited to those meetings. So I do not know if there was such a meeting, why he thinks that Jiyane would have been

present. Again, R 200,00 notes, R 100 000,00. It is like the earlier version. He would always find R 200,00 notes and it is approximately R 100 000,00.

And he says he has estimated. He had all the time. He could have counted it instead of estimating and then he can tell you it was so much. And if there was such money, why did he not tell me that: You have a windfall here. Here is R 100 000,00. Why would R 100 000,00 just be laying around in a car instead of being in a bank? It
 10 does not make sense Chair.

It is – the result of what I believe a person who has been induced and coached to come up with some story. So some of the things he will come up with are things of real events that took place. So he would say there was at a meeting at Denel. Maybe if you go and check, maybe there was a meeting at Denel. But the people that he says were there, they would not ordinarily be at that meeting.

If you ask Minister Brown: Did you meet Jiyane of Transnet? She would tell you that: I do not know who
 20 he is. Because it was only the Chief Executives that would go there. If Koko was there, it is probably because he was the acting CEO of Eskom at the time. So, and there would not be any other executive from Eskom other than the Chairperson of Eskom and the CEO and the Minister.

So, but here, it goes to show that as – he tries

to be flavourful. He then continues to make mistakes because he is trying to tell – to create a believable story out of something that was not there.

CHAIRPERSON: I see, Mr Myburgh, that the witness says in paragraph 36: He saw Matjila Koko of Eskom. Now at Eskom you had, I guess maybe at different stages, Matjila Koko and I think you have Mr Collin Matjila.

MR GAMA: Yes.

CHAIRPERSON: So I am not sure where he meant Matjila
10 Koko or whether he meant ...[intervenes]

MR GAMA: Mr Collin, ja.

CHAIRPERSON: ...Collin Matjila.

MR GAMA: It is to clear.

CHAIRPERSON: So there would need to be clarification.

ADV MYBURGH SC: Yes, DCJ.

CHAIRPERSON: H'm.

ADV MYBURGH SC: When you say he was coached by who you think that happened?

MR GAMA: I have a scenario here Chair, where somebody
20 resigns from an entity, Transnet and he leaves in November of 2017. So he writes a letter to his manager and he says I resign because I do not want to face a disciplinary hearing that I should be facing.

He leaves, okay. I do not know if he told you that he ran away from a disciplinary hearing from his manager,

but anyway he leaves in November 2017. He then comes back, he says no I resigned, no I was dismissed. You do not hear, you do not understand.

CHAIRPERSON: It might help if you started by giving the answer to who you think coached him. Then if you need to elaborate we can take it from there, because the question was do you know or you have somebody that you think coached him.

MR GAMA: I would not know the present for sure, but the
10 City Press reports that he met with the non-executive Chair of Transnet, why is a close protection officer meeting with the non-executive Chair of Transnet, and then in there, it then says the non-executive Chair then refers him to Mr Mohammed Mohamedi to say no, he must reinstate this man.

You reinstate somebody who appeals a dismissal. If there was an appeal it would have happened within the 60 days after the dismissal. So if he was dismissed as he claims, because he resigned anyway after I have
20 mentioned that he, if he was dismissed it means that by January 2018 he would have filed an appeal.

Then we must discover that, that appeal and then when that appeal, then there must be a process, the bargaining council or where ever that it goes to and then it reinstates him. This one, meets the non-executive Chair of

Transnet as referred to the acting GCE of Transnet.

From there it goes to the general manager that is dealing with labour issues and then he is re-employed which is, which are his words and then when he is re-employed, it is as if okay, we have these particular issues. If you can give me a believable story around the person of Mr Gama, then maybe we can hire you.

Then he proceeds to write a lot of this fiction that we see here today.

10 **CHAIRPERSON:** Of course you are not saying, but you will tell me if you are saying, are you saying that is what happened or are you saying it is a possibility that something like that might have happened?

MR GAMA: That is correct.

CHAIRPERSON: It is the latter?

MR GAMA: Yes, I am saying that is a possibility.

CHAIRPERSON: Yes.

MR GAMA: Because what I do not understand when I read the newspaper and I see what is happening and these
20 people have confirmed it according to the newspaper to say this is what has happened. Mohammed says this fellow was referred to me by the Chairperson of the board, and then I was asked to deal with this man.

I am then saying was he reinstated as an inducement? There was something in there, in the

newspaper that says he has been reinstated because that was long before these statements were made to the commission.

It says he has been reinstated because he has been asked to say that Gama has been bribing policemen, money laundering and something very close to that then happens. So it is not, I am not painting a story that did not happen.

Some of the things that were said there, were
10 predicted in that article and then they happened.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. How does one explain then all the details?

MR GAMA: Sorry?

ADV MYBURGH SC: How does one explain all the detail?

MR GAMA: How does one explain the detail? Well, here there is a motive. There is an intent and person has got time. I mean people who write movies, like Steven Spielberg, they sit and they conceive these things. It does
20 not mean that everything that we see in the movies ever happened or is the truth.

So somebody will have those kinds of things where they sit and they say okay, this is what we could say. They try to do a story that is believable. For instance, witness 2 says to the Chairperson that I gave R50 000-00 but I never

said anything.

I never said what is the repayment period. He says he assumed that that is his money, that he can take it. It is all fiction Chair. Who gives you money and never says anything?

CHAIRPERSON: If I understand his version, it was not a loan. There was enough money and you were just giving him money. There was enough money, there was no problem. R50 000-00 was not a problem.

10 **MR GAMA:** Ja, but who gives money, does not say and he makes the assumption okay no, this is my money. As you say money is no problem. Let me take it. If indeed such has happened and then I said one day okay, can I have my money back. What was he going to do.

If he is somebody who is used to being given money to do things.

CHAIRPERSON: Well, as I understand his version, at least the context, he seems to have made it clear to him that you were just giving him money which he could use as
20 he so fits. That is my understanding of his version. As I say, because there was money, money was not a problem.

MR GAMA: Money was not a problem.

CHAIRPERSON: Ja.

MR GAMA: So you get given money, you ask no questions.

CHAIRPERSON: You take the money.

MR GAMA: You take the money.

CHAIRPERSON: Ja.

MR GAMA: And you go to [indistinct]

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: You see Mr Gama, I suppose it is something that we are going to unpack in more detail in time, but what you are doing, you are dealing with this what might be described as the ordinary course. Evidence is going to be led in this commission shortly that at the
10 Guptas they had a cash dispensing machine.

MR GAMA: Cash?

ADV MYBURGH SC: A cash dispensing machine, an ATM machine.

MR GAMA: Oh, okay.

ADV MYBURGH SC: You have also heard evidence that Mr Singh for example had eight safety deposit boxes at Knox Volt. Evidence is going to be heard in this commission that Mr Peter, his replacement and the your chief financial officer he had or his mother had seven safe deposit boxes
20 at Knox Ville.

Evidence has been led by drivers that cash was stored there. This is not an ordinary situation we are dealing with. One thing that it is not ...[intervenes]

MR GAMA: Sorry, you say there was an ATM machine?

ADV MYBURGH SC: Yes.

MR GAMA: Okay.

ADV MYBURGH SC: And this commission has heard a raft of evidence about there being lots and lots of cash used by many, many a senior executive. So what it perhaps turns on is how many occasions you went to the Guptas. You say you only went there once.

MR GAMA: That is correct.

ADV MYBURGH SC: Let us deal then with having dealt with the red medical aid bag. Let us deal with random
10 collections of cash at page 97. I recall occasions where cash amounts were given to Gama at random places. Cash collected at, is that [indistinct].

CHAIRPERSON: I am sorry Mr Myburgh, do not forget what you want to put to him. Let me go back to the issue of witness 2 and his version against your version. Was there a time when you and witness 2 had issues between the two of you while he was one of your drivers?

MR GAMA: Well Chair, the statements that witness 2 wrote would indicate those issues. That there were issues
20 yes.

CHAIRPERSON: Well, what I am looking at is I know he said you accused him of stealing money from the bag but you said there was no such. So I am asking from your own version whether the two of you ever had any issues while he was your drivers to [indistinct]

MR GAMA: Yes, that is correct Chair, but it was not about money.

CHAIRPERSON: It was not about money?

MR GAMA: No.

CHAIRPERSON: There were some issues but not about money?

MR GAMA: Yes.

CHAIRPERSON: Yes, okay. Now the reason why I am asking is because you said that he may have been induced
10 with something, it seems to me you suggest at work, at Transnet, to effectively fabricate stories about you. Did I understand you correctly?

MR GAMA: Yes.

CHAIRPERSON: Yes. So what I wanted to find out was whether your position is that to the extent that he makes allegations against you which you say are false, you say he is fabricating because he must have been induced to do that against you or whether he might have some grudge against you as well, and there might have been some
20 issues that you say would drive him to falsely implicate you in all kinds of things.

So that is what I want to establish. Whether it is only the issue of inducement or whether you say there were some issues also between the two of you which you think may have driven him to fabricate stories against you.

MR GAMA: Yes Chair.

CHAIRPERSON: Yes, okay I see the sun is giving you a problem. The sun light is giving you a problem.

MR GAMA: Let me just move a little bit Chair.

CHAIRPERSON: Okay, but there are certain issues which you think ...[intervenes]

MR GAMA: Yes, there are.

CHAIRPERSON: Which drive him to, drove him to fabricate some stories about you.

10 **MR GAMA:** Yes.

CHAIRPERSON: Okay, alright. At some stage I guess we can hear about that.

ADV MYBURGH SC: Perhaps we should deal with it now.

CHAIRPERSON: Ja, maybe ...[intervenes]

ADV MYBURGH SC: Chairperson if it is a convenient point.

CHAIRPERSON: I do not know if something can be done, but I can see you are having a problem with the, is it the sunlight that ...[intervenes]

20 **MR GAMA:** Ja, it is just ...[intervenes]

ADV MYBURGH SC: Shedding light on your evidence.

CHAIRPERSON: Is that something that can be dealt with or not? Oh, okay alright. Let us try and continue in the meantime but they will attend to it. Okay. so I think Mr Myburgh says well, maybe let us hear about those issues

that you say may have driven the witness to fabricate stories about you.

MR GAMA: Yes. Chair, I think witness 2 is aggrieved. He is aggrieved because he believes that if it was not because of me he would not have resigned. He claims that I made life unbearable for him and that caused him to resign from the company.

But what we are dealing with here Chair, is somebody who committed acts of dishonesty. You are
10 dealing with someone, if it was in the army, someone who could have been court marshalled, because if somebody is assigned to protect their principle, and goes and does something which is counter to that, it is like when you do not follow the code.

When your principle is threatened, you should be the first person who goes to your principle and say there is a threat and this is what we are going to deal with. This is a person Chair, who when the threat came through did not go to the principle to say there is a threat.

20 It was when I subsequently discovered through camera footage that certain things had happened. I then asked his manager. I said look, this is what has happened and I see this fellow doing one, two, three. Can you find out?

It was only after that, that he then came out and he

said to the, to his manager yes, it did happen. It happened like this and like this and like this, but in that statement that he wrote, he still lied about it. He still made it as if he volunteered the information when he did not.

But also I would not have seen it if he actually had not committed. If there was no commission of that act, but he committed that act which is why I was able to then ask his manager and then it was on that basis that his manager had then said look, your integrity is questionable.

10 It would appear that you did not take the steps that you ought to have taken to protect the principle and then he moved him from me pending an investigation and then subsequent to that, you will see it comes through in his statement.

 He then had this grudge that he claims that his life was made miserable. Because of what he had done and therefore he had to leave and I think in his own words he then says this was the culmination of somebody that I had worked for, very well for many years, but after that after
20 that incident Chair, then the dishonesty, the lack of integrity was then covered and the falsities, the lies that he then made to cover that event, because he had been given the opportunity to come clean.

 All that he was supposed to have done was supposed to be able to come clean and say this is what

happened, but still even in that statement, he tried to mislead and misrepresent what had actually happened and as a result of that, I then felt that look, I cannot have this person.

So whatever it is that his manager then did was an enquiry that tried to deal with that issue because he was saying as a protection officer your first duty is to protect your principle, but in terms of what you did, you actually conspired with other people against your principle.

10 So this is the kind of person that we are dealing with and therefore yes, he holds a grudge that he was going to be disciplined and he decided to resign although he claims also that he was dismissed. His story, but what I do know is that I was told that he resigned and left and that was prior to whatever disciplinary hearing that he was supposed to have had.

Therefore, as a result of that, when I even talk about the inducement, is to then say we can reinstate you but we want you to tell these kinds of tails, ja.

20 **CHAIRPERSON:** Mr Myburgh?

ADV MYBURGH SC: Thank you. Let us carry on at page 9011. At paragraph 39 under the heading random collections of cash:

“I can recall occasions where cash amounts were given to Gama at random places. Cash

collected at the Buli College in Midrand. Sometime during 2016 Gama and I were on our way to his home in Pony Lane in Midrand. On our way Gama asked me to stop at the entrance to the Buli College in Midrand which is not far from his house.”

Now am I pronouncing that correctly?

Is there such a college close to your house?

MR GAMA: Yes.

10 **ADV MYBURGH SC:** Okay. At 41:

“On our arrival ...”

I presume it should be at the college:

“I noticed Giyane’s Mercedes Benz GL parked at the entrance. Giyane got out of his car and handed a wine box which was sealed with cello tape to Gama. The box was very heavy and did not feel as if it contained bottles. I suspected that the box contained money.”

You want to comment on that?

20 **MR GAMA:** Ja, first and foremost I mean there was no such box that I met with Giyane about, and if he says there was a box and it contained money and then he says it was very heavy, I do not know what is heavy between bottles and pieces of paper which is money.

If he says it was very heavy, I do not think that

bottles with wine in them would be lighted but there was no such thing that happened. What happened in Buli College, Giyane used to work in Pretoria. There was a re-organisation at Transnet.

I was able to meet each and every one of the executives face to face and there was a letter that I needed to hand over to him and he had asked that after hours, because he was not available, that if I could give him the letter, he will come and meet me on my way home,
10 and that is what happened.

I actually gave him that letter. So and there was not a box that Giyane gave me. There was a letter, an official letter that I gave to Giyane at Buli College in 2016. I think it would have been around May of 2016 when this re-organisation took place.

ADV MYBURGH SC: And you were driven there by witness 2?

MR GAMA: Sorry?

ADV MYBURGH SC: You were driven there by witness 2.

20 **MR GAMA:** Yes, I was going home.

ADV MYBURGH SC: And Giyane was there in his Mercedes Benz GL.

MR GAMA: I do not know. I do not know the kind of car. I need to pay attention to these kind of things.

ADV MYBURGH SC: You had an impressive array of

vehicles Mr Gama, I would have thought you would have been able to tell us.

MR GAMA: No, I think Mr Myburgh you may be getting it wrong. People will say you have an impressive array of cars. They are old cars, they are 12, 13, 14 years old. So when I have a car, I do not sell car. I will have my instalment sale agreement for five years.

Then unless I need to buy another car I keep the car. I even have a 30 year old car that I have been
10 driving. It is not, it is not a flashy life style or anything of that nature, but a GL to me is like an ML, and I have not seen Giyane drive a GL, but maybe he does have.

I do not know. I thought I have seen him drive a car, maybe a C something. So, a GL, I think a GL is like an ML. It is these big cars. I do not know. I do not think there is such a thing.

ADV MYBURGH SC: You do not think there is such a thing?

MR GAMA: The car that he was driving, but maybe he
20 was, but I have seen him drive a Mercedes, but a private car, a sedan. Four, five seater.

ADV MYBURGH SC: Alright, and then under the heading cash collected on the N17 highway near Springs. 42:

“On a Friday evening some time in 2017 I went to Gama’s residence in Pony Lane Midrand

where I collected a new Mercedes Benz S65 from the premises which he had booked out earlier from a dealership as a test vehicle.”

Do you want to comment on that?

MR GAMA: No, he did not. He did not go to my residence.

ADV MYBURGH SC: You had not booked out ...[intervenes]

MR GAMA: To collect such a car. It is not true.

ADV MYBURGH SC: Had you not booked out
10 ...[intervenes]

MR GAMA: No.

ADV MYBURGH SC: A new Mercedes Benz S65 as a test vehicle?

MR GAMA: Well, the first thing is they do not give you a new car. A demo car is a demo, it is not new. But he did not fetch it from home. I asked him to pick it up in Woodmead. So it is not true.

ADV MYBURGH SC: But you had then booked out, let me get the language right, a demo Mercedes Benz S65.

20 **MR GAMA:** Yes, I wanted to test drive it.

ADV MYBURGH SC: And you asked him to collect it in Midrand, not from your house?

MR GAMA: No.

ADV MYBURGH SC: I see.

MR GAMA: Here in Woodmead.

ADV MYBURGH SC: 43:

“From Pony Lane I proceeded ...”

MR GAMA: Where he says he proceeded to Woodmead is where he picked the car.

ADV MYBURGH SC: Sorry:

10 “From Pony Lane I proceeded to a shopping centre in Woodmead and you say that is where he picked up the car, where I met a close friend of Gama and Giyane’s driver in the parking area of the shopping centre. Gama’s close friend got into the S65 with me whilst Giyane’s driver departed in another direction.”

Shall I finish this whole part and then you comment on it, or would you prefer to comment ...[intervenes]

MR GAMA: I think it is easier if you just ...[intervenes]

ADV MYBURGH SC: Alright.

MR GAMA: Went through all of it, so that we do not ...[intervenes]

ADV MYBURGH SC: Okay.

20 **MR GAMA:** Because it is, it can be tiring and the water is getting finished.

ADV MYBURGH SC: Paragraph 44:

“From the shopping centre ...” ...[intervenes]

CHAIRPERSON: Well, you must say when you run out of water. They will give you more water. Are you running out

of it?

MR GAMA: No, no I still have.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Paragraph 44:

“From the shopping centre Gama’s close friend and I proceeded to the N17 highway where just after the first tollgate towards Springs, I pulled over to the shoulder of the road. At that spot, two other vehicles also arrived and parked on the shoulder of the road. The one vehicle was an Audi with witness 1 as the driver and Gama as the passenger. The other vehicle was a Mercedes Benz GL with Giyane as the driver.”

45:

“Gama got out of the Audi and I got out of the S65. Gama then got into the driver’s seat of the S65, where he joined his close friend. Giyane also got out of his vehicle and he walked over to the driver side of the S65 where he handed a big packet, which I assume contained cash, in my presence to Gama.”

46:

“In the meantime witness 1 left the scene with the Audi and Giyane left shortly afterwards.”

47:

“Also in the meantime another PCO arrived in a Toyota Corolla with whom I had arranged to pick me up at that location.

48:

“I wish to state that all the arrangements as described above were in Gama’s instructions.”

MR GAMA: Thank you. So this is a very simple thing where I needed to test drive this vehicle and I was going to KZN, so we met there. So again, real events but with
10 flavour. I do not recall Jiyane there. I do not recall – I do not know about this Jiyane’s driver, I am going to have to maybe try and – maybe they should give an affidavit in terms of whether they were there.

So there would not have been any big packets that was – so let us assume there was a packet of money that somebody needed to give me, why would you convoy bring two, three cars and then you give the person there? It does not make sense. But there was not any of that, there was no packet of money that as being given. He says
20 there were two cars that arrived, one was witness 1 and the other one was Jiyane.

I do not recall a lot of these intricate things that happened but what I do know is there was no packet of money or he says he assumed it contained cash. There was no such. We exchanged cars, I had to travel and I

travelled.

ADV MYBURGH SC: So could you just explain what actually did happen here? So you test drove this S65 and at a point you then got out of it and got into your car which – let me understand what happened.

MR GAMA: No, no, no, the test driving was going to take place after he brought the car. He brought the car.

ADV MYBURGH SC: Right and then?

MR GAMA: To where we met, it was next to the tollgate,
10 very close to the tollgate from the N17, I cannot remember, I think it is called Rifles something. He brought the car because I was in a meeting elsewhere.

Witness 1, as he calls him, brought me to that place so that I could get onto the car and then I would have thought that he then got into the car with witness 1 and where his car was that he says someone else came to pick him up. It was not such an intricate thing as it is now being painted, it was really just to say go and fetch this car, do not come back on the N1 because it is going to be
20 traffic and I want to travel when there is still a bit of light.

Witness 1 is going to bring me from the meeting that I was at and then I can take the car and drive. It was not all of these intricate things that the flavour demands that they should...

ADV MYBURGH SC: Alight. And then under the heading:

“Breakdown in relationship...”

I think you have already touched on this.

“...with Gama and dismissal.”

He says at 49:

“During August 2017 my relationship with Gama became strained as I did not get along with Gama’s close friend referred to in paragraph 24 above, the reason being that over time she more and more insisted that I assist her with private business and to undertake non-work related trips for her. I refused to adhere to her requests as I felt that she was abusing my services as CPO for Gama for her own selfish cause. Gama did not take kind to my attitude towards his close friend.”

15 My relationship with Gama reached breakpoint in November 2017 when Gama and his close friend accused me of sprinkling muti in and around their house and being involved with witchcraft. Nothing could be further from the truth of this. On 17
20 November 2017 I resigned from Transnet as I could not tolerate Gama’s accusations and attitude towards me any longer. Despite having resigned as stated above, Transnet continued with disciplinary proceedings against me on 6 December in my absence and I was summarily dismissed. The

charges against me *inter alia* entailed that I had betrayed the trust relationship with Gama and that I sprinkled an unknown substance at Gama's residence thereby putting his and his family's lives into danger.

53. I subsequently approached Transnet to seek redress due to the fact that I believed that I was treated unfairly, that I was victimised and eventually unfairly dismissed on Gama's instruction.

10 54. After due consideration Transnet agreed that I was unfairly dismissed. I was therefore reinstated to the position of CPO with effect from 1 December 2019 retrospective from 1 January 2018."

Now these are things that you I think have touched on already, what other comments do you have?

MR GAMA: Chair, probably this is at the nub of why we are having this discussion today. At paragraph 49 there is a whole lot of lies, there was no such that took place but he is prefacing it in this fashion so that there seems to
20 have been something untoward that had happened. He then says at paragraph ...[intervenes]

CHAIRPERSON: I am sorry, so are you saying that where he says that your close friend used to make demands in effect for him to do non-work related tasks or trips for her and that this then strained the relationship between you

and him, that is witness 2, you say there is no such thing?

MR GAMA: That is correct, Chair.

CHAIRPERSON: Okay, alright. I just wanted to be sure, ja, of what you are saying. Okay, continued, ja.

MR GAMA: So paragraph 50 where he says it reached breakpoint, the breakpoint is not in November, Chair, it is in August when it happened.

CHAIRPERSON: Of 2017?

MR GAMA: That is correct. Where I observed these
10 things on the camera. I then approached his manager to say this is what I have observed, can you find out from him what is it exactly that he was doing? And then he wrote a statement to say this had been given to him by someone that I knew to sprinkle ...[intervenes]

CHAIRPERSON: Now is that sprinkling something? Is that what you observed?

MR GAMA: Yes, that is what I observed, yes.

CHAIRPERSON: You observed him sprinkling something around your house.

20 **MR GAMA**: Yes.

CHAIRPERSON: Okay.

MR GAMA: It was a brown powder in terms of the statement that he wrote.

CHAIRPERSON: Yes, okay, okay.

MR GAMA: That he had been given this brown powder.

CHAIRPERSON: Yes, yes, yes.

MR GAMA: But he then says no, he never came with it to the house, that he threw it away in the freeway but I observed him sprinkling this there.

CHAIRPERSON: On cameras?

MR GAMA: On the cameras.

CHAIRPERSON: Ja.

MR GAMA: And then ...[intervenes]

CHAIRPERSON: Would this have been during the day?

10 **CHAIRPERSON:** Would it have been during the evening?

MR GAMA: Night.

CHAIRPERSON: When he sprinkled it according to what you observed or it ...[intervenes]

MR GAMA: It was at night.

CHAIRPERSON: It was at night?

MR GAMA: Yes.

CHAIRPERSON: Okay.

MR GAMA: And then I had not been aware that he was there, it was one of these things that I talk about, that
20 ...[intervenes]

CHAIRPERSON: Oh, so in terms of – as far as you were concerned you did not expect to be in your house.

MR GAMA: He was not supposed to be there. Ja, he came there [indistinct].

CHAIRPERSON: He came there?

MR GAMA: [indistinct] at night.

CHAIRPERSON: Oh.

MR GAMA: By cover of night and hoping that...

CHAIRPERSON: Yes, okay, alright, continue?

MR GAMA: Yes. So then he writes the statement to say who gave it to him but then in his statement he then says no, he never – he was asked to go and sprinkle it but he never sprinkled it. So I am saying then if he never sprinkled why then did I see in the cameras because I
10 would never have asked him, I would have never asked for the investigation to say there is something with this fellow and there are these things that are happening. I would not have known if he threw in the freeway as he claims because he wrote a statement, Chair, where he says no, I threw it away in the - on the freeway. But then I see this thing and it was a vicious thing, you know, to have many prayers to deal with that.

CHAIRPERSON: So he acknowledged that he had been – that the cameras correctly captured him, he was at the time
20 – the cameras showed him to have been there and he just denied – he denied what it was that he was sprinkling or there was no denial, it was [indistinct – dropping voice] or what was the position?

MR GAMA: So this is where the dishonesty is, Chair. So I raise this issue because of what I have observed. He

then denied that it happened, that he sprinkled anything.
He then says no, he did have something that he was sent
...[intervenes]

CHAIRPERSON: To sprinkle.

MR GAMA: To sprinkle.

CHAIRPERSON: But did not sprinkle.

MR GAMA: In the statement, ja, he says but he did not
sprinkle. But if he had not sprinkled it, I would not have
seen him sprinkling, I would not have asked the question.

10 If he had received and really thrown away this thing on the
freeway, I was not with him when he was on the freeway
when he was supposed to have thrown it away but because
he did not throw it away, he then captured – he gets
captured by the camera doing this thing. So he writes
about it to say no, so and so gave it to me and said this is
what I must do and then he then claims no, but I did not do
it. Then why would I ask if he had not done it? So that is
the other thing. So I then say to his manager look, just do
not assign him to me because as you can see, he admits
20 that something like this happened but he now tries - he
creates another flavour of it to say no, it did not happen in
this way.

CHAIRPERSON: Okay. I interrupted you while you were
dealing with this. I do not know if you have finished.

MR GAMA: Yes, so if I then move to 51, Chair. He says

he resigned because he could not tolerate my accusations. The accusation happened once, he admitted to it in a statement. You know, he talks about an attitude. He was no longer working with me so I do not know what he talks about but I think that then becomes the source of – so you now have somebody with a grudge against you, somebody that used to work with you very closely that you no longer trust, that now has a grudge against you and has become an enemy because he now thinks that he lost his job
 10 because of you. That is really what we are dealing with here.

I am not terribly familiar with all of those issues but the betrayal of trust, that is actually what it was and the putting me into danger also because this was a very toxic thing that I really do not understand but you cross that area you [indistinct].

CHAIRPERSON: Am I right to say you suspected or believed that what he did was connected with witchcraft?

MR GAMA: Well, I did not have to suspect, he told me.

20 **CHAIRPERSON**: Ja.

MR GAMA: It is in her statement, Chair.

CHAIRPERSON: Ja. How did he put it?

MR GAMA: Oh, I have got it, I have got it.

CHAIRPERSON: You have got his statement?

MR GAMA: Yes, Chair.

CHAIRPERSON: Okay, so you can make arrangements to share it with the Commission.

MR GAMA: Yes.

CHAIRPERSON: Okay, alright.

MR GAMA: Then you can read it, Chair.

CHAIRPERSON: Yes. Okay, Mr Myburgh?

ADV MYBURGH SC: Yes, I would just like to take you to two last paragraphs please. Page 100, paragraph 58, under the heading: Risk and security concerns, says:

10 “In exposing Gama’s apparent inappropriate
conduct in the statement I believe that my and my
family’s safety and security may come under threat.
It is worthy to note that a few days after my
resignation in November I noticed on two
consecutive days drones hovering above my house.
Although I cannot say with certainty I believe that
Gama may have been behind these incidents in
attempts to victimise and intimidate me. I am
further aware that my manager, witness 1, had
20 received threats on his cellular phone to the effect
that he should not cooperate with the Zondo
Commission in relation to allegations of improper
conduct by executives of Transnet which is of great
concern.”

Do you want to comment on that?

MR GAMA: I have no reason to threaten witness 1 or – I mean, witness 2. I do not know how to procure drones to – I just suspect that his citing of drones is also a figment of his imagination. I am not behind any attempts to intimidate him, I do not do that, I pray for him every day but I do not – I have no reason to hire drones or try to intimidate or threaten him. He knows himself where he is, he knows the truth.

CHAIRPERSON: Mr Myburgh?

10 **ADV MYBURGH SC:** And then finally paragraph 59:

“I am furthermore concerned that although Gama is no longer with Transnet he may still have influence over executives and senior managers at Transnet and that I may be subjected to further victimisation by individuals loyal to him.”

Do you want to deal with that?

MR GAMA: Innuendo, conjecture, there is nothing that I can say to those kinds of things, it is his belief system. I am not there, there is no such but I think the issue of
20 whether he would be seen to be trustworthy or loyal towards his principals by other colleagues in the security industry is something that he should himself think about because where somebody can be creative and make lies about their principals, I think everybody – it is something that he should have thought about before he starts the

inventions and the flavour.

ADV MYBURGH SC: No, Mr Gama, I just want to point out something to you. Can you go to page ...[intervenes]

MR GAMA: Perhaps before you do, Chair?

ADV MYBURGH SC: Yes, sure.

MR GAMA: I do not know if it would be – I do not know what time it is, I do not keep a watch but ...[intervenes]

CHAIRPERSON: It is about ten to four.

MR GAMA: If we could take a short ...[intervenes]

10 **CHAIRPERSON:** A short adjournment.

MR GAMA: Yes.

CHAIRPERSON: No, that is fine, we normally take it at four so we may as well take it now. It will be a ten minutes adjournment. I think, Mr Myburgh, we would start with the next stream.

ADV MYBURGH SC: Yes.

CHAIRPERSON: It is the same stream but maybe at five?

ADV MYBURGH SC: I have got – on this score I have got literally two more questions or three more questions to ask

20 Mr Gama to finish on this.

CHAIRPERSON: On this one, yes, yes.

ADV MYBURGH SC: Mr Solomons just Whatsapped me to find out whether we are on for four o'clock.

CHAIRPERSON: Oh.

ADV MYBURGH SC: The remote link is in the process of

being established.

CHAIRPERSON: Yes, well what I have in mind is that we should go on with Mr Gama to five.

ADV MYBURGH SC: Fair enough.

CHAIRPERSON: Because the evening session we always say they must arrive at four, be ready.

ADV MYBURGH SC: Yes.

CHAIRPERSON: If we are done with the day witness then we start. If not, we start at five. Okay, alright, we will
10 adjourn for ten minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Mr Gama I just wanted to take you, if I may, to page 94 of Witness 2's statement or affidavit. From what I can see Witness 2 only ever uses three specific dates, he talks of the collection on the 13th of June 2017, you see that, then over the page ...[intervenes]

MR GAMA: Page 94?

20 **ADV MYBURGH SC:** 94, red numbering. He speaks of a collection on 13 June 2017, we have been over this, and over the page a collection on the 13th of July 2017 and then the third time that he uses a specific date is in paragraph 36 he speaks of you having been at a meeting at Denel on the 20th of April 2017, but we know that's not

contentious because you accept that. So, the two dates, events in relation to the 13th of June and the 13th of July are contentious but, on both occasions, you have, via the information that has been provided to you by the Commission, been able to source minutes of meetings, a special meeting of the Board of Directors and then a meeting of the TNPA which, on your version establishes your defence, is that correct?

MR GAMA: I think that's a legal term,
10 establishes...[intervenes].

CHAIRPERSON: Your explanation.

ADV MYBURGH SC: Your explanation, okay.

CHAIRPERSON: Or your side of the story about whatever allegation he makes.

MR GAMA: Yes.

CHAIRPERSON: Ja.

ADV MYBURGH SC: So, if you could then go, please to your affidavit and can I take you to paragraph 7 at page 250.2.6.4. paragraph 7 you say,

20 "The legal team of the Commission – as the legal team of the Commission is well aware, I entertained the thought of causing witness 2 to be cross-examined and in this context, I requested the Commission to provide me with my diaries spanning the period relevant to the testimony of witness 2.

To date such access has not been provided, sub-
two, any attempt at causing the effect of cross-
examination of witness 2 is dependent on and will
be premised upon demonstrating that I was,
physically, not in attendance and/or in the company
of witness 2 when certain meetings transpired, and
cash was conveyed as he alleges but rather that I
was elsewhere and potentially in the company of
other persons. The Commission's legal team's
10 failure to provide access to my diary has prejudiced
me and deprives me of my ability to test the
evidence of witness 2 through cross-examination",

Now, if necessary, we can put up an affidavit
dealing with this but Mr Gama, you will know, and this has
been placed on record before that what the Commission
has provided you with is electronic data that would make
up a diary, from January 2012 until September 2018, in fact
there were over 14 000 records that were provided to you,
we went through this last time, Mr Benjamin, in fact
20 delivered this on a flash disk to your attorneys. I would
just ask you, also, to confirm that when you gave evidence
on the 11th of March my investigators actually sat with your
attorney and demonstrated how you could recreate your
diary with reference to that electronic information, would
you confirm that, on the 11th of March?

MR GAMA: Yes, except that it doesn't recreate a diary and I think I've been at pains to explain to Mr Myburgh, and I think I explained earlier this morning that what this does, I think you call it electronic data, I'm looking for a diary I don't have a diary. The electronic data gives you 50 to 60% of information that you would ordinarily find in the proper diary. So, we have used the information that we have been given to the extent that we can. So, it doesn't give us the kind of information that we wanted and that's
10 why we have sought to resort, now, to meeting minutes and those kinds of things just to show and demonstrate that some of these things, when they are alleged to have happened, that I was not even at the places where witness 2 says that I have been. so, I know from the interaction between myself and my legal team and the legal team and the Commission's legal team that the 14 000 records, as it were, provide electronic data but they don't provide a diary. So, I think it's something which we've gradually had to accept that, that's what it is, it's not the diary as we
20 would know it because we believe that, if it was actually the diary itself, I think it would have been much, much better. For instance, there are these two or three dates that have been given but we don't have any of the other dates where he says certain things could have happened or that could have been useful...[intervenes].

ADV MYBURGH SC: Mr Gama only three specific dates are given and your case in respect of two of them lies in the minutes which you tracked using the data that was given to you and you've actually shown the Chairperson one of these schedules that none of us can read and you say, well that shows me, that I was in a meeting with the Chairperson of the Board.

MR GAMA: Yes, and I've indicated to you what it shows, it's the meeting requests. So, it says so and so need a
10 meeting request for these people, for a meeting to take place at such and such a day. The way that it works, you have to go into a specific date, look for those things but sometimes it doesn't tell you where the meetings were and the only reason you are able to get the meetings and find out where they were is if there's minutes that took place. Certain times you can have a meeting somewhere and there are no minutes that were taken because it was not a formal, you know, meeting. So, I think that is the issue...[intervenes].

20 **CHAIRPERSON:** It's a hardcopy that you are looking for or?

MR GAMA: I'm trying to remember what this thing was called on the diary, it's a Microsoft, exchange is it...[intervenes].

CHAIRPERSON: But I take it that it's something that

people in the Commission is not in possession of, whatever it is you are looking for?

MR GAMA: They are unable to procure it Chair.

CHAIRPERSON: Ja.

MR GAMA: They've tried.

CHAIRPERSON: And, has Transnet said they don't have it as well, Mr Myburgh, do you know?

ADV MYBURGH SC: I beg your pardon?

CHAIRPERSON: Has Transnet said they don't have it as
10 well?

ADV MYBURGH SC: Yes, they have.

CHAIRPERSON: They have ja so I just wanted to make sure that if there is a complaint against the Commission it would be addressed but you say Mr Gama also confirms that he accepts that the Commission doesn't have it, obviously if the Commission had it, it probably would have no reason not to give him. So, the position is simply – is the position, Mr Gama that you simply – you are simply lamenting the absence of that diary without blaming
20 anybody...[intervenes]?

ADV MYBURGH SC: No, I do not wish to apportion blame, I know that the team has – all I say is that the Commission's legal team has also failed to find it for me, but I know that they tried so maybe it's just the manner and way in which we write it in English yes.

CHAIRPERSON: Yes, okay, alright okay that's fine...[intervenes].

MR GAMA: So, I'm not saying that it's because of a lack of trying.

CHAIRPERSON: Yes, okay.

MR GAMA: And so, I'm saying, what we have gives us something.

CHAIRPERSON: Ja, but not everything?

MR GAMA: Yes, but it doesn't give us everything it gives
10 us 50 to 60% of what diaries would have been used for.

CHAIRPERSON: Okay, alright, well maybe I may as well mention this, Mr Gama, now that we're talking about this. To the extent that anybody, witness, whether it's somebody implicated, wrongdoing or not, if they have got concerns we are quite happy for them to articulate those concerns and my attitude is that, we must look at those concerns and be able to say, we have looked at this, has got merit, this is what should happen, address it, this maybe we don't agree it's got no merit but if people have got concerns let
20 them articulate them and then we look at them, we come back to them and say, this is our response. So that is part of the reason why I wanted to know about this diary even earlier, okay.

MR GAMA: Ja, I'm not asking the Commission to still continue trying, I think they've tried, so we are saying –

we're just lamenting the fact that what we intended to do.

CHAIRPERSON: Yes.

MR GAMA: We wanted to cross-examine the witness.

CHAIRPERSON: Yes, okay, alright.

ADV MYBURGH SC: But Mr Gama that – I'm afraid I don't understand why you can't cross-examine the witness with reference to the minutes of the meeting on the 13th of June and the minutes of the meeting on the 13th of July, just as you've articulated your case here.

10 **MR GAMA:** I think we could argue this *ad infinitum* Chair, I have no intention to – I can't take it further.

ADV MYBURGH SC: As I understand it, you in fact, with reference to the electronic information that the Commission provided you with, you were able to work out that on the 13th of June you were at the special Board meeting and on the 13th of July you were at a meeting on the – with the TNPA and that then caused you or your attorneys to ask the Commission to produce these two sets of minutes. SG2 and 3 isn't that correct?

20 **MR GAMA:** Yes, but it might not be – it may not have reflected everything that happened on that particular day. For instance, with what we have, I couldn't be able to tell you why I was delayed for two hours at the meeting of the TNPA, but my diary probably would have done that. So, this is something – it's a useful tool but it doesn't achieve,

completely, the objectives for which I wanted the diary for.

ADV MYBURGH SC: Of course, the point of contention there is not your time of arrival at the meeting, it's your time of departure and you say that can be determined with reference to the minutes.

MR GAMA: Yes.

ADV MYBURGH SC: And then just to complete this, so we gave you that demonstration on the 11th of March then on the 18th of March, and you've explained how this came
10 about with reference to the information the Commission had given you, Mr Khan...[intervenes].

MR GAMA: Sorry, can you repeat that, sorry.

ADV MYBURGH SC: On the 11th of March we gave you a demonstration, on the 18th of March Mr Khan requested the Commission to provide you with these two sets of minutes and that – I'm sorry that was on the 17th on March and on the 18th of March Mr Benjamin provided them. You want to see the email string, or will you take my word for it, here it is?

20 **MR GAMA:** Well, I don't know where we are going to with this.

ADV MYBURGH SC: Quite simple Mr Gama, the information that you gave it's – the information that you were provided with you used it to establish that you were in these two meetings and you asked us to provide you

with the minutes and we provided them to you within one day.

MR GAMA: And?

ADV MYBURGH SC: You accept that?

MR GAMA: Yes.

ADV MYBURGH SC: Fine.

CHAIRPERSON: That answer was yes.

ADV MYBURGH SC: Mr Gama I'd like to turn to a different topic, and I would like to...[intervenes].

10 **MR GAMA:** I'm sorry the document that has been given to him must he slot it in somewhere in the bundle or?

ADV MYBURGH SC: I don't think it's necessary DCJ, if the chronology is accepted by Mr Gama, that on the 17th a request was made by his attorney for the two sets of minutes and on the 18th of March the Commission provided his attorney with the two sets and those are the minutes that then, are next to his affidavit.

CHAIRPERSON: Okay, alright.

ADV MYBURGH SC: Mr Gama, what I would like to do –
20 because it becomes important for many of the topics that we're going to address in due course is to look at your role in relation to the 1064 locomotives and perhaps you could assist us with working out exactly how you fitted in, what role you played from the beginning to the end. Is it my understanding that in all of your interactions in relation to

the 1064 locomotives, and there's part of your affidavit that I'll take you to, you were, at all times the Chief Executive of Transnet Freight Rail?

MR GAMA: Yes.

ADV MYBURGH SC: And then – in fact, let me correct myself right towards the end you took certain decisions, as I recall, you were at the helm for example when the relocation was dealt with and you were also at the helm when the club loan was secured, does that accord with
10 your recollection? So that would have been in 2015?

MR GAMA: Yes.

ADV MYBURGH SC: So, could you just explain to the Chairperson from the beginning, how this unfolded, the 1064 locomotives, your role in it, your role in the business case, your role in the post tender negotiations, your role in the increase in the ETC, from the beginning to the end, to what you were members of sub-committees' etcetera?

MR GAMA: Okay, do you have a reference that we can use like my affidavit to deal with that issue?

20 **ADV MYBURGH SC:** The difficulty with that is that it's dealt with sort of pitted if you know what I mean, in a sense that, for example, if you look at page 250.1.33 you talk there, about the business case and the handing over of the business case. Is that a convenient place to start or do you want to start earlier, dealing with the market

demand strategy etcetera?

MR GAMA: That's fine, I could give you a broad brush and maybe what – what could assist the Commission on these matters is an understanding of the decision making process and then we can go into – I think there are three things that we need to understand about any – of these decisions. Whether it's the 1064, the 100, 95 any investment decision. The first thing is that there is an investment case that is made which is a business case for
 10 the investment to be made which is called the investing decision and that investing decision is normally taken in a context where a number the of assumptions must be made and what I've seen a lot here happen is that there then became a marriage between the assumptions and the investing decision in terms of what then happened and then when people wanted to make certain comparisons they failed to get out of the post in terms of the investing decision and the investment case, Chair.

So, as with the case with the 1064 – so there was
 20 an investment decision that was made that the 1064 locomotive that must be purchased but even that, before you got to it, as Mr Myburgh indicates, Transnet had a locomotive lead plan, there was a market demand strategy which gave the context to it. The market demand strategy said, how do we meet the demands of the market without

looking at the constraints that we as Transnet have in terms of how to finance a capital investment programme. So, I'll come back to that, the second decision is the procurement decision. The procurement decision is when you go out to the market and you start the process to find bidders that can supply you with this equipment. So, in this case, we are talking about locomotives.

That process is a very separate process from the investment decision and typically the procurement decision
10 takes place after the investment decision has been made or simultaneously in terms of long lead procurement processes such as – for infrastructure or for locomotive. The procurement decision is then premised on how you call for proposals, how you adjudicate, how you qualify and disqualify, what are the financial, technical, commercial criteria that are measured in order to arrive at an adjudicated decision and then the third decision is the financing decision. The financing decision talks to how are you going to finance the capital investment programme.
20 The programme is the whole programme so if you have the MTS, you have the whole programme but the projects within the programme and the capital programme. So, there are various projects, and they are closely intertwined because for certain of these things if you do certain things here you must also do certain things there so that you

have a complete picture in terms of the – what Mr ...[indistinct – dropped voice].

The financing decision talks to whether you are going to finance in-house, from your own cash flow, all of the capital or whether you are going to borrow some of the money, and it also takes into account the period within which you are going to ...[indistinct] the assets. So, for instance you cannot go for a bank overdraft if you are going to finance an asset that has an asset lifecycle of 20
10 or 30 years, so then you try to match your asset that you are acquiring with the financial instrument that is commiserate with that. There is a delineation in Transnet in terms of who does what. So, for me as a lowly railway man who is just trying to – my job in Transnet was to meet customer expectations. Customers want to move a product from point A to point B. What we found was, the assets were too old, locomotives were more than 35 years old, they failed all the time, a trip to Durban which could ordinarily by train take 12 hours would take 35 hours. You
20 can't run an economy when producers and consumers cannot not, within reason – with reasonable expectation know what time their cargo will be there because people are chasing just in time principles, their production – there are factories that need certain raw materials to go into a process in order for them to run.

So, as a result, even though railways are cheaper than trucks or road, people ended up transporting a vast number of tonnages via the road because of the lack of the reliability of the rail. What had triggered is, there was a serious under investment which had happened over a period of time in the railway, in fact the last locomotives that had been acquired were around 1972 which was a problem and that's why you were now having a process and a system where you had locomotives that failed because
10 they were too old. They had gone through midlife refits and some of the parts that were required were no longer there. Some of these locomotives are no longer even in manufacture but Transnet was still running them.

So, what ended up happening is that if you had 20 locomotives running you would park 2 locomotives from which you would take some parts to use on the others because there's nowhere else that you are going to find these parts, they are now obsolete. So, that was the situation that we were in, but we were also saying that if
20 we wanted to create a world class, competitive logistic system for our country, reliability is at the top end of the system that you need to create and in order to be reliable you need locomotives that have fewer faults per 100 000 ton kilometres as much as possible. Ours was just simply out of the range that you could have your clients to have

any form of confidence in the system that you had and as a result, therefore, the railway was just not reliable and we found that more and more trucks were on the road and that causes also, untold issues.

So, we as the people who then, had to deal with the clients, we required to have these assets that would give a measure of respectability to the promise that we made to customers. So, we, the lowly railway people were only really interested in acquiring these assets so that we could
10 put them into operations and run them. The group had to fund and finance this, they have treasury operations and finance people who are hired to do this. Then the other thing that we were then doing was to then be involved in the procurement process. The procurement process has got its own procedures manual in terms of how it works. So you're looking at the interplay of these three processes. The investing decision we could not make at our division because what we needed to buy was just simply too large for our delegated authority or anything so this was probably I
20 think Transnet had a R300 billion market demand strategy I cannot remember the actual number I think it went to about 350 and these locomotives that we wanted to acquire were estimated at roughly about 40 billion of that which was about 15 to 18% of the – the total of Transnet.

So Transnet had to look at this very closely so the

investment decision therefore also had to take place at board level in fact it took place at ministerial level because of the – the size of it and there were PFMA issues. So I think that is the context within which these key decisions had to be made.

So Transnet Freight Rail worked on the investment case up to a certain point and the Transnet said okay thank you very much we think we like what you want to achieve however it is too big for you so we run with it on your behalf.

10 We would like your input from time to time so give us some support people that we can liaise with that will deal with these issues but we will also get external people to assist us because it is just simply too big.

And so that is what they did. So that was the investment decision until the time when it went to board from the board it went to the ministers and then it was approved. So that was the aspect that we dealt with at TFR. So we came up with a business case up to a particular level when we presented it to what is called the Group Capital

20 Investment Committee.

After the Group Capital Investment Committee then the Group CFO then had to take this and run with it and do all of the different things that had to be done like the capital assurance, the risk management framework etcetera around it leading to the board the decisions to hatch all of those

things.

But then the second decision that we were involved in as TFR was the pre-payment. So our chief procurement officer then was given the authority via the board also just to go to the board first to say now you can initiate and you can start the process. And then we had to go back to the board and say these are the committees that we will put in place in order for us to be able to deliver.

Then TFR also ran with the procurement process.

10 We then have high value tender teams which is an audit function and a compliance function that looks at every step of the way as you deal with this and ticks and say okay you can go to the next step you have fulfilled satisfactory these particular steps.

The third one which is the financing one which involved how you finance it that is way over our league at the – that is what the Group function and finance and treasury typically dealt with although they would ask us for input in terms of if we produce so many per year how much

20 money would you need in that year to – in order to be able to finance and pay?

So I think that provides context Chair and then we can then go into the actual...

CHAIRPERSON: Specifics and the processes.

MR GAMA: The actual specific things but then I think once

we have understood that – I think specifically when you do the investment decision you – you make all kinds of assumption from a clean slate or from certain things that you know.

You might find that by the time you get to the end of the process that which you thought you know you find that you only know –knew 50 or 60% of it and then you have to deal with it so you end up with what is called an estimate of the investment in terms of what it is going to cost.

10 And then once you do the procurement decision the procurement decision is the one that gives you the actual cost that you are going to deal with and then the final step will then come in because I can give you an actual today to say if we bought all of them today it is going to cost us so much we knew that out of the – out of the procurement process. But then you need the clever finance people to then say to you okay if it is going to be delivered over a seven year period and you have to borrow money what does that mean; what is it that we will have to do?

20 Then they talk about the net present value or the future value of the present cash flows and it gets – it gets complicate we never really got too involved in it. They would tell us what it was and we would accept what they tell us because that is what they do every day – that is – that is their job.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: Yes. So I just wanted to look then at the first phase as you call it – the business case or investment decision. Could I just take you to certain parts of your affidavit please? At page 250.133 and I am talking now of your third affidavit.

CHAIRPERSON: And that is at Bundle 7?

ADV MYBURGH SC: Bundle 7 Chairperson. Are you there Mr Gama?

10 **MR GAMA:** Yes I am.

ADV MYBURGH SC: Now just to thrash out what you have been saying about the business case. At 9.3:

“The 1064 locomotive business case was developed at TFR where after it was handed over to head office.”

MR GAMA: Correct.

ADV MYBURGH SC: And then you go on to say:

20 “In terms of the development of the business case for the 1064 locomotives will probably be between six and ten individuals that contributed to the development of the business case. The team was coordinated by Callard whose main role was to ensure that the business case was coherent and that it integrated various elements of business,

financial, commercial, technical as well as operational capabilities within TFR with a view to optimise in the fleet.”

At 9.5.

“The business case was finalised by TFR sometime in 2012 and then submitted the Group Finance division of Transnet SOC Limited which then appointed McKinsey as well as other transaction advisors that would assist Transnet in acquisition of the 1064 locomotives.”

So I just wanted to confirm with you these transaction advisors they were not appointed at TFR level they were appointed at Transnet level after the business case was handed over to them, is that correct?

MR GAMA: That is correct.

ADV MYBURGH SC: Then you say at 9.6:

“Once the business case had been handed over from TFR division to head office the business case became the responsibility of head office.”

MR GAMA: Correct.

ADV MYBURGH SC: You say at 9.7:

“Between May 2012 and April 2013 the business case was dealt with by the Group

Chief Financial Officer at the time Anoj Singh and Mohammedy as the General Manager responsible for capital assurance and integration”

MR GAMA: That is correct.

ADV MYBURGH SC: And then you say at 9.8:

10 “In the main Callard and Pillay together with others from the TFR division continued to support and assist McKinsey and the Transnet group in terms of providing professional input concerning technical information that was required.”

And then if I can take you to 10.1 you say the same thing:

“The initial business case was prepared by TFR.”

At 10.2:

20 “The business case was submitted to Group Finance and from the time that it was presented as a business case at the Transnet Capital Investment Committee Group Finance advised that they were appointing McKinsey to evaluate the business case.”

And you make the point again at 11.2:

“The appointment of transaction advisors

took place at Group head office level.”

Over the page you were not – 12.1:

“Party to the appointment of either McKinsey
nor Regiments.”

MR GAMA: Correct.

ADV MYBURGH SC: And then I just wanted you to confirm
13.2:

10 “I confirm that Singh performed the key
oversight role and I in my capacity as CEO of
TFR during the period May 2012 to April
2014 provided him with support in the form of
Human Resources from within the TFR
division.”

MR GAMA: Correct.

ADV MYBURGH SC: And the relevance of those dates May
2012 when the initial business case was presented and April
2013 when the board confirmed it.

MR GAMA: Sorry where are you now?

20 **ADV MYBURGH SC:** The significance of the date May 2012
to April 2013.

CHAIRPERSON: Paragraph 20.2.

MR GAMA: Yes the significance of that date is that in May
2012 is when we basically took the investment case to the
Transnet Capital Investment Committee and after May 2012
when they the group office then accepted the business case

they then said look we need to evaluate and assess this business case. It took them then the better part of the next twelve months to do exactly that. And then in April 2013 the board approved the business case. That is the significance of those dates.

ADV MYBURGH SC: And then if I could take you Mr Gama because you – a lot of this is then repeated but gathered together are then quite usefully. At page 250.169 – 169 under the heading Acquisition of the 1064 diesel and electric
10 locomotives.

MR GAMA: 169?

ADV MYBURGH SC: 169 yes. Paragraph 78 you confirm that you were then the Chief Executive Officer during the acquisition phase. You talk about a team from TRF having been responsible.

At 78.3 over the page:

20 “Once the investment case was adopted by Capital its future management was assumed by Mr Singh the GCFO of Transnet. You submitted the investment case to the Group Executive Committee. Once approved by the Executive Committee it was considered by the GCEO who recommended it to BADC whose chairperson in turn recommended the investment case to the board.”

I just want to go through those – those steps if I may?

MR GAMA: Yes.

ADV MYBURGH SC: So could you just perhaps expand upon those various different levels and the role of the Chief Executive, the role of BADC and then the role of the board in relation to the business case.

MR GAMA: So if – if we use 78.3 as a – as a pillar. So the Capital Investment Committee is charged with looking at the investment case. The people at Group Finance would then
10 look at it they assess and evaluate under the leadership of the Group Chief Financial Officer.

Once they are satisfied with it they do many tests financial and risk framework tests. Once they are satisfied with it then it moves upstairs to the Group Executive Committee for approval or recommendation. The Group Executive Committee is the highest decision making audi amongst the executives and is chaired by the Chief Executive Officer. Once the Group Executive Committee has then dealt with it then the GCE has to engage the board
20 committees.

So in this case it had to go to the board Acquisition And Disposals Committee. And once the board Acquisition And Disposals Committee has approved or got it recommended to it then that chairperson of that committee or that sub-committee of the board would then recommend the

investment case to the board itself.

And in this case after the board has approved it also needed to go to the – to the Minister because it exceeded the delegated framework within which the board could approve. I think the board could approve around R4 billion so anything above the R4 billion has to go to the Minister.

ADV MYBURGH SC: So I just wanted to ask you about this BADC as we call it the BADC. That we know is a committee of the board, correct?

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

ADV MYBURGH SC: And typically who would – who would sit on the BADC? How many members would it have?

MR GAMA: Probably four or five non-executive board members would sit in there and then the GCFO and the GCE were ex-official members of that committee.

ADV MYBURGH SC: Of the BADC? So that would have been up until they went – they were seconded to Eskom would it be Mr Molefe and Mr Singh?

MR GAMA: Yes.

20 **ADV MYBURGH SC:** And how is the chairperson of the BADC appointed do you know?

MR GAMA: I do not know probably by the chairperson of the board. I am not sure. I have seen in certain instances where I think there were two separate processes that get followed in this type of thing.

Amongst the non-executives they would sit and they will say we have five committees in the board we need a chairperson of each and then they would decide amongst themselves who was going to chair this one. But I know that two committees which is the HR and Remuneration Committee even after they have agreed they have to send that to the Minister to approve.

So that – that is the HR and RAMCO as well as the Audit and Risk Committee I think those ones the Minister
 10 then gives final approval of who will chair that. So the chairperson of the board will then provide the Minister to say these are the people who will be the members and this is the person who will be the chairman and then in terms of corporate governance we will also share a very brief CV of each of the members. But most of the time the – because in Transnet the board members are all appointed by the Minister so the Minister would have had some of the CV's of these people before they were appointed.

ADV MYBURGH SC: So Mr Gama just picking up from that
 20 we were at 78.3 and explained that to us and then what you deal with is the evolution of the business case. If I could take you to page 171 you will see about seven lines down on the right hand side:

“On 25 April 2014 one year after we handed over the process to the Group the board

approved the business case.”

So it culminated in board approval is that correct?

MR GAMA: Yes.

ADV MYBURGH SC: And then you go onto say at 78.6 and you have already addressed this:

“Once the business case was approved the procurement process was initiated.”

I just want to ask you a few questions about that. From what we have heard the procurement process the initiation of it
10 you have the issuing of RFP's, you have that process in closing and then you have various stages the tender evaluation stage, the BAFO stage, best and final offer and the PTN Post Tender Negotiation phase and that then ultimately results in the conclusion of what I will refer to as LSA's Locomotive Supply Agreements. Are they – is that a correct lineation of the various phases? Tender evaluation, BAFO and PTN stage?

MR GAMA: Yes.

ADV MYBURGH SC: Ja. Now who was – you say that Mr
20 Jiyane TFR was involved in that procurement process.

MR GAMA: Yes Mr Jiyane was the overseer of the procurement process. Within the procurement process I think they were close to I might be wrong maybe 120 who dealt with the approving. And each of these in – maybe there were six or seven different committees each of them

had a chairperson.

So there would be a chairperson for the commercial stream and so that educate they have got certain things that they are looking for. There is a chairperson for the financial stream. There would be a chairperson for the technical stream. There would be a chairperson for the supplier development stream. There were also BBBEE and equity sort of requirements that were required in that.

So I do not know if I have done justice to the
10 different committees but then those chairpersons constituted what was called the tender evaluation team. And each of those then reported to Jiyane.

Alongside that was the high value tender evaluation team which is the independent team of experts and people that have got audit and compliance skills and they will look at the procedures manual. They will look at the entire RFP to say what does it say and how do certain things happen. They will look at any deviation that needs to be made and they will make recommendations and they will say okay this
20 deviation you can make but go back to whoever is the delegated authority to give you the proper delegation to do it etcetera, etcetera.

So in total I think roughly let me just say between 60 and maybe 120 different people I have seen their names in one of the documents that shows the different committees.

ADV MYBURGH SC: Well I do not know if the number is that important but I understood in your affidavit you talked about 40 but we will come to that.

MR GAMA: Ja I am – I am not sure.

ADV MYBURGH SC: Sure.

MR GAMA: That is why I am saying.

ADV MYBURGH SC: I think they referred to as cross – cross-functional.

MR GAMA: Yes cross-functional team there is one for
10 finance, commercial etcetera some were smaller some were bigger.

ADV MYBURGH SC: Alright.

MR GAMA: Ja.

ADV MYBURGH SC: Now Mr Gama perhaps just before we end off for the day let me just ask you this. Was the – would there then be a time where short – there would be a short list of bidders and that – that preliminary choice or assessment would have to be approved again by the BADC and the board before one entered the post-tender
20 negotiation?

MR GAMA: It depends on the delegation that was made at the time that the investment decision is made. So the board would give the GCE a delegation they will say we give you delegation to go out on tender which is the procurement process. If they want the GCE to shortlist they would also

say that.

And then they will say after you have shortlisted come back to us for further delegation – share with us who you have shortlisted etcetera and we can then make a decision in terms of what the next steps ought to be. So that is normally the process.

Sometimes they will say GCE we give you the authority to go out on tender, shortlist, approve a supplier and come and share with us who the chosen supplier is
10 based on your PPM.

ADV MYBURGH SC: Now Mr Gama I understand that you would not have been involved yourself in the tender evaluation process but that you were involved in the post-tender negotiations, is that correct?

MR GAMA: Yes I was chosen or nominated as it were to be part of the post-tender negotiations. I had a very fancy title of them the co-chair of the negotiating committee and what it really meant was that if during the negotiations there was anything that the negotiating teams needed clarity on or if
20 there were deadlocks with suppliers etcetera they could come to me and explain the problem and I could then sit with them and say okay go about it this way, look at it in different ways.

As it turned out I was never approached at any point by the teams to say we have deadlocked somewhere we

need your input or counsel or certain amount of wisdom. It did not really happen there.

I think at each stage they came back and said we are now at this stage this is what we are doing. They – it was more – it became just more of an information sharing thing. I never found myself having to get stuck in any kind of negotiation.

ADV MYBURGH SC: So who – who were the other members of the Locomotive Steering Committee?

10 **MR GAMA:** The Locomotive Steering Committee was chaired by the GCE. I was a member, the GCFO was a member. I think legal and compliance was a member. Probably internal audit and I think Jiyani was an ex-official.

ADV MYBURGH SC: And then what has also surfaced in evidence is a sub-committee of the Locomotive Steering Committee. Do you recall such a body comprising yourself, Mr Molefe and Mr Singh?

MR GAMA: Ja I would not say it is a sub-committee but I think that was the committee and then some of the people
20 who were ad-hoc members.

ADV MYBURGH SC: Alright. And so you deal with your role perhaps I could just take you so we can finish this off to page 250.165 paragraph 70.1. You say:

“I was indeed a member of the Locomotive Steering Committee it was Brian Molefe who

designated me as co-chair of the negotiating committee. I did not participate in any negotiations as alleged or at all whilst I did in fact offer to assist with any deadlock or dispute – disputes that arose during the negotiation process. I was at no stage requested into nor to assist.”

When you talk about – sorry would you confirm that?

MR GAMA: I confirm that.

10 **ADV MYBURGH SC:** When you talk about the co-chair who was the other – the other co-chair?

MR GAMA: It was Mr Singh.

ADV MYBURGH SC: Mr Singh. And who then you say you – you did not become involved in the negotiations who actually ran and conducted them?

MR GAMA: In the main Mr Singh was actually based at the place where the negotiations took place but I think he would be the one who would indicate whether he was ever approached in terms of the negotiation process but Jiyane
20 oversaw aspects of it. At the negotiation there were various teams.

There was I know that there was a team that looked after the Transnet Engineering sub-contract. There were financial teams but in the main it was a lot of the same people who were at the adjudication who were also

negotiating.

ADV MYBURGH SC: Chairperson I see it is just after five if this is a convenient time to end the daytime session.

CHAIRPERSON: Unfortunately some of us must go into the evening session. Yes I think let us adjourn the day session at this stage. I think that in terms of where we are with regard to Mr Gama's evidence Friday we are where we last discussed in chambers. I do not know whether in the meantime there is anything you wish to project to me that is
10 either yourself or your (talking over one another)

ADV MYBURGH SC: Only – the only thing that I can report back to you from my side is Mr Oldwadge will tell you of his position.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Is that apparently Mr ...[intervenes]

CHAIRPERSON: Molefe.

ADV MYBURGH SC: Molefe is flexible.

CHAIRPERSON: Yes.

ADV MYBURGH SC: As you know he is scheduled for
20 Thursday night.

CHAIRPERSON: Yes.

ADV MYBURGH SC: He has indicated potentially – we haven't taken it any further with him.

CHAIRPERSON: Okay alright. Okay. We leave it on the basis that on your side sometime on Thursday or the

evening session or sometime on Thursday we can make time for Mr Gama to continue his evidence even if it is for the number of hours that his counsel would not be available on ...[intervenes]

ADV MYBURGH SC: Chair ...[intervenes]

CHAIRPERSON: ...on Friday morning and then continue at a certain time on Friday subject to what they have to say.

ADV MYBURGH SC: Chairperson, I think he wants to
10 address you on that. As I understand that their position remains.

CHAIRPERSON: Yes, ja.

ADV MYBURGH SC: It is either Thursday and no Friday.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Or it is Friday.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Then, of course, with the difficulty of Mr Oldwadge not being here but can I let you ...[intervenes]

20 **CHAIRPERSON:** No, that is fine.

ADV MYBURGH SC: ...can he address you?

CHAIRPERSON: No, that is fine. Before – he might be able to address us but I wanted to hear your side.

ADV MYBURGH SC: Yes.

CHAIRPERSON: But you had made that offer.

ADV MYBURGH SC: Yes.

CHAIRPERSON: You are able to make that to may be to be a position that from the Legal Team's side and the Commission's side ...[intervenes]

ADV MYBURGH SC: Yes.

CHAIRPERSON: ...once the President's evidence on Thursday is done, we could continue with Mr Gama's evidence, whether we have restricted it to a particular number of hours to make sure that we do not lose time that
10 would have been used on Friday morning. From your side, that is available. Then he can indicate what his position is.

ADV MYBURGH SC: Yes, Chair.

CHAIRPERSON: Okay alright. Counsel for Mr Gama, are you able to say anything about the position?

ADV OLDWAGE: Mr Chair, I do not want to burden the record with the repetition of what it is that I communicated to you in chambers.

CHAIRPERSON: Yes, yes.

20 **ADV OLDWAGE:** Regrettable, my position is that I must commit ...[intervenes]

CHAIRPERSON: Ja.

ADV OLDWAGE: ...from a timing perspective ...[intervenes]

CHAIRPERSON: Yes.

ADV OLDWAGE: ...to another firm of attorneys by virtue of a matter I have in court on Friday. I did communicate to Mr Myburgh ...[intervenes]

CHAIRPERSON: Ja, okay.

ADV OLDWAGE: ...that I need to know well in advance. So if it is not a situation, I must know by, perhaps, tomorrow afternoon. I have to commit my time elsewhere.

CHAIRPERSON: Okay. No, that is fine. I think as far as I am concerned. One, Friday proceeds as planned, starting
10 usual starting time. However, we could start later than the usual time to accommodate counsel for Mr Gama if on Thursday they are available for us to make sure whatever time we would lose on Friday is used on Thursday but if, obviously, they are not available to take advantage of Thursday, then the position would remain – Friday remains as was prior to today. Okay alright.

ADV MYBURGH SC: Thank you, Chair.

CHAIRPERSON: We will then adjourn for about 10, 15-minutes. Will ten minutes do Mr Myburgh?

20 **ADV MYBURGH SC:** I think it should, Chair.

CHAIRPERSON: Ten minutes, ja.

ADV MYBURGH SC: We just need to establish a remote link to Mr Solomon.

CHAIRPERSON: Yes. Okay. Maybe we will say 15-minutes.

ADV MYBURGH SC: Thank you, Chair.

CHAIRPERSON: Just to be on the safe side. We will adjourn for 15-minutes and then we will then start with the evening session. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon, good evening to those who may not have been us during the day session. Mr Myburgh, are you ready?

10 **ADV MYBURGH SC:** Yes, we are. Thank you, Chairperson.

CHAIRPERSON: H'm?

ADV MYBURGH SC: Chairperson, as you know, this is an application brought by Mr Gigaba. You should have the file in front of you. It is – it bears the reference SEQ18/20/2021 and in essence it is an application for a determination that Ms Gigaba's affidavit be find to be inadmissible. In the alternative that Mr Gigaba's statement of response to be admitted and that both his evidence and
20 that of Ms Gigaba be heard *in camera* and not disclosed to the public other than to the extent to which you referred to it in your final report and that Mr Gigaba is granted leave to cross-examine Ms Gigaba.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Mr Gigaba is represented by

Mr Solomons who is remotely linked but you will see that he is there. Oh, here he comes.

CHAIRPERSON: H'm?

ADV MYBURGH SC: [No audible reply]

CHAIRPERSON: Yes?

ADV MYBURGH SC: And with your direction and leave, Chairperson I assume you would want Mr Solomon to address you on the application.

CHAIRPERSON: Yes but ...[intervenes]

10 **ADV MYBURGH SC:** And that he would then respond.

CHAIRPERSON: Let us do that. Well, before we do that. Ms Magma's legal representatives, if they wish to place themselves on record in regard to this application or they want to do so only in regard to the leading of evidence?

ADV S LEBAGENG: Thank you very much, Chair. We do place ourselves on record. My name is Simbati(?) Lebageng(?).

CHAIRPERSON: Yes.

ADV S LEBAGENG: I am from ...[indistinct].

20 **CHAIRPERSON:** H'm?

ADV S LEBAGENG: I am with my attorney, Ms Quali(?) and indeed Ms Gigaba is here with us.

CHAIRPERSON: Yes.

ADV S LEBAGENG: And insofar as the application is concerned by Ms Gigaba. I am informed - I have a letter

that was sent prior to the Commission and to their Legal Team indicating that Ms Gigaba will not oppose and will simply abide by the decision of ...[intervenes]

CHAIRPERSON: Yes. Okay alright.

ADV S LEBAGENG: Thank you, Chairperson.

CHAIRPERSON: Alright. Good afternoon, good evening, Mr Solomons.

ADV SOLOMONS: Good evening, Chair. I appear in this matter together with my learned friend, Mr Gumby(?)

10 [00:03:23]

CHAIRPERSON: Yes.

ADV SOLOMONS: For the applicant in the application.

CHAIRPERSON: Yes.

ADV SOLOMONS: Chair, we will also refer just shortly before the commencement of these proceedings with a letter which was apparently addressed to the Commission from Ms Gigaba's legal representative.

CHAIRPERSON: H'm?

20 **ADV SOLOMONS:** We were also aware that on the last occasion when our application was due to be heard and Ms Gigaba was due to lead evidence, that another letter was read out by her attorney on her behalf, setting out that she did not wish to participate further in the proceedings.

So certain of the allegations that are contained in our application and certain of the submissions have, to

some extent, been superseded and we would submit Chair, bolstered by the attitude of Ms Gigaba as set out in the two letters that have been presented to you. We have done ...[intervenes]

CHAIRPERSON: Well, just hang on one second.

ADV SOLOMONS: ...further ...[intervenes]

CHAIRPERSON: Sorry, Mr Solomons.

ADV SOLOMONS: Yes?

CHAIRPERSON: I am aware that there is a certain letter,
10 a long letter that was shown to me this afternoon
Ms Magma's attorneys. It is too long for me to read or it was too long for me to read within that tea break. So I did see certain part of it, very little. I have not read it. I do not know – I did not get the impression that it is essential to read it before the hearing. At any rate, it came late.

So I do not take it as part of this application, nor do I take that other letter that was read out on that day as part of this application. I believe that what I have got here is simply the papers as they stood n that day. Whether or
20 not anything has been filed since then, I am not aware and certainly I have not been told. So I am very keen ...[intervenes]

ADV SOLOMONS: [Indistinct]

CHAIRPERSON: I am very keen that we use the time we have to deal with the application because if the position is

that we will or that we end up having to hear her evidence, we need all the time that we can have. So I just mention that so as you address me you know what it is that I have read and what it is that I have not read.

ADV MYBURGH SC: Okay. DCJ, may I ...[intervenes]

ADV SOLOMONS: Yes, Chair ...[intervenes]

CHAIRPERSON: Sorry, Mr Solomons. I think Mr Myburgh want say something.

ADV MYBURGH SC: No, sorry. I am terrible sorry to
10 interrupt but I have been asked that Mr Solomons please clean his camera if possible because the technical people say the picture is very fudged.

CHAIRPERSON: Oh, okay. Did you hear that Mr Solomons?

ADV SOLOMONS: I heard. I will try and ask for someone assistance.

CHAIRPERSON: Yes, okay. But ...[intervenes]

ADV SOLOMONS: Can I address you?

CHAIRPERSON: We – I can see you. Yes, continue.

20 **ADV SOLOMONS:** Thank you. Chair, what you have just placed on record creates some difficulty for me and my client.

CHAIRPERSON: H'm?

ADV SOLOMONS: In this sense.

CHAIRPERSON: H'm?

ADV SOLOMONS: We do believe that the letter that we just received now is important. It was just, literally, sent to us a few moments ago. We do believe it is important because it not only bolsters my client's application but it, in a sense, the supports the needs for the relief that we seek.

And if I preclude it from referring to it, it will certainly hamper my client in presenting his application in the most favourable manner and we would hope in the most
10 informative manner for the benefit of the Commission. But I do not ...[intervenes]

CHAIRPERSON: Well, I want to say to you is. I just wanted you to know what the factual position is, namely that I have not read the whole of that letter and what I have read is very little. That is as far as I wanted to go, you know?

ADV SOLOMONS: Yes.

CHAIRPERSON: Whether or not you can rely on it and if you want to rely on it, what needs to be done, I have not
20 gone into that. I just wanted you to know that as a matter of fact I have not read it because it came – I have not had time. I have been sitting the whole day hearing evidence. Ja.

ADV SOLOMONS: I understand it. I am appreciative of it.

CHAIRPERSON: H'm.

ADV SOLOMONS: Of that difficulty. But Chair, then there are different ways to deal with it. If you are happy for me to address you on aspects of the letter in the absence of you having not considered it in its entirety, I would be happy to do so. If you require my client to place the letter more formally before you by way of an affidavit then that may mean that this application cannot be heard now.

CHAIRPERSON: Yes.

ADV SOLOMONS: ...falls flat. If facts are placed before
10 the Commission, not by my client, then we would be – and when I say before the Commission and placed on record before the Commission, then my client, with respect, should be able to rely upon those facts insofar as he deems any of those facts of what has been placed on record to be supportive of his application and hopefully also to bring those particular facts placed on record to the attention of the Chair.

CHAIRPERSON: One second...[intervenes]

ADV SOLOMONS: ...to allow the Chair.

20 **CHAIRPERSON:** One second. Mr Myburgh ...[intervenes]

ADV SOLOMONS: [Indistinct]

CHAIRPERSON: One second, Mr Solomons. Mr Myburgh, do you have any position about the use of those letters that are not here?

ADV MYBURGH SC: Chairperson, I think – well, certainly

from the Legal Team's point of view. If this is a – if this is going to give rise to a delay because Mr Solomons wants to put in an affidavit, we would rather the matter be dealt with now.

CHAIRPERSON: Ja.

ADV MYBURGH SC: It is not clear to me how this letter ultimately will assist Mr Gigaba.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But obviously, Mr Solomons wants to
10 make his ...[intervenes]

CHAIRPERSON: Ja. I think, Mr Solomons, if you say – if you submit to me that I can and should rely on it as it is and I do not know if maybe you rely on both or both letters, the one that was read out here last time and the one that arrived today. If you submit that I can and should have regard to it, I am quite happy to let you make that submission and you refer me to whatever portions of it that you think are relevant or important and we continue without me making any ruling. And then once I have heard
20 everything, I can take it from there. Is that fine with you?

ADV SOLOMONS: That is quite fine, Chair. What I would perhaps recommend, subject to you, Chair, is that Ms Gigaba's legal representative perhaps read into the record and place as she did on the last occasion.

CHAIRPERSON: Ja, but I do not want somebody to read

the whole letter because it is quite long. So I – if you have certain parts that you want to rely on, I am quite happy to allow you to read those parts. That is number one. Number two. I must choose to place some time limit on the time for the application.

So maybe let us do that first, so that as you make your submissions you have an understanding of how much time we – you have. Because of the fact that you are such an experienced counsel, I think I should not give you
10 more than 15-minutes. What do you think? [laughs] This is nothing. This is nothing.

ADV SOLOMONS: [Indistinct]

CHAIRPERSON: You can... [laughs]

ADV SOLOMONS: [Indistinct]

CHAIRPERSON: You can handle this easily. [laughs] So if I give you 15-minutes from now, is that fine?

ADV SOLOMONS: I would be guided by your Chair.

CHAIRPERSON: Yes, let us try that.

ADV SOLOMONS: Have you – I imagine you would have
20 had the opportunity. Have you had the opportunity of seeing our submissions which was sent today sometime to the Commission?

CHAIRPERSON: No, I have not seen them. I read the papers last time when the matter was going to be heard. I have not seen any new papers today. They might be here

but I am not aware of them. I have not been told of anything that may have been filed today. But ...[intervenes]

ADV SOLOMONS: That is fine.

CHAIRPERSON: Yes.

ADV SOLOMONS: Well, Chair I will try and stay within the 15-minutes.

CHAIRPERSON: Yes-no, that is fine.

ADV SOLOMONS: [Indistinct]

10 **CHAIRPERSON**: Yes, that is fine.

ADV SOLOMONS: Can I just at the outside then, tick(?) where we - without necessarily reading of the sake of time saving.

CHAIRPERSON: Yes.

ADV SOLOMONS: Perhaps to start with Ms Gigaba's letter. We want to just make the following points where we think what she has set out in the letter supports our contentions. The one is, she appears to take the point that she is not a compatible witness although she does not
20 want to be a contentions witness.

So she respects the subpoena received by her but it would seem to us she wishes to exercise a martial privilege which is part of what we have argued in our application and in our initial submissions and supplementary submissions. So that is the first point. And

Chair, if you want to make a note of that. That is paragraph 4 of the letter.

The second point that we wish to make which we submit is the supportive of our contentions is. She says in paragraphs 8.3 and 8.4 of her letter... Chair, if you would also just bear in mind. I only had a very quick glance at the letter.

CHAIRPERSON: Yes.

ADV SOLOMONS: But she says – thank you, Chairperson.

10 She says that there are certain facts that are not within her personal knowledge. She also place it on record that what is in her statement or affidavit is not in all respects, it would appear to be, accurate. That is the third thing.

The fourth thing. In paragraph 8.5 she raises security concerns which we say supports the alternative relief that we seek if she is to give evidence that it should be *in camera*. We have raised that in our application as an alternative.

20 And then refrain from, a concern, she has got a concern relating to public disclosure which again feeds into our submission in regard to the alternative relief. Chair, I am going to just try and share our amended submission with you.

CHAIRPERSON: Yes.

ADV SOLOMONS: [No audible reply]

CHAIRPERSON: Yes, you may do so.

ADV SOLOMONS: I am trying now. I just hope it will... Is the document on your screen, Chair?

CHAIRPERSON: Yes, it is but let me find out. Mr Myburgh, do you know whether I have go a hard copy here in the file?

ADV MYBURGH SC: No, Chairperson. I do not think you do.

CHAIRPERSON: Ja, I think your junior also shakes her
10 head. So.

ADV MYBURGH SC: We ourselves have not ...[intervenes]

CHAIRPERSON: You do not ...[intervenes]

ADV MYBURGH SC: received the ...[intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: ...the amended written submissions.

CHAIRPERSON: Yes.

ADV MYBURGH SC: I do not think it is a difficulty if Mr Solomons ...[intervenes]

20 **CHAIRPERSON:** Yes, I will not be able to read the text, Mr Solomons. So it will be better if you deal – you articulate those parts of the revised written submissions that you believe are important.

ADV SOLOMONS: Yes. Chair ...[intervenes]

CHAIRPERSON: I will not be able to read from where I

am.

ADV SOLOMONS: Certainly.

CHAIRPERSON: Ja.

ADV SOLOMONS: That is not a problem. But perhaps we could – it was sent to the Commission and perhaps for the purposes of your ruling that our learned friend ...[intervenes]

CHAIRPERSON: Maybe ...[intervenes]

ADV SOLOMONS: [Indistinct]

10 **CHAIRPERSON:** Ja. Maybe ...[intervenes]

ADV SOLOMONS: ...whilst I proceed.

CHAIRPERSON: Maybe what I can tell you Mr Solomons is that it might be convenient because of time constraints that you deal with your client's application only insofar, today, only insofar as it relates to your relief other than leave to cross-examine because even if were to grant you leave to cross-examine, you would not cross-examine today So another day can be arranged.

ADV SOLOMONS: Ja, we ...[intervenes]

20 **CHAIRPERSON:** So maybe ...[intervenes]

ADV SOLOMONS: Ja ...[intervenes]

CHAIRPERSON: Maybe you – maybe the relief to cross-examine can be dealt with some other time. What is more urgent is such a relief as need to be dealt with today if Ms Mngoma is to testify.

ADV SOLOMONS: Yes. Yes, Chair. Well, that involves two aspects. One is our application that she should not testify in relation to the contents of her affidavit that had been shared with us. And then, in the alternative, if she is, it should be held *in camera*.

CHAIRPERSON: Well ...[intervenes]

ADV SOLOMONS: ...and we make our submissions in our application why that should be.

CHAIRPERSON: Well, let us take the first one. What is
10 the basis for the first one?

ADV SOLOMONS: Chair ...[intervenes]

CHAIRPERSON: Or is it difficult ...[intervenes]

ADV SOLOMONS: ...the basis for this is – there are a number but I will just try to deal with them in turn.

CHAIRPERSON: H'm?

ADV SOLOMONS: The main thrust is that these are parties who are married, who are going through an acrimonious divorce and a large portion and perhaps the majority of her evidence contained in the affidavit
20 constitutes communications that took place between a husband and wife which would ordinarily be protected by the marital privilege. So that is the first point.

We say that communications that took place between Mr and Mrs Gigaba within the marital privilege context should not be aired in public. Secondly, we say

that because of the acrimonious nature of their divorce proceedings, there is an inherent risk in the evidence and the veracity of the evidence that she is going to give and that will impact upon questions of credibility, et cetera.

And that fear has been exacerbated by the two letters that she has addressed to the Commission and it seems to us that the Commission should not be used as a platform for evidence of this nature where the parties are in engaged in an acrimonious divorce to bring about the
10 end of their matrimonial regime.

And we submit that it sets a dangerous and perhaps distasteful precedent that the Commission's work which we all endorse as extremely important for our democracy but it should not be used as a forum for the area of domestic grievances but that is not the reason why we say ...[intervenes]

CHAIRPERSON: Hang on one second, Mr Solomons. Maybe because I am listening to what you have to say more than reading, I am not reading what is on the screen.
20 Maybe you should just let us see your face and not the written submissions. I will make notes of the important points.

ADV SOLOMONS: Yes, it is just... Can you not see me, Chair?

CHAIRPERSON: Well, I can see a little bit but I am

focussing more on your – on what you have to say to me than the written – I prefer to see you.

ADV SOLOMONS: I will stop the sharing then and – is that better then?

CHAIRPERSON: Ja, ja, ja. I prefer to see you as you make your submissions.

ADV SOLOMONS: Yes.

CHAIRPERSON: And will simply ask that you look at your written submissions and see what you need to

10 ...[intervenes]

ADV SOLOMONS: Certainly, Chair.

CHAIRPERSON: Ja.

ADV SOLOMONS: Certainly, Chair.

CHAIRPERSON: H'm.

ADV SOLOMONS: So Chair, the other concern that we raised is the question of the minor children born from the marriage. There are numerous references which we have highlighted in our application where they are implicated in the evidence and we need not overemphasise that the
20 rights of those minor children would need to be protected.

And to have this type of evidence presented in so a public a forum which concerns the relationship between the parents who are going through this divorce, we submit it is another factor to be taken into account. So Chair, why we say ...[intervenes]

CHAIRPERSON: Well, you have relied on two points in relation to the first relief. The marital privilege and the acrimonious nature of the divorce proceedings. Is that right?

ADV SOLOMONS: Correct.

CHAIRPERSON: Yes. Marital privilege. You are saying I must refuse to hear evidence as a Commission that may relate to allegations of state capture and corruption from a person who is willing to give that evidence and knowing
10 that I am not a criminal court?

ADV SOLOMONS: Chair, if – certainly we accept you are not a criminal court. The question of being willing to give evidence, we have a concern with. We do emphasise that recent events have superseded our initial application and we would invite you Chair not to ignore what has been submitted to the Commission through Ms Gigaba's attorney's letters.

CHAIRPERSON: Well, have you got ...[intervenes]

ADV SOLOMONS: To say ...[intervenes]

20 **CHAIRPERSON:** I am sorry. Have you got an accurate statement of the law on the privilege that you refer to?

ADV SOLOMONS: We have. We have.

CHAIRPERSON: Ja.

ADV SOLOMONS: In our heads ...[intervenes]

CHAIRPERSON: What... Ja, what does it say? Just read

it.

ADV SOLOMONS: Well, what we say is. Spousal testimonial privilege – we are talking now in a criminal context – does not exist. We have to protect the rights of the accused. It exists for public policy reasons and to protect the right of privacy. So ...[intervenes]

CHAIRPERSON: No, no what I want is this ...[intervenes]

ADV SOLOMONS: [Indistinct]

CHAIRPERSON: What I want is the statement of the
10 privilege, the principal.

ADV SOLOMONS: We ...[intervenes]

CHAIRPERSON: Where you have an accurate statement of what the privilege is. This what may not be done. This is what may be done.

ADV SOLOMONS: Yes, Chair. We ...[intervenes]

CHAIRPERSON: Is it not that – is it available? Can it be invoked in a Commission – a Commission proceedings?

ADV SOLOMONS: Well, of course we recognise that we made the point in our amended submissions that the
20 Commission stands in a slightly different position but what we are inviting you Chair to hold, that the underline public policy reasons would apply to a commission because spousal – and we referred to a case of the – sorry – we referred to the authors in ...[indistinct], *S J van Niekerk and S C Van der Merwe*.

We have got the reference. It is at 14.1 of our amended submissions. If you can just make a note, Chair? Paragraph 14.1 that:

“Spousal testimonial privilege reflects the public interest in preserving the institution of marriage and in recognition of the law of marriage in society and in the value preserving family, spousal testimonial privilege underlines the notion that spouses should be able to confide in one another freely and without interference from the law...”

CHAIRPERSON: But once – I am sorry, Mr Solomons. I know I am interrupting you but ...[intervenes]

ADV SOLOMONS: Well ...[intervenes]

CHAIRPERSON: I want to make sure by the time the 15-minutes is finished, you have dealt with things – matters that I think are important to assist me.

ADV SOLOMONS: Yes.

CHAIRPERSON: Once it is accepted that the privilege is not, let us say, applicable in commission proceedings. What you would be asking me is. You would be saying, and you must just confirm if that is what you are saying. We know it is not applicable, strictly speaking, to the commission proceedings but we think that it is something that the Commission can take into account, whatever else

in deciding whether to grant the relief that we are asking for. Is that what you are saying?

ADV SOLOMON SC: Quite so Chair, what we are saying is that there is spells or testimonial privilege and in that context the non-compellability argument that we have raised should apply and we say that really distinguishes itself from the judgment in the constitutional court in State versus Zuma regarding compellability of witnesses.

So what we are saying Chair is that where you have
 10 Ms Gigaba who now appears to be a reluctant witness, is no longer a voluntary participant in the commission's proceedings, we say that in terms of Section 34 of the Act she should not and cannot be compelled to testify against Mr Gigaba, because all the protections that one would normally have, are no longer there.

Because her evidence on her own version is now inherently unreliable and in this context one should not allow the airing of spousal grievances against one another in the public forum of the commission. So we are asking
 20 you Chair to exercise a discretion in terms of Rule 1(1) so that her evidence is ruled inadmissible and her compellability which she now relies upon and which we have also relied upon is such that she should not be compelled to give that evidence today before the commissioner.

Really we also rely Chair on the procedural prejudice which we say outweighs the minimal probative value if any, of Ms Gigaba's evidence which it offers. So when you look at the totality, when you look at the position that Ms Gigaba has now adopted, the procedural privilege, the prejudice is such that you should exercise that discretion and find that that compellability issue would apply to the work of the commission.

Where you have got in the context of the spouses
10 relationship a high likelihood that the evidence would be unreliable, fabricated, highly subjected, emotive and possibly vindictively motivated. Chair, the other problem we have and I know you have said we should separate the question of cross-examination and I am not going to go there, because in the interest of time and we agree with what is behind the Chair's ruling in that regard, but we do say that were she to give evidence, we would be compelled to have, to request you Chair to have an opportunity to
20 tease out the collateral issues which give rise to portions of the evidence contained in her statement, which we again submit respectfully to you Chair is outside of the commission's mandate, and should not be allowed to be aired in this forum.

We have made the point and we just want to emphasise that the admission of evidence of this nature,

we submit makes [indistinct] on Mr Gigaba and his children's rights to dignity and privacy and we would submit Chair, that you have the right in terms of Regulation 15 to determine your own procedures.

Rule 6 allows you to receive evidence that you consider relevant and that you need not follow the strict rules of evidence regarding admissibility and we would submit that exercising that broad discretion that you have, this evidence should not be accepted.

10 Chair, we make the point that whilst Rule 6 says that the ordinary rules of the admissibility of evidence in courts of law need not be strictly applied to determine admissibility, we submit that the time tested norms of admissibility in court proceedings would find relevance to the commission's determinations, and this is because those norms with respect have been developed to take into account issues such as reliability, probative value, fairness in assessing evidence, all of which are concerns which ought similarly to be valued in the commission's
20 assessment.

Sorry Chair.

CHAIRPERSON: Yes. I do not know whether you have gone beyond the first relief, because I am looking at your time, whether you have started addressing the second relief or the alternative relief as well. So I am just alerting

you to time.

I think you may well have exhausted 15 minutes, but maybe you have exhausted ten. So I just want you to be alive to that.

ADV SOLOMON SC: Yes. Certainly Chair. We just, you asked me about where the privilege arises in terms of the Criminal Procedure Act. I am not going to read it, Section 198 and 199. They are to be found at, if you could make a note paragraph 29.10 at page 15 of our amended
10 submissions, and I am just going to make this last submission.

CHAIRPERSON: Yes.

ADV SOLOMON SC: And then move on to the second leg, but what we submit is that Section 198 of the Criminal Procedure Act, means that a witness in Ms Gigaba's position may refuse to disclose marital communications with her husband, and she could also refuse to disclose communications which she has made.

So we would say that she would be entitled to
20 evoke that privilege. We say she should not be compelled to give evidence, and our amended submissions set out very clearly why we say this and we would urge you Chair, before you make any ruling, would have regard to that.

Then just moving to the ...[intervenes]

CHAIRPERSON: I am sorry. In your written submissions,

whatever you think is important, I would like you to articulate it, because I might not have time to go and read but if you have articulated what you believe is important, that is fine. In regard to this stress relief.

ADV SOLOMON SC: I think we have Chair, in respect of the first ...[intervenes]

CHAIRPERSON: Relief.

ADV SOLOMON SC: The first relief. It is just there is no time to refer you to all the authorities we rely upon, but
10 they are in our ...[intervenes]

CHAIRPERSON: In the written submissions.

ADV SOLOMON SC: Written submissions.

CHAIRPERSON: Okay.

ADV SOLOMON SC: In regard to the in camera element.

CHAIRPERSON: Yes.

ADV SOLOMON SC: We submit to you Chair, that if you do decide to have her evidence led and if she is to give evidence, the proceedings should be held in camera. The reason we say you have that discretion in terms of Section
20 4 of the Act and Regulation 2 also as read with Regulation 9, gives you that, those powers.

4.2 specifically says you can make an order to be held in camera, as she has now elaborated upon in the latest letter that was placed on record before the commencement this afternoon, and as elaborated upon by

Ms Gigaba in his statement, the evidence is acutely intimate and personal, and it relates not only to the spouses romantic and marital relationships, but also to their children's private lives.

Many of these impact upon the divorce proceedings which are presently sub judice and pending. We have dealt with in quite some detail in our submissions ...[intervenes]

CHAIRPERSON: Just hang on Mr Solomon. I was still just
10 looking at the power in Section 4.

ADV SOLOMON SC: Yes.

CHAIRPERSON: To you know, in camera proceedings strictly speaking are proceedings where the Court or the tribunal would exclude the public in effect from the hearing. I know that in this commission the term in camera has been used sometimes or what we have done namely to allow witnesses who fear for their safety, who do not want their identities to be disclosed or their faces to be shown, to give evidence from a venue that is different from the
20 venue of the hearing and they are, their evidence is heard by the public and they can be cross-examined.

But their identities are not published and their faces are not shown. Sometimes members of the legal team have referred to that as in camera but strictly speaking it is not in camera, but that is what it is. Here, Section 4 says:

“All evidence and addresses should be heard in public, provided that the Chairman of the commission may in his discretion exclude from the place where such evidence is to be given or such address is to be deliver any class of persons or all persons whose presence at the hearing of such evidence or address is in his opinion not necessary or desirable.”

Now of course the reality is that for the past two
10 and a half years or whatever, the commission has been operating on the basis that its proceedings are broadcast live and so on. They are shown on TV and so on. You, I do not remember that the papers say anything other than in camera about what we should do with those arrangements, existing arrangements if we grant your relief, bearing in mind what Section 4 says, namely the exclusion of the public from the venue.

ADV SOLOMON SC: Yes, well Chair, we have said and we agree with you that concealing the person’s face in these,
20 in this situation, is not what would meet the potential harm that we have described in our application and in our amended submissions.

What we are saying is that where you have evidence of an acutely intimate and personal nature that relates not only to the spouses romantic and marital

relationship but also to the children's private lives. It is inappropriate to have that evidence in a public forum and perhaps the answer to our alternate relief that we seek, is that reinforces the need for that evidence not to be led, because if the later of these proceedings are such that arrangements cannot be made to afford that protection, that really reinforces the need to exclude this evidence in all the circumstances that we have described between a spouse and a husband who may or may not be implicated
 10 in some wrongdoing.

So it really just reinforces the need to exclude her evidence, because if you cannot and it is no criticism of the commission, but if one cannot provide that type of anonymity and confidentiality and protection because of the nature of the proceedings, then we submit that really reinforces the point why Ms Gigaba should not be compelled to give evidence against her husband in the manner suggested.

CHAIRPERSON: My recollection Mr Solomon, my
 20 recollection of evidence relating to children seems to be simply evidence about some present being given to a child or something like that. I do not remember that there is evidence that relates to children that is ...[intervenes]

ADV SOLOMON SC: We have ...[intervenes]

CHAIRPERSON: Really of any serious negative nature.

ADV SOLOMON SC: We have highlighted in our submissions, our amended submissions Chair, the evidence that impacts upon the children, and just by way of example. She commences her evidence with dealing with the nature of the romantic relationship with Mr Gigaba when she was pregnant with her first child.

She describes those issues, she describes the couple's financial arrangements at that time. She describes being unhappy with Mr Gigaba's parenting.
10 Claims that he did not spend enough time with his children.

CHAIRPERSON: Ja.

ADV SOLOMON SC: A lot of these, I would not necessarily want to go through the list ...[intervenes]

CHAIRPERSON: No, no.

ADV SOLOMON SC: Because it is in a sense self-defeating.

CHAIRPERSON: Ja.

ADV SOLOMON SC: Because we are saying that ...[intervenes]

20 **CHAIRPERSON:** No, no, no.

ADV SOLOMON SC: Evidence should not, sorry Chair.

CHAIRPERSON: Okay, alright. Is it fine if I give you, I see we are at nearly quarter past. I think you started maybe about quarter to or twenty to, I am not sure. Is it fine if I give you five minutes to deal with whatever

remains?

ADV SOLOMON SC: That is fine Chair.

CHAIRPERSON: Okay.

ADV SOLOMON SC: We are grateful for the indulgence.

CHAIRPERSON: Okay.

ADV SOLOMON SC: What we would just submit on the question of the children, that the references to the children are not simply passing references. Ms Gigaba's claims intertwine the children's lives, their health, their positions, 10 their relationship with their parents, into the allegations against Mr Gigaba.

So there is really a cross-pollicisation which would be very difficult to untangle and those references are just contextualised amongst other details about immediate family and extended family's homes and relationships. So the silver thread that underpins the entire affidavit of Ms Gigaba runs deeply into the family relationship, the extended family relationship, the children.

That evidence of course cannot be heard least of all 20 tested Chair, without intimate aspects of the children's lives being disclosed. So in doing so, regardless of the outcome of the findings, the Gigaba children who are now only eight and nine years old, will invariably be tainted with links of allegations of State Capture and the acrimonious divorce proceedings between their parents

being aired in so public a forum.

We say that such disclosure does not serve the public confidence in a manner that is proportionate to the harm occasioned to the children's best interests.

CHAIRPERSON: Yes.

ADV SOLOMON SC: And we furthermore oppose the compellability of Ms Gigaba for the reasons we have stated, but our concerns have been certainly exacerbated by the recent events and what she has placed on record
10 before you.

CHAIRPERSON: Yes.

ADV SOLOMON SC: And really the legal teams who oppose our applications, suggesting that the evidence will be protected from public disclosure on the basis of the identity of witnesses, does not assist us really to meet these requirements.

So we would submit Chair, that this is a case for the extension of the compellability argument, that given the unique facts that you are now presented with, particularly
20 Ms Gigaba's changed attitude, she is no longer a witness who has simply come to the commission, and we just wanted to make this point which really concerns us and this is our final point.

CHAIRPERSON: Yes.

ADV SOLOMON SC: Is that we understood she had

approached the commission, but it seems from the letter that we received this afternoon, that the commission approached her and when you look at the way her statement reads with the headings and the flow of the statement, it engenders quite a lot of concern on the part of my client as to how the entire narrative was structured and whether that was indeed the [indistinct] of Ms Gigaba in the sense of she says now placing on record that there are aspects of the statement that she is unhappy about.

10 What we say sets a dangerous president is that if the commission is prepared to go and seek out witnesses who are involved in divorce proceedings which are pending between spouses to give evidence against a notionally implicated spouse, it really would set a very dangerous president.

CHAIRPERSON: No Mr Solomon.

ADV SOLOMON SC: We will submit Chair ...[intervenes]

CHAIRPERSON: No, no Mr Solomon. If the commission is set up to investigate allegations of State Capture and
20 corruption, it cannot stop to look for people who can assist us, just because they happen to be married or happen to be going through some divorce proceedings.

It looks for people who can assist us to determine the issues before it. It is doing the right thing. If it becomes aware that somebody may have information that

will help it with the issues that it is required to deal with, it would be doing the right thing to make the approach, because it seeks to carry out its mandate.

ADV SOLOMON SC: No Chair, we accept that but in circumstances where the witness now says that there are aspects of that affidavit she does not agree with ...[intervenes]

CHAIRPERSON: No, that will be a separate matter. That would be a separate matter.

10 **ADV SOLOMON SC:** That is what we are saying. Not as a general proposition.

CHAIRPERSON: Ja.

ADV SOLOMON SC: But just in these particular circumstances Chair.

CHAIRPERSON: Okay.

ADV SOLOMON SC: Those are our submissions Chair.

CHAIRPERSON: Okay, no thank you. Mr Myburgh, do you want to say something?

ADV MYBURGH SC: Yes, thank you Chairperson. We
20 have prepared some brief written submissions, if I could hand them up to you.

CHAIRPERSON: Okay.

ADV MYBURGH SC: They have been provided previously to Mr Solomon.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Chairperson, I take it that we also have ...[intervenes]

CHAIRPERSON: 15 minutes.

ADV MYBURGH SC: Ten, 15 minutes.

CHAIRPERSON: Ja, okay. Well, Mr Solomon ended up having much more than ...[intervenes]

ADV MYBURGH SC: We will not take more than 15.

CHAIRPERSON: Ja. Okay, alright.

ADV MYBURGH SC: Chairperson, in these legal
10 submissions we set out in our introduction the relief that is sought and then in the second section we deal with the applicable regulatory framework which I am not going to waste time on. I want to take you directly please to Section 3.

That is at page 4, dealing with the admissibility of the witness's affidavit. Now as a general statement ...[intervenes]

CHAIRPERSON: Just one second. Mr Solomon, can you hear or, I see I do not see your face, but can you hear Mr
20 Myburgh?

ADV SOLOMON SC: I can indeed Chair, I thought just to [indistinct] and ...[intervenes]

CHAIRPERSON: No, no that is fine. I just wanted to make sure that you are able to hear so that if you, when you are required to respond, you will have heard him.

ADV SOLOMON SC: Thank you Chair.

CHAIRPERSON: Okay, alright. Mr Myburgh?

ADV MYBURGH SC: So at paragraph 17 we make the point Chairperson, that in general terms the witness's evidence deals directly with matters that fall within the commission's terms of reference, and also that the affidavit and the evidence falls within the mandate and area investigation of the commission.

Then we set out in paragraph 19 and I am not going
10 to deal with this on the record.

CHAIRPERSON: Yes, yes.

ADV MYBURGH SC: What the witness's evidence includes and you would have seen that, and a lot of it is corroboratory.

CHAIRPERSON: Ja.

ADV MYBURGH SC: At paragraph 20 we also mention that she presents important original evidence and then at 21 Chairperson, we pose the question then on what basis can this affidavit be found to be inadmissible, and when you
20 look at Mr Gigaba's affidavit as a whole, he deals with three main points.

Firstly that the affidavit it is alleged seeks to publicise private matters. Secondly, that the admission of evidence is prejudicial to him and thirdly that the nature of the witness's evidence, is largely irrelevant and of little

probative value.

We say the first contention is founded on the allegation that the witness's approach to the commission is and I quote "an improper effort to advance her gender in our divorce proceedings." Well Chairperson, that is a matter for evidence, as motive often is.

Then as for the balance of the applicant's complaints under this head, about personal and matrimonial communications and as he puts it most
10 disturbingly references to our children, they will without merits and I would invite you Chairperson, to have regard to paragraph 16 of the papers and perhaps I could just take you there.

This is at page 9, paragraph 16. Thirdly and most disturbingly, Nomshula makes several references to our children and this is a point Chairperson that you put to Mr Solomon. When you look at these five sub paragraphs, I mean they are completely innocuous.

They are contextual and I am not going to go into
20 the detail for obvious reasons. We go back to our submissions at paragraph 24, the second contention is premises on the hypothesis that the witness may assert marital communication privilege under cross-examination and thus avoid answering questions which would otherwise implicate her improper motive, and this will somehow cause

procedural prejudice.

Well, of course that is an hypothesis. We do not know whether Ms Gigaba is going to do that. But what is clear is that marital privilege does not apply in these proceedings and what we also know is that that privilege for the purposes of the affidavit was waved.

Then the third contention is the weakest of all of them. What is submitted is that large parts of the evidence are irrelevant and of little probative value. Now
 10 Chairperson, if I could take you please to paragraph 28.3 of the affidavit at page 15 and I would invite you Chairperson to read through these various paragraphs and ask yourself how conceivably can these things that are listed here be irrelevant.

In fact it is hard to imagine with respect a greater relevance to the work of this commission within some of the things that are listed in this paragraph.

CHAIRPERSON: I see, ja I see particularly 28.3.6.

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

20 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: This is highly admissible.

CHAIRPERSON: Ja.

ADV MYBURGH SC: All three legs that are relied upon are without merit. We then come to the in camera part of things and really what I want to just direct your attention to

if I may, is paragraphs 34 and 35 of our submissions.

Of course Chairperson, what needs to be done here is there must be a comparable waiting of competing rights or interests. That is what caused this. As in the case of courts, one of the factors to be weighed in the balance, is the importance of retaining the trust and confidence of the public in the proceedings of the commission, and also in its eventual findings and recommendation.

CHAIRPERSON: I guess that it does not help Mr
10 Solomon's case that his client was a public representative.

ADV MYBURGH SC: Well, precisely.

CHAIRPERSON: That does not help that case. Yes.

ADV MYBURGH SC: DCJ, what we do is we sight some authorities at footnote 19. If I could please take you to the flag that we have at the end of our heads.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Where we reproduce those three quotations, all judgments of the constitutional court. Obviously all in different contexts. But what strikes a
20 particular cord with us, is Shinga at the bottom. Paragraph 25.

The section makes dangerous inroads into our system of justice, which ordinarily requires court proceedings that affect the rights of parties to be heard in public.

These were criminal appeals in chambers. It provides that an appeal can be determined by a judge behind closed doors and we say that this is equally [indistinct] and particularly important. No member of the public will know what transpired.

Nobody can be present at the hearing. Far from having any merit, the provisions is amicable to the rule of the law, to the constitutional mandate of transparency into justice itself, and the danger must not be underestimated.

10 Those court proceedings carry within them the seeds for serious potential damage to every pillar on which every constitutional democracy is based.

And then if I could take you to paragraph 35 and this is the point that you were raising with our learned friend:

20 “The Commission is historically granted applications to mainly protect the identity of witnesses whose evidence is lead before the Commission. Those applications were founded upon security threats to the lives and safety of witnesses, the Witness Protection Act or the legislative and regulatory frameworks compelled a non-disclosure of that entity of persons or classified information. Even in those grave circumstances, the presentation of evidence was not prohibited in any material respect

from public consumption which the applicant seeks to achieve.”

And perhaps I could just – because it is central and we dealt with it today, where the evidence of the three Transnet drivers, witnesses 1, 2 and 3 were heard in camera, they still appeared, they gave evidence. Yes, their faces were blanked out, there is still a transcript of their affidavit, there is still an affidavit relating to the evidence. What Mr Gigaba is for you to shut down this
10 venue and for the public to know nothing about what happens literally behind closed doors save for what you may write in your report. We say there is simply no basis for that. I do not know whether Mr Solomon dealt with the application for cross-examination but we only have one point to make.

CHAIRPERSON: I think he did not but he might have mentioned some things relating to these that are mentioned in the cross-examination application but I said to him let us leave out the cross-examination application
20 for another day.

ADV MYBURGH SC: Thank you. So, Chairperson, the bottom line here is this is a highly relevant and admissible affidavit, it would do fundamental damage to the public perception of this Commission if we were to go literally behind doors.

And then insofar as Ms Gigaba's letter is concerned, I do not want to prejudge what Ms Gigaba's counsel may or may not make of this letter but it is not clear to me that Ms Gigaba is saying that she is not cooperating with the Commission.

CHAIRPERSON: Well, I think on the contrary...

ADV MYBURGH SC: Yes.

CHAIRPERSON: She reaffirms or affirms her cooperation from what I – the bit that I have read, she seems to be
10 suggesting that it might not even have been necessary for a summons to be issued.

ADV MYBURGH SC: Well, that is the point I want to make in conclusion, DCJ. Paragraphs 10 and 11, the last sentence of 10:

“We are available to discuss the way forward in the spirit of cooperation and civic duty.”

And then paragraph 11, at the end, she said that she has been treated poorly by the Commission, she has now been summoned with been given an opportunity to make
20 submissions as to the necessity for the summons. So yes, she complained about the way that she has been handled, the Commission is an open book, she must ventilate that on the record, if she is allowed to give evidence, and those things must be dealt with.

CHAIRPERSON: Ja.

ADV MYBURGH SC: If there are errors in her affidavit well, those must be corrected.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Those are our submissions.

CHAIRPERSON: No, that is fine. Thank you. Mr Solomon can I give you seven minutes in response?

ADV SOLOMON SC: That should suffice, Chair.

CHAIRPERSON: Okay, alright.

ADV SOLOMON SC: Chair, we do not agree with our
10 learned friend's characterisation of our application as
based on the three legs that he has argued. We say that
our application deals with spousal testimonial privilege,
which is the compellability issue, which he has not deal
with.

We say that we have raised that issue and we say
that on a proper reading of her letter she has raised the
compellability issue and where someone has a witness who
is not disrespectful of the Commission in the sense that
she refuses to come to the Commission – she says she is
20 cooperating with the Commission but, as we read it, she is
exercising her spousal testimonial privilege concerning
compellability and in that sense she should not be
compelled to testify.

Second point we have relied up is the marital
communications privilege and that is Sections 198 and 199

of the Criminal Procedure Act and we make the point, which our learned friend, with respect, has not addressed, that spousal testimony of privilege means a spouse cannot be compelled to give evidence in criminal proceedings against their spouse at all and we say there is no reason why that should not apply in these particular circumstances to the Commission and the work of the Commission and insofar as this particular application is concerned and we submit that it applies for two reasons.

10 The discretion that you have in terms of Section 3(4) of the Commissions Act and secondly, it is principally to protect the institution of marriage, not just an accused, so it is far beyond the narrow argument that our learned friend is evoking and we submit that Mrs Gigaba is both not a compellable witness and is also entitled to raise marital communication privilege in response to questions arising out of the marital relationship. And the mere fact that she mentions issues relevant to the mandate does not afford the nature of her evidence, probative weight or render her
20 compellable in the sense that our learned friend although has not argued but by implication.

And of course, Chair, we make the point strongly that if the state capture legal team accepts that her evidence may be tainted by improper motive and that this is a matter for evidence, that point only really bolsters our

argument that credibility needs to be tested and this is not the forum to descend into marital disputes and go and test credibility.

So, Chair, in regard to the first leg of our application we submit that our learned friend has not put up any compelling reason why any of the arguments that we have advanced should not be accepted.

Insofar as the question of *in camera* hearings, we have made our submissions, we stand by the concern we
 10 have that where in circumstances such as this, given the stance now adopted by Mrs Gigaba it would be extremely prejudicial particularly to the children born of the marriage and we do not agree with our learned friend's characterisation of the evidence and how it may or may not impact upon for that evidence to be aired fully in the full glare of the public eye. We would then again ask you Chair to uphold our application that the affidavit be found inadmissible and that she should not be allowed to give evidence, as we have submitted, but in the alternative, is
 20 she is, that that should be done in a total protected confidential *in camera* manner. Thank you, Chair.

CHAIRPERSON: Thank you, Mr Solomon. Prayer one is clear, prayer 2A, I am not sure what it means, Mr Solomons. Mr Solomons?

ADV SOLOMON SC: I am trying to unmute myself.

CHAIRPERSON: Oh, I am not sue – do you persist in that prayer?

ADV SOLOMON SC: Yes, that ...[intervenes]

CHAIRPERSON: Or is that for later?

ADV SOLOMON SC: That is for later we would submit.

CHAIRPERSON: Okay, okay.

ADV SOLOMON SC: Chair, you need not rule on that now.

CHAIRPERSON: Yes and then B is the *in camera* one.

ADV SOLOMON SC: Yes.

10 **CHAIRPERSON:** Ja and C?

ADV SOLOMON SC: It goes together with B.

CHAIRPERSON: Is C for now or for later?

ADV SOLOMON SC: I think it would be – it would go – it would be for now, Chair, because if you agree that it should be held *in camera* you will need to ...[intervenes]

CHAIRPERSON: Well, if I were to grant B you would not need C, is it not, because it would follow from B.

ADV SOLOMON SC: I think so, Chair, I think it is just belts and braces but I think you are correct.

20 **CHAIRPERSON:** But if I am not prepared to grant B, what would that make of C? Would it survive that or not?

ADV SOLOMON SC: No, I do not think there would be much left of C in those circumstances.

CHAIRPERSON: Yes. Okay, alright.

ADV SOLOMON SC: And then D we have left open.

CHAIRPERSON: Ja, D we leave for another day.

ADV SOLOMON SC: Yes, Chair.

CHAIRPERSON: And your side can remain so to speak *dominus litis* in regard to that after today in terms of what is to be done and when it is done, we can look at that and see to what extent argument is necessary or whether I can just deal with it in chambers without hearing in – without oral argument.

ADV SOLOMON SC: Thank you, Chair.

10 **CHAIRPERSON:** So we look at that after today.

ADV SOLOMON SC: Thank you, Chair.

CHAIRPERSON: Okay, alright. I am not going to give reasons for my decision but if anybody wishes to have reasons they can make a request in writing and reasons would be provided.

RULING

Having heard the application, I am satisfied that Mr Malusi Knowledge Nkanyezi Gigaba's application for prayer one in his notice of motion should be dismissed and it is
20 **DISMISSED.**

With regard to the alternative in prayer two that relates to Ms Mngoma, Mrs Gigaba's evidence being her *in camera*, that also is **DISMISSED.**

The application for leave to cross-examine will be dealt with at some other stage and any other relief that the

applicant makes it necessary to be dealt with at that stage, that is covered by the notice of motion.

That is the decision, so the long and short ...[intervenes]

ADV SOLOMON SC: As it pleases you, Chair.

CHAIRPERSON: Yes. The long and short is that Ms Mngoma, Mrs Gigaba, may give evidence and will do so in the open.

ADV MYBURGH SC: As you please, Chair.

10 **CHAIRPERSON:** Okay, alright. Shall we take ten minutes adjournment and resume? We will adjourn for ten minutes before we resume. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready, Mr Myburgh?

ADV MYBURGH SC: Yes, I am, Chairperson. With your leave I understood that my learned friend would like to address you.

CHAIRPERSON: Yes, okay, you can do so from where you
20 are if your work is working and you will be comfortable, okay?

ADV QOFA: Thank you, Chairperson, I was told the mic is in proper working order.

CHAIRPERSON: Yes, okay.

ADV QOFA: Through you, Chair, we have been requested

specifically by Ms Gigaba that it is important before she is called to address you that the contents of the letter be placed on record so that whatever references she has to make or whatever address she has to make would be premises upon us having placed this letter on record.

CHAIRPERSON: Okay, that is fine, that is fine.

ADV QOFA: Thank you very much, Chairperson. I will therefore just try and go and swiftly as possible through the letter and it reads as follows. Dated today:

10 “The Honourable DCJ, we refer to the above matter and in particular to this afternoon’s proceedings scheduled for the hearing of Ms Gigaba’s application as well as the leading of Ms Magma’s, our client’s evidence. And impression has been created, it appears for us, wrongly that our client is reluctant or refuses to cooperate with the Commission. We must clarify at the outset that our client does not wish to act in a manner which

20 Chairperson. She is a law-abiding citizen who had wished to play her civic duty in assisting the Commission to the best of her ability. She has acted in the spirit throughout her engagement with the Commission. Our client also has never had direct encounter with Chairperson of the

Commission, a person she holds in very high regard. This is why she has decided that this letter should be addressed directly for the attention of the Chairperson as it is not clear whether or not he is fully aware of the issues raised herein. Our client has taken the step of communicating directly with the Chairperson because she believes that there is animosity exhibited by the evidence leading team towards her which has led to the unnecessary and inexplicable issuing of summons. Our client is not an implicated person yet the summons is issued to compel her testimony as though she is an implicated person. More importantly, she is not a compellable witness. In this letter we will set our clients concerns which we understand the Chairperson has called for as the Commission is aware. Our client was previously scheduled to give evidence on the 9 April 2021 and this was subsequently postponed at the Commission's instance to the 13 April 2021. However, on the 13 April we presented the Commission with a letter stating that our client, due to certain constraints that she has, would be withdrawing her participation in the Commission. This position was also reiterated when our Ms Makatini appeared before

the Commission on the afternoon of 13 April 2021. During the said appearance the Chairperson asked for the details of the concerns that our client had and unfortunately we had at the time not had an opportunity to consult with our client for purposes of eliciting the details of concerns. Following the proceedings of the 13 April 2021 as set out herein above, our client was served with a summons in terms of Section 3.2 of the Commissions Act 8 of 1907 with rules of the Judicial Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state published in Government Gazette 41774 of 16 July 2018 to appear as a witness to give evidence before the Commission on the 26 April at four, at 16h00. The said summons were served at client's place of residence on the 16 April 2021 during her temporary absence. Our client received the summons upon her return on Monday 19 April 2021 and forwarded same to us on the 21 April 2021. We have now had an opportunity to consult with our client and she has reiterated that she has always given the Commission her full cooperation and respect. However, the concerns outlines herein below and which the Chairperson requested that our

client should spell out in detail have rendered it difficult for her to continue assisting the Commission. The concerns raised by our client, some of which have been brought to the Commission in the past are hereby listed below in compliance with the directive of the Chairperson.

- 8.1 On the eve of her initially scheduled appearance before the Commissioner 8 April 2021 she had to consult with the Commission's new evidence leader, Adv Anton Myburgh SC, who had replaced Adv Paul Pretorius SC. The change in counsel was destructive as our client's previous counsel had specifically discussed with Adv Pretorius that he would lead her evidence. It also became clear during the consultation that Adv Myburgh had previously not been favoured with a proper handover report of the issues and concerns already raised with Adv Pretorius. There had been a few consultations between our client and Adv Pretorius previously and significant progress had been made in preparing our client's evidence. This abrupt replacement of the evidence leader meant that our client had to go through the same process all over again. It is traumatic for our client to be forced to repeat the events of her testimony since her

marriage is in a state of collapse and there are minor children involved. The Commission shows no consideration and empathy [indistinct] when it changes its legal teams for its own undisclosed reasons. During the aforesaid consultation on the 8 April 2021 our client pointed out to the evidence leaders that there were certain facts reflected in the affidavit that were not in her personal knowledge which needed to be discussed with her clarified. AT
10 the time of issuing of the summons this had not been addressed. When these issues were raised with the evidence leading the tone of Adv September was accusatory suggesting that it was our client's fault that these errors were not picked up before the affidavits submitted. Given her state of anxiety about the evidence which is against her current husband and gives details of her marriage and children. It is grossly unfair for the Commission evidence leaders to seek to shift blame
20 to our client. Instead, as previously suggested by Adv Myburgh and agreed to by our client, these aspects could have been clarified in a supplementary affidavit. Serious security concerns pertaining to our client's safety had to been brought to the attention of the Commission. An undertaking

was made that the Commission would look into this aspect. Our client had not heard from the Commission in this regard nor has she been afforded any form of security or the courtesy of an explanation for the failure to do so. Our client's first affidavit was leaked to the media and she brought her dissatisfaction with this to the attention of the Commission. This aspect exacerbated our client's security concerns. The Commission

10 undertook that it would investigate the source of the leak and revert to our client. No update has to date been furnished by the Commission to our client around this issue. Our client also highlighted to the Commission her discomfort about the Commission sharing her affidavit with Ajay Gupta without informed her or her legal team. It is mentioned that Ajay Gupta was implicated but he has not been in the country since the Commission started and there was no basis to share the affidavit with him. The

20 Commission has been wrongly suggesting that our client volunteered to come to the Commission when the correct version is that she was approached by the Commission's Mr Sakhile Masuku in December 2020 and she in turn agreed to assist the Commission in compliance with her civic duty and

as a law-abiding citizen. The letter must be read together with our letter dated 13 April 2021. We trust that the above does set out the reasons for our client's non-appearance on the 13 April and demonstrate that her decision to do so was not in defiance of the Commission but emanates from serious concerns which the Commission has failed to address. This is further demonstrated by our client's decision to attend physically today in order to explain her stance which she would have done even in the absence of the unlawful [indistinct – dropping voice] We do not believe that the hostile and heavy-handed attitude adopted by the evidence leaders have assisted the process. Our client has taken a risky decision to testify at her own expense and that of her children. She is now being portrayed as a villain who is in breach of the Chairperson's direction which is both wrong and unfortunate. We are available to discuss the way forward in the spirit of cooperation and civic duty. In the totality of the circumstances our client is of the firm view that the conduct of the Commission towards her has been abusive, discriminatory and disrespectful and no regard has been given to her rights and the traumatic experiences she has had to

endure at the hands of other law enforcement agencies in the past nine months, instead these experiences are being repeated for no justified reason. She has now been summoned without being given an opportunity to make submissions as to the necessity of [indistinct – dropping voice]. We trust that the above is in order. If the Chairperson deems it necessary, the above issues will be elaborated upon in an open forum.”

10 The letter was signed Yours faithfully, RMC Attorneys.

Chairperson, this is basically the letter that we are aware, Chairperson, has been in hearings the whole day today and unfortunately as a result would have been unable to look at the contents of this letter. However, what seek to do, Chairperson, is to persuade the Chairperson to consider this letter and, if necessary, allow Ms Gigaba to have the opportunity to say Chairperson, I am here because I respect without fail the process of this Commission. She raised various concerns, Chairperson,

20 which have been listed in paragraph 8 and all she does, Chairperson, is to say I am humbly requesting that these issues that I raise be considered and if this letter fails to persuade the Chairperson, then Ms Gigaba is here and she will be able to explain any other issues that the Chairperson wishes [indistinct – dropping voice]. However,

if there is anything else that the Chairperson would like me to visit before you proceed, Chairperson, I will be happy to do so.

CHAIRPERSON: No, no, that is fine. But is the position that she is here on the basis that although she has concerns she is happy to assist the Commission or is the position that she has concerns, she is only here because she is compelled through the summons, otherwise she would not like to be here?

10 **ADV QOFA:** Chairperson, I will steal your words, actually you summed it quite well.

CHAIRPERSON: Well, I want to know ...[intervenes]

ADV QOFA: Alright, Chair, I think you have summed it quite well.

CHAIRPERSON: Because Mr Solomon was interpreting the letter in a certain way, that is the attorney's letter, and I had received a certain impression of it which was different from what he was saying, so I want to hear from you exactly what her position is.

20 **ADV QOFA:** Chairperson, maybe I should start from the onset by saying first of all, Ms Gigaba feels it is of paramount importance that if she can assist the Commission in any way she will be happy to do so. The only grave concerns that she had, Chairperson, is that the affidavit before you does not demonstrate – first it contains

information that – certain information that is not within knowledge, certain information that she has disputed and certain information that she does not agree with and she says, Chairperson, that unless that is brought clearly and explicitly to the Commission so that the Chair is aware, amongst others, that for instance Ms Gigaba is not happy with paragraphs 1, 2, 3, 4, 6 or 1, 2, 3 and she says unless that is made clear to the Commission then the Chairperson and the Republic will be under the understanding that what
 10 is contained in that affidavit is what Ms Gigaba is saying. Hence she is saying, Chairperson, through you, I am happy to file an affidavit to identify for the Chairperson all the aspects that I say do not reflect that which I would want to communicate to the Chairperson.

CHAIRPERSON: Yes.

ADV QOFA: I do also need to emphasise that she does [indistinct], Chairperson, that indeed she is not a compellable witness, she says so and she says, Chairperson, she believes that she enjoys the privilege –
 20 the long discussions that was had earlier, Chairperson, not only the privilege that falls under marital privilege, Chairperson, further the privilege against self-incrimination and, Chairperson, what is critical ...[intervenes]

CHAIRPERSON: Well, the one of self-incrimination is separate.

ADV QOFA: Indeed. Indeed, Chairperson.

CHAIRPERSON: So that stands on a different footing.
Ja, okay, continue?

ADV QOFA: Indeed, Chairperson, absolutely, I agree.
So, Chairperson, what she is just simply saying is, it is
important for her to demonstrate to the Chair that she will
not disrespect the direction of this Commission. She
expresses her reluctance in this letter not only on the
basis that she feels she is uncompellable[sic] witness but
10 she raises a plethora of issues that she feels have caused
her even further discomfort for participating further in the
Commission. Now, Chairperson, that ...[intervenes]

CHAIRPERSON: It is like you are confusing me even
more because when you started I thought you said she is
saying she is happy to assist the Commission, she thinks it
is an important job that it is doing but she just has certain
concerns and particularly she is concerned that in her
affidavit there may be certain or there are certain parts
which are not within her personal knowledge and she would
20 like or she would have liked to have done a supplementary
affidavit which would have identified those. Now that is
not a problem, that is somebody who says I want to assist
but there is a problem with some of the – some parts of the
affidavit but then when you went on ...[intervenes]

ADV QOFA: Chairperson, I was going to point two.

CHAIRPERSON: Or is the instructions that are difficult?

ADV QOFA: So, I am sorry, Chairperson, maybe I am probably tripping over myself in the process, I do apologise.

CHAIRPERSON: Ja.

ADV QOFA: But that is the first part to say I am unhappy with aspects of my affidavit for the reasons I will be advancing. Then she goes further, she says I come here with absolute respect for the Commission and a civic duty
10 that I take very seriously and she said that being the case, I am married to Mr Gigaba still. She said I believe for that reason alone, I am not a compellable witness.

CHAIRPERSON: And therefore I would not like to be here if I have a choice.

ADV QOFA: If I have a choice I would rather not be here.

CHAIRPERSON: Okay, I think that answers my question, not here by choice.

ADV QOFA: No, she is not here by choice.

CHAIRPERSON: She is here because of the summons.

20 **ADV QOFA:** Indeed, Chairperson.

CHAIRPERSON: Okay.

ADV QOFA: Not only the summons but she raised that very issue, Chairperson, in the last paragraph of the letter where she says I am concerned with the fact that an impression has been created out there that I have

volunteered to come to the Commission when in fact I was called by the Commission on this particular date and so on and so on.

CHAIRPERSON: Yes, yes. Well, I seem to have – I seem to remember that she gave an interview to one of the television stations and she said she would be prepared to give evidence before the Commission if she was asked to, is that not true?

ADV QOFA: Chairperson, to quote her specifically – and I
10 hope I quote it as verbatim as she said it. The response to the question of whether or not she would be willing to come to the Commission was, if I am requested by the Commission to come through, I will be happy to assist my husband in issues where he needs me to help him remember. I will not go further than that.

CHAIRPERSON: Okay, alright.

ADV QOFA: But that is the response that she gave specifically to that question.

CHAIRPERSON: Okay, okay, alright. Alright, thank you.
20 Let me say, as I said earlier on, it is the duty of the Commission when it becomes aware of anybody who might have knowledge of information about matters that fall within its terms of reference to approach that person and seek evidence, seek a statement, seek an affidavit and if it is satisfied that the person knows matters that are relevant

and material to the Commission to ask that person to make themselves available and if they are not prepared to make themselves available to testify unless they are compelled, to compel then.

ADV QOFA: Indeed, Chairperson.

CHAIRPERSON: So you might just be talking on television or you give an interview to a newspaper, you say something, if the Commission becomes aware that you may be having knowledge of matters that it is interested in, it
10 will approach you.

ADV QOFA: Indeed, Chairperson.

CHAIRPERSON: And it would be dereliction of duty if the Commission would be aware of that and not approach you when it appears that you may have information that falls within the terms of reference.

ADV QOFA: Indeed, Chairperson, I agree totally.

CHAIRPERSON: Yes. Okay, alright, thank you. And then let me just mention this. All concerns that your client has about how the Commission may have treated her, how
20 investigators may have treated her or the legal team, requests that she may have made or whatever, she is – there is no problem articulating them. I will hear Mr Myburgh who might be able to say something about them or some of them either now or at a later stage when they have had enough time to look at the contents of the letter but we

are interested in making sure that if anybody has concerns and they articulated them, we look at them and where we think the concerns have got merit, we will say so. Where they can be addressed, we want them to be addressed.

ADV QOFA: Indeed so, Chairperson. In fact, that is the very reason why Ms Gigaba actually said – I think it is important, I think to some extent the Chair is not aware of the concerns that I keep raising.

CHAIRPERSON: Yes. Ja, ja, ja.

10 **ADV QOFA:** And if I do not let the Chair into the picture of my concerns...

CHAIRPERSON: Yes, yes.

ADV QOFA: Then it means I would have not only been unfair to the Commission but at all times the Chair would believe that everything is going perfectly well and that there is no reason why I am not presenting myself as I should.

CHAIRPERSON: Ja, no, no, that is very important. I think earlier today I may have made – I may have referred to Mr
20 Montana who was giving last week, former Group CEO of PRASA, he had his own concerns, he chose to come and make his request very respectfully, articulated his concerns and they are being looked into. Those that can still be addressed, attempts would be made to address them and he was allowed to continue to give evidence. He is

cooperating with the Commission and my own sense is that if anybody asks him he would tell them that he is being heard fairly but his concerns will be looked at and the Commission will go back to him and say on this one, we agree on this one, we do not agree on this one, this is the position so that he knows what has been done about that. So ...[intervenes]

ADV QOFA: Indeed, Chairperson, I think Ms Gigaba is therefore right.

10 **CHAIRPERSON:** So same thing with Ms Mngoma, Ms Gigaba, and I think she will tell me just now which she prefers I must use. If she has any concerns we will look at them and some we might not be able to address but those that we can address we try and address and where the Commission or the legal team or investigators might not have gone back to her, they try and go back to her on those.

ADV QOFA: Thank you very much, Chairperson.

20 **CHAIRPERSON:** Okay, thank you. But maybe one thing that I can say about the change of the evidence leader because I did hear that she expressed a concern about that. I must say that I am responsible for that. So it is not Mr Myburgh's fault and it is not for any reason other than simply that Mr Pretorius is busy with certain matters, Mr Myburgh was busy with certain matters at a certain time

and I said that in these circumstances let Mr Myburgh deal with the matter and – so it is nothing – but I understand that sometimes a particular person might find that maybe they deal better with a particular person or maybe that is not the issue, it is just that she had to now start afresh with somebody and tell the same story, so – but that decision came from me and it was simply a way of trying to see how best to use our resources.

ADV QOFA: Indeed, Chairperson, and I think she
10 definitely understands that.

CHAIRPERSON: Yes, yes, yes.

ADV QOFA: And in all honesty the schedule of the Commission has been quite hectic.

CHAIRPERSON: Yes, yes.

ADV QOFA: And I do not think anybody is not aware of that.

CHAIRPERSON: Yes, yes, it happens quite frequently. Actually even today I just made another change in another work stream and said okay, this one will deal with that, this
20 one will deal with that, so it happens quite frequently. Okay, alright.

ADV QOFA: Thank you very much, Chairperson.

CHAIRPERSON: Okay, thank you. Mr Myburgh, would you like to say something?

ADV MYBURGH SC: Chairperson, subject to your

direction I would prefer to lead Ms Gigaba's evidence.

CHAIRPERSON: Yes, yes.

ADV MYBURGH SC: I certainly do intend to respond to this.

CHAIRPERSON: At some stage, ja.

ADV MYBURGH SC: But I would not like that to interfere with the presentation of her evidence.

CHAIRPERSON: Okay.

ADV MYBURGH SC: As you have mentioned there might
10 be things here that we need to investigate and look at a bit more carefully.

CHAIRPERSON: No, no, that is fine. Good evening, Ms Mngoma and you must tell us how you wish to be addressed. Is it Ms Mngoma or Ms Gigaba or either is fine? Which one do you prefer? Either is fine? Okay, alright. Okay, you have been listening to the discussion, is that right? The one thing which I did not mention to your counsel and maybe she – well, she is listening, is the issue of a supplementary affidavit. I would imagine that she
20 should be fine with a situation where as she goes along with her affidavit, with her evidence, she can point out what she would have corrected in a supplementary affidavit, is that fine? Just point on your mic.

ADV QOFA: Thank you, I thought to indicate, Chair, that when ...[intervenes]

CHAIRPERSON: If necessary she can file it later on but as she goes along she says no, this is not accurate or something. Would that be fine?

ADV QOFA: I would absolutely probably request that it may be helpful, Chair, that she files a supplementary affidavit first and I say this, Chair, for numerous reasons because you will see, Chair, when we filed the supplementary affidavit that not only does Ms Mngoma query the nature and the character of the evidence in
10 addition to that which I have already indicated below but I think rather, Chair, it would be helpful to the Commission to not have her go through the affidavit and correct it as she goes along. I think it will be more helpful to the Commission that she highlights those areas that – and which she is going to indicate clearly why she is highlighting and why she is – her objections to those aspects and I truly think that for purposes of the Commission that may truly be a better approach.

CHAIRPERSON: Are you suggesting that her oral
20 evidence should be postponed until she has filed a supplementary affidavit?

ADV QOFA: Chair, we did make that suggestion [indistinct – dropping voice]

CHAIRPERSON: Yes.

ADV QOFA: And I know indeed – I must say that it was

very clear that of course [inaudible – speaking simultaneously]

CHAIRPERSON: Yes. No, there is a problem with that.

ADV QOFA: Indeed, indeed, Chairperson.

CHAIRPERSON: But what your side could have done or – well, I do not know how long ago you came into the matter but...

ADV QOFA: Very recently, Chair.

CHAIRPERSON: Her legal representatives could have
10 prepared a supplementary affidavit even without involving the legal team to say here are in here earlier affidavits that she wants to say A, B, C, D about and this could have been made available to the Commission and the evidence leaders much earlier or even if it was made available only today he would have been able to see it before she starts her oral evidence, but postponing is problematic because we don't have the time.

ADV QOFA: Chair and I do apologise for that, I do appreciate that. Unfortunately Chair, and I will speak for
20 myself in this regard, I came into this matter on Wednesday last week, and unfortunately I had a family issue to attend to over the weekend, which I could not get out of.

CHAIRPERSON: Okay.

ADV QOFA: And so I did say that if it wasn't for that we

would have finalised the application, in fact we had started ...[indistinct]

CHAIRPERSON: Yes, yes, yes.

ADV QOFA: It is just that the client feels that that affidavit must not only be in the draft format that we have now, it must be specific enough to identify why she is unhappy with paragraph 1 or 2 or 3 or 4 or 5.

CHAIRPERSON: Yes.

ADV QOFA: But otherwise what we have done was to
10 globalise the issues so as to say we are not happy with the affidavit because of the following, but her feeling is that no it must go specifically to paragraph as to why she disputes this and why she is not happy.

CHAIRPERSON: Ja, okay, alright. No we will continue with your evidence Ms Mnogoma and – but in the end if there are aspects or parts of your affidavit that you believe do not correctly reflect the position you are free to indicate that. Mr Myburgh?

ADV MYBURGH SC: Yes thank you. Ms Gigaba the
20 practice in the Commission is that I am going to take you to your affidavit, take you to the last page where it was signed ...[intervenes]

ADV QOFA: I apologise – I apologise Chairperson I am getting a note here from my attorney that says it will be critical to highlight, and I apologise for missing this point,

that Ms Gigaba feels that the affidavit which she is being sought to be led on does not represent what she says, so far as to say, and I know that is not going to be a step by step, paragraph by paragraph evidence here you know, but it ought to be placed on record that he effectively says that the majority of that affidavit does not represent that which she says and even though she is the – the Chair says it is okay she must be left on that affidavit it should be brought to the attention of the Commission that it is primarily what
10 she feels is not heard.

Thank you Chair.

CHAIRPERSON: Okay, no that is fine, at some – as we go along she must feel free to indicate what she believes does not reflect the position and she will have to say whether that's what she said what is written, but on reflection she does not think it is true or whether she didn't say it at all, but by the time she finishes if when Mr Myburgh has finished if she – if there are parts which were not touched upon which she wants to deal with and say they don't
20 reflect what the position is she will be allowed to say that.

Okay, Mr Myburgh?

ADV MYBURGH SC: Thank you. Chairperson Ms Gigaba's affidavits are Exhibit BB26, there are two of them. Ms Gigaba could I take you please to page 999 when we refer to pages they are the black numbers on the

left hand side, and we refer just to the last digits.

CHAIRPERSON: It is Transnet Bundle 7 Mr Myburgh?

ADV MYBURGH SC: I understand so Mr Chairperson yes.

CHAIRPERSON: And what page?

ADV MYBURGH SC: 999. Are you there Ms Gigaba?

MS GIGABA: Yes.

ADV MYBURGH SC: Now there is an affidavit, it starts at
page 999, perhaps I could ask you to go through my
learned colleague reminds me Chairperson that Ms Gigaba
10 hasn't yet been sworn in as a witness. I do apologise.

CHAIRPERSON: Oh yes, no thank you for that. Please
administer the oath or affirmation, thank you.

REGISTRAR: Please state your full names for the record.

MS GIGABA: [No audible response]

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

MS GIGABA: No.

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

20 **MS GIGABA:** Yes.

REGISTRAR: Do you solemnly swear that all 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 GIGABA: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Sorry they might not, you might have been speaking too softly Ms Gigaba, they might not have heard, is that the concern?

ADV MYBURGH SC: Yes I am told that the transcribers didn't pick that up.

CHAIRPERSON: Yes, please raise your voice so it will be recorded. Okay, please start afresh.

REGISTRAR: Please state your full names for the record.

10 **MS GIGABA:** I am Nomachule Gigaba.

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

MS GIGABA: No.

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

MS GIGABA: Yes.

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

MS GIGABA: So help me God.

REGISTRAR: Thank you.

NOMACHULE GIGABA [d.s.s.]

CHAIRPERSON: Was it audible? It is fine, oh, okay alright. Thank you. Mr Myburgh?

ADV MYBURGH SC: Yes thank you. So at 999 if I can ask you then to turn to page 1016, you will see that's the end of the affidavit. 1016 is the signature page Ms Gigaba and then – are you there, at 1016.

MS GIGABA: Yes.

ADV MYBURGH SC: And then attached to that affidavit are four annexures, A, B, C and D, pictures of the bag. Do you see that?

MS GIGABA: Yes.

10 **ADV MYBURGH SC:** If I could ask you to go to page 1016, do I understand that you attested to this affidavit at Sandton on the 6th of March 2021.

MS GIGABA: Yes.

ADV MYBURGH SC: And will you confirm the truth and accuracy of this affidavit, subject to any corrections that you will make during the course of your testimony?

MS GIGABA: Can you please repeat that?

ADV MYBURGH SC: Would you confirm the truth and accuracy of this affidavit subject to any corrections that
20 you may make during the course of your evidence this evening?

MS GIGABA: Yes.

CHAIRPERSON: Maybe let's – you might have formulated the question in a legal way.

ADV MYBURGH SC: Certainly.

CHAIRPERSON: Except for saying that in the course of your evidence you will point out those parts of this affidavit that you think are not the truth, or do not reflect the position, except for saying that are you happy to say those parts, other parts of the affidavit will be true and correct?

MS GIGABA: Yes.

CHAIRPERSON: Okay, alright. Mr Myburgh?

ADV MYBURGH SC: Chairperson might I then ask that you admit Ms Gigaba's affidavit dated the 6th of March
10 commencing at page – Bundle 7, 999, as Exhibit BB26.1.

CHAIRPERSON: The affidavit of Ms Nomachule Gigaba formerly Mngoma which starts at 8999 is admitted as an exhibit and will be marked as Exhibit BB26.1

ADV MYBURGH SC: Thank you. Ms Gigaba you will see that you then depose to another affidavit, it is a short one dealing with the threats.

MS GIGABA: Yes.

ADV MYBURGH SC: You will find that at page 1021, and attached to that affidavit are – or is one annexure marked
20 NS1, do you see that?

MS GIGABA: Yes.

ADV MYBURGH SC: Can I ask you please to go to page 1023 and would you confirm that you attested to this affidavit at Sandton also on the 6th of March 2021?

MS GIGABA: Yes.

ADV MYBURGH SC: And would you similarly then subject to any corrections that you may make during the course of your evidence confirm the truth and accuracy of this affidavit?

MS GIGABA: Can you please rephrase that?

CHAIRPERSON: Let's say are you confirming the correctness of this affidavit on the same basis as you did a few minutes ago the other one, namely there may be parts that you will point out during your evidence as being
10 inaccurate or not correct, but those that the rest will be true and correct.

MS GIGABA: On this part everything is correct yes.

CHAIRPERSON: Oh on this one everything is correct?

MS GIGABA: Yes.

CHAIRPERSON: Okay, alright.

ADV MYBURGH SC: Chairperson if I could ask you to admit then Ms Gigaba's affidavit dated the 6th of March commencing at bundle 7 page 1021 as Exhibit BB26.2

CHAIRPERSON: The affidavit of Ms Nomachule Gigaba
20 formerly Mngoma which starts at page 1021 is admitted as an exhibit and will be marked as Exhibit BB26.2.

ADV MYBURGH SC: Alright, Ms Gigaba if I could ask you then to go back to your first affidavit at page 999, are you there?

MS GIGABA: Yes I am.

ADV MYBURGH SC: Alright, perhaps I could just start out by asking you are you in a position to confirm that you were at all times when this affidavit was being prepared represented by Senior Counsel?

MS GIGABA: Yes.

ADV MYBURGH SC: And in fact he procured your signature of this affidavit, is that correct?

MS GIGABA: Yes, but I have concerns on that.

ADV MYBURGH SC: I beg your pardon?

10 **MS GIGABA:** Yes, but I have concerns on that.

ADV MYBURGH SC: Alright, we will come to that.

MS GIGABA: Okay.

ADV MYBURGH SC: So Ms Gigaba I wonder if I can just point this out to you. I am going to ask you the questions because you speak quite faintly and you are more than entitled to do that, but I am going to ask you the questions, you need to direct your answers at the Chairperson, so you don't need to – don't feel you have to look at me when you are speaking, you must speak to the Chairperson, okay?

20 **MS GIGABA:** Okay.

ADV MYBURGH SC: Alright, so let's start at paragraph 1, it says that you are an adult female businessman, a businessperson sorry, and you reside in Pretoria, is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: And when did you marry Mr Gigaba.

MS GIGABA: 20 August 2014.

ADV MYBURGH SC: And are you still married?

MS GIGABA: Yes we are still married.

ADV MYBURGH SC: In paragraph 4 it says that on the 21st and 22nd of January the Commission interviewed you, is that correct?

MS GIGABA: Yes it is correct.

ADV MYBURGH SC: How did you come to be interviewed
10 by the Commission?

MS GIGABA: Sakhile called me and he told me that the Commission wants to interview me.

ADV MYBURGH SC: That's Sakhile Masuku?

MS GIGABA: Yes.

ADV MYBURGH SC: And was that after your ENCA interview?

MS GIGABA: Yes I received the call the day after the interview.

ADV MYBURGH SC: Is it correct that you stated during
20 the ENCA interview that you were prepared to assist the Commission?

MS GIGABA: I said if the Commission calls me I will come and assist the Commission where Malusi does not remember, so according to me I wanted Malusi to come and give his evidence and then where he doesn't remember or

he doesn't recall anything then I will say what I know.

ADV MYBURGH SC: You say at paragraph 5 at page 1000 that you are assisted by your counsel, we know that your senior counsel, Thembeke Ncetobe, withdrew as your counsel and has now been replaced, but have your attorneys throughout been RMT Attorneys?

MS GIGABA: Yes.

ADV MYBURGH SC: Did they also assist you in the preparation of this affidavit?

10 **MS GIGABA:** My attorney was – never attended any of this – when we were preparing for the evidence, he only attended once, the last one, where you were telling me that I need to come to the Commission, it was the first day I also saw you, and it was her first day as well. So during the entire preparation of the evidence she never attended, I was only there with the Advocate ...[indistinct].

ADV MYBURGH SC: Okay, so he attended without the attorney.

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** And you are quite right, on the 8th of April when we met your attorney came along.

MS GIGABA: Yes.

ADV MYBURGH SC: Alright and then there are – there is a heading saying the government position is held by Malusi over the period from 2009 to 2019, and then they are

listed, it says at paragraph 6 Mr Gigaba held positions tabled below over the years 2004 to 2018, do you confirm that he held those positions?

MS GIGABA: That is the first information that I didn't put, all this information was collected by the Commission, and I raised that with them, because I never paid attention which Department he is working on, what does he do, which year, so I never pay attention on that so the Commission put that, it is not me.

10 **ADV MYBURGH SC:** So presumably ...[intervenes]

CHAIRPERSON: But does it accord with your knowledge or you don't know whether it is true that he held these positions during these times?

MS GIGABA: I know that he held those positions but I am not sure about the times.

CHAIRPERSON: About the dates?

MS GIGABA: Yes, the years.

CHAIRPERSON: Okay, alright okay. Mr Myburgh.

ADV MYBURGH SC: So just to go through this you knew
20 that at a certain point Mr Gigaba was the Deputy Minister of the Department of Home Affairs, I think you go on to say in your affidavit that when you met him he occupied that position, isn't that so?

MS GIGABA: That is correct.

ADV MYBURGH SC: And can you remember

approximately when that was, in what years?

MS GIGABA: It was 2010, 2009 to 2010 when we met, because we met in 2009.

ADV MYBURGH SC: Okay at that point he was the Deputy Minister of the Department of Home Affairs?

MS GIGABA: Yes.

ADV MYBURGH SC: And then can you recall when he became the Minister of the Department of Public Enterprises, DPE, did he hold that position at a time?

10 **MS GIGABA:** Yes that time we were already together, it was in 2010 if I am not mistaken.

ADV MYBURGH SC: And then after that he became the Minister of the Department of Home Affairs, is that correct?

MS GIGABA: It is correct.

ADV MYBURGH SC: Can you recall when that was?

MS GIGABA: Not exactly, because I never pay attention to the dates and everything, and I raised that during our consultation.

ADV MYBURGH SC: Alright, and then what was his final
20 ...[intervenes]

CHAIRPERSON: I am sorry Mr Myburgh. So is the position that one of the things you would have corrected in terms of this paragraph is to say let's not put the dates because I am not sure about the dates.

MS GIGABA: Yes I said that Chair.

CHAIRPERSON: Those positions I know about those positions.

MS GIGABA: I know the positions but I don't know anything about the dates and I don't want to be held accountable for the dates.

CHAIRPERSON: Yes.

MS GIGABA: In case Malusi comes and says at that date I was not because I am not sure about that.

CHAIRPERSON: Yes, ja, no that is fine, that is fair
10 enough.

ADV MYBURGH SC: And you recall then that the final ministerial position that he held ...[intervenes]

MS GIGABA: Say that again?

ADV MYBURGH SC: What was his last position as a Minister?

MS GIGABA: He was the Minister of Finance.

ADV MYBURGH SC: And if you have a look at paragraph 7 did Mr Gigaba ever say anything to you about being involved in ANC elections?

20 **MS GIGABA:** Yes.

ADV MYBURGH SC: What did he tell you?

MS GIGABA: I know at some point, I am not sure which day it was, then he said to me he was the head of elections.

ADV MYBURGH SC: Then you go on to deal with your

relationship with Mr Gigaba and the Gigaba family, when did you meet Mr Gigaba for the first time?

MS GIGABA: I don't remember meeting him for the first time?

ADV MYBURGH SC: Well when did you meet him?

MS GIGABA: I don't remember exactly, but I know that it was in 2009.

ADV MYBURGH SC: Well I was actually getting at the year, I don't need you to be more specific with the day.

10 **MS GIGABA:** Okay.

ADV MYBURGH SC: Alright, so you say I met Mr Gigaba during 2009 and you have already told the Chairperson that at that time when you met him he was the Deputy Minister of the Department of Home Affairs, is that correct?

MS GIGABA: Yes it is correct.

ADV MYBURGH SC: And was there a time when you moved in with him into his Pretoria home?

MS GIGABA: Yes.

ADV MYBURGH SC: Can you remember when that was?

20 **MS GIGABA:** I think it was the – it was in 2010.

ADV MYBURGH SC: And were you expecting a child at that point?

MS GIGABA: Yes.

ADV MYBURGH SC: Did Mr Gigaba provide you with any financial means when you moved in with him?

MS GIGABA: Yes he did.

ADV MYBURGH SC: Can you explain that?

MS GIGABA: He gave me his card that he said I must use or if I want to go to the doctor or if I buy anything for the house.

ADV MYBURGH SC: When were you then subsequently married, you have already told us that was on the 30th of August 2014, correct?

MS GIGABA: Yes.

10 **ADV MYBURGH SC:** Whereabouts is Mr Gigaba's family home situated?

MS GIGABA: In Mandeni ...[indistinct].

ADV MYBURGH SC: Mr Gigaba, how many sisters does he have?

MS GIGABA: He has two sisters.

ADV MYBURGH SC: One of them Gugu Gigaba?

MS GIGABA: Yes.

ADV MYBURGH SC: And do you know where she is employed?

20 **MS GIGABA:** Yes.

ADV MYBURGH SC: Whereabouts?

MS GIGABA: Transnet in Jo'burg.

ADV MYBURGH SC: And Mr Gigaba's other sister, what is her name?

MS GIGABA: It is Nosipho.

ADV MYBURGH SC: And do you know where she worked?

MS GIGABA: Last time I know she worked for Sahara, I am not sure about the name properly but it was the company for the Guptas, the one in Midrand, the Sahara one.

CHAIRPERSON: Sahara Computers?

MS GIGABA: Yes.

CHAIRPERSON: Sahara Computers?

MS GIGABA: Yes.

10 **CHAIRPERSON:** Okay.

ADV MYBURGH SC: Alright, and was there a time where she lived together with you and Mr Gigaba?

MS GIGABA: Yes.

ADV MYBURGH SC: Now the next heading deals with meeting the Guptas and visits to the Gupta residence and you will see that that's a part of the affidavit that goes on for that page, the next page, page 1033 and 1044, quite a lengthy section. So let us work our way through this. You refer in paragraph 12 to the fact that from the time that you
20 met Mr Gigaba, when he was the Deputy Minister of the Department of Home Affairs he would visit certain persons, is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: And who did he refer to those persons as?

MS GIGABA: That time as his advisors.

ADV MYBURGH SC: He referred to them as?

MS GIGABA: Advisors.

ADV MYBURGH SC: Advisors, and did he explain to you what he was doing in meeting with his advisors?

MS GIGABA: So there are times I will be confused when he talks about advisors, because sometimes he will be with Thami Msomi because he introduced Thami to me as a friend and an advisor but then later stage he will say I am
10 going to see an advisor and then I already saw Thami then I will ask who are the advisors, then he will ...[indistinct] them.

ADV MYBURGH SC: So at this point in time did you know who his advisors were?

MS GIGABA: Not exactly.

ADV MYBURGH SC: And if I understand your evidence did you make a presumption, did you presume that he was talking about Thami Msomi?

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** And who was he.

MS GIGABA: I think at that time Thami was the Chief of Staff at Home Affairs.

ADV MYBURGH SC: You then go on to say – you talk about something having happened two or three months before Mr Gigaba took up the position of Minister of DPE,

can you remember what happened?

MS GIGABA: Can you please rephrase that?

ADV MYBURGH SC: At paragraph 13 you deal with something that occurred two or three months before he took up the position as the Minister of DPE.

MS GIGABA: Yes.

ADV MYBURGH SC: What happened?

MS GIGABA: He told me that he will move to the Department of DPE and I asked him what is DPE because I
10 didn't know what is DPE at that time.

ADV MYBURGH SC: Did he tell you where he had received this, or from whom he had received this news that he was going to move to being the Minister of the DPE?

MS GIGABA: Malusi said he heard it from Ajay.

ADV MYBURGH SC: Ajay who?

MS GIGABA: Ajay Gupta.

CHAIRPERSON: Was that before he moved to the Department of Public Enterprises?

MS GIGABA: Yes.

20 **CHAIRPERSON:** When he told you that?

MS GIGABA: Yes.

CHAIRPERSON: Do you know how long before he actually moved or can't ...[indistinct]

MS GIGABA: I think it was two to three months before he moved.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And at that point in time had you met Mr Ajay Gupta?

MS GIGABA: Not yet.

ADV MYBURGH SC: And then perhaps you could tell us how often did Mr Gigaba visit his so-called advisors once he became the Minister of the DPE, can you remember?

MS GIGABA: I don't remember exactly how many times but what I know when he was at DPE he will go more often.

10 **CHAIRPERSON:** Can you recall – remember how he felt about this news that he had been told namely that he was going to move to DPE, can you remember how he felt about it?

MS GIGABA: He was excited about it, that's why I even asked what is DPE, so then he explained to me what is it.

CHAIRPERSON: Okay, alright. Okay Mr Myburgh?

ADV MYBURGH SC: Thank you Chairperson. So you say when he became the Minister of the DPE he went there to meet his advisors more often, is that what you said?

20 **MS GIGABA:** Yes.

ADV MYBURGH SC: And was there a time when you asked him about who are these advisors?

MS GIGABA: Yes.

ADV MYBURGH SC: What was his response?

MS GIGABA: Then he told me that his official, unofficial

advisors, people who are advising him about certain decisions, about his work then he differentiate them from the advisors that he had at DPE which I know of them, which is his legal advisor and Thami Msomi as well.

ADV MYBURGH SC: Did he tell you who these unofficial advisors were?

MS GIGABA: Yes he told me.

ADV MYBURGH SC: What did he say?

MS GIGABA: It was the Guptas, Ajay and his brothers
10 which I don't know all of them by names, because I only hear from Ajay more than the other ones.

ADV MYBURGH SC: Did he tell you what they advised him about?

MS GIGABA: He said they were advising him about work, about things that he was supposed to do.

ADV MYBURGH SC: Did the frequency of Mr Gigaba's visits to the Guptas ever cause you concern or unhappiness?

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** Can you explain that?

MS GIGABA: I was not comfortable with that because we have a young child at home, which I don't want to talk more about that, I don't want to involve my kids on this.

ADV MYBURGH SC: And when you raised that concern with him what was his response?

MS GIGABA: Then he said he will introduce me to them so that I can be comfortable with them.

ADV MYBURGH SC: And did he tell you why he needed to meet these advisors?

MS GIGABA: The reason is that he needs to – sort of I can understand when he is with them who are they.

ADV MYBURGH SC: I see. Now in paragraph 16 you deal with Mr Gigaba's visits to his advisors when it was sitting and then when Parliament was in recess perhaps you
10 could just take the Chairperson through that.

MS GIGABA: Can you please repeat your question?

ADV MYBURGH SC: So when Parliament – when Parliament was sitting now when would Mr Gigaba go to Cape Town in a typical week?

MS GIGABA: Most of the time he will go on Monday evenings or he would leave on Tuesday mornings.

ADV MYBURGH SC: Monday evening or Tuesday morning?

MS GIGABA: Yes.

ADV MYBURGH SC: And when would he come back?

20 **MS GIGABA:** He will come back on Thursday evenings or Friday mornings.

ADV MYBURGH SC: And would he then when Parliament was sitting would he inform you as to when he was going to the Gupta's?

MS GIGABA: Sometimes he will go before he flies to Cape

Town or sometimes he will go when he comes back from Cape Town.

ADV MYBURGH SC: So that would either on the Monday morning or the Friday evening?

MS GIGABA: Yes.

ADV MYBURGH SC: And then when Parliament was in recess?

MS GIGABA: He will go anytime.

ADV MYBURGH SC: And how would these meetings come
10 about?

MS GIGABA: What do you mean by that question could please ask the question again?

ADV MYBURGH SC: Yes. So how do you know that he went to the Gupta's?

MS GIGABA: Oh because he will tell me.

ADV MYBURGH SC: He would tell you?

MS GIGABA: Yes.

ADV MYBURGH SC: When did you first meet Mr Gigaba's advisors?

20 **MS GIGABA:** You mean the Gupta's?

ADV MYBURGH SC: Yes.

MS GIGABA: Oh when our son was born.

ADV MYBURGH SC: Sorry.

MS GIGABA: When our first son was born.

ADV MYBURGH SC: And in what year was that?

MS GIGABA: It was in 2011.

ADV MYBURGH SC: 2011.

MS GIGABA: Yes.

ADV MYBURGH SC: And how did that meeting come about you deal with this at paragraph 17.1?

MS GIGABA: Because Ajay wanted to meet our son so he told me like a few times that he wants to meet our son.

ADV MYBURGH SC: And did you agree then to go to the Gupta's residence?

10 **MS GIGABA:** Not on the first time he told me but eventually I agreed after a certain time.

ADV MYBURGH SC: But you then did go there?

MS GIGABA: Yes I went there.

ADV MYBURGH SC: And who did you meet at the Gupta residence on this first visit?

MS GIGABA: Ajay, his wife, her son ja.

ADV MYBURGH SC: And what happened during the course of that meeting?

MS GIGABA: It was not a meeting it was a visit.

20 **ADV MYBURGH SC:** Oh well what happened during that visit?

MS GIGABA: He greeted me, my son we spoke but it was like a – any visit that you will have when you visit someone you welcome them. But it was not a formal meeting.

ADV MYBURGH SC: And did they give your son any gift of

any sort?

MS GIGABA: Yes.

ADV MYBURGH SC: Can you remember what it was?

MS GIGABA: Ajay gave – Ajay gave my son a necklace but Malusi took it so he never had it. He never used it.

CHAIRPERSON: I am sorry I did not hear the last part of your – say what you said. After but I did not hear what you said.

MS GIGABA: Okay I am saying Ajay gave him a necklace
10 which Malusi took it then he kept it. So he never ever gave it to my son.

CHAIRPERSON: Oh okay.

ADV MYBURGH SC: What was the necklace made of?

MS GIGABA: It was a gold necklace.

ADV MYBURGH SC: Now that is in 2011 so that was your first visit. What happened in 2012?

MS GIGABA: In terms of visiting or in terms of (talking over one another)

ADV MYBURGH SC: In terms of visiting the Saxonwold
20 compound. Did you go there in 2012?

MS GIGABA: Yes we did go visit.

ADV MYBURGH SC: How often did you go to the Saxonwold residence in 2012?

MS GIGABA: Sometimes he will go with me, sometimes he will go with his protectors.

ADV MYBURGH SC: No I am asking you yourself how often did you go in 2012?

MS GIGABA: We would go often but not every day or weekly. It will depend on him.

CHAIRPERSON: I see that in the affidavit paragraph 17.2 you say:

“On several occasions during 2012.”

MS GIGABA: Yes.

CHAIRPERSON: Is that correct?

10 **MS GIGABA:** Yes.

CHAIRPERSON: Okay alright. Mr Myburgh.

ADV MYBURGH SC: Thank you. Now your second son when was he born?

MS GIGABA: 2012.

ADV MYBURGH SC: Can you remember the month – I remember telling you that I noticed that your second son was born on Christmas day.

MS GIGABA: Yes he wa.

ADV MYBURGH SC: 25th of December.

20 **MS GIGABA:** Yes.

ADV MYBURGH SC: Did you – did you then have occasion to visit the Gupta's again?

MS GIGABA: Not then but we went after a few months was gone.

ADV MYBURGH SC: And why did you go to the Gupta's

after your second son was born?

MS GIGABA: They wanted to meet my second born.

CHAIRPERSON: They were to?

MS GIGABA: They wanted – they wanted to meet my second born.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Now in 2013 did you attend the Gupta wedding?

MS GIGABA: Yes I did.

10 **ADV MYBURGH SC:** Right. Now you in paragraphs 19 and 20 deal with the Waterkloof Airforce Base do you want to just deal with that?

MS GIGABA: And the question again.

ADV MYBURGH SC: Did you go to the Waterkloof Airforce Base?

MS GIGABA: Yes I did.

ADV MYBURGH SC: Did you go there before or after the wedding?

MS GIGABA: I only went before the wedding.

20 **ADV MYBURGH SC:** Was it the day before?

MS GIGABA: It was the day before.

ADV MYBURGH SC: Can you remember what day of the week that was?

MS GIGABA: I do not remember because I do not remember what day was their wedding but it was a day before the

wedding.

ADV MYBURGH SC: Now how did it come about that you went to Waterkloof?

MS GIGABA: Malusi asked me to accompany him to go welcome the Gupta family at Waterkloof Airforce.

ADV MYBURGH SC: And what did you do there?

MS GIGABA: What did I do?

ADV MYBURGH SC: Yes.

MS GIGABA: I went there with him. We waited for them so
10 – but I sat inside the airport with my – with my son so he went out to fetch them.

ADV MYBURGH SC: And then what....

CHAIRPERSON: Okay I am not sure – I just want to make sure that – so the two of you and your sons went to Waterkloof, is that right?

MS GIGABA: Yes.

CHAIRPERSON: And – and the purpose of going there was to ...

MS GIGABA: Welcome the ...

20 **CHAIRPERSON:** Was to welcome the guests.

MS GIGABA: Yes.

CHAIRPERSON: The Gupta's?

MS GIGABA: Yes.

CHAIRPERSON: Guests. Okay. And you brought your sons with you?

MS GIGABA: Not sons we only took the older one.

CHAIRPERSON: The older one?

MS GIGABA: Yes.

CHAIRPERSON: Oh okay. Alright thank you. Continue Mr Myburgh.

ADV MYBURGH SC: Yes thank you and then on the day of the Gupta wedding did you accompany Mr Gigaba?

MS GIGABA: Yes to the wedding.

ADV MYBURGH SC: And this paragraph then and you have
10 – you have indicated to me during our consultation that there is an error and we pointed it out to you because it reflects paragraph 20.

“That we packed and were escorted to attend the Waterkloof to receive the Gupta aircraft. When we left Waterkloof there were many blue light vehicles and Metro police.”

That is a sentence that could either be deleted or should find its way into paragraph 19, is that correct?

MS GIGABA: I prefer to – to repeat as I repeated again when I was raising the concern about it. I prefer to say it in
20 my own words because what I saw.

ADV MYBURGH SC: Alright but you only mention.

CHAIRPERSON: Say it in your own words.

MS GIGABA: Sorry.

CHAIRPERSON: Say it in your own words.

MS GIGABA: We only went once at the airport at the

Waterkloof Airforce it was the day before in the evening when the Gupta aircraft landed. Then I stayed inside the airport in that room and then Malusi went out to fetch them. Then after that all the members were escorted to the cars and then we were taken by our protectors to go to our car. So when we left the airport we went home and then I saw a lot of blue lights escorting the members of he Gupta's when they were leaving at the airport. So we did not go again because here somewhere it mentions like we went there
 10 twice which we were never there twice. It was the day before then on the day of the wedding I was at work and Malusi called me that we have to go to the wedding and I was shocked why – I cannot just attend a wedding like that because I wanted to do my hair, I needed to buy some things but he said we need to go someone else to go to the wedding and then I had to leave work and then we home and we packed we went to the wedding.

CHAIRPERSON: Hm. Okay alright.

MS GIGABA: But it was not something was planned to go to
 20 the wedding according to my knowledge.

CHAIRPERSON: Okay. Just one second Mr Myburgh.

ADV MYBURGH SC: Thank you when you were at the...

CHAIRPERSON: I am sorry Mr Myburg.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Just one second. Will the technicians

please switch off this screen here because it is distracting me. Okay alright we can continue.

ADV MYBURGH SC: Thank you. Did you meet any of the Gupta family whilst you were at the wedding?

MS GIGABA: Yes we –

CHAIRPERSON: Just switch on your mic Ms Gigaba.

MS GIGABA: Okay.

ADV MYBURGH SC: Sorry you said Ms Gigaba?

10 **MS GIGABA:** I was saying yes we met but it was a lot of them.

ADV MYBURGH SC: It was?

MS GIGABA: It was a lot of them.

ADV MYBURGH SC: Alright.

MS GIGABA: But I was not familiar with them because most of them they were coming from India.

ADV MYBURGH SC: You refer in this paragraph 20 to a facebook photo what happened there?

20 **MS GIGABA:** When we at the wedding so a lot of ladies were doing something called Henna it was like a design that they do it in the hand and I asked to join to do it as well. And then later because it was my first time doing it I posted it on my facebook and then I think it was later at night Malusi told me because we were supposed to sleep there because they booked for us. So Malusi told me that we need to go home we cannot sleep and because there were already

something on the media that we attended the wedding and that Malusi was complaining that that is why he did not even want to attend the wedding so we need to go home. So then after that he said I need to delete someone called him. So I do not know who called him to tell me that I must delete the picture that I posted on the wedding of that Henna design. So I went on my facebook I deleted it. So the following day I wanted to remove it but I did not even know that it does not – can be removed so it was – I think it stayed there for the

10 whole week but I deleted on facebook.

ADV MYBURGH SC: Alright now after the Gupta wedding di you continue to go to the Gupta residence in Saxonwold?

MS GIGABA: Yes we did.

ADV MYBURGH SC: How often would you go there?

MS GIGABA: We will go maybe during the week or weekend it will depend.

ADV MYBURGH SC: Then what you do at paragraph 22 is you explain the procedure that would be followed each time you attended the Gupta residence. Please explain that? Tell

20 us about the procedure? How did it work practically?

MS GIGABA: So every time when you come in there is security which is our protectors. So they will tell their protectors because there were a lot of protectors outside who will be there and they will tell them that we here and they will open. And one of them will take us in the house

and then someone will come and call – will go and call Ajay and then someone will come maybe offer us some drinks or something then later Ajay will come and talk to us. Then mostly it was like that all the time.

ADV MYBURGH SC: So can I just ask you to...

CHAIRPERSON: Just one second. The transcribers can you hear the witness well? Okay alright. Okay.

ADV MYBURGH SC: Mr Gigaba do you mind.

CHAIRPERSON: Let us continue.

10 **ADV MYBURGH SC:** I am actually struggling to hear you can you speak a little bit louder. I cannot see your ...

CHAIRPERSON: Try and speak up a bit.

MS GIGABA: Because we gave exhaustedly – so I am so tired.

ADV MYBURGH SC: Alright so you were saying that Ajay would arrive just explain how that would work?

MS GIGABA: Say that again.

ADV MYBURGH SC: When you went to the – the Gupta residence you gained access into the house or the
20 residence. You mentioned that Ajay would then arrive.

MS GIGABA: Yes.

ADV MYBURGH SC: Okay and what will happen then?

MS GIGABA: Then he will greet us. If we are just there went there for a visit so we would sit with him – we talk but if it is a meeting he will come brief Malusi about something

they will go in the meeting then I will stay in the room at the lounge.

ADV MYBURGH SC: And would you have your cell phone with you?

MS GIGABA: No. But sometimes I will go fetch my cell phone.

ADV MYBURGH SC: What happened with your cell phones when you went to the Gupta residence?

MS GIGABA: They always ask us to leave them at the – I
10 think it is like a foyer and then we will go leave them there. And then later I will go take my phone when I am bored – if I am bored.

ADV MYBURGH SC: And who would you see when you went to the Gupta residence?

MS GIGABA: Say that again.

ADV MYBURGH SC: Who would you see? Would you see other people – people you knew when you went to the Gupta residence?

MS GIGABA: The only people I saw it was Ajay, his wife, his
20 brother, his son, Thami Msomi and Siyabonga Mahlangu. They are the only people that I saw.

ADV MYBURGH SC: So Mr Msomi you have told us about. Mr Mahlangu who was he?

MS GIGABA: Say that again.

ADV MYBURGH SC: Who was Mr Mahlangu?

MS GIGABA: He was Malusi's legal advisor.

ADV MYBURGH SC: And where would these meetings be held between Ajay and Mr Gigaba?

MS GIGABA: They will be in the opposite room from the lounge.

ADV MYBURGH SC: Did you ever ask Mr Gigaba why you had to turn in your cell phone?

MS GIGABA: Yes I did.

ADV MYBURGH SC: And what did he say?

10 **MS GIGABA:** Because he said some of the information was confidential so we had to leave our phones. But it was not something was strange for him because most of the time when I call him his phone will be answered maybe when he is at work his phone will be answered by his PA or maybe when they are in the NEC they will leave – for him was their nature but for me I did not understand why must I leave my phone.

ADV MYBURGH SC: Now you have mentioned to us that you saw Mr Ajay Gupta, Mr Mahlangu and Mr Msomi.

20 **MS GIGABA:** Yes.

ADV MYBURGH SC: There did you see anybody else attending meetings?

MS GIGABA: No. But I knew that they were inside because you can hear voices of people in the room and when Ajay will come and brief him I know that there will be people but I do

not want to say who was there because I have never seen them.

ADV MYBURGH SC: And when you went to the residence did you sometimes find cars already parked there?

MS GIGABA: Yes there were a lot of cars.

ADV MYBURGH SC: What sort of cars?

MS GIGABA: Cars similar to our cars which is like state cars.

ADV MYBURGH SC: Okay how did you know they were
10 state cars?

MS GIGABA: Because of the blue lights at the front and I also the body guards because most of them they dress the same and the car they most similar. It is either the – I do not know how to explain the nature of the cars but it is a bit similar most of the cars.

ADV MYBURGH SC: Now you have mentioned that when you went to the Gupta residence Ajay would meet with you and he would hold discussions with Mr Gigaba and then they would go off to the meeting room. What sorts of things
20 would be discussed in your presence between Mr Ajay Gupta and Mr Gigaba before they went for a meeting?

MS GIGABA: It was not discussing it was like briefs.

ADV MYBURGH SC: Alright.

MS GIGABA: He was briefing him not like discussion.

ADV MYBURGH SC: And what was Mr – or what was Ajay

Gupta briefing Mr Gigaba about? What was the sorts of things that he briefed him about?

MS GIGABA: So sometime he will brief him about the SAA or he will brief him about Transnet or he sets a meeting that they will talk about so that he is aware before he goes to the meeting.

ADV MYBURGH SC: And can you remember what – what was discussed or what was briefed in relation to Transnet?

MS GIGABA: Most of the time in Transnet it will be the
10 people that Ajay feels like they need to be appointed or need to leave or maybe they are restricting and maybe they will just argue a little bit about it because Malusi had his own favourites of people and Ajay has his own favourites of people.

ADV MYBURGH SC: And what – what did you hear about SAA?

MS GIGABA: SAA most of the time they will – they will – when he is with Ajay they will be talking about the board so he will be asking him about the board or maybe Kalawe
20 because there was a lot of discomfort between Malusi and the chairperson of SAA. So sometimes they will discuss that.

CHAIRPERSON: Which chairperson of SAA are you referring?

MS GIGABA: That time Nomwabisi Kalawe was the CEO then Dudu Myeni was the chairperson and I think Malusi

liked Nomwabisi Kalawe and Dudu did not like him and they will have those arguments most of the time.

CHAIRPERSON: Okay alright. Thank you. Mr Myburgh.

ADV MYBURGH SC: And during these briefing sessions did you ever hear any mention made of Eskom?

MS GIGABA: Yes.

ADV MYBURGH SC: And what – what was said about Eskom?

MS GIGABA: There was a time Mr Brian Dames was the
10 CEO of Eskom and what I remember Malusi liked Brian Dames and there was a certain time then the Gupta's did not like him especially Ajay let me not say Gupta's because it was most of the time it was Ajay and Ajay did not like him. So he will say Brain Dames needs to resign he was uncomfortable about certain things but he will be talking to him not to me and then Malusi liked Brian Dames. I think even myself I liked him.

ADV MYBURGH SC: Alright and then was there ever a time
20 where Mr Gigaba held a discussion with you about Mr Dames?

MS GIGABA: Yes.

ADV MYBURGH SC: What did he say?

MS GIGABA: He told me that the Gupta's do not like him and he does not understand why they do not like him. And I think they told him that there will be a new restructuring

someone else will move to Eskom and then Brian Dames will leave but I did not know how the process is going to happen which a few months later it happened.

ADV MYBURGH SC: Alright. These visits to the Gupta residence how long would they last for usually?

MS GIGABA: Hour to two hours but not more than that.

ADV MYBURGH SC: An hour to two hours?

MS GIGABA: Yes.

ADV MYBURGH SC: Then at page 1005 it deals –

10 **CHAIRPERSON:** I am sorry Mr Myburgh I just want to make sure that I understood this. Paragraph 26 of your affidavit.

MS GIGABA: Yes.

CHAIRPERSON: You say at some stage Mr Gigaba told me that Mr Ajay Gupta wanted him to get rid of Mr Brian Dames. Having met Mr Dames I asked Mr Gigaba why and he said that the Gupta's did not like Mr Dames because there are things that Mr Dames was supposed to do but did not do

MS GIGABA: Yes.

CHAIRPERSON: That is correct?

20 **MS GIGABA:** Yes.

CHAIRPERSON: Is it correct?

MS GIGABA: Yes.

CHAIRPERSON: Okay alright. Mr Myburgh.

ADV MYBURGH SC: Thank you Chairperson. Ms Gigaba you then go on to deal with meetings held at our home.

Whereabouts was that? Was that the ministerial home in Pretoria?

MS GIGABA: Yes.

ADV MYBURGH SC: Alright. And you start by dealing with meetings with the Gupta's.

MS GIGABA: It was not a lot of meetings. I think Ajay only came to us 00:23:20

ADV MYBURGH SC: He came to your home?

MS GIGABA: Sorry.

10 **ADV MYBURGH SC:** You say that Ajay came to your home?

MS GIGABA: Yes.

ADV MYBURGH SC: Right how many times?

MS GIGABA: I only remember twice.

ADV MYBURGH SC: And whereabouts – what did he do there?

MS GIGABA: Mainly meetings but he it was the two of them in the meetings so I was not a part of the meetings but I saw him because I went to greet him.

ADV MYBURGH SC: And whereabouts in what room were
20 the meetings held?

MS GIGABA: So the way the house is structured there is an upstairs because when I said it was underground they questioned me. So let me not say it was underground it was a downstairs. So all of us are staying upstairs and when you go down with the steps there is a room that is under which

Malusi used as his study or meeting room – ja so Ajay was there.

ADV MYBURGH SC: Alright. And did Mr Gigaba tell you what he was meeting Ajay Gupta about?

MS GIGABA: I think that time there was this – there was some projects at Eskom it was called Kusile Projects. I think that project was giving Malusi a lot of sleepless nights and then he was – then he said no Ajay was here to give him – they were discussing Eskom Kusile but he did not give me all
10 the details about it.

ADV MYBURGH SC: So what Eskom project was giving Mr Gigaba sleepless nights?

MS GIGABA: I only remember Kusile Projects.

ADV MYBURGH SC: Sorry.

MS GIGABA: I only remember Kusile Projects.

ADV MYBURGH SC: Then you go on to deal with meetings with Mr Gigaba's staff. Was there a time where his staff visited your home?

MS GIGABA: It was a Ministerial staff. So there is a staff of
20 the department and there is a Minister of Staff. So Minister of Staff it is people that he travels with wherever he - it is either he goes to Cape Town he comes back then the department. But most of the time if it is a Minister of Staff maybe one person will come from the department maybe
00:26:05 then it is the – if we are travelling on the state's.

Maybe sometimes it will be the DG or they will chose whoever is relevant to the trip so he will come and brief the entire ministerial team.

ADV MYBURGH SC: Alright can I...

CHAIRPERSON: Can I – I am sorry Mr Myburgh can I go back to paragraph 29? Did it ever happen that Mr Gigaba told you that he and Mr Gupta – Ajay Gupta were discussing any projects at Transnet?

MS GIGABA: Yes.

10 **CHAIRPERSON:** Huh-uh tell me about that.

MS GIGABA: So they used to talk about maybe renewing contracts maybe Ajay will ask Malusi no there is a project needs to be renewed or maybe someone needs to sign a certain project but I do not know exactly who needs to sign it but they will talk about it.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. Now you go on at paragraph or in 30 and 30.1 you deal with a trip to Mumbai and New Delhi and what we identified during our consultation
20 you will remember is that there is an error. This is another area where there is an error.

MS GIGABA: Yes.

ADV MYBURGH SC: In the affidavit because it says at 30.1:

“During the last period of Mr Gigaba’s tenure
as Deputy Minister of Home Affairs”

Now that would have been in late 2010 you go on to talk about a trip in 2010 to India. In what year did that trip actually occur?

MS GIGABA: I said to people who were leading because you were not there to people who were leading this part I said to them I do not want to say exactly which year because I do not have my passport with me. I remember there was a trip to India but I do not remember exactly when was it. And then when the affidavit came it was written this year and I
10 even mentioned to say okay that I do not want to be accountable for the year exactly but I remember we went to India to Mumbai.

ADV MYBURGH SC: Okay. So we know from Mr Gigaba's affidavit that he says it happened in 2015 do you accept that now?

MS GIGABA: If he says so.

ADV MYBURGH SC: Okay.

MS GIGABA: Because I do not have my passport because after – on that day we were talking about this I said to the
20 commission team I will go check my passport at home so what I have done on my way when I was leaving where we had the meeting with the commission team I called his former PA then I asked her about my passport – the state passport because we do not keep those passports with us. And then – because I wanted to know exactly when did we

go then she said she is going to come back to me. By the time I arrived at home because my passport was there before – when – before I left because I wanted to remember certain trips because we were travelling a lot because I had two separate passports. I have the normal passports then we have the diplomat passports. So when I got home on that day after calling his PA my passport was not there and my two kids passport was still there.

ADV MYBURGH SC: Alright so this is a part of your affidavit
10 that I understand you would want to correct.

MS GIGABA: Yes.

ADV MYBURGH SC: In a supplementary affidavit because it may very well be that the change of the date then has knock-on effect as these things often do. But presently do you remember what happened in India, what was the purpose of this trip?

MS GIGABA: I do not remember exactly but what I heard what Malusi was talking about. They were talking about to meet some – what is it – the Gupta family members, some
20 people who were working – who were going to assist in working and the Mumbai trip because there was an airline that they used to talk about when he was at DPE. So there were people who used to come working, their permits.

So most of the times they would talk about the permits of – from Gupta family. So I do not know how that

was facilitated because I remember when Malusi was saying it is not easy for him to go to India when it is not a state trip because everyone will question. So, then – I do not know how it ended up, it was a state trip.

ADV MYBURGH SC: Alright. And in India, who did you travel with? Who did Mr Gigaba travel with?

MS GIGABA: With his staff.

ADV MYBURGH SC: Would that have included Mr Msomi?

MS GIGABA: Yes.

10 **ADV MYBURGH SC:** And you say that they had attended various meetings.

“I did not see with whom they met as I was out shopping when they attended the meetings.”

Is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: And then you deal with the Johannesburg/Mumbai flight route. What happened there?

MS GIGABA: What I know about it. It is - when he was still at DPE, they used to talk about the Mumbai Route that
20 – I think it was South African Airlines that they need to console(?) and under(?) the route from Mumbai need to take over. So they used to have a lot of discussions about that. That is what I only can remember.

ADV MYBURGH SC: Just whilst we are on this issue of a supplementary affidavit. As I understand it, because it has

been shared with me. Mr Ngetobi(?), your counsel, actually prepared a draft supplementary affidavit.

MS GIGABA: Okay.

ADV MYBURGH SC: After our consultation on the 8th of April, was it?

MS GIGABA: Okay.

ADV MYBURGH SC: And this was – you would have seen, was one of the paragraphs that is addressed in there.

MS GIGABA: Okay.

10 **ADV MYBURGH SC:** You confirm that?

ADV QOFA: Chairperson, if I may?

MS GIGABA: Okay.

CHAIRPERSON: Ja?

ADV QOFA: I would like to – I have had this discussion earlier. We have concerns about affidavits that the client says have to be specific to her. She must have read them and she has made it clear that she will not give any evidence on drafts that she has not particularly commissioned. And therefore I request that the issue on
20 the draft affidavit not be led, Mr Chair.

CHAIRPERSON: Well, I think Mr Myburgh is – all Mr Myburgh is trying to do is to check whether this is one of the affidavits which are going to be the subject of corrections in the supplementary affidavit.

MS GIGABA: Yes.

CHAIRPERSON: Yes, yes. So I think Mr Myburgh wanted to be fair so that we know that we must not take this affidavit, this paragraph as not subject to corrections.

ADV QOFA: Chairperson, if I understood correctly and maybe I did not.

CHAIRPERSON: Ja.

ADV QOFA: What Mr Myburgh is suggesting to the witness is that there is a draft supplementary affidavit that he is in possession of which he says corrects some of the
10 issues that have been dealt with.

CHAIRPERSON: H'm?

ADV QOFA: And what I have indicated, even prior to the sitting to Mr Myburgh is that the draft affidavit which he has been furnished with is but a drop(?), according to the witness. There is – the witness has been clear. Nothing should be discussed in the Commission until I have personally commissioned an affidavit.

CHAIRPERSON: Well ...[intervenes]

ADV QOFA: To do so would be premature because
20 whatever draft supplementary affidavit that is before him and not before this Commission ...[intervenes]

CHAIRPERSON: I ...[intervenes]

ADV QOFA: ...is not ...[intervenes]

CHAIRPERSON: I... Mr Myburgh has not said – has not responded to you but I have a very good sense that he was

not saying that because he wants to hold the witness to whatever is in the draft affidavit. I do not think he wanted to – I think that is what you maybe be concerned with. I do not think ...[intervenes]

ADV QOFA: Chairperson, maybe he can clarify it?

CHAIRPERSON: I do not think Mr Myburgh ...[intervenes]

ADV QOFA: Because that is a concern for us ...[intervenes]

CHAIRPERSON: I do not think Mr Myburgh wants to say
10 later on: I saw that affidavit. This is what it was saying. Or anything like that. No, no. I do not think. Mr Myburgh, talk for yourself.

ADV MYBURGH SC: No, absolutely, DCJ. I mean, that the simple point. I am not suggesting that the witness is bound by any affidavit and of course she can say what she wants to.

CHAIRPERSON: H'm.

ADV MYBURGH SC: But the simple point is that during the consultation on the 8th of April, it was identified that
20 there was a problem with this paragraph.

CHAIRPERSON: H'm?

ADV MYBURGH SC: I alerted Mr Ngetobi(?) [00:05:26] to that and as I understand it, he set about working on a draft affidavit.

CHAIRPERSON: Yes.

ADV MYBURGH SC: The reason that I highlight that is there is no point in me then taking this witness through every single line of all these paragraphs because it need to be amended.

CHAIRPERSON: Because you know there is a problem, ja.

ADV MYBURGH SC: Yes.

CHAIRPERSON: H'm.

MS GIGABA: Can I say something on that?

10 **CHAIRPERSON:** Ja.

ADV MYBURGH SC: Please do.

MS GIGABA: I think what ...[indistinct] is trying to highlight because if we corrected this because I raised these issues before even ...[indistinct] was given in my affidavit. And when Malusi heard my affidavit, he was given my affidavit. On their response on my affidavit they went for those errors and they were given an upper hand like it looks like I was lying.

CHAIRPERSON: Okay.

20 **MS GIGABA:** A certain nature(?) [00:06:19] did not happen.

CHAIRPERSON: Okay.

MS GIGABA: But if the Commission have listened when we were consulting because I raised those issues.

CHAIRPERSON: H'm.

MS GIGABA: Because I think some of the things, when we wrote them they did not put it in my words and now when Malusi lawyers and himself responded to them, now they are just questioning most of all those errors because they know it did not happen like that because in the ...[indistinct] happened ...[intervenes]

CHAIRPERSON: Ja.

MS GIGABA: ...that the fact remains but now the only part is the year(?) or what happened. So now we have
10 been choosing the words.

CHAIRPERSON: Ja.

MS GIGABA: Because they know it is not exactly like that.

CHAIRPERSON: Okay.

MS GIGABA: But if we have addressed those issues before we will not be faced by this.

CHAIRPERSON: Ja.

MS GIGABA: And also, I *will be* comfortable to answer this question and hence I said I did not come to give my
20 evidence the time when I was supposed to come because I did not want to say things because they are written and then one day someone will hold me accountable to say I have said this and I did not say it.

CHAIRPERSON: Yes.

MS GIGABA: So, because I think the way it is written

...[intervenes]

CHAIRPERSON: Ja.

MS GIGABA: Things that she said. And what they highlighted, all of them, which is the affidavit of Noma/Soma(?) [00:07:32] So it is. I - Siyabonga Gama – I Soma(?) this is... What they were – they highlight more is the errors that I made. But it was – did not change the fact of the things but it how things are put.

CHAIRPERSON: Ja.

10 **MS GIGABA:** It is ...[intervenes]

CHAIRPERSON: No, no, no. That is fine. I think Mr Myburgh is saying, because he is aware that you did raise issues with this paragraph and he thinks the supplementary affidavit that corrects this might affect certain other paragraphs that follow, should rather not - he would rather not take you through them.

MS GIGABA: Yes.

CHAIRPERSON: Because he is aware of that.

MS GIGABA: Yes.

20 **CHAIRPERSON:** That is what he wanted – he was trying to convey.

MS GIGABA: Okay.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes, thank you. Then, Ms Gigaba, at page 106 there is a heading: Prior Knowledge of

Appointments in State-owned Enterprises. Now you deal at paragraph 31.1 with The New Age Breakfast and that Mr Gigaba then informed you of something after one of those breakfasts. What did he tell you?

MS GIGABA: Can you please repeat the question?

ADV MYBURGH SC: Paragraph 31.1.

MS GIGABA: Yes?

ADV MYBURGH SC: You say after one of The New Age Breakfasts, Mr Gigaba then told you something. What did
10 he tell you?

MS GIGABA: About the TNA Breakfast?

ADV MYBURGH SC: Yes.

MS GIGABA: The only thing I know at TNA they used to discussed who sits on which table. Ja, that is what I know about them.

ADV MYBURGH SC: Okay. So the heading to this section is Prior Knowledge of Appointments of State-owned Enterprises. Was there a time when Mr Gigaba would tell you: Well, mister so and so is going to move here and
20 then that would happen? That is what this section deals with.

MS GIGABA: Yes.

ADV MYBURGH SC: Were there occasions where he said X is going to happen and then it did happen?

MS GIGABA: Yes.

ADV MYBURGH SC: Can you remember those instances?
To whom was he talking about?

MS GIGABA: I remember when he said Brian Dames will leave at Eskom and then Brian Molefe will go to Eskom. So I knew that it would happen and it happened.

ADV MYBURGH SC: And so he said to you that Brian Molefe would go to Eskom?

MS GIGABA: Yes.

ADV MYBURGH SC: And I think you have mentioned
10 ...[intervenes]

MS GIGABA: I think even Gama also. I knew before he even – ja. I mean, before ...[indistinct]

ADV MYBURGH SC: So he told you ...[intervenes]

CHAIRPERSON: Okay. Maybe let us take one at a time.

ADV MYBURGH SC: Yes, certainly.

CHAIRPERSON: So it is clear. Let us talk about Mr Brian Molefe. You say that after one of The New Age Breakfasts sessions, Mr Gigaba told you that Mr Brian Molefe was going to be moved from Transnet to Eskom
20 Holdings Stock Limited. And you say he told you this before Mr Molefe was officially appointed to Eskom?

MS GIGABA: Yes.

CHAIRPERSON: He told you that the Guptas wanted Mr Molefe at Eskom and not Mr Brian Dames. Is that correct?

MS GIGABA: Yes.

CHAIRPERSON: Okay. You did not put a date here. Do you have some recollection of which year it may have been?

MS GIGABA: No, I do not remember. What I know. He was the Minister of DPE at that time.

CHAIRPERSON: He was Minister at DPE at that time?

MS GIGABA: Yes.

CHAIRPERSON: Now ...[intervenes]

10 **MS GIGABA:** And it was during the time where they used to host a lot of TNA Breakfasts meetings on SABC 2.

CHAIRPERSON: I am sorry. Just repeat that, please?

MS GIGABA: I am saying it was around the time they used to host a lot of TNA meetings at SABC 2 on – in live in the morning.

CHAIRPERSON: Yes, okay. Now Ms Lynne Brown was giving evidence last week and she said she was appointed as Minister of Public Enterprises at some stage in 2014. So I think it would have been after the General Elections of
20 2014. So if you say that Mr Gigaba told you this while he was still Minister of Public Enterprises, it would mean that he told you this either at some stage during the first half of 2014 or earlier.

MS GIGABA: Yes.

CHAIRPERSON: Would you say that?

MS GIGABA: Yes.

CHAIRPERSON: Okay alright. Is there a chance that you might be mistaken about that?

MS GIGABA: I do not remember exactly which time.

CHAIRPERSON: Yes, but he was still Minister of Public Enterprises, you say?

MS GIGABA: Yes.

CHAIRPERSON: Okay alright. Mr Myburgh.

ADV MYBURGH SC: Thank you. So that deals with
10 Mr Molefe. Did Mr Gigaba ever mention anything to you about Mr Gama?

MS GIGABA: Yes, I remember.

ADV MYBURGH SC: What did he tell you?

MS GIGABA: I think it was – there was a time he was – he had a position at Eskom – not at Eskom, sorry about that. At Transnet. And then he left but when he was appointed again. So I do not which sector he was moving from, to another sector, then he told me that Gama will be appointed as a CEO.

20 **ADV MYBURGH SC:** Be appointed as the CEO?

MS GIGABA: Yes.

CHAIRPERSON: I did not hear the earlier part, the first part of what you were saying. Were you saying that you are not sure when ...[intervenes]

MS GIGABA: Because what I know.

CHAIRPERSON: H'm?

MS GIGABA: Siyabonga was already at Transnet.

CHAIRPERSON: Yes.

MS GIGABA: So he was - when he was appointed as the CEO, he was not arriving as a new person.

CHAIRPERSON: He was not coming from outside?

MS GIGABA: Yes, because I remember that.

CHAIRPERSON: Yes.

MS GIGABA: Ja.

10 **CHAIRPERSON:** Well, Mr Siyabonga Gama was CEO of a division of Transnet at some stage, TFR. And he was dismissed in 2010. Ja, I think June 2010 and he was reinstated in February – or the settlement agreement was in February 2011. He started or resumed duties in that position as CEO of TFR, namely, a division of Transnet, I think in April 2011. And then later on when Mr Brian Molefe was seconded to Eskom in 2015, April, Mr Gama was acting CEO of Transnet.

MS GIGABA: Of Transnet.

20 **CHAIRPERSON:** And then, I think later on he was appointed. So that ...[intervenes]

MS GIGABA: Yes, I only remember that last part of him because I was ...[intervenes]

CHAIRPERSON: The last part.

MS GIGABA:because I was from with him in 2011 and

...[intervenes]

CHAIRPERSON: Yes, okay. So you heard that he was going to be appointed as Chief Executive Officer of Transnet ...[intervenes]

MS GIGABA: Yes.

CHAIRPERSON: ...in 2015?

MS GIGABA: Yes.

CHAIRPERSON: Or you are not sure when it was?

MS GIGABA: Ja, it was – because during the time, Malusi
10 was ...[intervenes]

CHAIRPERSON: Was he still Minister ...[intervenes]

MS GIGABA: He was ...[intervenes]

CHAIRPERSON: ...at that ...[intervenes]

MS GIGABA: He was the DPE.

CHAIRPERSON: He was still Minister of Public Enterprises?

MS GIGABA: Yes.

CHAIRPERSON: When he told you about Mr Gama ...[intervenes]

20 **MS GIGABA:** Yes.

CHAIRPERSON: ...being in line to be appointed as CEO of Transnet?

MS GIGABA: Yes.

CHAIRPERSON: Okay. And you do not think you are mistaken about the fact that he was ...[intervenes]

MS GIGABA: I am not sure about the year.

CHAIRPERSON: ...the time?

MS GIGABA: Yes.

CHAIRPERSON: You are not sure whether he was still at DPE at that time, that is Mr Gigaba, when he told you? Could it be that he was no longer Minister of DPE at the time?

MS GIGABA: He was.

CHAIRPERSON: He was?

10 **MS GIGABA:** Yes.

CHAIRPERSON: Okay alright.

MS GIGABA: Because we went in Cape Town. So I do not – sometimes he needed to attend Eskom functions.

CHAIRPERSON: Ja.

MS GIGABA: But Gama was not there but Brian Molefe was there.

CHAIRPERSON: Okay.

MS GIGABA: So and I remember Malusi was still the Minister of ...[intervenes]

20 **CHAIRPERSON:** Public Enterprises.

MS GIGABA: Yes.

CHAIRPERSON: Okay ...[intervenes]

MS GIGABA: But in this - I do not remember exactly about the years.

CHAIRPERSON: Okay. No, that is fine.

MS GIGABA: And I said that to the Commission that I am not sure about the years.

CHAIRPERSON: Ja.

MS GIGABA: Because I was not keeping track of everything that he was doing.

CHAIRPERSON: No, that is fine.

ADV MYBURGH SC: You see, Ms Gigaba, perhaps to be of some assistance to you. This is another issue that we looked at during our consultation. Because as the
10 Chairperson has pointed out to you. In 2011, Mr Gama was reinstated as the Chief Executive of Transnet Freight Rail and that was at a time when Mr Gigaba was the DPE Minister. He was then in 2015 made the Group Chief Executive of Transnet by which time Mr Gigaba was no longer the DPE Minister. And as I recall, you talked about being put back into a position. Do you remember that?

MS GIGABA: Because - what happened is. Let us say ...[indistinct]. I do not put times on certain issues. What I wanted to highlight is, like, every time when something
20 happens, he will say before. So he will come and say it. And when I or giving my consultation, I said I do not want to put exact times with what he was talking about.

What I wanted to highlight is, like, each and all those times when they were appointed we knew before because he will tell me about it maybe two or three months

before that so and so will go to this one or this one will move. Some he will be sad about it. Some because there is nothing you can do. So it was those kind of subjects.

So I knew that Mr Gama will be brought back to the position. *He was just like I do not know him.* [Speaker not clear] But I knew also about – also Brian, that Brian will move to Eskom before he was appointed to Eskom.

CHAIRPERSON: Would you have made a distinction ...[intervenes]

10 **MS GIGABA:** Yes?

CHAIRPERSON: ...between being told that Mr Gama was going to be made or appointed as CEO of TFR, a division of Transnet? Or being told that he was going to be appointed as CEO of Transnet? In your mind would you have been able to make that distinction?

MS GIGABA: I think maybe the mistake is there.

CHAIRPERSON: Ja.

MS GIGABA: Because I do not remember exactly what he was – what position he was holding. But I know that – at
20 some point when Malusi was at DPE, Siyabonga was in a position that he was appointed.

CHAIRPERSON: H'm.

MS GIGABA: And he – because he said that at home(?).

CHAIRPERSON: H'm. Mr Myburgh.

MS GIGABA: Then I said – what I do not know because I

was not keeping tracks of their movements.

CHAIRPERSON: Ja.

MS GIGABA: Because I was not tracking this one is doing this and this.

CHAIRPERSON: H'm.

MS GIGABA: But I knew that at some point. Because if I remember correctly, when Siyabonga was appointed in that position, there was like a little(?) bit of a noise. I think it was in the media about him moving and he needs to come
10 back.

CHAIRPERSON: H'm?

MS GIGABA: So and then Siyabonga, Mahlangu and Malusi they had some discussion at home, talking about it that Siyabonga must come back.

CHAIRPERSON: Now you talk about Mr Gama coming back or something like this ...[intervenes]

MS GIGABA: Yes.

CHAIRPERSON: ...appointment.

MS GIGABA: Because I do not know his position properly.

20 **CHAIRPERSON:** Yes.

MS GIGABA: Because I have never done that research.

CHAIRPERSON: Yes. You see, he was dismissed in – at the end of June 2010 from his position as CEO of TFR, not of Transnet.

MS GIGABA: That is ...[intervenes]

CHAIRPERSON: Then he ...[intervenes]

MS GIGABA: ...what I do not know.

CHAIRPERSON: ...he was fighting his dismissal.

MS GIGABA: Yes.

CHAIRPERSON: And then there were negotiations for a settlement. The negotiations happened when Mr Gigaba was ...[intervenes]

MS GIGABA: ...was still DPE.

CHAIRPERSON: ...the Minister of Public Enterprises.

10 **MS GIGABA:** Yes, I remember that.

CHAIRPERSON: And as a result of those negotiations, a settlement agreement was reached in terms of which he was allowed back.

MS GIGABA: Yes.

CHAIRPERSON: He was reinstated.

MS GIGABA: Yes.

CHAIRPERSON: But he was not ...[intervenes]

MS GIGABA: That is what I am talking about.

CHAIRPERSON: When he was reinstated, he was going
20 back to his earlier position ...[intervenes]

MS GIGABA: Yes.

CHAIRPERSON: ...of CEO of TFR.

MS GIGABA: Yes, that is what I was talking about.

CHAIRPERSON: He was not being made CEO of Transnet.

MS GIGABA: Yes, that is what I was talking about.

CHAIRPERSON: You were talking about the first one?

MS GIGABA: Yes.

CHAIRPERSON: Oh, okay.

MS GIGABA: Because that time I remember Malusi was at DPE.

CHAIRPERSON: Okay alright. But did you say they held a meeting in – at your home, Mr Gigaba, Mr Mahlangu and Mr Gama at some stage?

10 **MS GIGABA:** No. Gama has never been at my home.

CHAIRPERSON: Oh.

MS GIGABA: But we – we are like – they were like friends of some sorts because ...[intervenes]

CHAIRPERSON: [Indistinct]

MS GIGABA: ...Athol called. We attended the wedding. I think it was his daughter's wedding. And also, they were close.

CHAIRPERSON: The three of them?

MS GIGABA: Ja, they were close.

20 **CHAIRPERSON:** Oh, okay.

MS GIGABA: So as I remember, Malusi would talk – will have that kind of discussion with Siyabonga, Mahlangu. He would discuss how they need to assist Siyabonga Gama to come back.

CHAIRPERSON: H'm?

MS GIGABA: Because there was some business(?) still that happens.

CHAIRPERSON: H'm?

MS GIGABA: So I remember that. Those discussions. It is just like I was not part of them but I remember them.

CHAIRPERSON: But were those discussions, were they taking place in your presence or you were hearing from Mr Gigaba that such discussions had taken place?

MS GIGABA: It was him and Msomi, Thami. Thami
10 Msomi. They were talking.

CHAIRPERSON: Yes.

MS GIGABA: Yes, but Gama was not in the meeting.

CHAIRPERSON: Not in the meeting?

MS GIGABA: Yes.

CHAIRPERSON: They are talking on the phone?

MS GIGABA: No, it was a meeting. It was Thami Msomi and Malusi, they were talking about that.

CHAIRPERSON: Oh.

MS GIGABA: And then later, Malusi was telling me
20 because I think he did not like how Siyabonga Gama was dismissed. I think.

CHAIRPERSON: Yes.

MS GIGABA: Yes.

CHAIRPERSON: Okay alright. Mr Myburgh.

ADV MYBURGH SC: Thank you. At paragraph 31.3, you

also say something about Mr Gama.

MS GIGABA: Yes.

ADV MYBURGH SC: Can you deal with that, please?

MS GIGABA: Can you please say that again?

ADV MYBURGH SC: So was there – how – do you know how Gugu Gigaba came to be employed at Transnet?

MS GIGABA: I have a little knowledge about it. What I know is, when Gogotso(?) Malusi at SAPI(?), they want him to take the package because he was very sick and then
10 Malusi was like: No, you must take the package and move to Joburg. He also, through Siyabonga, to find him a position there. So then he came – he stayed with us, I think, for two months. Then after that he went to work at Transnet. [Speaker not clear]

CHAIRPERSON: I am sorry. Just repeat that answer. I have missed some things.

MS GIGABA: Okay. So what I know. Gugu was working in KZN at SAPI.

CHAIRPERSON: H'm.

20 **MS GIGABA:** But just because he was often very sick at work. So SAPI offered her(?) the boarding package. So Malusi said no she must take it and she must move to Joburg to stay with us. So which she came to stay with us. And he explained to me that his sister has come to stay with us but he will speak to Siyabonga Gama to find her a

job at Transnet. Then once he finds a job, he(?) will leave our home and find his(?) place to stay and that happened.

CHAIRPERSON: H'm. Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. Then Ms Gigaba, there is a heading, Tensions Rising. Do you see that?

MS GIGABA: Yes.

ADV MYBURGH SC: Now whilst Mr Gigaba was the Minister of the DPE, was there a time when you felt that the Guptas were putting pressure on him or did he mention
10 that to you?

MS GIGABA: He mentioned that to me.

ADV MYBURGH SC: And what did he say?

MS GIGABA: There were times where Malusi will have his own diary from his department and then while he is sitting at home maybe he will say Ajay is calling him. He needs to go. Or he will have to leave the department. So he will come at home. He was like: No, let us go to Saxon. They want to see me. But it came to a time where he did not want to do it. He says they put pressure on him because
20 he has his own diary that he runs it with his PA.

So now when they do these random calls. So now he needs to cancel the things and then he had to rush to Saxon. So he was not happy with that. And also I remember. He was really not happy with when there were a lot of arguments and pressure on ...[indistinct] to use

SAA because Malusi thought he was good as the CEO.

And also, I remember that he liked Mr Dames at Eskom. He said he was a good guy. He was working. So but the Guptas did not like them. So there were a lot of discussions about them. So sometimes he would not take their calls when they were calling and I was like: No, why are you not taking their calls? He was like: They always put pressure on me. They want me to run my work the way they want. And now I want to run the department the way I
10 want.

ADV MYBURGH SC: So was there a time where you discussed this with Mr Gigaba, the pressure that you say was being put on him?

MS GIGABA: Ja, a lot of times because it will – most of the calls they will make him uncomfortable. It is either when maybe he talks to Dudu Myeni. Maybe they are discussing SAA and then after that he will talk to me and say he is not okay because I think it was more of he wanted me to give him support. And also, there are certain
20 people that he – he really enjoyed to work with them. And then he felt the Guptas, they also want to change things around and he was comfortable with those people.

ADV MYBURGH SC: So was there ever a time in that context in that you suggested to Mr Gigaba that he might stop using these advices?

MS GIGABA: Can you please repeat that?

ADV MYBURGH SC: Did you – you say in the middle of paragraph 32:

“When I asked Mr Gigaba why he did not stop using the Guptas as his advisors...”

What did he tell you then?

MS GIGABA: Oh, I asked him that because I felt like – because these people are stressing him. So why do you not just cut communication with them? So he said he
10 cannot.

CHAIRPERSON: And what did you say in response?

MS GIGABA: I do not remember.

CHAIRPERSON: You cannot remember.

MS GIGABA: No.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Was there a time – have a look at paragraph 33 – when the relationship between Mr Gigaba and the Guptas appeared to be strained?

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** And when was that? Can you remember?

MS GIGABA: Firstly, I noticed every time when they will talk about ...[indistinct]. Malusi, he did not like those. And also I remember when they were talking about ...[indistinct]. He really did not like ...[indistinct] to be

removed. And I remember at the time it was more when they talk about – because he has called Dudu Myeni – in the beginning they used to be very friendly and later when he was at the DPE they used to argue a lot about the board and the decisions of the board and also how SAA is operating.

So Malusi was very uncomfortable how – I think she – he felt that Dudu was just in everything. He wanted to be hands on where he is not supposed to be hands on.

10 So it was more of that most of the time.

ADV MYBURGH SC: Now did Mr Gigaba often receive calls from Mr Ajay Gupta?

MS GIGABA: Ja, sometimes Ajay will call him. Sometimes he will take the calls, sometimes he will not take his calls.

ADV MYBURGH SC: And why – what would cause him not to take the calls?

MS GIGABA: I think it was at the later stage where these calls because knew that he will tell him something that is
20 going to upset him or he will tell him something about a certain individual that needs to be moved, because every time when there is someone, AJ wants him to be appointed, he would just put pressure on him and Malusi would hate that.

So and at some point, sometimes he would, then he

would [indistinct]

ADV MYBURGH SC: And what would happen if he ignored the Guptas calls?

MS GIGABA: I only remember one instance where AJ said Malusi must remember why he was appointed as a minister.

CHAIRPERSON: What did Mr AJ Gupta say?

MS GIGABA: He said he needs to remember why he was appointed as a minister.

CHAIRPERSON: As a Minister of Public Enterprises?

10 **MS GIGABA:** Public enterprises.

CHAIRPERSON: Did he say this in your presence or did you get, did you hear from Mr Gigaba that that is what ...[intervenes]

MS GIGABA: Malusi told me.

CHAIRPERSON: He told you?

MS GIGABA: Yes, but I was there when he was talking to him on the phone. But also he told me.

CHAIRPERSON: Oh, okay alright. Mr Myburgh?

20 **ADV MYBURGH SC:** Yes, thank you. I just want to take you through paragraph 33. Tell me if there is parts of it that are wrong. It says:

“During early 2014 Mr Gigaba’s relationship with the Guptas began to appear strain. The Guptas wanted Mr Gigaba to get rid of Mr Danus as the chief executive officer of Eskom,

because Mr Danus was not doing what the Guptas wanted him to do for them at Eskom. However, Mr Gigaba did not agree with the Guptas instruction. Mr Gigaba then started avoiding telephone calls from the Guptas. When Mr Gigaba ignored the phone calls, the Guptas would send Mr Mosane to speak to him and Mr Gigaba would then agree to meet with them. Mr AJ Gupta would regularly call Mr Gigaba and demand that he attend the Gupta residence to meet certain people. This upset Mr Gigaba, because he would have to cancel his planned official appointments in order to do so. Mr Gigaba also told me that AJ Gupta told him that if he wanted to run the DPE as he wished, he would be moved back to the Department of Home Affairs. I understand that Mr AJ Gupta would often tell Mr Gigaba that he should remember why he was appointed at the DPE.”

MS GIGABA: Yes.

ADV MYBURGH SC: Is that correct or is there something wrong with this paragraph? Is there anything wrong with it?

MS GIGABA: There is nothing wrong.

ADV MYBURGH SC: Alright. Then you go on to deal with Mr Gigaba's relationship with Dudu Myeni. Now was there a time where Mr Gigaba had a close working relationship with Ms Myeni?

MS GIGABA: Yes.

ADV MYBURGH SC: When was that?

MS GIGABA: I think when he was appointed in the beginning at DPE, they were close. They were like a sister and a brother. Although they were colleagues as well.

10 **ADV MYBURGH SC:** Paragraph 34 goes on to read that Ms Myeni facilitated our honeymoon trip to Mauritius. What do you mean by that?

MS GIGABA: Well, let me say a honeymoon, because it was not the exact honeymoon, and I raised that on the consultation.

ADV MYBURGH SC: Yes. So this was a trip to Mauritius if I understand correctly what you say.

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** That you took shortly before you got married.

MS GIGABA: Yes.

ADV MYBURGH SC: And when you say Ms Myeni facilitated the trip, what do you mean by that?

MS GIGABA: So he arranged the whole trip for us. They booked for us to go to Mauritius. We went to meet him,

meet her at the Sheraton Hotel. Then she sent us the whole itinerary about travelling and I remember when we were in Mauritius we were stuck, because I think [indistinct] was not so familiar with travelling by himself.

So when we were there we did not know where to pick up the car, what happened. So we were calling her when we were there because she is the one who arranged the trip. So he did that because he said he wanted him to go to rest, because while we were arranging my wedding,
 10 Malusi was not part of the wedding arrangements because he was working, and if I remember properly, that time Malusi was the head of elections.

So he was forever out with the door to door, doing the preparations of the elections and also give us the time we were preparing for our wedding.

ADV MYBURGH SC: So who paid for this trip to Mauritius?

MS GIGABA: Dudu paid for it. Malusi told me that he paid for it, but what I remember she is the one who gave us the whole artillery, our flights and when we get there, where
 20 we must sleep. Who must we call, who needs to pick us up at the airport and everything.

ADV MYBURGH SC: Now can you remember where Mr Gigaba would meet, typically meet with Ms Myeni?

MS GIGABA: At Sheraton Hotel in Pretoria.

ADV MYBURGH SC: Alright.

MS GIGABA: But sometimes she would come at home.

ADV MYBURGH SC: Sorry?

MS GIGABA: There was sometimes she would come at our home.

ADV MYBURGH SC: She would come to your home?

MS GIGABA: Ja.

ADV MYBURGH SC: And was there a time then where their relationship soured?

MS GIGABA: Yes.

10 **ADV MYBURGH SC:** How did that come about, why?

MS GIGABA: They used to, because they started and they had a sisterly and a brotherly relationship and also as colleagues, but then it became sour when Dudu used to tell Malusi that you need to do a certain thing, and Malusi will be like he does not want Dudu to tell her the kind of job that he needs to do.

Also I remember on the Monalusi and Galawayaga saga, Dudu did not like Monalusi and Malusi did and also Malusi was not happy when Dudu was interfering with the
20 board decisions. So he will call her and say like why she is always involved in things.

I remember they will have like a lot of arguments. Then Dudu will be like Malusi will go back to, he will be taken back to Home Affairs and Malusi is like no one will take me back to Home Affairs.

So they will just fight about that and Malusi or sometimes he will come and say the president said you need to do this, and then Malusi was like president, if you want to tell me something, he will come to me. He must not go to you and tell me something.

So they had that kind of a relationship where it became, they did not want to meet, because I remember there was a certain time where Malusi did not want to talk to her anymore, but it was more of how she runs SAA.

10 Malusi felt like he was not supposed to be appointed as the Chairperson of SAA.

He felt like he did not know how to do the job. Sometimes he interferes. So they had that kind of a strained relationship. But in the beginning they were very close.

ADV MYBURGH SC: Now you say at paragraph 37, let me ask you did Mr Gigaba ever mention anything to you about the SAA Johannesburg Mumbai flight route?

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** Was that an issue that was causing concern?

MS GIGABA: It was their topic, because I think Malusi was not interested in this thing of Mumbai route, SAA has to be cancelled, but it was a business thing and then he would say they will discuss it with Malusi and every time

they talk about that, Malusi will be very angry like why he is telling her what to do.

Why she is interfering because sometimes he would just switch off the phone and he will tell me like I do not know why she was just appointed. So every time Malusi used to question why he was holding the position of the new Chairperson because he felt like he was just interfering everywhere.

ADV MYBURGH SC: Chairperson, I have a request that we
10 take a short comfort break. I see that it has just gone nine o'clock.

CHAIRPERSON: Well, you have been standing the whole day.

ADV MYBURGH SC: Yes.

CHAIRPERSON: How are you feeling?

ADV MYBURGH SC: No, I am fine.

CHAIRPERSON: You are fine?

ADV MYBURGH SC: Yes, I am keen I am sure like everyone to finish this evidence.

20 **CHAIRPERSON:** Okay. Ms Gigaba, can we continue after a break and try and finish?

MR SOLOMON: Okay.

CHAIRPERSON: Okay, alright. We will take a ten minutes adjournment.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you Chairperson. Ms Gigaba, can I ask you to have a look at paragraph 37 at the bottom of page 1007. You say that on Sundays Mr Gigaba and I would regularly have lunch in Sandton. Is that correct?

CHAIRPERSON: Just switch on your mic please and then repeat the answer.

10 **ADV MYBURGH SC:** You say at paragraph 37:

“On Sundays Mr Gigaba and I would regularly have lunch in Sandton.”

Is that right?

MS GIGABA: That is 37 point what?

ADV MYBURGH SC: 37.

CHAIRPERSON: The previous page.

ADV MYBURGH SC: Sorry, page 1007.

CHAIRPERSON: At the bottom.

MS GIGABA: Oh, okay.

20 **CHAIRPERSON:** At the bottom.

MS GIGABA: Okay.

ADV MYBURGH SC: So paragraph 37 is at the bottom. Are you there?

MS GIGABA: Yes.

ADV MYBURGH SC: “So on Sundays Mr Gigaba and I

would regularly have lunch in Sandton. While driving to return home I would overhear Mr Gigaba's telephone discussions with Ms Myeni. He would sometimes share the detail of these discussions with me and that would include."

What does the, if you go over the page, what was the sorts of things that he would tell you after holding these discussions with Ms Myeni?

MS GIGABA: That is what I already mentioned before.

10 **ADV MYBURGH SC:** Sorry?

MS GIGABA: It is what I have already mentioned before.

ADV MYBURGH SC: Okay, and that is about following instructions, etcetera.

MS GIGABA: Yes.

ADV MYBURGH SC: Was there a time where he said to you that he did not understand why she had been appointed as the Chair of SAA because he did not believe she was competent?

MS GIGABA: He said that to me, not to her.

20 **ADV MYBURGH SC:** Yes, and did he say to you that she would feed information to the former president?

MS GIGABA: Can you please ask the question again?

ADV MYBURGH SC: Did he say to you that Ms Myeni would feed information to the former president without telling him about that?

MS GIGABA: Malusi felt like that.

ADV MYBURGH SC: He felt that?

MS GIGABA: Yes.

ADV MYBURGH SC: And then paragraph 37.3, and these are things I think that you have already touched on:

“When Mr Gigaba did not want to follow the instructions of Mr AJ Gupta of Ms Myeni, one or other would phone the former president to complain about him.”

10 Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: “Ms Myeni would then pass on instructions from President Zuma to Mr Gigaba which would upset him. Mr Gigaba believed that he should have a direct line of communication to the former president and not receive instructions via Ms Myeni, because he did not report to her.”

Is that correct?

20 **MS GIGABA:** Yes.

ADV MYBURGH SC: And then at 38, can you deal with that please?

MS GIGABA: What do you want me to do about 38?

ADV MYBURGH SC: What did Ms Myeni tell Mr Gigaba?

MS GIGABA: He said if he does not want to do something,

he will be taken back to Home Affairs.

ADV MYBURGH SC: And was there a time when Mr Gigaba did return to the Department of Home Affairs?

MS GIGABA: Yes.

CHAIRPERSON: You said earlier on that Mr AJ Gupta told you, told Mr Gigaba ...[intervenes]

MS GIGABA: Yes.

CHAIRPERSON: That ...[intervenes]

MS GIGABA: The same thing that you just said.

10 **CHAIRPERSON:** He would be returned to Home Affairs.

MS GIGABA: Yes.

CHAIRPERSON: So now I see that you are saying that Ms Myeni also said that same thing.

MS GIGABA: They both said it, yes.

CHAIRPERSON: Are you sure that both of them said the same thing?

MS GIGABA: Yes, I am sure.

CHAIRPERSON: Yes, okay. Mr Myburgh?

20 **ADV MYBURGH SC:** Yes, thank you. Then you have a heading, Mr Gigaba's return to the Department of Home Affairs and paragraph 39:

“On 26 May Mr Gigaba was transferred back to the Department of Home Affairs as minister.”

I take it that that was not a date that you could personally recall, but you were assisted with that date. Is

that correct?

MS GIGABA: I did not assist with the dates, I think the commission put the dates.

ADV MYBURGH SC: Yes.

MS GIGABA: But I said Malusi was taken back. I remember when he was taken back.

ADV MYBURGH SC: Because that date accords with the date in the schedule, in paragraph 6. All the different positions that he held.

10 **MS GIGABA:** Remember, all those dates are the dates they were not put by me.

ADV MYBURGH SC: Yes.

MS GIGABA: They were put by the commission.

ADV MYBURGH SC: That is actually Ms Gigaba what I am saying here, is that this is, you did not remember this date, you were assisted with the date.

MS GIGABA: Yes.

ADV MYBURGH SC: Correct. But you do remember him being transferred back to the Department of Home Affairs.

20 **MS GIGABA:** Yes, I do.

ADV MYBURGH SC: But I am not sure that is the right language perhaps, but he moved.

MS GIGABA: Yes, he moved back.

ADV MYBURGH SC: Did Mr Gigaba think that he would be moved back?

MS GIGABA: No.

ADV MYBURGH SC: Why?

MS GIGABA: Because he had a very close relationship with the president.

ADV MYBURGH SC: And what was Mr Gigaba's reaction to being returned or to moving back as you put it, to the Department of Home Affairs? How did he feel about it?

MS GIGABA: He was shocked and also I think he was hurt.

10 **ADV MYBURGH SC:** Did he tell you what had happened?

MS GIGABA: In terms of?

ADV MYBURGH SC: Did he tell you what the president told him?

MS GIGABA: He said he told him that he will be taken back to, you need to go back to Home Affairs.

ADV MYBURGH SC: And did he tell you why the president had said that he was going to be moved back?

MS GIGABA: He said he need to tighten the borders at the Home Affairs.

20 **ADV MYBURGH SC:** Alright.

CHAIRPERSON: And what did Mr Gigaba think of that reason, or think of that? Do you know what his reaction was to being told that he needed to go back to Home Affairs in order to strengthen border controls?

MS GIGABA: He thought he was taken back because he

was already threatened that he will be taken back. So he thought [indistinct but the president did not say those words.

CHAIRPERSON: Yes, okay. Mr Myburgh?

ADV MYBURGH SC: Thank you. You then go on to deal with the Gupta's application for South African citizenship. What did Mr Gigaba tell you about this?

MS GIGABA: I am not supposed to talk about this, because I never work at the department. So what I will say
10 is [indistinct]. So I am not comfortable with ...[intervenes]

ADV MYBURGH SC: Sorry, for some reason I am not hearing you clearly. What did you say?

MS GIGABA: I am saying I am not comfortable to talk about the application citizenship of the Guptas, because I have never worked for the department.

ADV MYBURGH SC: Yes, but what did Mr Gigaba tell you?

MS GIGABA: So maybe you will ask something, then he will respond to that because most of everything I have said here, is the questions that ... the questions that I was
20 asked on the consultation. Then I will respond to what I know.

ADV MYBURGH SC: Alright.

MS GIGABA: Based on the questions [indistinct].

ADV MYBURGH SC: So is this a part of the affidavit that you want to correct?

MS GIGABA: Ja, because I do not want to say certain things because they are here and I do not want to say those words because I do not want to be accountable for a certain yes, because most of the information that is pertained, the commission summarised. Maybe it is their own interpretation and I do not want to be part of that.

ADV MYBURGH SC: Okay, well when it says at 42 that during Mr Gigaba's turn of office as Minister of the Department of Home Affairs, he informed me that he was
10 assisting some of the Gupta family members to obtain citizenship in South Africa.

ADV OLDWAGE SC: Chairperson, through you. The witness is making it very clear that she does not intend to deal with the contents of paragraph 42, 43 and 44. She says she does not intend to do so, because one the information there was provided to her by the commission.

Secondly because she does not have personal knowledge of these facts. Now referring her to this information for her to confirm, does not take cognisance of
20 the fact that she is saying I am not comfortable, that information is not within my personal knowledge.

CHAIRPERSON: No, no. The witness is not being asked to say anything she does not know. She is being asked whether that sentence is true or not and therefore she is able to say no, it is not true or it has been put in a way

that I am not comfortable with or anything like that.

MS GIGABA: Yes, that is what I meant.

CHAIRPERSON: Mr Myburgh?

ADV OLDWAGE SC: Chair I apologise.

CHAIRPERSON: Ja.

ADV OLDWAGE SC: Once again, the witness is saying I do not know this information.

CHAIRPERSON: Yes.

ADV OLDWAGE SC: It was put by the ...[intervenes]

10 **CHAIRPERSON:** No, no, no. The witness has deposed to an affidavit and she then says there is something in the affidavit that she is unhappy about. The evidence leader is entitled to say is it the first sentence that you are unhappy about.

Is there anything untrue about it. He is entitled to ask that and the witness is quite entitled to say yes, it is not true or yes, it is true.

ADV OLDWAGE SC: Chairperson, my objection was merely because the witness specifically said this
20 information was put here by the commission and therefore I do not have knowledge of that.

CHAIRPERSON: Well, I think Mr Myburgh wants to establish which part of this paragraph the witness says was put by the commission, because that is a serious allegation.

ADV OLDWAGE SC: As the Chair pleases.

CHAIRPERSON: Ja, those are serious allegations. So it is important that if there is something that she never told the commission which has been put here, let us have clarity. If she says, as I believe she did with regard to some earlier paragraph where she says the substance might be fine but the way it has been put is not right, it is important that we know exactly what it is.

So Ms Gigaba, when Mr Myburgh ask questions
10 about this paragraph, feel free to say what you wish to say. If you want to say this is not true or it has not been put in the right way, feel free to say so. If you say it is true, but the way it is put or whatever, feel free.

But if you say that the investigators or members of the legal team of the commission have put information in your affidavit without having been told that by you, it is important that we know.

MS GIGABA: Okay. So what I said to him, I am not comfortable to answer this part because there is a year
20 that is mentioned, which I never I do not talk about years, because I never kept the years recording everything what happened.

CHAIRPERSON: Yes.

MS GIGABA: And also even the summary at the end.

CHAIRPERSON: You can take it, Ms Gigaba you can take

it that if you have a problem about a year or a date, as far as I am concerned that is not going to be a big deal you know, but it is more about whether the substance does not reflect what you told whoever prepared the affidavit.

MS GIGABA: Okay, because what makes me comfortable is if I said something, because part of the paragraph, there is something that I say. But now the way that it is summarised ...[intervenes]

CHAIRPERSON: Yes, yes.

10 **MS GIGABA:** It has so much of the information that has got nothing to do with me.

CHAIRPERSON: Okay.

MS GIGABA: Especially 44. It is something that was collected by the commission.

CHAIRPERSON: Okay, okay.

MS GIGABA: And it makes it difficult for me to be held accountable for the whole paragraph and to select certain parts. So I wish they have put my words ...[intervenes]

CHAIRPERSON: No, I think I understand completely what
20 you are saying. Mr Myburgh?

ADV MYBURGH SC: Well, perhaps we could ask you in your own words what happened in relation to the Guptas application for South African citizenship, that you know. That you learnt from Mr Gigaba.

CHAIRPERSON: In other words even if you did not look at

this affidavit, at these paragraphs, in terms of what he told you if you were to just relate that.

MS GIGABA: I will not remember a long part of it, that he said he was assisting them.

CHAIRPERSON: Ja.

MS GIGABA: But I just want to express myself on the publically [indistinct] because I do not want to go in terms of what happens in the department because I have never worked for the department. So I do not want to use a
10 certain word and then when the department comes back he says no we never done that.

CHAIRPERSON: Ja.

MS GIGABA: Because I have never worked for the Department of Home Affairs.

CHAIRPERSON: Ja.

MS GIGABA: And here it is already, the answer is broad. This whole information it is not my words.

ADV MYBURGH SC: So if I understand you correctly, please correct me if I am wrong. You have a particular
20 concern with paragraph 44. Because there it says:

“It is publically known that Mr Gigaba during his term of the Minister of the Department of Home Affairs had approved the early naturalisation of members of the Gupta family.”

That you say ...[intervenes]

MS GIGABA: It is you that commissioner to that, not me.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So you say ...[intervenes]

MS GIGABA: I never done any investigation about what public says about him. Everything that is given here it is what I heard from him, it is what I have seen, but I did not go do an investigation when happened when and how the public views him.

CHAIRPERSON: Okay.

10 **MS GIGABA:** And that what Malusi was challenging on his affidavit.

CHAIRPERSON: Okay.

ADV MYBURGH SC: But if you take out that and we take out the date in 2015 you have any particular concerns in relation to paragraph 42 and 43, because it refers ...[intervenes]

MS GIGABA: Yes.

ADV MYBURGH SC: We were, but what I am interested in is your own personal experience.

20 **CHAIRPERSON:** Of what he told you.

MS GIGABA: Ja, but you are making my life so difficult, because I so wish you did not mix my words because now I have to select what is my words out of that whole paragraph, because all this it is what you know of him. It is the investigation that you have done.

It is what the public think of him and then now I have to find myself in between and that is the reason I said I do not want to come to the commission before everything is corrected because now I have to tick pieces and pieces of what I said.

CHAIRPERSON: Would you be happy to through your legal representatives, put in an affidavit ...[intervenes]

MS GIGABA: Yes.

CHAIRPERSON: How you wanted it to be put?

10 **MS GIGABA:** That is what yes, we propose.

CHAIRPERSON: Yes. So you can still deal with it but you would like to put it in your ...[intervenes]

MS GIGABA: In my own words.

CHAIRPERSON: Ja.

MS GIGABA: So that I can say what I have seen and what I know.

CHAIRPERSON: Okay.

MS GIGABA: Because I do not want to agree with the statement that has got nothing to do with me.

20 **CHAIRPERSON:** Okay. Well, Mr Myburgh I do not know what you think but it may well be that when we see that affidavit, it may well be that whatever you might wish to pursue, you might look ... do that after looking at that.

ADV MYBURGH SC: Yes, I think we are happy to move on, on that basis.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Chairperson. So this is one of those areas that, like with the India trip you need to re-craft the passage. Is that right?

MS GIGABA: That is the thing that I did not want to do, and I do not want you to force me to do it, because when you force me to do it now, I have to look and try to select.

ADV MYBURGH SC: Alright.

MS GIGABA: And I did not want to do that. I preferred,
10 that is what I propose to my lawyers and to the commission. I preferred to stick to my words, so that I can give the information what I know.

CHAIRPERSON: Ja.

MS GIGABA: Because now it is to select the bits and pieces ...[intervenes]

ADV MYBURGH SC: Absolutely.

CHAIRPERSON: No, that is ...[intervenes]

MS GIGABA: That is difficult because some here, on 43 I know what I have said.

20 **CHAIRPERSON:** Ja.

MS GIGABA: And now ...[intervenes]

CHAIRPERSON: No, no ...[intervenes]

MS GIGABA: And now it is mixed with the whole overall of the investigation of the commission.

CHAIRPERSON: Do not worry, that is fine because you

want to put it in your own words.

MS GIGABA: Yes.

CHAIRPERSON: That that is acceptable. You could do that in a supplementary affidavit.

MS GIGABA: Okay.

CHAIRPERSON: And then once the commission has got that we can look at that and take it from there.

MS GIGABA: Okay.

ADV MYBURGH SC: Alright.

10 **ADV OLDWAGE SC:** Chairperson, if I may?

CHAIRPERSON: Yes, yes.

ADV OLDWAGE SC: I do need to indicate that my original concern was that as Ms Gigaba is being led on aspects of this affidavit, at a later stage she then furnishes an affidavit to try and explain this I did not say, this I did not say.

The reason why this has been a concern is purely because at some point or the other, when we come to deal and I am just giving a simple example. When we come to
20 deal with paragraph 45 or 43 of this original affidavit, the question then becomes you agreed to certain aspects of it and now you are now refusing.

Hence the concern Chairperson was that we try and we make the exercise simple for the commission. Not only for the credibility and making sure that the proper

information before this commission is exactly that which
...[intervenes]

CHAIRPERSON: No, no, no, no. It is fine the way it is. What has been said, is he has said that some of the things that are here she knows, but others have been put in a certain way. She did say Mr Gigaba did say he was assisting, I think the Guptas about the citizenship.

But as far as I am concerned, the arrangement is a supplementary affidavit will be obtained where under the
10 Guptas application for South African citizenship they can put her evidence they say she wants to put in terms of what she knows, and in terms of what she was told by Mr Gigaba.

Then we will have that. What happens after that will depend on what emerges because if her supplementary affidavit says what is wrong is the 2015 and the 44, and then the way this thing is put has lost the essence of what I told whoever was drafting the affidavit.

This is what I said, it is fine, but I do not think there
20 is any other way of doing it, because this is an affidavit which she signed.

ADV OLDWAGE SC: Chairperson, as I had already submitted before, we raised concerns and Chairperson, one of the reasons why she feels it is critical that she explains the circumstances under which she signs this

affidavit, we saw that this affidavit does not get placed on her. Because she is specifically saying the contents of this affidavit contain information that is not mine.

CHAIRPERSON: Yes, I have heard that. I have heard that, I have heard that. It is enough. I know what, I know all the points you have made. I have not forgotten them. We are going to proceed, but we proceed on the basis that one, as far as these paragraphs are concerned a supplementary affidavit will be provided in which she will
10 put her knowledge or her evidence the way she wants to put it.

If in subsequent paragraphs there is another paragraph where she has a similar discomfort we will talk about that and probably do the same thing. But let us make progress. It is late in the night, we all want to finish, okay.

ADV OLDWAGE SC: As the Chair pleases.

CHAIRPERSON: Alright.

MS GIGABA: Also can I say something on that?

20 **CHAIRPERSON:** Ja.

MS GIGABA: When it comes to the signing of the affidavit, because I remember on our last consultation one of the evidence leaders were saying but you signed it. So when it came to this, and me signing it, it was a day because during those days when we were about to wrap up this,

there were a lot of threats, people threatening me about coming here and I was receiving a lot of calls.

I felt like my life was so threatened. So it was more of the security concern, so on that day we were signing this, it was the day we received the news that there was someone, they tried to kill someone or something. So when Paul gave the affidavit to my senior counsel, so then he was like we only have ten minutes.

We need to sign it quickly. I do not want it on me
10 because these people, what if these people they you know, because we were so scared to have the affidavit within us, because the media was calling me, wanted the affidavit. Certain people, they wanted the affidavit from me and I did not have it.

So when I was answering people, telling them especially the media to say I do not have the affidavit and I was not lying. I did not have my affidavit with me, and that is what we proposed with the evidence leader. That I do not want to have it, because I felt like having this affidavit
20 will put my life more in danger, because a lot of people wanted my affidavit and my life was so under threat during the time.

So when on the day we were signing it, we were only given certain few minutes. So we sign it quickly and then the senior counsel went to drop it off to the evidence

leader, but it was the nature of both of us we were so scared of our lives.

Myself, I was scared of my life and I raised that and we were discussing the security, the threat. How I am going to be protected which I was not protected by the commission and it promised to protect me. So every time when now they are saying I signed it, I did not sign it in my comfort.

I sign it under pressure. We did not go through it
10 because of there was that on that day.

CHAIRPERSON: Do not worry about that for now.

MS GIGABA: Okay.

CHAIRPERSON: In your supplementary affidavit you can explain the circumstances under which you signed it, because when you prepare your supplementary affidavit, when you ... it is looked at, it may well be that in substance you will not be deviating much from what you have said.

But one can only make that judgment call when one
20 compares the two, but when you do your supplementary affidavit you can just explain that these are the circumstances under which you signed this first one.

MS GIGABA: Okay.

CHAIRPERSON: Okay. Alright, let us continue.

ADV MYBURGH SC: Alright. Thank you. Ms Gigaba,

there is another heading then, Malusi Gigaba's transfer from the Department of Home Affairs to the Department of Finance. You remember that he moved from Home Affairs to the department of finance?

MS GIGABA: Yes.

ADV MYBURGH SC: Remember that, and how did you come to learn about that?

MS GIGABA: Because he told me.

ADV MYBURGH SC: And can you remember where you
10 were at the time when he told you?

MS GIGABA: We were in Cape Town.

ADV MYBURGH SC: And were you at a function or something?

MS GIGABA: Yes.

ADV MYBURGH SC: And what happened when, did he receive a telephone call?

MS GIGABA: Yes.

ADV MYBURGH SC: After he received the call, what did he say to you?

20 **MS GIGABA:** He told me that [indistinct].

CHAIRPERSON: Please speak closer to the mic.

MS GIGABA: So he told me about his appointment as the Minister of Finance.

ADV MYBURGH SC: Was he happy about that?

MS GIGABA: He was not.

ADV MYBURGH SC: Why?

MS GIGABA: What he mentioned, he said he knows that he was not the person which, for him to be a Minister of Finance.

ADV MYBURGH SC: Sorry?

MS GIGABA: He said he knew that he was not the person which to be, for him to be a Minister of Finance.

ADV MYBURGH SC: He is not the person the president wish to be the Minister of Finance?

10 **MS GIGABA:** Yes.

ADV MYBURGH SC: Did he tell you who the president wanted to be the Minister of Finance?

MS GIGABA: He said he wanted [indistinct].

ADV MYBURGH SC: Now after Mr Gigaba moved to the Department of Finance, did he continue to go to the Gupta residence? You continued to go the Gupta residence?

MS GIGABA: Can you please repeat the question?

ADV MYBURGH SC: After Mr Gigaba moved to the, became the Minister of Finance, did he carry on going to
20 the Gupta residence?

MS GIGABA: After when he was at finance.

ADV MYBURGH SC: So what we are dealing with here is Mr Gigaba transfers from the Department of Home Affairs to the Department of Finance. He becomes the Minister of Finance.

MS GIGABA: Oh, okay.

ADV MYBURGH SC: When he was the Minister of Finance, did he carry on going to the Gupta residence?

MS GIGABA: Their relationship was not good by that time.

ADV MYBURGH SC: So let us then deal with the next heading. Gifts, cash and benefits received from the Guptas. Now you have already told us about the gold necklace that he gave to your elder son, correct?

MS GIGABA: Yes.

10 **ADV MYBURGH SC:** Let us deal with other gifts. There is a heading that says the white three series BMW motor vehicle, the BMW. Could you tell us about that?

MS GIGABA: They give him that car as a gift.

ADV MYBURGH SC: Sorry?

MS GIGABA: They gave him that car as a gift.

ADV MYBURGH SC: Who is they?

MS GIGABA: Guptas, AJ.

ADV MYBURGH SC: And when you say they gave it to him, how do you know that?

20 **MS GIGABA:** Because he went to collect it.

ADV MYBURGH SC: Where about did you collect it?

MS GIGABA: At Sahara.

ADV MYBURGH SC: Sahara computers?

MS GIGABA: Yes.

ADV MYBURGH SC: And did you drive this car, this BMW?

MS GIGABA: Yes, I did.

ADV MYBURGH SC: Was it your private vehicle for a while?

MS GIGABA: Yes.

CHAIRPERSON: Was it a BMW?

MS GIGABA: Yes.

CHAIRPERSON: Okay, and what colour? Do you recall?

MS GIGABA: Say that again?

CHAIRPERSON: Do you recall what colour?

10 **MS GIGABA:** It was white.

CHAIRPERSON: It was white.

ADV MYBURGH SC: And was it transferred into your name?

MS GIGABA: Yes.

ADV MYBURGH SC: And then what happened to the car?

CHAIRPERSON: I am sorry. Did you say, was this a new car as far as you know?

MS GIGABA: Yes.

CHAIRPERSON: And ...[intervenes]

20 **MS GIGABA:** But I am not sure it was new new or it was second hand, but it was new.

CHAIRPERSON: But it looked new.

CHAIRPERSON: Did you say it was transferred into your name?

MS GIGABA: Yes, they did at some stage.

CHAIRPERSON: At some stage?

MS GIGABA: Yes.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Thank you, and then what happened to this car?

MS GIGABA: He gave it to, we took it to his friend to fix the lights. It never came back.

ADV MYBURGH SC: Alright and then you deal with cash and benefits, there is ...[intervenes]

10 **CHAIRPERSON:** I am sorry, before that, Mr Myburgh. How did it come to be registered in your name? Was this a gift for Mr Gigaba, was it a gift for you?

MS GIGABA: It was his – again that time - I am the one who was using the car.

CHAIRPERSON: You were?

MS GIGABA: I am the one who was using the car.

CHAIRPERSON: Okay but when it was given to him was it given as a gift or was it loaned to him to use as he ...[intervenes]

20 **MS GIGABA:** It was a gift to him.

CHAIRPERSON: H'm?

MS GIGABA: It was a gift to him.

CHAIRPERSON: It was a gift to him?

MS GIGABA: Yes.

CHAIRPERSON: But he allowed you – then he gave it to

you?

MS GIGABA: Yes.

CHAIRPERSON: And you got it registered in your name?

MS GIGABA: Yes.

CHAIRPERSON: Okay, alright. Mr Myburgh?

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Or you say you took it to somebody to fix the lights?

MS GIGABA: Yes.

10 **CHAIRPERSON:** And then what happened about it? It never came back?

MS GIGABA: It never came back, ja.

CHAIRPERSON: Did you take it there or Mr Gigaba took it there or somebody else?

MS GIGABA: I took it there.

CHAIRPERSON: Why did you not go back to fetch it?

MS GIGABA: I kept on asking about it until I decided to buy myself a car.

CHAIRPERSON: Who were you asking? The person to
20 whom you had taken it or Mr Gigaba?

MS GIGABA: Both.

CHAIRPERSON: Both?

MS GIGABA: Yes.

CHAIRPERSON: Okay and ...[intervenes]

MS GIGABA: It is a friend.

CHAIRPERSON: Oh, the person to whom you took the car was his friend?

MS GIGABA: Yes.

CHAIRPERSON: And that person was somebody who fixes cars?

MS GIGABA: He said he will take it somewhere so that they fix the light for me.

CHAIRPERSON: Ja. So it was nothing serious, it was just the lights?

10 **MS GIGABA:** Yes.

CHAIRPERSON: And when you asked for it back what did that person say to you about it?

MS GIGABA: So he kept on telling me that when I come back, so at a certain stage I went to buy a car.

CHAIRPERSON: You bought your own car?

MS GIGABA: Yes.

CHAIRPERSON: And Mr Gigaba, did he tell you anything about the car about why it was not coming back?

20 **MS GIGABA:** I stopped asking him about it, so I decided to buy a car for myself.

CHAIRPERSON: Yes and you cannot remember the year when this car was given to Mr Gigaba as a gift?

MS GIGABA: I do not want to say exactly the year but I can check.

CHAIRPERSON: But you remember which position he was

holding at the time, what ministry he was in?

MS GIGABA: I do not remember the position but it was I think around 2015, there.

CHAIRPERSON: Around 2015.

MS GIGABA: Ja, but I am not sure but I can check because at certain point the car was under my name.

CHAIRPERSON: Okay, alright. Mr Myburgh?

ADV MYBURGH SC: Thank you, Chairperson. Let us deal with wedding gifts of cash. So we know that you married
10 Mr Gigaba on the 30 August 2014. Who did your wedding planning and who did you invite to your wedding. Did you invite the President? Did you invite the Guptas.

MS GIGABA: We invited a lot of people but I did not have an access to invite Guptas or the President.

ADV MYBURGH SC: I beg your pardon?

MS GIGABA: I did not have an access to invite the President or Guptas so Malusi was inviting his friends, I was inviting my friends. He was inviting his family, I was inviting my family.

20 **ADV MYBURGH SC:** So where it says:

“We invited both the former President and the Guptas but none of them attended.”

Is that wrong?

MS GIGABA: Yes, they did not attend.

ADV MYBURGH SC: Yes but is it wrong where it says we

invited both the former President and the Guptas?

MS GIGABA: Yes, they were invited but they did not come.

ADV MYBURGH SC: Okay. Mr Molefe was invited and he did attend, is that correct?

MS GIGABA: Yes, he did attend.

ADV MYBURGH SC: Now did you get any wedding gift of any sort from the Guptas?

MS GIGABA: Not me, but Malusi said he did.

10 **ADV MYBURGH SC:** And what did he tell you about that?

MS GIGABA: There was a certain time when he told – because we knew about the Guptas prior the wedding that they were not coming, only President Zuma I think two days before the wedding that they were not coming. So they gave him – so he said they will give him money as a gift as a compensation of their attending the wedding.

ADV MYBURGH SC: And who paid for your honeymoon?

MS GIGABA: Say that again?

ADV MYBURGH SC: Who paid for your honeymoon?

20 **MS GIGABA:** Ajay did.

ADV MYBURGH SC: Do you know how much money Mr Gigaba was given?

MS GIGABA: No, I do not know.

CHAIRPERSON: How do you know that it was Mr Ajay Gupta who paid for your honeymoon?

MS GIGABA: Because he told me when someone pays.

CHAIRPERSON: Who told you?

MS GIGABA: Malusi told me.

CHAIRPERSON: So he told you that Ajay Gupta had paid for your honeymoon?

MS GIGABA: Yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So the paragraph reads:

10 “Mr Gigaba informed me that as a wedding gift the
 Guptas gave him a cash donation towards the cost
 of the wedding in addition to paying for the cost of
 honeymoon in Dubai. I do not know how much
 money the Guptas in fact gave.”

Is that correct?

MS GIGABA: I do not know.

ADV MYBURGH SC: But that paragraph, is it right?

MS GIGABA: Yes.

ADV MYBURGH SC: Now how long did you go on honeymoon for?

20 **MS GIGABA:** I think we were there for a week.

ADV MYBURGH SC: And in what hotel did you stay?

MS GIGABA: I think it was a hotel called Waldorf.

ADV MYBURGH SC: The Waldorf?

MS GIGABA: Yes.

ADV MYBURGH SC: In Dubai?

MS GIGABA: Yes but I have to check exactly the name but I think it is something like that.

ADV MYBURGH SC: Now you go on to estimate how much your wedding cost. How much was that?

MS GIGABA: It was 4 million to 5 million.

ADV MYBURGH SC: And who paid the wedding expenses.

MS GIGABA: It is me.

ADV MYBURGH SC: And how did you pay them?

MS GIGABA: I always paid them cash.

10 **ADV MYBURGH SC:** And where did you receive this cash from?

MS GIGABA: He gave me because he was busy with his work.

ADV MYBURGH SC: Sorry?

MS GIGABA: Because that time it was during elections so he was busy with the work, so I was dealing with the wedding arrangements.

CHAIRPERSON: So R4 million to R5 million for the cost of wedding appears to ...[intervenes]

20 **MS GIGABA:** It was not even on the consultation I raised that, it was not like he came to me with 4 million, said here is 4 million, 65 million, it was not like that.

CHAIRPERSON: Yes.

MS GIGABA: So my wedding was planned from 2013 because I wanted to get married on my birthday which is in

April 2014 and then it was not approved by parliament because that time it was during elections, most of the government ministers were busy so then we have to move the wedding date to Malusi's birthday so it took like almost three years, so the payments were happening like that, it was not like there was a 4 million or 5 million came at once.

CHAIRPERSON: Yes, even if it was not a possibly that was made at one time, it is still sounds quite a lot. How do
10 you know that it was about R4 to R5 million?

MS GIGABA: Because all the ...[intervenes]

CHAIRPERSON: Is that amount – is that number, is that figure [inaudible – speaking simultaneously]

MS GIGABA: It is the estimation, not like a specific figure.

CHAIRPERSON: Yes but is it an estimation that you made because you were using the money, you know the money that was available to you and you were using it?

MS GIGABA: No, it was not I was using the money that is
20 available it was because of the – each and every person who was part of the wedding preparation, like the caterer, they will send me their bill, flowers, people were preparing because my wedding was in Durban. So each and every person – and my wedding happened two days, so it was not only for the white wedding, it was two weddings because it

happened in two days.

CHAIRPERSON: Yes, [inaudible – speaking simultaneously] as well.

MS GIGABA: So prepared two weddings at the same time.

CHAIRPERSON: Okay.

MS GIGABA: So it was like two caterers, one for the white wedding, one for the traditional wedding.

CHAIRPERSON: Okay.

10 **MS GIGABA:** So it was like that, this venue and that venue, this tent and that tent.

CHAIRPERSON: Okay.

MS GIGABA: So it was like in bits and pieces, not like we have a million, have never had a million at hand but it was more of maybe the caterer for the white wedding will send like 600 000, then they want a deposit then maybe I will go pay a certain amount and this one is for the venue at a certain -, so it was more of bits and pieces through the entire whole year and year and a half.

20 **CHAIRPERSON:** Okay, okay. And did you say you paid in cash or you paid in different ways of paying?

MS GIGABA: Yes, I paid cash.

CHAIRPERSON: Okay. All the expenses were paid in cash or some were paid by EFT or whatever?

MS GIGABA: The one that I remember was paid in cash.

CHAIRPERSON: In cash. And when you say the estimate of the cost of your wedding, the estimate is R4 to R5 million you think that either 4 million, 5 million was in cash at different times?

MS GIGABA: Yes.

CHAIRPERSON: Throughout the year.

MS GIGABA: Yes.

CHAIRPERSON: Okay, alright. Yes.

ADV MYBURGH SC: Sorry, Ms Gigaba, I just received a
10 request from some of the technical people, they have asked again if you could just try and speak a little bit more clearly. Apparently your voice is dipping in and out, I can imagine it makes transcription difficult.

MS GIGABA: Okay.

ADV MYBURGH SC: So did you not find it strange that you have been given all this cash? I mean, where did it come from as far as you were concerned?

MS GIGABA: As I mentioned on the – unfortunately you were not there, so I did not find it strange because Malusi
20 has been a minister for a very long time and also he told me that he has savings with this money market that he saved monies from and most of the expenses we do not pay for them because it is paid by the state so most of the time his salary and my salary, we were using it to pay our stuff. So to have a lot of cash, it was not something that

was strange to me.

ADV MYBURGH SC: Yes, I think perhaps we are speaking at cross-purposes, I am not suggesting that you found it strange that you could afford a wedding of this value, my question is more directed at why is everything being paid in cash? As you say Mr Gigaba – the state paid a lot of his expenses, he had a good salary, he had a money market account but none of that explains why – just bear with me? None of that explains why one would be going around with

10 large bundles of cash.

MS GIGABA: When you say large you are talking about how much?

ADV MYBURGH SC: Well, to the tune ultimately of R4 to R5 million.

MS GIGABA: But I never said he walked around with R5 million at once.

ADV MYBURGH SC: It added up to that.

MS GIGABA: Ja, adding up to that, it is in bits in piece in a year and a half so if you break it down that – it is not
20 that large. It can be large to you but it was not large to him and maybe to us, as a family because of how our expenses, we spend them because maybe the way you are just comparing, you are comparing by maybe a certain individual who have a salary and that salary, you have to pay for everything. So our life was different from that. So

he has his salary, I have my salary and we hardly paid for anything in the house.

ADV MYBURGH SC: Can I perhaps ask you a question in another way? I understand what you are saying but did you think in your mind that Mr Gigaba was going to, for example, First National Bank in Sandton City with his bodyguards and was drawing these bundles of cash to give you to pay for flowers? Is that what you think was happening?

10 **MS GIGABA:** Because most of the time, every January he used to take the money that he is paid for the whole year from his - what is this thing, market something, so ...[intervenes]

CHAIRPERSON: Money market account.

MS GIGABA: Ja, his money market because he used to pay for his – school fees was cash because he would say I save the money for the whole year, so he does that. So sometimes he will sit with his financial adviser about his money. Then end of the year or beginning of the year he
20 will take out the money and then he will use his own things. So when there is extra money – so I do not know this one was coming from where it was, was it from him or from - but – because I found it like that, so...

CHAIRPERSON: Are you able to – are you saying that it was normal or usual for him to give you amounts of cash

that maybe somebody else might regard as large amounts but you did not regard as large amounts?

MS GIGABA: Ja.

CHAIRPERSON: Yes.

MS GIGABA: Because to me what people do, will be shocked that oh, you have kind of money, for me it was normal.

CHAIRPERSON: Ja. And what kind of amounts did you regard as normal in terms of cash that he would give you
10 or he would have?

MS GIGABA: Maybe 50 000, 100 000, for me it was normal.

CHAIRPERSON: It was normal to have that, yes.

MS GIGABA: But maybe to other people it was not.

CHAIRPERSON: Yes. Okay, alright. Mr Myburgh?

ADV MYBURGH SC: Thank you. Let us then turn to another topic under the heading:

“Cash collected from the Gupta residence.”

You say at paragraph 53 that Mr Gigaba had two close
20 protection officers who accompanies him in the same vehicle. Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: And you knew one of them, what was his name?

MS GIGABA: I do not want to mention his name.

CHAIRPERSON: I wonder whether – ja, it might be good not to mention the name because I do not know, you know, the drivers whether one of them ...[intervenes]

ADV MYBURGH SC: Point taken, DCJ, thank you.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Now let us have a look at paragraph 54 and perhaps you can explain to us what you saw happening in relation to the collection of cash at the Gupta residence.

10 **MS GIGABA:** Can you please repeat the question?

ADV MYBURGH SC: What did you see happening about the collection of cash from the Gupta residence?

MS GIGABA: I never(?) see collection of cash at the Gupta residence.

ADV MYBURGH SC: Okay. Right, that is the heading.

MS GIGABA: So I can say what I saw?

ADV MYBURGH SC: Yes, tell us what you saw.

MS GIGABA: Sorry, on the cash?

ADV MYBURGH SC: Yes.

20 **MS GIGABA:** I think you have to ask the question in a different way.

ADV MYBURGH SC: Alright.

MS GIGABA: Because I do not want to give the whole thing that you do not need.

ADV MYBURGH SC: Okay. Well, this is important so let

us go through it.

“On several occasions that we attended the Gupta residence I personally observed Mr Gigaba leaving the adjacent meeting room.”

Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: So you were sitting there, as you have explained, he was having meetings in the private meeting room, is that right?

10 **MS GIGABA:** Yes.

ADV MYBURGH SC: And what would happen after he left the meeting room?

MS GIGABA: Well, sometimes he will ask his bodyguards to bring the bag.

CHAIRPERSON: To what?

MS GIGABA: He will ask his bodyguards to bring the bag from the car.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Alright and would the bag then be
20 brought?

MS GIGABA: Yes.

ADV MYBURGH SC: Would it be given to Mr Gigaba?

MS GIGABA: Yes.

ADV MYBURGH SC: By the CPO?

MS GIGABA: What is CPO?

ADV MYBURGH SC: The close protection officer.

MS GIGABA: Oh, okay.

ADV MYBURGH SC: Right? And what would Mr Gigaba then do with the bag once it was given to him?

MS GIGABA: It looked like this was happening all the time, but the times that I remember. So sometimes he will go in, in that room, and then when he will have tea he will leave with the bag, go to the room, but not like I saw the money.

10 **ADV MYBURGH SC:** And how many bags did Mr Gigaba have?

MS GIGABA: He had two big ones then one small one.

ADV MYBURGH SC: Now can I just ask you to have a look at these annexures, I think this is another thing that we might have identified in the consultations. We are talking about leather bags here.

MS GIGABA: Yes.

ADV MYBURGH SC: Now the annexures referred to paragraph 54 are A and B. Is A and B the correct bag or is
20 it C and D the correct bag?

MS GIGABA: Just give me a second? Sorry, repeat the question?

ADV MYBURGH SC: So which bags – what are the correct photographs? These bags that were brought to him at the Gupta residence that he would call for, are they the bags

marked A and B or are they bags that looked like C and D?

MS GIGABA: That A, that leather bag, is more [indistinct] bag.

ADV MYBURGH SC: Yes.

MS GIGABA: The A, C and D because he had two bags like this, that were different.

ADV MYBURGH SC: Yes. I think what I am getting to, Ms Gigaba, if you go back to paragraph 54, do you confirm that instead of reading A and B it should actually read C
10 and D?

MS GIGABA: It is A and D, the small bag and the big bag but now when you look at D, it is the brown bag. He has the brown bag.

ADV MYBURGH SC: Yes.

MS GIGABA: He also have a black bag of a similar nature and also A and B is something similar, which he has a bag like that but it is one bag, but yes.

ADV MYBURGH SC: So let us just go back to paragraph 54.

20 **MS GIGABA:** Okay.

ADV MYBURGH SC: So he would call his CPO to bring in a leather bag, kept in the boot of the vehicle, the bag would be brought to him, he would go into the private meeting room, he would come out with the bag, the bag would be placed in the boot. Now what bag are we talking

about there? Are we talking about bags that look like A and B or are we looking at – talking about bags that look like C and D?

MS GIGABA: The one goes in the boot, C and D.

ADV MYBURGH SC: Sorry?

MS GIGABA: C and D is the one that goes in the boot.

ADV MYBURGH SC: Yes. So if you go back to 54, at the end, that A and B should change to C and D. Is that what you say?

10 **MS GIGABA:** Say that again?

ADV MYBURGH SC: If you go to the end of paragraph 54.

MS GIGABA: Yes.

ADV MYBURGH SC: Where it refers to annexures A and B should correctly read C and D. It was the big bag.

MS GIGABA: The big bag, is from C and D.

ADV MYBURGH SC: Yes.

MS GIGABA: And that is what I said because you guys, you asked this for a lot times at the consultation and I said the same thing and I am saying it again.

20 **ADV MYBURGH SC:** Ja.

MS GIGABA: C and D, either it is those two bags, so I do not want to say only this bag because he has a black one.

ADV MYBURGH SC: Alright.

MS GIGABA: Sometimes he will carry this. Also at D, it is a brown bag, he has this bag, similarly, Chair. So

sometimes he will take this back, he goes to the boot, he goes in with it but now A and B is the small bag that he always has with him.

ADV MYBURGH SC: Yes.

MS GIGABA: Yes.

ADV MYBURGH SC: Alright. Did you come to learn of what was contained in these bags?

MS GIGABA: Yes.

ADV MYBURGH SC: What did you come to learn was
10 contained in them?

MS GIGABA: It was not all the time I saw what is in the bag but once we were in Sandton then I saw what was in the bag.

ADV MYBURGH SC: Alright. So have a look at paragraph 55.1. Did you and Mr Gigaba go to Sandton City together?

MS GIGABA: Yes.

ADV MYBURGH SC: When did you do that?

MS GIGABA: What do you mean when?

ADV MYBURGH SC: Well, when you were at the Gupta
20 residence were there times where you would go then to Sandton City?

MS GIGABA: Sometimes we leave from [indistinct – dropping voice] or sometimes we will just leave from home.

ADV MYBURGH SC: And what would happen when you went from the Guptas to Sandton City? What would

happen at Sandton City?

CHAIRPERSON: And again do not mention the name.

MS GIGABA: Ja.

CHAIRPERSON: But you can talk without mentioning it.

MS GIGABA: So there was this one time then he opened the boot, then he got the money and he put it on this small bag, the small one that he carries it around his shoulder.

CHAIRPERSON: You are making certain gestures I think towards you shoulder or hands – did he put it in his – did
10 he carry it on his arm or shoulder?

MS GIGABA: He always carries bag.

CHAIRPERSON: Ja, okay, alright. Continue?

ADV MYBURGH SC: Yes, so what would happen at Sandton City, would he go shopping, would you go shopping?

MS GIGABA: He will go to the shop, the HTK shop.

ADV MYBURGH SC: What shop?

MS GIGABA: HTK.

ADV MYBURGH SC: And what would he do there?

20 **MS GIGABA:** Then they will give him clothes or suits, then he will ...[intervenes]

ADV MYBURGH SC: Please can you speak up, Ms Gigaba.

MS GIGABA: Sorry?

ADV MYBURGH SC: Please speak up. Do you not want to

lower the microphone a little bit? Perhaps that will help.
Alright. So you say he would go shopping at the HTK store?

MS GIGABA: Say that again?

ADV MYBURGH SC: He would go shopping at the HTK store?

MS GIGABA: Yes.

ADV MYBURGH SC: Is that what you say? Would he shop at other stores?

10 **MS GIGABA:** Once in a while he go [indistinct], it was not often.

ADV MYBURGH SC: So if we go to paragraph 55.2, I think you have already told the Chairperson that Mr Gigaba would transfer money from one bag to the other bag, is that right?

MS GIGABA: Yes he did that once in Sandton.

CHAIRPERSON: I am sorry, when shopping how did he pay for whatever he was buying?

MS GIGABA: So most of the time he will give the money
20 of the protectors.

CHAIRPERSON: One of the protectors?

MS GIGABA: Yes.

CHAIRPERSON: To go and pay.

MS GIGABA: Yes because when he got to the shop he never take the money and give it to them. So he will take

the money and give it to the protector and then he will go the restaurant, so the protector is the one who has paid.

CHAIRPERSON: Would he take the money out of his wallet maybe?

MS GIGABA: He will take it from his bag. So the other time he took him from the bigger bag, then he put on the smaller bag.

CHAIRPERSON: Okay.

MS GIGABA: And then he will give to the protector to
10 pay.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Thank you. So at 55.2 you say:

“On several occasions I also personally observed Mr Gigaba transferring money from his brown and black leather bags into his brown leather personal carry bag. I attach a similar example of the personal carry bag obtained on an internet search marked C and D.”

So is that ...[intervenes]

20 **MS GIGABA:** So I did not say on several occasions because several means many times, which I never said that.

ADV MYBURGH SC: Okay, so how many occasions?

MS GIGABA: So I saw him once in Sandton and the other time I saw the money it was at home which the instance

that I mentioned here somewhere.

ADV MYBURGH SC: So you saw him once transfer?

MS GIGABA: Yes.

ADV MYBURGH SC: So this personal carry bag, is that picture A and B or C and D? Have a look at the photos again? We are almost finished. So you are talking about the bag that he transferred money into.

MS GIGABA: Yes.

ADV MYBURGH SC: Is it photographs A and B or C and
10 D?

MS GIGABA: C and D.

ADV MYBURGH SC: C and D?

MS GIGABA: Yes.

ADV MYBURGH SC: Are you sure?

MS GIGABA: Then he will transfer the money to a smaller one which is A and B.

ADV MYBURGH SC: Oh, the smaller was A and B?

MS GIGABA: Yes.

ADV MYBURGH SC: Alright. Now did Mr Gigaba ever buy
20 you anything in Sandton City?

MS GIGABA: Say that again?

ADV MYBURGH SC: Alright. Now did Mr Gigaba ever buy you anything in Sandton City whilst shopping?

MS GIGABA: Yes.

ADV MYBURGH SC: What he buy you?

MS GIGABA: I think it was a bag.

ADV MYBURGH SC: Did he ever buy you anything else?

MS GIGABA: We never shopped together, like do my shopping [indistinct – dropping voice]. Because even with him he never go around do shopping at Sandton, so when he used to go to that certain shop they used to put the clothes aside for him. So what he will go to – when he gets there he will just fit the clothes. If they fit him he will take them and then maybe he will send the bodyguards to pay later or if
10 they do not fit he will just give them – their tailor will fix them for him, so he never goes around and do shopping.

ADV MYBURGH SC: So at paragraph 55.3:

“Apart from a Louis Vuitton handbag bought in Sandton City which Mr Gigaba paid in cash, he did not typically buy gifts for me with the cash collected at the Gupta residence.”

Is that right?

MS GIGABA: Yes. Sorry, sorry, sorry, say that again? I am sorry, sorry, repeat?

20 **ADV MYBURGH SC:** 55.3:

“Apart from a Louis Vuitton handbag bought in Sandton City which Mr Gigaba paid in cash, he did not typically buy gifts for me with the cash collected at the Gupta residence.”

Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: How many times did you see Mr ...[intervenes]

CHAIRPERSON: I am sorry. Earlier on you said you never saw I think him with cash at the Gupta residence.

MS GIGABA: Yes.

CHAIRPERSON: So when here you say – you refer to cash collected at the Gupta residence, what is the basis for saying that?

10 **MS GIGABA:** I am saying that on the basis of – it was the same bag that [indistinct – dropping voice].

CHAIRPERSON: Ja.

MS GIGABA: It was the same bag that the protector took aside.

CHAIRPERSON: Ja.

MS GIGABA: When he called him, he got it in and he took it outside and when we got to Sandton he went with a similar bag then he took money – and when he opened the boot, it was me and the bodyguards and when he opened, so all of
20 us were just shocked because it was me and the bodyguard.

CHAIRPERSON: I am sorry you say when he opened ...[intervenes]

MS GIGABA: Yes.

CHAIRPERSON: That is Mr Gigaba opening the bag?

MS GIGABA: Ja.

CHAIRPERSON: And he opened the boot, is that right?

MS GIGABA: The bag was in the boot.

CHAIRPERSON: Ja, and you and the – bodyguards arrived.

MS GIGABA: Yes.

CHAIRPERSON: And did you see anything in the bag?

MS GIGABA: Yes.

CHAIRPERSON: What did you see?

MS GIGABA: He took out the money.

10 **CHAIRPERSON:** Yes.

MS GIGABA: And he put it in the...[intervene]

CHAIRPERSON: Was there a lot of cash in the bag?

MS GIGABA: Yes.

CHAIRPERSON: Would you say about half a bag or you are not able, but you know it was a lot of money.

MS GIGABA: No, I do not want to assume.

CHAIRPERSON: Ja, okay, alright, okay. Mr Myburgh?

20 **ADV MYBURGH SC:** Thank you Chairperson. At 55.3 after talking about the Louie Vittone handbag, you refer to the credit card that Mr Gigaba had given you, what was the limit on that credit card?

MS GIGABA: I do not know what was the limit, what I know is he said I must not use it up to a specific amount, so I do not know what was the limit.

ADV MYBURGH SC: What did he say you could use it up

to how much?

MS GIGABA: That I must not use it up to 100 000,00.

ADV MYBURGH SC: Beyond 100 000,00?

MS GIGABA: Yes, but I never use it even closer to that.

ADV MYBURGH SC: And when you were shopping overseas?

MS GIGABA: Ja, when I got to overseas, he will give me money to buy stuff.

ADV MYBURGH SC: How much money would he give
10 you?

MS GIGABA: Sometimes 100 or 150 because overseas is expensive and I never stay there for like normally just travelled to overseas for one day. So I need to be able to spend money for a whole week when I am there.

CHAIRPERSON: Did you say when you were travelling together overseas, he would give you money?

MS GIGABA: Most of the time I would travel alone without him.

CHAIRPERSON: Oh, without him, and then he would give
20 you money to spend.

MS GIGABA: Yes.

CHAIRPERSON: Okay and you say sometimes it would be 100 000,00 sometimes 150 000,00, is that right?

MS GIGABA: Yeah, because sometimes I will use the cash and also I will use my own card as well from work.

CHAIRPERSON: Yes, okay alright Mr Myburgh.

ADV MYBURGH SC: Thank you did Mr Gigaba want you to shop in Sandton City?

MS GIGABA: No.

ADV MYBURGH SC: Why not?

MS GIGABA: Because - when I am with him or when I am alone?

ADV MYBURGH SC: Whenever.

MS GIGABA: No, when we together he never wants to do
10 shopping because also he is not that kind of a person who
just walks around the mall. So if we leave home we would
just go to the restaurant or he goes and purchase clothes.
So he said, he does not want to walk around and do
shopping because he is a public servant and also he does
not want to walk around with cash, so when I will do that, I
will do that when I am alone not with him.

ADV MYBURGH SC: I see, and then a paragraph 56 you
say that about a week after the Gupta wedding held at Sun
City during 2013. Mr Gigaba now visited the Gupta
20 residence and then you talk about what happened on your
return home. Can you explain that please?

MS GIGABA: What must I talk about?

ADV MYBURGH SC: The paragraph, what happened once
you returned home?

CHAIRPERSON: Paragraph 56.

ADV MYBURGH SC: 56.

MS GIGABA: Oh, okay we went to Saxon.

ADV MYBURGH SC: Right, what you deal with at 56:

“On our return home, the CPO’s took the bag from
the boot of his official vehicle.”

Is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: And where had those bags come
from?

10 **MS GIGABA:** It was the same bags that he takes in and
out when he is there.

CHAIRPERSON: When he is at the Gupta residents?

MS GIGABA: Yes.

CHAIRPERSON: Yes?

MS GIGABA: Yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And what did Mr Gigaba then do with
those bags?

MS GIGABA: He will put them in the study.

20 **ADV MYBURGH SC:** And did you then go into the study?

MS GIGABA: Sometimes.

ADV MYBURGH SC: But on this particular day, did you
enter the study?

MS GIGABA: Yes.

ADV MYBURGH SC: And what did you see?

MS GIGABA: I saw him packing money.

ADV MYBURGH SC: Packing money into what?

MS GIGABA: Into the safe.

ADV MYBURGH SC: What was your reaction when you saw that?

MS GIGABA: I was shocked.

ADV MYBURGH SC: Why?

MS GIGABA: Because he was just packing a lot of money from the bag.

10 **ADV MYBURGH SC:** And what did he tell you as to where he got the money from?

MS GIGABA: He said he got it from Ajay.

ADV MYBURGH SC: And did he tell you what it was for?

MS GIGABA: It is me who asked him what it was for.

ADV MYBURGH SC: Yes and what was his response?

MS GIGABA: He said it was for the elections because at that time he was the head of elections.

ADV MYBURGH SC: It was for the ANC elections?

MS GIGABA: Yes.

20 **ADV MYBURGH SC:** Alright and then Ms Zizipho Gigaba payment of her bad debt and employment at Sahara Computers. Now you speak about the fact that during 2013 Mr Gigaba's father called us to a meeting at their family home. Is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: And what happened there?

MS GIGABA: I was not part of the meeting, I only asked him when we were on the way back to Joburg.

ADV MYBURGH SC: And what did Mr Gigaba tell you, as to what had been discussed?

MS GIGABA: He said his father asked him to assist to pay the credit bureau money that was owing on the credit bureau.

ADV MYBURGH SC: So had she been blacklisted?

10 **MS GIGABA:** Yes.

ADV MYBURGH SC: And you say that Mr Gigaba's father asked him to help her?

MS GIGABA: Yes.

ADV MYBURGH SC: And do you know; what debts it is that she had?

MS GIGABA: So he told me that she was owing 850 000,00.

ADV MYBURGH SC: And what did Mr Gigaba – did Mr Gigaba agree to help her?

20 **MS GIGABA:** Yes, he agreed but it was, I asked him like where he is going to get that kind of a money.

ADV MYBURGH SC: Yes, sorry.

MS GIGABA: I asked him where he is going to get that kind of money.

ADV MYBURGH SC: And what did he say in response?

MS GIGABA: He said he will go raise it with – he will go ask Ajay and he will go raise it for his sister.

ADV MYBURGH SC: Okay, so, he said he would ask Ajay?

MS GIGABA: Yes.

ADV MYBURGH SC: Did he ever then tell you whether or
10 not Ajay had agreed?

MS GIGABA: Say that again?

ADV MYBURGH SC: Did he tell you whether Ajay had agreed to give the money?

MS GIGABA: Ja, a few weeks later he told me that they will give him half, not all of it at once.

ADV MYBURGH SC: And was any arrangement made as to who would collect the money?

MS GIGABA: Yes.

ADV MYBURGH SC: And what was that arrangement?

20 **MS GIGABA:** He said to me, he spoke to Siyabonga Mahlangu then he will assist his sister to clear her name on credit bureau and he will go collect the money from Ajay.

ADV MYBURGH SC: So Mr **Mahlangu** was to collect the money from Ajay and assist in clearing her name?

MS GIGABA: Yes, because they said it was a better process to clear her name.

ADV MYBURGH SC: Now, **Mzipho** Gigaba you have already told the Chairperson that for a time she worked at Sahara Computers.

MS GIGABA: Yes, she worked there.

ADV MYBURGH SC: Alright and then we deal with cash
10 for renovations to Mr Gigaba's on The Family Plot. So whereabouts is this in Kwazulu Natal?

MS GIGABA: It is in **Mandeni**.

ADV MYBURGH SC: **Mandeni**, and what happened?

MS GIGABA: Where are you, on 61?

ADV MYBURGH SC: Paragraph 60.

MS GIGABA: Okay, what is the question?

ADV MYBURGH SC: Well, was there a building undertaken on the plot?

MS GIGABA: It was a renovation an extension and
20 extension of the house.

ADV MYBURGH SC: And can you remember when this happened? What position did Mr Gigaba hold whilst these renovations were undertaken?

MS GIGABA: He was the DPE at the time.

ADV MYBURGH SC: And who did the building work?

MS GIGABA: It was his brother in law.

ADV MYBURGH SC: And who paid for this?

MS GIGABA: It is him.

ADV MYBURGH SC: Sorry?

MS GIGABA: Malusi did.

ADV MYBURGH SC: Okay, and where did Mr Gigaba get the money from, did you come to learn of that?

MS GIGABA: So most of the time he will pay them cash
10 and there was a certain time, he said he will go take the money from Ajay and then you will fly to KZN so that time he flew there alone.

ADV MYBURGH SC: So, paragraph 61 says:

“I learnt that Mr Ajay Gupta funded the building renovation. When one day Mr Gigaba told me that he was going to get the money from Ajay Gupta to pay the builder. He later called the same day to tell me that he was flying to Kwazulu Natal immediately to pay the builder. I do not know the cost of the
20 building renovations, etcetera.”

Is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: Were you ever present when Mr Gigaba paid the builder in cash?

MS GIGABA: Sometimes.

ADV MYBURGH SC: Can you remember how many times?

MS GIGABA: Maybe two or three times.

ADV MYBURGH SC: Alright, now a paragraph 63 it says:

“Despite assurances that Mr Gigaba gave me I do not know if he officially declared any gifts, cash or benefits to the ANC and to the relevant government authorities.”

Is that correct?

MS GIGABA: Yes.

10 **ADV MYBURGH SC:** Then we get to the next heading, we have now only got two pages to go. The Gupta money counter, can you explain to us about this Gupta money counter?

MS GIGABA: I do not like that part although it is not you but it is before the Commission so – it is not every time I will see that, I only saw it one, it was a function and this – that was the second function that I attended because this was the first one, and that was the second. And then we were taking a tour around the house and all of a sudden we
20 saw this cash counter, but I thought it was an ATM because I have never seen a case counter before.

ADV MYBURGH SC: And what happened when you saw it?

MS GIGABA: When Ajay was demonstrating how it works?

ADV MYBURGH SC: And how did it work?

MS GIGABA: So you just press - I do not know how the money was put in because I did not see when the money was put in but you just press maybe the amount of money then it takes the money out. So that's the only thing I saw.

ADV MYBURGH SC: And how much money came out?

MS GIGABA: It was a lot of money but maybe 10 000,00 but not like, a lot of money in terms of like 100 000,00 or something because he was just demonstrating.

ADV MYBURGH SC: Alright, so 64 you say:

10 “In one of the visits to the Gupta residence when Mr Gigaba was still Minister of DPE, we attended a function at the Gupta residence. Ajay Gupta took us on a tour of one of the newly renovated houses in the Gupta compound.”

Is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: “We were part of a small group of people who were unknown to me, he showed us a room that had been converted into a small cinema
20 and in another area I saw a sauna.”

Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: Paragraph 65, as you have already said:

“In one area I saw a device which looked like a

small version of an automated teller machine, an ATM. Mr Ajay Gupta demonstrated how it operated by punching an amount on the keyboard of the machine, which was 10 000,00, if I recall correctly, and it dispensed the cash notes in denominations of R100,00 and R200,00.”

MS GIGABA: Yes.

ADV MYBURGH SC: Then we deal, you deal with the confiscation of my devices to destroy possible evidence.

10 You say that:

“In February of 2020, you asked Mr Gigaba for divorce.”

Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: You say:

“You do not want to go into any detail but you wish to bring the following to the attention of the Commission.”

What did Mr Gigaba ask you to do?

20 **MS GIGABA:** So he told me I must give him time because he was dealing with - because that time he was busy doing his affidavit to come to the Commission, and also he was busy with his PhD. So he said I must give him time because right now he is not in a state of doing the divorce and the Commission and his PhD at the same time.

ADV MYBURGH SC: So 61 says:

“Mr Gigaba asked me to delay the divorce proceedings until after he appears before the Commission.”

Is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: Then you say that:

“Around June of 2020 Mr Gigaba asked you for your electronic devices.”

10 Is that correct?

MS GIGABA: Yes.

ADV MYBURGH SC: And what in what circumstances did he ask you for them, how did that happen?

MS GIGABA: He came to my room, he asked me to give him my phones and my laptop, then I asked him why.

CHAIRPERSON: And what did he say in response?

MS GIGABA: He said there was someone at home who was an IT expert who was at home to assist us to delete some information so I asked him why our information must
20 be deleted. I think on that day he didn't explain a lot of things why and then there was a second time the person came then he asked for my information and then I refused to give him my gadgets so then he sat down he explained to me that the reason he wants my gadgets he wanted to get some information because he is about to wrap up his

evidence, because of the Commission. The problem why he wants my devices so then he made an example about when giving to the ...[indistinct] the time when there was that investigation about Brian Molefe so when Brian said he was at the Guptas, I don't know if he said once or two times, and then the investigation showed that he was there so many times, so he used that example to me, he said he is about to wrap up his testimony, his evidence but now he already said he went to the Guptas two or three times, but
 10 now he is worried about my phone in case someone does an investigation then they will see that we were there more than so many times, so I said to him why don't you go to the Commission and tell the truth that you were there so many times, so he said he doesn't want, then I refused to him my gadgets.

ADV MYBURGH SC: And were there photographs of trips that he was also interested in?

MS GIGABA: Yes.

ADV MYBURGH SC: Okay, photographs of what trips?

20 **MS GIGABA:** Even trips that we took together and trips that I took by myself and the trips that we took with the State visits.

ADV MYBURGH SC: Okay and then paragraph 66.3, do you want to read that?

MS GIGABA: Say that again?

ADV MYBURGH SC: Paragraph 66.3 do you want to read that?

MS GIGABA: I am so tired, can please read it.

ADV MYBURGH SC: Okay, tell me if it is right or wrong, we have one page left, we will see whether you fall asleep before I fall down.

CHAIRPERSON: Thankfully that is the last page?

ADV MYBURGH SC: That is the last page, thank you, I think everyone is keeping it ...[indistinct]. Now Mr Gigaba
10 also asked not to – sorry Mr Gigaba also asked me not to speak to the Commission nor Law Enforcement Agencies about Gupta visits, the cash and the gifts, is that right?

MS GIGABA: Yes.

ADV MYBURGH SC: Then you talk about a domestic incident that occurred, what happened there?

MS GIGABA: This one I do not want to talk about it because it involves my kids, the domestic incident that happened, so for the safety of my kids I do not want to talk about it, but something happened on 18th of June.

20 **ADV MYBURGH SC:** Okay, but we know that that domestic incident then gave rise to a high court judgment, which is referred to in the press and there is the citation given, is that correct?

MS GIGABA: Say that again?

ADV MYBURGH SC: It gave rise to a high court judgment

in your favour.

MS GIGABA: I don't understand the question.

CHAIRPERSON: Okay, he is saying is it correct that as a result of that incident that you don't want to talk about of the 18th June 2020 there was proceedings and a judgment that was handed down in your favour.

MS GIGABA: No that was another incident.

CHAIRPERSON: That was another incident, okay, alright, okay. Mr Myburgh the answer is that was another
10 incident.

MS GIGABA: Yes.

CHAIRPERSON: The one that resulted in a judgment is another incident.

ADV MYBURGH SC: Alright. Do I understand correctly, I am terribly sorry but – do I understand that you do not wish to speak to this paragraph?

MS GIGABA: Ja, for the sake of my kids.

ADV MYBURGH SC: Alright. And then the last thing deals with the loss of your personal passports, do you want
20 to just deal with that quickly. What happened to your passports?

MS GIGABA: So last month when we were doing our consultation with the Commission team then because I wanted to be specific about dates because I don't know the trips that we took when they happened, and also I don't

remember the personal trips and the State trips because I have two passports.

So my entire staying with him we were not allowed to keep our diplomatic passports so each and every trip when we go overseas the PA takes it and the Department keeps it for us, so we are only allowed to keep our personal passports. So what happened, because the Commission were asking me about certain trips and I didn't want to give dates from the head, I wanted to be specific
10 based on how those trips happened, so what happened on that day in the evening I called his former PA, then I asked her do you have our travelling history or do you know what is the process of me getting my passport from the department. Then she said she has the whole history and she will call me in five minutes.

At that time I was driving from Sandton. Then when I was about to get to Pretoria then I called her that I am still waiting then she said, but her tone changed, because when I called her in the first place she was like oh
20 no, I have everything, I will go through the system now, I will send you everything and I can get you, I don't remember who she said who will get my passport, because I don't know who keeps it and she said I will get your passport right now.

So then now 25 minutes later when I called her then

she answered the phone she was like, then her tone already changed, she was like oh no, I don't have the records, I cannot give you the passports, she doesn't know how I am going to get my passports, but now she is the one who used to keep all my stuff and – but when I called before she said she has everything and she knows how I am going to get it, and then when I got home I was – let me just go on the personal one, because I made the copies in the morning on the day, then I forgot them when I was
10 going to the Commission, so I wanted to balance with the trips that I took with the State, with the trips that I took as personal trips and I wanted to put all of them.

So I made copies in the morning and I put them in my passport. I went to the Commission, so when I came back home after calling – because I was talking to the PA, so I was like I will call in the morning to check how to get, because now she was just totally blank.

So when I got home my passport was not there, the copies were not there, so where I keep my passport it is
20 closer to my bed, so it is my passport and my kids passports, I keep them, all of them at the same place, so when I opened there I only found the cover of my passport, the pouch, then my passport was not there and my kids passport was not there as well, and then I was shocked, because they were there in the morning and I called

someone – I called someone else who worked at Home Affairs, but he does not work there anymore, he was an official, then I asked him how do I get passports and the records, so then he told me the process, which I – he gave me an email of someone how do I get my trips from the immigration which I did, I wrote an email, because that's how he told me what to do, and I did that, but in the morning – so the same day I sent the message to the Commission then I was like I got home and my passport is
10 not here and in the morning I met the caucus, and also I sent them the picture of the pouch and then I said I don't have my passports anymore, can you please assist me to get the trips, because now I didn't even know how do I get them.

So then in the morning I sent an email to the Department, so they wanted – there is a lot of process for me to get past securities with it, but they said they will give me all the records from the immigration, so then after that I went to him, and I said Malusi where is my passport,
20 because it was here yesterday and I have been keeping my passport my whole life, so where is my passport. So he said your passport, I didn't see it, I was like okay where are the kids passports, he said I didn't see them, then I was like that is very strange because passports were here, and I always keep them, so – but I am not saying I am

saying a conclusion but what I think had happened, I think when I called the PA the PA called him, she told him, and that is why my passport was taken, so I only applied two weeks ago for a new one, so I haven't go there to collect it, so where I am standing right now I don't have my passport, and the one that, the diplomatic passport, I haven't received the records but the Department said they can give me the whole trips, but I need to write a letter because there is a portion where they said I need to write
10 a letter why they need to give me the trips, because I said to them can they send them from 2009 to 2018, so I think anytime if I were to get them I will get them, so that is how my passport got lost.

ADV MYBURGH SC: So Chairperson we have no further questions for the witness. I would like if I may – I know it is late, but to address you for the record on certain aspects of Ms Gigaba's letter. I don't want to – I don't want to become a witness in these proceedings and I don't want to be seen to be cross-examining Ms Gigaba about
20 these issues, obviously this is something that we as the legal team take seriously and we are sympathetic to her plight, but there are some things that we need to correct.

CHAIRPERSON: Ja.

ADV MYBURGH SC: So the first point which is overarching and important and something that Ms Gigaba

has already accepted, is that throughout the production of her affidavit she was represented by a pre-eminent senior counsel, and that senior counsel was in fact responsible for procuring her signature of the final version of the affidavit.

In paragraph 8 of Ms Gigaba's letter, letter from her attorneys, she lists a number of concerns, as she is more than entitled to do. Paragraph 8.1 and 8.2 relate to the change in evidence leaders, which you Chairperson have
10 already addressed. Then in paragraph 8.3 Ms Gigaba refers to the fact that the affidavit contained certain things that are not within her personal knowledge and that seems to be correct and a process has been put in place to resolve that.

At paragraph 8.4 she mentions that during the consultation that I had with her on the 8th of April mention was made of why these errors had not been picked up before, and she is also correct when she says that I proposed that that could be clarified in a supplementary
20 affidavit, so we went through this affidavit, we noted certain errors, and remember we were preparing Ms Gigaba for evidence. We hadn't as the evidence leaders finalised this affidavit, procured the signature on it, that had been done by her senior counsel. So after this meeting I made contact with her senior counsel and I simply said to him

you may want to consider dealing with these issues.

So it was a situation where we realised there were errors, and we put in place a mechanism to try and clarify that, and in fact at 8.4 the letter reads:

“As suggested by Advocate Myburgh and agreed to by our client these aspects could be clarified in a supplementary affidavit.”

Now we had hoped that that supplementary affidavit would have been produced by now. I have seen a draft copy of
10 the affidavit prepared by Ms Gigaba’s former counsel.

Then we get to the issue of security concerns. Uhm, you mention at paragraph 8.5:

“Serious security concerns pertaining to our client’s safety have been brought to the attention of the commission and an undertaking was made that the commission would look into this aspect. Our client has not heard from the commission in this regard nor has she been offered any form of
20 security or the courtesy of an explanation for the failure to do so.”

So here I am afraid that this is the one part where the versions of the two parties are irreconcilable. Sakile Maseku has provided me with a flow chart of occasions where he has met and evidence leaders have met with Ms Gigaba and as I

understand it and I am new to this but as I understand it security measures were put in place right from the beginning but it came with a condition and that is that Ms Gigaba had to trigger the process. She had to say I want to take up your offer and as soon as she said that then those measures would be triggered. And repeatedly she was reminded that she needed to take up the offer before the measures could be triggered and she did not do so. So that is what I am instructed to (talking over one another.)

10 **MS GIGABA**: That is not true at all. It is not true at all.

ADV MYBURGH SC: Alright well.

MS GIGABA: It is true. I can say what happened.

CHAIRPERSON: Ja – ja hang on – hang on Ms Gigaba let Mr Myburgh finish, make a note of what you want to say.

ADV QOFA: Apologies Chairperson.

CHAIRPERSON: Ja.

ADV QOFA: I think it would be proper maybe if I do interject and clarify.

CHAIRPERSON: Sorry.

20 **ADV QOFA**: I think it would be important that we do clarify because we have consulted with Mr ...

CHAIRPERSON: No wait until Mr Myburgh has finished. I will give you a chance to clarify.

ADV QOFA: Okay. Thanks Chairperson.

ADV MYBURGH SC: So just so that I make sure that what I

am saying accords exactly with what I am instructed. And if necessary Chairperson we can put up an affidavit to deal with this we do not want to get in a big debate.

CHAIRPERSON: Ja.

ADV MYBURGH SC: About this issue because obviously we have an interest in ensuring the safety and security of Ms Gigaba insofar as we can. But for example Mr Maseku instructs me that on the 20th and the 21st of January Ms Mngoma consulted with state capture for two days. On both
10 days Ms Mngoma was offered security if she feels that her life is in danger. Ms Mngoma indicated that she is not scared and will continue with her affidavit.

Then on the 8th of February Ms Mngoma alerted state capture commission on threatening calls she had received and shared screen shots of some of these. Calls are from a no number caller.

On the 8th of February investigators alerted the state capture head of security about the above. On the 28th of February investigator returned Ms Magma's call – Ms
20 Mngoma indicated that she had received additional threatening calls with no name caller. Ms Mngoma shared these with the investigators.

On the 1st of March investigator met with the state capture commission head of security and also shared screen shots of threatening calls. Security options were discussed

with the investigator which were later shared with Ms Mngoma.

She indicated that she was okay for now will advise once she has decided to take up the security option.

On the 4th of March Ms Mngoma called the investigator regarding additional threatening calls screen shot shares – screen shot shared.

10 March Ms Mngoma called the investigator she advised that she felt unsafe. Investigator alerted her that state capture commission is awaiting her to advise when she is ready to take up the security option. She indicated that she will move and stay somewhere.

20 March state capture commission consulted with Ms Mngoma and her legal advisors. At the end of the consultation Ms Mngoma advised that she still needs to advise the state capture commission when she is ready to take up the security offer. She indicated that she will get back to the state capture commission.

8 April state capture commission consulted with Ms Mngoma. Ms Mngoma informed that she still needed to advise state capture commission once she had decided to take up the security option.

Now there may be different ways of viewing this but what you can see on these instructions is that investigations are undertaken. A system was put in place that needed to be

triggered so that is from what I am instructed.

Then the next complaint is the client's first affidavit was leaked to the media and the commission undertook to investigate the source of the leak and revert to her. That investigation is at a – I am told a very advanced stage. Not quite as simple as it might appear but action is being taken.

Then the next concern and I am not saying they are unfounded or without merit but on each of these things you will see that there has been an attempt – there has been
10 interaction – there has been work done by the commission.

8.7 the complaint is our client also highlighted to the commission her discomfort about the commission sharing of her affidavit with Ajay Gupta without informing her or her legal team.

Now I am told that that is wrong. That there was in fact a discussion and Ms September will correct me if I have got this wrong because I am told this evening – there was in fact a discussion between Ms Nkobe and Mr Pretorius about the fact that her 3.3 had to be issued in relation to Ajay
20 Gupta because he was so central – is so central to this affidavit and the 3.3 was then issued in that context.

So it was done in consultation with her legal team.

MS GIGABA: That is not true.

CHAIRPERSON: Hang on. Ms Gigaba I will give you a chance after Mr ...

MS GIGABA: And then...

CHAIRPERSON: I will give one of you a chance not both of you – you or your counsel. Let us

ADV MYBURGH SC: It is that stick that has got to handed around.

CHAIRPERSON: Ja.

ADV MYBURGH SC: And then at 8.8 the commission has wrongly suggested that our client volunteered to come to the commission when the correct version is that she was
10 approached. We accept entirely that – that she was approached by Sikele Maseku after ENCA intervened.

So Chairperson that is – that is the position from our side. It is not something that we want to enter into any sort of acrimonious discussion or debate but obviously we accept that Ms Mngoma and her counsel may very well have a different view that we must respect and then we must find out a way to get to the bottom of things with your – with your direction and advice.

CHAIRPERSON: Yes. I will allow one of you and not both of
20 you so ...

ADV QOFA: Chairperson I think 00:07:46 that we

CHAIRPERSON: Counsel – Counsel you should be the one because you are here and she...

MS GIGABA: No I rather talk.

CHAIRPERSON: She has brought you here so you can

speak on her behalf.

MS GIGABA: No I was saying I think it is only fair that she expresses herself Chairperson.

CHAIRPERSON: Oh you prefer that she – okay.

ADV QOFA: Indeed.

CHAIRPERSON: Okay Ms Gigaba do you want to say anything.

MS GIGABA: Yes.

CHAIRPERSON: In response.

10 **MS GIGABA:** About the – the changing of the leaders if you took that decision.

CHAIRPERSON: Yes.

MS GIGABA: So when Paul Pretorius was leading this whole consultation we took like three to four hours in a day preparing and we got comfortable with him leading it then he knows and he promised that he would be one – he will be the one who will be leading the evidence. Then only two weeks ago then the 00:08:41 came.

CHAIRPERSON: Mr Myburgh.

20 **MS GIGABA:** And most of the things he was not aware – okay there is errors here there was errors there because the team was aware of the errors. And he was not aware because he was new to the team. I only saw him once and I was so uncomfortable to come that he must come and lead my evidence because I did not prepare with him the entire

preparation he was not there it was someone else. So – and also my senior counsel did not even know as well when he was changed so both of us were shocked or – because he promised us that he is the one who will lead so why they changed and why were we not told. That was one concern.

So when it comes to the security every time I will tell Sikele here is this and there was not one point when Sikele was showing the threats what was happening even himself he was – he said to me this is so scary this is getting out of
10 hand. He is the man he was even scared himself. What about me as the woman?

And then he said to me I will talk to the head of the security I will come back we need to do something and on that day he did not come back. And then when we were having our second consultation then those issues were raised by my senior counsel and in the meeting all of us were so cool because they said no they explained how the security works and then I have to choose to be taken in a place of safety or they would – I will be given a security. But
20 they said each and every meeting so and so will contact you.

So no-one has ever contacted me after the meeting. The last consultation where the threats were so bad and then – then they said oh he said the head of the security says show us the proof. Then I took all the proof I show it to them.

And then what happened he – so the head of the security came to the meeting. So they said we heard your concerns here is the head of security he will take care of your concerns because we can see – and I think they were taking it seriously all 00:10:50. Then they said the head of the security will contact you after this.

So I do not even have the number of the head of the security and he explained also how the security will work. So every time they will say that in the meeting but no-one
10 has ever contacted me. So no-one told me that I have to call them because I called them to say there is these now – there is these – I think this is getting out of hand – now I am scared.

And then they will say okay we will go the 00:11:24 someone will contact you. So no-one has ever called me to say okay here is the decision – so I do not understand where it was my fault because I told them they were supposed to call me to say here is the security. The last meeting we were with them the head of the security was there. They
20 said this is his name he will contact you – he did not contact me and then I thought just because my life was so in – because I was receiving those threats on a daily basis. A lot of calls closer to hundred. I have never seen such a thing. But there was a time where things that came a bit slow and I told them I was on. So I said for this week I did not receive

any calls but still I am so scared because in the beginning when they offered me the security there was nothing.

All these things came once my affidavit – when my affidavit and the media knew about it and my affidavit – Malusi have – Ajay have then that is where all these threats were a bit hectic.

So in the beginning when they offered me the security I told them that no I am not scared because no-one has threatened me so I did not want to lie and say I need a
10 security when I do not need it. I said no I am not scared there is nothing.

But when they started coming I told them and they said they will contact me. So no-one in the commission has ever called me to say okay based on the meeting here is the security. That is where I became so uncomfortable that the commission they want me to give evidence and this evidence come with a lot of threats in my life. Because everyone when they were calling me they were like where is your evidence – we want to see your evidence. We want to come
20 and collect the evidence. Then to deaths go to the commission. My life became so miserable during the process and I was telling them there is no even one person in this commission who said here you are coming with the security go find a security. Even the last meeting my former senior counsel he raised those questions and he was like

guys what happened – what is happening with the security? They said no we are – we will sort it out. He – after here at the meeting they will contact Mngoma so these are the measures. So they explained how the commission take the measures but no-one has contacted me. So it is – so – so it is not true that I was supposed to call because I already called. So what type of call must I say? So that – that is the second thing.

About that I am not leaving anything. Yeah I think
 10 that is it unless someone 00:14:18 can remind me if you remember earlier.

CHAIRPERSON: Okay.

MS GIGABA: But the situation – I am very failed because I even said it that I felt like the commission did not protect me and I was cooperating with them and what I do not understand it was that day they said I did not appear on the commission I agreed on a Friday. On that Friday I said everything. They said to me when I land in Cape Town I will be taken somewhere to give my evidence. Then I said I am
 20 not going to do that because the – how the commission is linking everything I do not want – because I have done everything to cooperate with the commission and the commission will say something and then they would never met everything that they promised me. Or when it comes to this the leaking of my affidavit so the commission said to me

everything is confidential. Hence I did not even have time to read and read my affidavit a lot because we were not allowed to be – they said they cannot send this electronically – my affidavit because everything needs to be treated confidential. And they promised me that there are a very few people in the commission who will have my affidavit. So my senior – former senior counsel he did not know that my affidavit was shared with Ajay. How it came about? So I received a call from Sunday Times. Sunday Times said to
10 me we have your entire affidavit. Then I was shocked because how can they have my entire affidavit when the commission said to me my affidavit would be treated with – confidential until I appear to the commission. And then I called them and I was very angry I even called the former
00:16:06 so on that day all of us we met in the afternoon. I raised my concerns that how come you guys leaked my affidavit so they said to me no it is not the commission who leaked it maybe it is Malusi. Then my former counsel was like there is no way Malusi would leak the affidavit because
20 it implicates him. So on my way going to the meeting one of the – one of the commission team he said to me no you are – your affidavit was given only to two people the entire affidavit which is Malusi and Ajay Gupta. Then I was like I did not know that my affidavit was given because my senior counsel told me that my affidavit would be given to Malusi.

So when we got to the meeting he asked all of them like how Ajay Gupta got – he was given my affidavit without his knowledge and he did not know that? So no-one said – he did not know about it and he was like why guys gave him – my client's affidavit because he does not even cooperate with the commission? He is not even prepared to come to the commission so why you are giving him the affidavit?

And on that for me my question is because we were not allowed to receive the affidavit via electronic – electronic
10 Ajay – Ajay Gupta stays in Dubai so how did he receive it? So us who are cooperating with the commission then they brought it to me via the other day they – it was the USB then after that it was copies. But now Ajay Gupta have my entire – so I felt like the commission did not keep to their promises.

So I said because of that I do not want to come to the commission, I do not want to give my – because you say this and you say that and I was not happy that my affidavit was given to Ajay without me being told because they told me a few days ago that they would give my affidavit to Malusi and
20 I asked why then they said they quoted why he needs to be given – and what what and also because of his implicated in.

Then I understood but Ajay, myself the former counsel we did not know about it. And then the leak to the Sunday Times that one I did not take it well because I felt like my affidavit was supposed to be protected especially

because the entire team of the commission knew that my life was under threat.

So when my – my affidavit was sent – was leaked to the media so what they did the day we met all of us. My former senior counsel was upset as well. Myself was like this but they apologised. They said they would do an investigation because each and every copy of the affidavit has a mark on so the commission will know who leaked the affidavit.

10 And I am still waiting for that because I have not received that exact – who leaked the entire affidavit.

So those were the concerns that made me not to adhere to the commission not just because I was disrespectful of the commission or I was undermining the commission. I thought like the way everything was treated it was not in the manner that I was promised.

CHAIRPERSON: Well...

ADV MYBURGH SC: Chairperson - I am sorry Chair. I just have – I – I would like to correct something that I said as
20 soon as I can?

CHAIRPERSON: Yes.

ADV MYBURGH SC: I having listened to Mr Gigaba about Ajay Gupta receiving the affidavit I asked Ms September whether I was right in relation to what I had told you that there was a discussion between Mr Ngotome and Mr

[Indistinct] about the affidavit being sent to Ajay Gupta.

He tells me there was no discussion what I said to you was there was a discussion about the timing of the issuing of the 3.3's it was not a discussion particularly around Ajay Gupta so Ms Gigaba may very well be right. She tells me of course that who is implicated and to whom 3.3's must issues clearly as a matter of law. So there was not a – there was not a discussion expressly around (not speaking into mic).

10 **CHAIRPERSON:** Okay alright. Ms Gigaba it is – it is good that you have articulated what your concerns were and are and the legal team has dealt with those matters that they are able to deal with. I think Mr Myburgh it would be good that there be an affidavit that explains everything from the side of the investigators.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Or the legal team in response to the – to the concerns and a copy thereof obviously should be made available to Ms Gigaba's legal team and once they have got
20 it it would be up to them whether they want to file an affidavit that responds to it and then one can it from there just so that we know exactly as far as possible exactly what happened. So that is the one point.

The second point I want to make is that with regard to leaks Ms Gigaba you may or may not be aware but during

in – in 2018 soon after the commission had started having hearings we had a problem of witness' affidavits leaking or finding their way to the media and we were not sure whether it was happening from within the commission or whether it was people who were served with copies in terms of the rules of the commission that is people who were implicated

I went on record and said that I was asking the investigation team to investigate how that had happened because a number of people were also complaining and
10 there was an investigation that was done then and I do not think it was the only one I think later there was another one and I had appealed to the media please not publish information from the commission that is not authorised – that is not official and a lot of media houses complied but there was one or two that did not comply and publicly I have talked about them I have said which ones they are. I know that one of them is I think Sunday Independence or Independents on Sunday and I think at a certain stage Business Day also did that - did not comply but a lot of other media houses
20 respected the processes of the commission.

But the point I want to make to you to make you is that the investigations that in the past have been conducted have not always been able to determine exactly how whether the media got the information from the commission or from somebody else. I think maybe at some stage there was an

investigation that said the leak would not have come from the commission must have come from outside. I am not sure but investigations have been done in the past. Some of the investigations have not been able to pin down who exactly did that.

So – but Mr Myburgh has said that he has been told that the investigation in regard to this leak is at an advanced stage and – so once it has been completed he will need to – the commission will need to let you know exactly what the
10 outcome is.

So any leak of information that has not been presented to the commission and by way in a public hearing is most regrettable. But I just make the point that we have been talking about it There have been investigations in the past and whereas a number of media houses have respected our – respected our processes. There are some who have not done so.

So but once the investigation has completed the – you will be notified what the outcome is.

20 **MS GIGABA:** Okay can I ask something?

CHAIRPERSON: Ja.

MS GIGABA: So since you have heard all my concerns and also I think you are aware I have been cooperating with the commission and I feel for you to summon me it was a bit harsh because I just did not – not just come to the

commission. So now in terms of this summons where do we stand?

CHAIRPERSON: Well the summons you have complied with the summons is it not? You have been summoned – you have been - you have complied with summons and the summons was issued because your legal representative informed the commission that you had withdrawn your participation you had decided to withdraw it and you have confirmed that you had withdrawn it so the issuing of the
10 summons was fine. So it was fine. You may have had certain concerns but once you – we were aware that you had information that is important for the commission you had deposed to an affidavit, you had undertaken to come to the commission but you changed your mind. It was proper that summons be issued.

MS GIGABA: That is – now are you aware that I am not just did not come to the commission?

MS GIGABA: Well I am aware that you have certain concerns I think at that time it was said that you did have
20 certain concerns but I think we – it was made clear even then I think I must have said that even if you had – you had concerns you needed to come to the commission and articulate your concerns here rather than say I am not going there because of whatever concerns.

If you had come here and articulated your concerns

then that would have been different. Okay.

We – this is the longest session that we have had. It is now about twelve minutes past eleven. I think we need to adjourn and we do need to adjourn because although it is a public holiday tomorrow some of us will be working. So the commission will be sitting tomorrow this is for the benefit of the public. I will be hearing the evidence of Mr Mosebenzi Zwane former Minister of Mineral Resources tomorrow.

So we – we will continue with evidence to try and
10 finish our work within time. I take this opportunity to thank everybody for their cooperation for us to have been able to sit until this time. Thank you to the staff and the technicians, thank you to you Mr Myburgh and your team. Thank you to Ms Gigaba – thank you to her team for their cooperation. Thank you very much to everybody for having cooperated so that we could sit late and finish Ms Gigaba's evidence.

If her team wishes to re-examine arrangements can be made for the re-examination to happen at another date –
20 another time but then they would have to communicate that.

Thank you very much – we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 27 APRIL 2021