

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

22 MARCH 2019

DAY 71

20

PROCEEDINGS ON 22 MARCH 2019

CHAIRPERSON: Good morning. Good morning Ms Gcabashe, good morning everybody. Good morning Mr Mbalula. Thank you. Okay no that is fine I have seen that he signifies here, acknowledges he has greeted back. He will put on the mic when he testifies. Ms Gcabashe.

ADV LEAH GCABASHE SC: Thank you, thank you.

CHAIRPERSON: We are seven minutes late.

ADV LEAH GCABASHE SC: Thank you DJ first an apology for starting late this morning. DJ it is – it is a result of not having tidied up exactly where we would meet
10 this morning. We had a scheduled meeting with the – with Mr Mbalula and his team and unfortunately they came to this side of the road instead starting at our offices where we have our consultation rooms. They then had to walk back and go through security that delayed us rather. We had a very brief consultation DCJ and as you know as evidence led as it is our responsibility

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: To at least have a discussion.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: With the witness on the material issues that we will be bringing.

20 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: To your attention.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: We have done that much as it really was just a heads up but I believe that they appreciate the issues we have placed.

CHAIRPERSON: YEs.

ADV LEAH GCABASHE SC: Before them. They would need just a bit time DCJ to consider the issues we have – because it is the first time really that we speak at all. Our schedules just as you know have just not been aligned I have been here all week.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: And Mr Mbalula is a very busy person.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABASHE SC: So we really are asking for you indulgence DCJ

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: If you would please permit us 30 minutes

10 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: Just to – for them to at least sit down, catch their breath

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: And then we are quite happy to start after that.

CHAIRPERSON: Okay do you want to place on record Mr Mbalula's legal representatives or...

ADV LEAH GCABASHE SC: I believe – yes please.

CHAIRPERSON: Ja let us do that.

ADV LEAH GCABASHE SC: DCJ thank you.

20 **ADV MKHULULI DUNCAN STUBBS:** Morning DCJ. Thank you very much for this opportunity to address you and to place myself on record. My name is Mkhululi Stubbs I am counsel for Mr Mbalula of the Johannesburg Bar. May I firstly DCJ confirm everything that my learned colleague has said in relation to the arrangements and the difficulties. Secondly to apologise even more profusely for the inconvenience to yourself and to this tribunal in relation to the adjournment or the postponement, the short adjournment that we request and thirdly reiterate the request from our side. If it

would please you?

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: We would be most grateful for the extra time.

CHAIRPERSON: Yes. Yes and I understand that you would like if possible an adjournment of about 30 minutes?

ADV MKHULULI DUNCAN STUBBS: That is correct DCJ.

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: We would be most grateful yes.

CHAIRPERSON: Yes. Okay no thank you.

10 **ADV MKHULULI DUNCAN STUBBS**: Thank you DCJ.

CHAIRPERSON: Thank you very much. Thank you. Okay it is important that we be fair to everybody and I would like to make sure that Mr Mbalula and his legal team have had enough time to look at issues that they may wish him to look at and that also the legal team of the commission would like to raise with him. So I will grant a stand down for 30 minutes. We are at ten past nine now 30 minutes will take us to twenty to ten. So we will adjourn for 30 minutes we will resume at twenty to, maybe let us just make it quarter to ten. So we adjourn for now.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 **CHAIRPERSON**: Yes Ms Gcabashe are you ready?

ADV LEAH GCABASHE SC: I am DCJ.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I think I should call you Chairman. DCJ my two juniors say I called you DJ earlier on. I must apologise I will stay with Chairman because that makes it much easier. They asked me to not to repeat it. Chairman thank you very

much.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: Chairman this morning we take the testimony of Mr Fikile Mbalula.

CHAIRPERSON: Well I just say whether you say Chairperson or DCJ it is still me.

ADV LEAH GCABASHE SC: Thank you.

CHAIRPERSON: Okay alright.

ADV LEAH GCABASHE SC: Thank you. Thank you Chairman.

CHAIRPERSON: Thank you.

- 10 **ADV LEAH GCABASHE SC**: The theme today Chairman is centred around the testimony that was tendered at this commission by Mr Trevor Manuel and General Siphwe Nyanda on the 28 February this year. Mr Mbalula has been invited to give the commission his version of the events that transpired at the ANC NEC meeting of August 2011. He has on many occasions indicated that he is willing to assist the commission in the allegations of state capture, fraud and corruption that the commission is ceased with and of course these were prompted by the report of the Public Protector dated October 2016. Mr Mbalula's evidence just falls within terms of reference 1.1 and 1.3 Chairman. 1.3 Chairman is of particular significance today because it addresses the disclosure of the appointment of a member of the National Executive functionary or
20 office bearer to the Gupta family or to any other unauthorised person before such appointment was formally made or announced. Chairman to assist in structuring the manner in which the evidence is to be presented today the legal team has prepared a bundle that falls within the V and I had said last time V for Valerie – V series of Exhibits Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: We ask Chairman that you admit this bundle as Exhibit V3.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: For your ease of reference Chairman V2 is the record relating to Mr Manuel which V3 was the bundle that was handed up in relation to the testimony of General Nyanda.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: So Chairman on the spine today you have Exhibit V3 written on the spine. You have Mr Mbalula's name on the spine and...

10 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: If you then look at the index Chairman we have actually got various sections to this bundle. Sections V3A to V3E.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: In V3A Chairman you will find all the statements of the affected parties.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: So that is Mr Manuel's statements there are two of them. We start with Mr Mbalula's statement.

CHAIRPERSON: Yes.

20 **ADV LEAH GCABASHE SC:** That he will be relying today.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: We then included Mr Manuel's statements, the two.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Then you have the statement of Mr Ajay Kumar Gupta.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: You have the statement of General Nyanda.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: And those are statements that are in the first section.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: If I might just make a very small correction Chairman to the index. We advertently and the index is just before you get to the sections Chairman under 1.4 we said the 3.3 application of Ajay Gupta it was actually a Rule 3.4 application that he submitted. So that is just the minor correct to have the record.

CHAIRPERSON: Yes okay. Thank you.

10 **ADV LEAH GCABASHE SC:** Read correctly.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: And then – so that transcript – that is – index Chairman then follows on with the different sections. VB – V3B I beg your pardon consists of media reports spanning the years 2011 to date.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: These have been obtained Chairman from open sources and will be referred to as and when necessary to guide the discussions in this investigation.

CHAIRPERSON: Yes.

20 **ADV LEAH GCABASHE SC:** Section V3C consists of the transcript of the Public Protector's interview with Mr Mbalula.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: On the 12 October 20116.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: And for your ease of reference Chairman we have

included the transcripts of the evidence of Mr Manuel and General Nyanda's evidence of the 28 February 2019. Finally Chairman Sections V3D and E are video clips and transcripts of interviews given by Mr Mbalula on ENCA and News 24.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: To give context to today's theme we will start off by playing probably only one of these two clips Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I had then just thought I should again indicate Chairman that we have had time constraints in relation to consulting with Mr Mbalula so you will

10 bear with him.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Because we have had a very short time to consult.

CHAIRPERSON: Yes. Okay no that is fine.

ADV LEAH GCABASHE SC: Chairman if there are no other...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Matters may your Registrar kindly

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Administer the oath?

CHAIRPERSON: Please administer the oath of affirmation?

20 **REGISTRAR:** Please state your full names on the record?

MR FIKILE APRIL MBALULA: Fikile April Mbalula.

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

MR FIKILE APRIL MBALULA: No objection.

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

MR FIKILE APRIL MBALULA: Yes.

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

MR FIKILE APRIL MBALULA: Help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Well thank you very much Mr Mbalula for coming to give evidence in the commission. Thank you very much. Yes you may proceed Ms Gcabashe.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Mbalula you have Exhibit V3 before you. If you could please turn to page 1 of that and the page numbers are on the
10 top right hand corner of every page and while you hold your finger at page 1 can you then flip across to page 12 of that document and assist the commission in identifying the document? Page 012, page 12.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Whose signature appears at the end of that document Mr Mbalula?

MR FIKILE APRIL MBALULA: There is no signature here.

ADV LEAH GCABASHE SC: Are you on page 12 Mr Mbalula?

MR FIKILE APRIL MBALULA: Yes I am on page 12. Oh.

CHAIRPERSON: Well maybe – maybe start at the beginning or have you seen it?

20 **MR FIKILE APRIL MBALULA:** No I am at page 12 conclusion that is my signature.

CHAIRPERSON: Oh yes ja.

ADV LEAH GCABASHE SC: Thank you Mr Mbalula.

MR FIKILE APRIL MBALULA: Sorry Chair.

ADV LEAH GCABASHE SC: And if you go over the page what is the date on which you signed this statement which is the date on which it was commissioned? If you look

at page 13 and read, signed and sworn to before me – if you read that portion? The date?

MR FIKILE APRIL MBALULA: On this the 18th day of March 2019.03.22 **ADV LEAH**

GCABASHE SC: Thank you very much. Do you confirm that this is your statement?

MR FIKILE APRIL MBALULA: I confirm.

ADV LEAH GCABASHE SC: Are you familiar with its contents?

MR FIKILE APRIL MBALULA: Yes I am familiar.

ADV LEAH GCABASHE SC: Excellent. Mr Mbalula are there any corrections or amendments you wish to make? It is actually an affidavit – are there any corrections or

10 amendments you wish to make to this affidavit at this point in time?

MR FIKILE APRIL MBALULA: No.

ADV LEAH GCABASHE SC: Not at this point in time?

MR FIKILE APRIL MBALULA: Yes not at this point in time.

ADV LEAH GCABASHE SC: Excellent. Can I ask you to confirm that you are aware of the record of the 12th October which constitutes the interview that the then Public Protector Advocate Madonsela had with you in relation to matters that include some of the matters that we are dealing with today?

MR FIKILE APRIL MBALULA: Yes I got the transcript when I arrived today.

ADV LEAH GCABASHE SC: But you are aware that you did have – I mean you do not
20 have a difficulty with the fact that there is a transcript of your discussion with the Public Protector in October 2016?

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Thank you. Mr Mbalula then can I then ask you to go to paragraph 4 of your statement and as I understand paragraph 4 there are matters that you would wish to place on record in relation to whether or not and or how and when

you may have received the Rule 3.3 Notices that were sent to you. So that is really the information you set out at paragraph 4.1. I just thought it might be – we are on page 4 Mr Mbalula 004.

MR FIKILE APRIL MBALULA: Yes page 4.

ADV LEAH GCABASHE SC: And the paragraph if 4.1

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: I thought you may just want to clarify that issue that you have set out in paragraph 4.1.

MR FIKILE APRIL MBALULA: I did not receive this notice on around the date it was
10 sent and reason to this appears to be that it was sent to an incorrect address.

ADV LEAH GCABASHE SC: Yes. But you are quite satisfied that the process has been underway for a while because you have said in the media that you are quite happy to come and give your evidence at this commission.

MR FIKILE APRIL MBALULA: Absolutely

ADV LEAH GCABASHE SC: There are no other issues you want to highlight in paragraph 4?

MR FIKILE APRIL MBALULA: No.

ADV LEAH GCABASHE SC: Thank you. I think the most material paragraph that we
20 will deal with in due course will be paragraph 5. But prior to doing that as evidence leaders we thought we should really try and tap into the vast experience you have as a politician and as a both a Deputy Minister and a full Minister and as somebody who has criss-crossed this country and spoken to various individuals from all walks of life. From those encounters Mr Mbalula what have South Africans identified to you as key issues that they think might lead to manifestations of state capture and what solutions might they have offered to you? Please this is just a view we are really just taking advantage

of the fact that you are here and we know that you will deal with the merits of what happened at the ANC NEC meeting but just if we transcend that meeting for a minute can you just give us a sense as an experienced politician of what people are saying about state capture, what you have heard? Thank you.

MR FIKILE APRIL MBALULA: Thank you very much. First in dealing with the issue of state capture which has been a matter in the public discourse in following the discussions and also engaging on the matter most of the people have raised the issue of first and foremost they recognise the fact that you get appointed into a position either a Cabinet Minister or Deputy and you are entrusted to that particular position by the
10 President of the Republic. And what people expect is that you need to undertake your duties with diligence but at most you just be above reproach and that they trust that the person who would have appointed you in the position would have done so with the full understanding of understanding your capabilities. And they do not expect that in such appointment there could be a third party interference in relation to that because they trust that the President would have applied his mind on the appointment of an individual in such a position.

ADV LEAH GCABASHE SC: This of course is consistent with the oath of office that a Minister would take as she or he assumes office?

MR FIKILE APRIL MBALULA: Yes.

20 **ADV LEAH GCABASHE SC:** Is that correct.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: And this of course would also be consistent with both Section 83 which pertains to the President – 83 of the constitution and Section 85 which deals with the appointment of cabinet.

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: Well I was about to say of course Mr Mbalula may be very familiar with those sections but he might not be and I was not sure whether it was fair to particularly ask him but if he is familiar with them then it is fine. Mr Mbalula you are familiar with the sections?

MR FIKILE APRIL MBALULA: Yes I am.

CHAIRPERSON: Oh okay. Alright thank you. One sec before you proceed. [Zonika where is my water?] Yes please you may proceed.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Mbalula do you have a view on what some have called a repurposing of the state and a diversion of rents or resources
10 away from development in ways that are extra-legal and anti-constitutional and of course all of this would be happening to the detriment of the people of South Africa. Do you – do you have a view on this repurposing theory?

MR FIKILE APRIL MBALULA: First and foremost which we will deal with the matter maybe at the later stage. The matter of the perception or reality out there that resources of the state are basically being looted or redirected to individuals because of their proximity to those who are in power and they use that as an advantage over and above everyone else in society to be preferred in a way or the other. It is politically incorrect and it is against the purpose of why people vote us into power and give us the mandate to govern at the end of the day. So it means that we cannot allow that to
20 happen in a way it has been reported or suggested either way and that led to the establishment of this commission.

ADV LEAH GCABASHE SC: You know as I sometimes reflect on the matters that and the evidence that we have heard at this commission I wonder if some of the evidence that has been tendered here ought to be subjected to some form of political analysis. You know as lawyers we tend to analyse things from a legal perspective. You are a

politician I suppose the question I am asking is are the tendencies that have emerged a function of our political system coupled with an electoral platform that really is based on proportional representation? I did say I am just asking for guidance here on what you think might be the problem.

MR FIKILE APRIL MBALULA: Well ascendancy to political power for any political party or liberation movement excrete tendencies that I have seen in other countries bringing what we call a revolution to a halt and repurpose and we are lucky in South Africa because we are almost the last before worst in Sahara to be liberated. Such that we have learnt from other revolutions or other liberation struggles globally. And in this

10 particular purpose – in this particular situation in South Africa we were forewarned in our own documents politically when we analysed the South African revolution, the national which we term as the ANC the National Democratic Revolution because it is a revolution that primarily addresses the question of race, gender and class but over and above that it is about the resolution of the national question which is racial contradictions in society. And in that particular analysis we have made assertions about as far as back as the time of our President, former President Oliver Tambo about sense of incumbency that may actually affect us. Up to Kgalema Motlanthe in our 1996 report in Port Elizabeth in the ANC national general counsel where he analyses in the report the dangers of incumbency that include mode gauging of state

20 power. And indeed we grappling with that and the important thing is about the commitment of the liberation movement being the ANC to overcome and undo these tendencies as they creep in because they are unavoidable given how we ascend to power exposed to managing huge resources and the interest of those to seek to get those resources for their own purposes individually amongst wealth and so on. And in this particular instance South Africa is no exception to that and we are empowered by

the fact that the ANC as the liberation movement have learnt from other revolutions and it is in a position to quickly attend to such and fix them. So from 1996 to date we have been grappling with this patronage and all of that and so on to deal with this including the effects of what we may characterise as you know – I mean – comprador bourgeoisie wherein which people amongst wealth and from state resources particularly tenders and all of that for their own purposes. So we need to deal with that and that is why in our policies and manifestos we have also tried to also address the review including the whole notion of the tender process within the state because it affects adversely negatively in terms of the liberation movement as the challenges that we

10 have got to deal with.

ADV LEAH GCABASHE SC: We look forward to hearing some of those submissions from the ANC if and when it does just from what you foreshadowing if and when it does come as the ANC to present evidence on the issues that we are just foreshadowing really right now. Maybe I should then just move to the next level of the same discussion and say if one accepts the proposition that a President as leader of a political party makes a political judgment on how best to deliver on the manifesto promises it has made to the populous where ought a President who seeks assistance or advise on whom to appoint as a Minister or Deputy Minister where ought such President to draw counsel?

20 **CHAIRPERSON:** Well I am sorry Mr Mbalula before we proceed I would prefer to first hear Mr Mbalula's evidence on the important point of what he raised with the NEC at that very important meeting because some of the things that he has said are very important but they it seems to me would be better dealt with when he has confirmed what he raised with the NEC even before we may go into any details you know. We look at what – why he raised it? In his statement he addresses that and what was done

about it, what was the context of it and I think that context includes part of what he has said which are I think are very important issues that I am also very interested in hearing him on. So maybe you might wish to deal with it that way if that is fine with you?

ADV LEAH GCABASHE SC: It does not present a difficulty at all Chairman.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABASHE SC: I was simply trying to be consistent because when.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I led Mr Manuel.

CHAIRPERSON: Yes.

10 **ADV LEAH GCABASHE SC:** We dealt with the more generic material first.

CHAIRPERSON: Yes. No that is fine.

ADV LEAH GCABASHE SC: But of course these are completely different witnesses.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: And I understand why you have a greater interest in getting the facts.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Before we then deal with the more generic matters.

CHAIRPERSON: Yes. No that is fine.

20 **ADV LEAH GCABASHE SC:** Mr Mbalula just to then start introducing that portion of your evidence just for the record when you served on the ANC NEC in 2011 were both Mr Manuel and General Nyanda members of the NEC?

MR FIKILE APRIL MBALULA: Yes. Retired General.

ADV LEAH GCABASHE SC: He is actually correctly speaking retired General Nyanda, but they have the advantage of keeping the title, yes but thanks for the correction because that is the correct way to address it. Who was the President at that point in

time, 2011?

MR FIKILE APRIL MBALULA: Yes. The President was Jacob Gedleyihlekisa Zuma.

ADV LEAH GCABASHE SC: And was he present at the meeting of August 2011?

MR FIKILE APRIL MBALULA: Yes, he was present.

ADV LEAH GCABASHE SC: Now that we have at least those basic facts Chairman with your permission we have a video clip that we would like to play, because that helps us deal with the matters that Mr Trevor Manuel and General Nyanda raised which is the very next thing we come to because the next thing after the video clip will be the content of the meeting of the ANC.

- 10 **CHAIRPERSON:** Well that will be fine, but maybe because you have asked him to confirm who the President was. It may be important for him to confirm who, I do not know whether they call the officials, but the top six were at the time. Mr Mbalula do you want to confirm just who the top six were of the ANC were in 2011?

MR FIKILE APRIL MBALULA: Thank you Deputy Chief Justice. The President was President Jacob Zuma, Deputy President was Kgalema Motlanthe, Secretary General was Gwede Mantashe, National Chairperson Baleka Mbete, Deputy Secretary General Jessie Duarte, Treasurer General Matthew Phosa.

CHAIRPERSON: Thank you very much. Yes you may proceed.

ADV LEAH GCABASHE SC: Thank you Chairman. If we might then play the video.

- 20 **CHAIRPERSON:** Okay, thank you.

[Viewing video]

CHAIRPERSON: Yes, you want to proceed?

ADV LEAH GCABASHE SC: Thank you Chairman.

CHAIRPERSON: Huh-uh.

ADV LEAH GCABASHE SC: Mr Mbalula the most critical part of that input, it was all

important, but for current purposes is the amplification you speak of. It is the truthfulness of the evidence that was tendered by Mr Trevor Manuel. So I would like you to hold those two critical elements. Hold onto them as you turn to page 6 of V3. It is still your affidavit and on page 6 paragraph 5 you set out what you have entitled “The Correct Version of Events”. Now Chairman with your permission I would ask Mr Mbalula to read the entire paragraph 5 into the record because it gives us a structured response to the matters that he is dealing with today. Thereafter I will come back to paragraph 5.1 Mr Mbalula and start dealing and interrogating the issues that are material to what we are discussing today. Chairman with your permission?

- 10 **CHAIRPERSON:** Well I am not sure whether it is necessary to say he must read. He probably knows what happened. So I think maybe he should just be asked to tell us what he said and then if there is something that differs from this then he can be asked to clarify, but it is much preferable if he does not necessarily read, but just tells me exactly what happened as naturally as possible.

ADV LEAH GCABASHE SC: Chairman if I may?

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: The request was simply to make sure that what we have on record.

CHAIRPERSON: *Ja.*

- 20 **ADV LEAH GCABASHE SC:** Is structured and is clear. It is really more for the record. I will interrogate every single aspect.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Every single paragraph.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Because I will take him back to paragraph 5.1

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: And I have actually underlined all the issues that I would like him to focus on.

CHAIRPERSON: But we have got it on record.

ADV LEAH GCABASHE SC: But Chairman.

CHAIRPERSON: We have got it here. It is written. It is on record.

ADV LEAH GCABASHE SC: As the Chairman pleases.

CHAIRPERSON: Yeah, so.

ADV LEAH GCABASHE SC: Mr Mbalula.

10 **CHAIRPERSON:** Yes. If you can just ask him to tell his story of what happened, what he said at that meeting and then after he has told his story from his recollection and obviously if was to refresh his memory from the statement he is free to do so, but if he is able to just tell me the story let him tell me and then you can direct him where you would like to direct him in the statement.

ADV LEAH GCABASHE SC: Thank you Chairman. We will do that.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: Mr Mbalula.

20 **MR FIKILE APRIL MBALULA:** Thank you Chief Justice. First I want to clarify one point that I am dealing with this affidavit in the context of what Mr Trevor Manuel said and in relation to what happened in the meeting of 2011 and in relation to that I dealt with the issue also in relation to the Public Protector which the Public Protector dealt with the question of who appointed me and which I clarified that it is President Jacob Zuma as a matter of fact that it is him who actually appointed me. So I want to clarify that particular point Advocate as discussed up front in terms of the matters we dealt with at that point and what we are dealing with now. In terms of the

meeting of August 2011 I raised the issue of the Gupta issue in the meeting of the National Executive Committee of the ANC. As you will have known the matter was all over the place. Everybody talking about Guptas this and that. About the influence they exerting on the leadership of the ANC or influence they have particularly the President. So I felt that it was time that we need to raise this because I have had a personal encounter with the Guptas in relation to appointment of Ministers where I received a call from Mr Ajay Gupta where he actually congratulated me before I was even appointed as a Minister and I did not know that I was going to be Minister of what, because I have had a discussion with the President about my problems I had in the

10 Ministry of Police with the then Minister of Police and in that the President told me to hang on and there will be changes that will be coming in Government. Now here I come and somebody calls me and says congratulations and so on for Minister of Sports. So I took that matter to the National Executive Committee to share part of my experience. To say to the NEC that this thing of the Guptas and them interfering and so on, calling Ministers and so on it is a big problem. One day this thing will land us in a big crisis and I said that to me these people enjoy the powers that even not ordinary members of the ANC enjoy, because we ourselves when we get appointed to become Cabinet Ministers you do not know whether you will be Minister. You are just called either midnight or during the day, but the announcements are always made at night and

20 so on. So you do not know what you will up until that moment that you are told by the President that you will be a Minister of this and that. So I raised the issue to the National Executive Committee and the people were spreading rumours and gossiping about it. So I raised it in the National Executive Committee and the top six were there and the reason why I have been cagey about this thing is because to be honest Advocate and the first time I am speaking about this issue even the media have been

interrogating me whether I was appointed by the Guptas and so on. It is in the State Capture Commission, because I honoured the privilege to serve in the National Executive Committee of the ANC and I did not raise the issue in public. I confronted the NEC and I raised it in the National Executive Committee that this occurred to me and we need to address this thing and the President who was my boss in Government the President was present. So it was no gossip. So what Nyanda particularly says is correct. What Trevor Manuel said, it is incorrect. I a sense that it was not Atul. I was Ajay Gupta who actually gave me a call and that is it. As to whether I cried or not I was emotional about it and the emotions just came because if you fell deep about
10 something that is an injustice it just shakes you that you think that there is something wrong about it. So I put it to the NEC, but we never talked about it beyond what I actually said because I raised it and I raised it in the National Executive Committee which has got more than 80 people who were present in that particular meeting.

CHAIRPERSON: I just would like you to state quite clearly exactly what it is that Mr Ajay Gupta said in that telephone conversation, because when he applied for leave to cross-examine Mr Trevor Manuel in his affidavit in regard to this issue, in his affidavit he put a certain version and so I think maybe we can talk about that now. Maybe other issues might come later on. Exactly what is it that he said to you?

MR FIKILE APRIL MBALULA: Thank you Chief Justice. What he said in my
20 [intervenes]. Deputy Chief Justice, sorry.

CHAIRPERSON: I do not want to be in trouble.

MR FIKILE APRIL MBALULA: Sorry.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: My apologies. To the best of my recollection he gave me a call. I think it was in the evening. I was at a friend's place and then he

congratulated me and then he said congratulations Minister of Sports and Recreation and then after that call he then went to talk further and so on. I do not recall what he talked about and then I related to a friend I was with in his house that hey I got a call from the Guptas. They say I am going to be Minister of Sports and Recreation and then we talked about it. That this is what is wrong about these people and so on and that was it. So, Deputy Chief Justice.

CHAIRPERSON: What was your reaction to what he was saying to you on this phone call?

MR FIKILE APRIL MBALULA: Well I froze I think in a sense because I was taken
10 aback. Here is a man who is not even an ANC Member and so on and many things are being said and then he tells me this and then I think a couple days after we were then called and so on and then told that I am Minister of Sports and Recreation, but mind you when he called me I had a discussion with the President about my problems in the police with the Minister and the President said to me stay on, because I said to the President that look I think it is better that I go to Luthuli House, because it is not nice here. I like to work.

CHAIRPERSON: You were not happy?

MR FIKILE APRIL MBALULA: I was not happy.

CHAIRPERSON: *Ja.*

20 **MR FIKILE APRIL MBALULA:** At the police

CHAIRPERSON: In the police portfolio?

MR FIKILE APRIL MBALULA: *Ja*, because we had issues with the Minister.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: So, and then that was it and then I was called later on about the reshuffle and I replaced Comrade Reverend Stofile as Minister of Sports.

CHAIRPERSON: You froze when Mr Ajay Gupta told you, said congratulations Minister of Sports, but what did you say him? Did you say thank you or did you say where you get that from or anything like that?

MR FIKILE APRIL MBALULA: No.

CHAIRPERSON: I just want to get the full conversation.

MR FIKILE APRIL MBALULA: I did not say thank you, because I cannot thank him. I just said hey, I mean hey. I mean that was it I think to the best recollection. Now here is the, and then I told the friend immediately.

CHAIRPERSON: Yes.

10 **MR FIKILE APRIL MBALULA:** That hey I got this call from Ajay Gupta.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: And this is what he tells me.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: *Ja.*

CHAIRPERSON: Okay. So.

MR FIKILE APRIL MBALULA: Of course it was something big, but to come from him it was a different story.

20 **CHAIRPERSON:** Well in his affidavit if I recall correctly he said that and in due course Ms Gcabashe will take you through to that particular affidavit, but he said that he spoke to you on the basis of what he had read in the papers and he said he did not say that you were going to be Minister of Sports or Minister. He said that, he said something if I recall correctly along the lines that he saw that the media were speculating that you were going to be Minister of Sports, but from what you say you seem to be clear that he said to you congratulations Minister or that you were going to be Minister of Sports. I just want you to know what he said and then to confirm whether you stand by your

version of what happened.

MR FIKILE APRIL MBALULA: Deputy Chief Justice I stand by that version that is what he said. He did not say congratulations Minister because media can make all speculation.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: But media would not know.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: At the end what Minister you will be.

CHAIRPERSON: Hm.

10 **MR FIKILE APRIL MBALULA:** But media can make speculations about reshuffle and so on.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: And at that point I think personally I was not aware about the rumours that I was rumoured to be going to sports.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: When I was at the Public Protector, the Public Protector also raised this thing that Ajay Gupta this is what he said.

CHAIRPERSON: Yes.

20 **MR FIKILE APRIL MBALULA:** And then I said to the Public Protector I do not know of such rumours.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: That Ajay Gupta is actually talking about and Chief Justice just on that point I need to also explain that Mr Trevor Manuel says that I sat in the meeting. I was called to the Gupta house. No, it was a call, but subsequent to the revelation that I raised the issue.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: In the National Executive Committee.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: There were meetings *post facto*.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: That took place.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: There was a meeting where at Sahara he formally laid a complaint with me.

10 **CHAIRPERSON:** Hm.

MR FIKILE APRIL MBALULA: Which I met him.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: At his offices.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: About the same matter.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: That I have read in the newspaper, Sunday Times that you said this in the NEC Meeting and so on.

CHAIRPERSON: Hm.

20 **MR FIKILE APRIL MBALULA:** Look it was not like I was meaning to do this or what. He clarified himself.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: But there was nothing I could do because he called me.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: Subsequent to that there was a meeting in his compound.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: Where because of that.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: And because of my stance.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: On the Guptas as a Minister of Sports.

CHAIRPERSON: Hm.

10 **MR FIKILE APRIL MBALULA:** They did not like me.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: It is on record.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: They chased me about everything.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: Including alleging that I paid for somebody.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: To be in London Olympics.

CHAIRPERSON: Hm.

20 **MR FIKILE APRIL MBALULA:** I took them to the Press Ombudsman.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: And the Press Ombudsman ruled in my favour.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: That they are incorrect in terms of their newspaper TNA, The New Age. The Press Ombudsman ruled in my favour in relation to that and

then we met and then I said look Ajay I do not have any issues with you personally and with your companies and all of that and then basically asking me that because I had filed other complaints about them and so on.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: So we met at his compound and that was it, but meeting about a matter that was a result of us not seeing eye to eye.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: Because of what I would have raised about them in the meeting.

10 **CHAIRPERSON:** Hm.

MR FIKILE APRIL MBALULA: And the Wanderers it is him complaining again lamenting and so on at the Wanderers Cricket.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: I think it was a match of cricket. The Gupta family loved cricket.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: And they also owned a stake.

CHAIRPERSON: Hm.

MR FIKILE APRIL MBALULA: In some of the stadiums if I am not mistaken.

20 **CHAIRPERSON:** Hm.

MR FIKILE APRIL MBALULA: Sahara and so on. They were a sponsor of the Wanderers or whatever, *ja*.

CHAIRPERSON: Hm. I may have missed understood you. I thought earlier on you said that when he called you he said congratulations Minister, but I think a few minutes ago you may have said no he did not say that. So I just want to get clarity.

MR FIKILE APRIL MBALULA: No he.

CHAIRPERSON: He did say?

MR FIKILE APRIL MBALULA: He did say. He did say that.

CHAIRPERSON: Okay, alright.

MR FIKILE APRIL MBALULA: Yes, he did say.

CHAIRPERSON: And he did say you were going to be Minister of Sports?

MR FIKILE APRIL MBALULA: He was congratulating me as Minister of Sports and Recreation.

CHAIRPERSON: Yes.

10 **MR FIKILE APRIL MBALULA:** Deputy Chief Justice, yes.

CHAIRPERSON: Okay. No, thank you. Ms Gcabashe will ask you more questions, but I just want us to stay on this issue that you raised at the NEC Meeting, because I think it is very important. Why did you see it as quite important that you should raise this issue at the NEC? What was your thinking, what was your purpose, what was your objective? What was worrying you if there was something worrying? Was there something you wanted the NEC to do about it?

MR FIKILE APRIL MBALULA: The fact that I was congratulated and we discussed this issue with a comrade and a friend and he was also in the NEC Meeting. It ate me that people are talking generally about Guptas all over and here we are in the NEC Meeting.

20 We are gossiping about it and then we are not confronting it and I saw in my own analysis the political dangers of this and then because something happened to me about Gupta calling me about my post. I raised it in the NEC Meeting. I said look, because if I raised based on rumours and I do not put myself in it will just be one of generalisation. So in the National Executive Committee of the ANC there is what is called the political overview of the President and after the political overview we analyse

the situation, we analyse the political you know issues around us and one of the fundamental political issues was that there was an issue about the Guptas alleged that they appoint Ministers or they influence the appointment of Ministers and the Ministers also report to them, you see or people to go them to ask political favours which I thought politically it was incorrect. Now I can sit with this thing and so on and not confront it and then I decided that look I did not think twice about it. I was a Minister at that time when I raised the issue, Minister of Sports in President Zuma's Cabinet. So I could have thought about the future of my kids before I raised the issue that I am risking, but I just felt that look the ANC taught us to raise issues in meetings. So I am

10 not in a rally. I am not being malicious and I exploded in that way to say that comrades there is this issue and it so happened that I was told by a Gupta that I am going to be Minister of Sport and it turned out exactly like that. I said it Deputy Chief Justice in that meeting and I did not take anybody into confidence. It is my political conscience that guided me and at that time there was nobody, people were rumouring about it. They were talking about it pass each other and so and the media was reporting about it, but I raised it in the meeting of the ANC and I was happy that I did and those who are underground people they then leaked it to the Sunday Times and the Sunday Times blew it and indeed I knew from where I was sitting this is true, but that does not give qualification for people who leak the right to continue to leak to the media for what I say

20 today.

CHAIRPERSON: Well you see, well in the end I will decide and make findings and so on about evidence that I am hearing here and I do not know whether at some stage somebody will come who will give a different version of what you said who will say or will say no Mr Ajay Gupta did not say what you say he said to you and I do not know if anybody will come and say no what you say you said at the NEC Meeting and what

General Nyanda said and Mr Manuel to the extent that you agree with his version what he said whether anybody will come and say no that is not what Mr Mbalula said at the NEC Meeting. I do not know. I will keep an open mind up to the end, but to the extent that what you have said is exactly what happened it is quite important because as I have said previously at these hearings I believe that if I at the end of the Commission's work come to the conclusion that a lot of activities that are viewed as State Capture activities did happen and State Capture did happen because my terms of reference is I must investigate allegations of State Capture, did happen, one of the things I will have to look at is how did it happen, what are the things that allowed it to happen, what are
10 the things that facilitated it to happen, and I would look, I would have to look at who or what bodies could have assisted to arrest it quite early to stop it or maybe to prevent it from happening and did they do that, and if they didn't do it, why did they not do it, what is it that held them back from arresting it because maybe it could have been arrested earlier.

Now against that – and then I would have to make recommendations as to what are the measures that should be put in place to make sure that in the future it never happens again, or if it does happen it would be clear who should do what to arrest it before it goes too far.

So your evidence becomes quite critical because you say to me that you
20 were quite concerned, you were worried about what was in the media and what you were hearing what everybody was hearing that there were allegations that the Gupta family was making appointments of Ministers and so on or was influencing the appointment of Ministers and you thought this was wrong and as I understand your evidence either in terms of what you have said here orally or what you have said in your own affidavit you were concerned that if nothing was done to deal with this issue

this issue would become a problem in the future. Am I correct in my understanding of what you sought to do and what your concern was?

MR FIKILE APRIL MBALULA: Correct Deputy Chief Justice.

CHAIRPERSON: And now you rise in a meeting of the highest body of the African National Congress, the ruling party, and you say here is a problem, I have experienced it myself. As you say you are not talking about rumours, you are telling them what happened to you and you are saying this thing is wrong, so it becomes quite important because then the NEC of the ruling party is aware, not of rumours, but of what happened to one of its leaders, a cabinet minister, a member of the NEC, who is
10 sufficiently worried about this issue to raise it, and as I understand your evidence you wanted to say, you were saying to them let's do something about this.

Now my question is how was your concern received by the NEC?

MR FIKILE APRIL MBALULA: I think many people they were bowing, looking down and you could hear the drop of a – when I raised the issue, a drop of rain or whatever in the meeting, it became quiet. People were shrinking in their chairs and others came after to give me a pat on the back, hey you are brave man, and it ended there. One NEC member rose and they said things in that meeting, which I can't speak on his behalf, but rubbishing what I said, and I know that I don't have to speak on behalf of that particular person.

20 To the best of my recollection we have never attended to the issues of Guptas politically, the way I raised it in the meeting, and I did not even have seconders in that meeting. Minister Manuel was there and nobody said but what Mbalula is raising and to the point that there's a motion, it's a serious matter for us and how do we react to it, nobody. But I understood Chair because when you are a cabinet minister you owe your plate and everything to a President, so you can't stand up in a meeting

against the President because you can be reshuffled at night, it happened with Paulo Jordaan under Mandela, differing with him, and then he was reshuffled for doing, just for saying hey don't go this way. So from there downwards we shouldn't owe our bin to the person who appoint us, but to the service to the people, but respect the person who appointed you as the CEO of South Africa, but in the party we can raise anything including about the person who appointed us, so maybe because I was young and I'm still young even now Deputy Chief Justice, forever young.

CHAIRPERSON: Yes you are young Mr Mbalula.

MR FIKILE APRIL MBALULA: So had the courage to stand up because when you are
10 young Comrade Galiema used to say that when you grow older you learn fear, so now I'm older, I've got kids, before my open my mouth my wife will be calling hey are you correct, but that time I was youth, I didn't care about anything, what is wrong is wrong, it must be dealt with right there and there and Chief Justice just to repeat myself about what I said in that meeting, I said everything about the Guptas I said you get, I was told that I am going to be Minister of Sport and it turned out exactly like that, by one of the Gupta people, this is wrong. That's what I said.

And then I didn't write a letter to the press like Mcebisi did and everybody, I confronted them in the meeting as the highest body of our organisation, and the President was there, nobody said Mbalula is wrong you are lying and I've got witnesses
20 about the call I got if anybody dispute it's fine, you can go to my records, my phone then and check when Ajay Gupta called me. I may not recall the exact date but that is there on record.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: He did call me.

CHAIRPERSON: Now you have said that at the time and I don't know whether still now

but at the time the NEC of the ruling party consisted of about 80 members, and you have said that you didn't get even one seconder, in other words in the meeting not a single person followed up to say but what Mr Mbalula is raising is important, we must deal with it, we must find a way of discussing and dealing with it, that's my understanding of what you have said, is that correct?

MR FIKILE APRIL MBALULA: Yes, the ...(intervention)

CHAIRPERSON: At the meeting.

MR FIKILE APRIL MBALULA: Yes Deputy Chief Justice that is correct, instead one member of the NEC stood up and rubbished what I said.

10 **CHAIRPERSON:** Yes, yes, yes.

MR FIKILE APRIL MBALULA: Yes, that's what I recall, in that meeting one member of the NEC stood up and rubbished what I said that you know when people come here not sober and this is not a beer hall you know, you can't say things about the President, so that member was defending the President you know and not what I was raising.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: Because the issue to me was not about the Guptas, it was a tendency I was dealing with that tendency which if it creeps in it will undermine the cause you know of what we stand for. So we need to undermine that tendency and put it aside so that member did not come to my defence, nobody came to my defence, it
20 was the fact that I raised it and then it ended there, but I raised it quite emotionally and decisively in the meeting for everybody to hear, that is why I think it was leaked to the press.

CHAIRPERSON: Well the impression I have and – the impression I have is that by raising it a structure of the party and an important structure such as NEC you were being principled in terms of raising what you thought could pose a danger or could pose

a problem for the ANC?

MR FIKILE APRIL MBALULA: Chief Justice I don't know whether I was being principled but I would appreciate that accolade.

CHAIRPERSON: Yes, because I would imagine that the ruling party encourages its members that if they have got any issues of concern about the party and maybe about government as well as long as it is the governing party, that they must raise their concerns within the party and that's what you were doing?

MR FIKILE APRIL MBALULA: Exactly that, I was comfortable by doing it inside the party because if I raised it a rally first it would be an act of cowardice and politically a principled and an opportunist masquerading as a revolutionary. I thought I must raise it for whatever the consequences which I suffered a lot after that, you will see because I was attacked, chased, left and right and so on because I took a stand that this is not on, so whatever the consequences I was able to raise it in my party and which is what we have been taught over the years to live by those principles because and conventions to have the courage to raise issues no matter how difficult inside the party Deputy Chief Justice.

CHAIRPERSON: Yes, now the issue was not discussed at that meeting after you had raised it except for whatever you have told us happened at that meeting but was it ever subsequently raised to say let's go back to that issue in any other meeting up to today was it ever raised to say let's go back to – or maybe I shouldn't say up to today, let us say up to before the establishment of this Commission was it ever raised to say let's go back to that issue that Mr Mbalula raised and we haven't done anything about it, let's do something about it.

MR FIKILE APRIL MBALULA: To the best of my recollection when the issue found its way back to the agenda of the NEC is when Mcebisi Jonas wrote that letter.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: It was publicised in the media.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: And then when the Public Protector then subsequent to that, not Public Protector, there were reports in the media Amo Pungani and all of them about the Gupta leaks and then Mcebisi wrote a letter, wrote a letter or what, I don't recall but it was in public.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Then it found its way back to the National

10 ...(intervention)

CHAIRPERSON: I think he issued a media statement.

MR FIKILE APRIL MBALULA: Yes it could be a media statement. Then it found its way back to the agenda of the NEC.

CHAIRPERSON: Yes, yes, that would have been I think Mr Jonas raised these issues publically in terms of the media statement around 2015 if I remember correctly.

MR FIKILE APRIL MBALULA: Yes, yes.

CHAIRPERSON: So that would have been around soon after he had raised the issue publically.

MR FIKILE APRIL MBALULA: Yes, yes.

20 **CHAIRPERSON:** Yes, but after that then were measures taken by the party to establish what you had said and anything else that anybody within the party may have raised relating to similar concerns as the concern you had raised?

MR FIKILE APRIL MBALULA: The issue of the Guptas later on was condemned by the party.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Remember the landing of the Guptas at Waterkloof.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: It became a big topic.

CHAIRPERSON: A big topic indeed.

MR FIKILE APRIL MBALULA: And so on and in all of those meetings what I recall is that over and above what was raised and what was happening around us the person in charge, the President defended his relationship with the Guptas.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Vehemently.

10 **CHAIRPERSON:** Yes.

MR FIKILE APRIL MBALULA: And that is what actually happened, so ... but the party sort of dealt with the issues upon now at Nasrec National Conference where things had taken shape and the Public Protector had dealt with the issues and now there was a report that must be processed through a State Capture to probe all the issues that were raised and then Congress then directed us that this must be implemented expeditiously and President Zuma then as the President of the country went on to define the terms of reference and establish the Commission.

CHAIRPERSON: Going back to the meeting at the NEC did President Zuma react to the concern you raised?

20 **MR FIKILE APRIL MBALULA:** No Deputy Chief Justice he did not.

CHAIRPERSON: Did anybody in the, among the top six react to your concern, at the meeting, not outside at the meeting?

MR FIKILE APRIL MBALULA: I don't recall exactly what the Secretary General Gweda Mantashe said but he did ...(intervention)

CHAIRPERSON: Say something.

MR FIKILE APRIL MBALULA: He did say something.

CHAIRPERSON: Okay.

MR FIKILE APRIL MBALULA: But I can't recall exactly what he said.

CHAIRPERSON: What he said ja.

MR FIKILE APRIL MBALULA: But there was an NEC member that I recall vividly, I will never forget because he rubbished what I said.

CHAIRPERSON: Yes, yes, yes, well you know you must feel free if you want to tell us who the person is, but if you want to not to say it's up to you.

Now with regard to the years that followed after you had raised this issue in
10 the NEC is it correct that until maybe the landing of the aircraft at Waterkloof are you aware of anything as the NEC did to deal with issues relating to concerns about the Gupta family and their alleged influence on Government and maybe some of the ANC leaders?

MR FIKILE APRIL MBALULA: No the NEC dealt with issues in the political overview because this issue was now top on the agenda of South Africa's political discourse, public debate, the NEC will from time to time reflect on the issue without taking adequate steps and then NEC will among others forewarn members of the ANC about business interests, to say that we must be not only cautious but not allow ourselves to be co-opted in a particular way.

20 **CHAIRPERSON:** Yes, yes.

MR FIKILE APRIL MBALULA: So those are generalisations, there were no concrete steps because remember when we dealt with the issue which was the issue about the Guptas and their relationship with our President our President was elected by congress of the ANC and he was President of the Republic and when we dealt with an issue where we were weak is that we left it to him and we did not give him instructions because

at the end he will tell us that there is nothing untoward about this relationship, it's just been exaggerated, there's nothing wrong he is doing but perceptions tend to be reality, so we were grappling with those perceptions that these things and so on are happening, and then he will say that I don't know why people go there as individuals, as Ministers because I didn't send them.

CHAIRPERSON: Yes, that's what he will say.

MR FIKILE APRIL MBALULA: Yes, that is what the President will say to us, and then the issue will die down, so the fact that we've got State Commission probing what exactly happened its taking it away from generalisations to the concrete, exactly what
10 happened, it was indeed the proof that people were co-opted and people were appointed there and how and so the Commission is expected to assist us about that, because it became a huge thing, because those who were in business were affected because Guptas it is alleged that they were preferred over and above other people and so on, in terms of business interests because of their proximity to the president and probably they used that proximity for an added advantage, for themselves and they want big contracts and all of that, so that's where we are today.

CHAIRPERSON: I heard evidence sometime I think it was end of last year or early this year that the NEC or members of the NEC or some members of the NEC did raise concerns at NEC meetings to the former President of the ANC about his friendship or
20 alleged friendship with the Gupta family and said that it seemed that that friendship or alleged friendship was creating problems for government and for the party. Now you have been in the NEC as I understand for the long time, are you aware that such issues were raised, and if you are aware what's your recollection of how the former President responded to them?

MR FIKILE APRIL MBALULA: Deputy Chief Justice honestly some of the things I

heard them here for the first time, I can tell you about me.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: Now those MEC members who were brave and raised issues in the NEC maybe because I was not elected in one conference and then I got co-opted later, those brave sons of Africa rose after I had that absence for some time, but in my presence and one of those people who was raising that issue was in that meeting where I confronted the issue, I don't recall them confronting the President.

I raised the issue in the meeting of the ANC and then the President was there, and then he did not respond to that. Members of the NEC were there, and they
10 did not raise that issue, unlike being – acting like a snitch behind the President's back, I raised the issue in the full presence of members of the National Executive Committee to say we need to deal with it.

The time these issues found their way into the NEC is because there will be Gupta lending, we've got to deal with it and then there will be Gupta leaks in the public discourse, we've got to deal with it, those are the perceptions that were piling up, that our President or the State is captured and that these are the people who are directing how things must happen in the country and that is how in the later years when I came back we were dealing with here.

CHAIRPERSON: Yes, yes, how long have you been in the NEC if you can just give me
20 that period?

MR FIKILE APRIL MBALULA: I started to serve in the National Executive Committee in the ex-officio capacity as the Secretary General of the Youth League.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Towards the end of Nelson Mandela and then effectively under President Mbeki from 1999 to date and then I was elected in

Polokwane.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Yes the historic conference of Polokwane.

CHAIRPERSON: Yes. So you have been in the NEC of the ANC from the nineties.

MR FIKILE APRIL MBALULA: Yes, the nineties.

CHAIRPERSON: You know whether you were *ex officio* or not but you were
...(intervention)

MR FIKILE APRIL MBALULA: Yes, post 1994, yes.

CHAIRPERSON: Yes post, and up to today?

10 **MR FIKILE APRIL MBALULA:** Up to date.

CHAIRPERSON: And there has been no break in between?

MR FIKILE APRIL MBALULA: There was a break in (indistinct) I was not elected.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: And then I was co-opted in the middle of the term I was
co-opted so till to date, and then in the Nasrec conference I was elected almost
unopposed.

CHAIRPERSON: Yes, and can one take it that you have attended most of the meetings
of the NEC over the period that you have been there, or is that difficult to say?

20 **MR FIKILE APRIL MBALULA:** No I attended most, unless if there was a
...(intervention)

CHAIRPERSON: There was a reason not to?

MR FIKILE APRIL MBALULA: A reason not to attend yes, deployment in government,
but most of the meetings I attended.

CHAIRPERSON: Yes, so generally speaking you would be aware of what was
discussed and what wasn't discussed, particularly if it's an important issue at some or

other meetings I would take it.

MR FIKILE APRIL MBALULA: Yes, Deputy Chief Justice.

CHAIRPERSON: So you – and you say you have no recollection of any members of the NEC at meetings that you attended because of course there may be a few that you might not have attended that you attended who raised the issue with the former President to say but your friendship with the – or your proximity to the Gupta family is problematic, why do you not end it, you have no recollection of that?

MR FIKILE APRIL MBALULA: No, not at all Deputy Chief Justice yes.

CHAIRPERSON: Okay, now part of my concern is the fact that on what you have told
10 me you seem not to have received any support, open support at the meeting for raising an issue that you regarded as very important for the NEC and that it doesn't look like for quite some time anything was done to go back to that issue and say something needs to be done, so I want to ask this question, was there something then, is there still something now within the NEC that would have held people back from standing up and dealing with an issue that was legitimately raised or that was important for the organisation, was there a problem with people standing up for what is right or what is the – why couldn't you get some support, openly for what must have been of concern I would imagine to a number of other people?

MR FIKILE APRIL MBALULA: Well without saying something you know Deputy Chief
20 Justice I think NEC majority of people are cabinet ministers, and deputy cabinet ministers and I think it would have been difficult for our comrades to just stand up like that and raise issues, some of them would have been accused of this and that, so in relation to the Guptas so it would be difficult I can only assume that is the only thing.

I didn't understand why 80 of us could not stand up and give direction and deal with the issue at that time, if we saw that there was a problem or even ourselves

establish our own Commission to probe the issues. Well I think at that time things did not happen, but later on I think when I came into the National Executive Committee, especially going to Nasrec and so on comrades started to confront issues in the National Executive Committee and of course we were divided on the inside, in relation to – but it was merely about divisions of leadership and I think that's when we started to see people vocal and so on in the NEC, but to my recollection even then in that being vocal there's never been an issue that this and that in relation to the President himself, that has been confronted directly with him in the meeting.

Of course we were discussing the Guptas and the issues of closing of banks
10 and all of that, other comrades had a different view about it, and they were vocal on those particular issues. There I recall that towards Nasrec these voices came up in the National Executive Committee.

CHAIRPERSON: Yes, yes, yes. No thank you, maybe we will come back to some of the issues but the clarifications you have given are quite important. Ms Gcabashe we still have about seven minutes before the tea break I don't know if you want to take it from there?

ADV LEAH GCABASHE SC: Chairman I thought you had completed all the questioning of Mr Mbalula. Mr Mbalula just a couple of side issues I will raise, I will try not to go back to the issues that the Chairman has raised with you. The first if we go
20 back to your paragraph 5 which is a paragraph I am interested in. The first really is you raised this matter at the NEC meeting in August of 2011. You were appointed in October, 30 October your appointment took effect on the 1 November 2010. Can you give an explanation as to and you had had the discussion with Ajay Gupta in October 2010, can you clarify what took so long in raising something that really had disconcerted you completely?

MR FIKILE APRIL MBALULA: I am not good at dates. What took me so long it is because issues of the Gupta's were piling up and were informing our public discourse and there was nothing that we seem to be worried about and so on so like I said I cannot explain that moment when it happened in the National Executive Committee in the political overview of the President. Among others the issues that were skating around and not dealing with was the issue of what obtained at that time which was in the public discourse the Gupta family and one felt at that moment that it is time that we confront this particular issue and that is what I did.

CHAIRPERSON: Is it possible that over the period as things were happening your
10 concern about the issue that Mr Ajay Gupta had – the fact that he had called you and told you what he told you that your concern grew stronger and stronger and hence ultimately the emotions that you could not hold back at the NEC meeting that went with how strongly you had started feeling

MR FIKILE APRIL MBALULA: Yes I never had a relationship with the Gupta's and as I have mentioned they are involved in sport and I did not co-operate with them largely in terms of their interest in sports because of this background I had. And informally we would discuss and ventilate about it this thing happened and so on. Obviously at some point it just came up that one had to raise it and Chief Justice I cannot – Deputy Chief Justice I cannot explain

20 **CHAIRPERSON:** Yes.

MR FIKILE APRIL MBALULA: How I felt because it is something that was boiling.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: And from my experience to where I was

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: As a Minister of Sport to think that these things get to

be said and we do not confront them.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: It just happened that I raised the issue.

CHAIRPERSON: Ja.

MR FIKILE APRIL MBALULA: In the National Executive – it was unplanned completely. It is not something that I sat down that today [indistinct] I am going to raise this thing in the meeting.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: It just happened and I raised the particular matter in
10 the National Executive Committee

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: But informally there will be lots of discussions amongst my peers and we had taken a stand politically. I mean youth league peers and youth league leaders at that time will discuss this issue and so on and say but this Gupta thing is a problem and one felt that the best platform was in the National Executive Committee.

ADV LEAH GCABASHE SC: Yes.

CHAIRPERSON: But you used the word boiling and that seemed to – that is what I was thinking that maybe over the time this thing was building up.

20 **MR FIKILE APRIL MBALULA**: Yes it was.

CHAIRPERSON: Until the boiling point was reached.

MR FIKILE APRIL MBALULA: Yes. I cannot explain exactly explain to the Advocate.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Exactly why it took so long.

CHAIRPERSON: Yes, yes, yes,

MR FIKILE APRIL MBALULA: It is something that was there – we were grappling with and so on.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: The moment and the time why it took so long for me to raise it.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: I cannot really give you a full account.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Of why I do not know but it just happened and I was
10 happy that finally I raised it.

CHAIRPERSON: Yes thank you.

ADV LEAH GCABASHE SC: I was going to follow up my question with the following question. Was there a trigger event that got you discussing this matter in August of 2011 given that ten months had passed? Was there a trigger event where you said enough is enough?

MR FIKILE APRIL MBALULA: There was a cricket event in Durban.

ADV LEAH GCABASHE SC: No, no trigger – oh. Sorry you may actually mean a cricket event I am asking for a trigger event but continue yes.

MR FIKILE APRIL MBALULA: What were you saying about the cricket?

20 **ADV LEAH GCABASHE SC:** Trigger. Cricket and trigger are rather close.

CHAIRPERSON: Mr Mbalula she is using a military term.

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: And you are using a sport term.

ADV LEAH GCABASHE SC: No I am not a sporting person Mr Mbalula I was asking if there was a trigger event. Was there something that sparked off your discussion or the

raising of this issue in August 2011 – I am still on that ten month break. Was there something specific that triggered the discussion of this matter on – in August of 2011?

MR FIKILE APRIL MBALULA: Well in relation to me raising the issue in the National Executive Committee I raised it because we were discussing the political overview and I felt that look here is the big elephant in the room and nobody says anything about it. And in our own informal discussions we as comrades we were reflecting on the matter and quite raising a displeasure about this behaviour it was a rumour mongering gossip so to say. And then the press the matter was all over and hear some of the things have actually happened and they were not doing anything about it as the National Executive
10 Committee so the National Executive Committee was the appropriate structure to deal with the matter and raise the issue finally there in the NEC meeting.

ADV LEAH GCABASHE SC: So your short answer is there was no trigger event?

MR FIKILE APRIL MBALULA: No there was no trigger event. I mean Gupta's have their own events that they organised of sport and so on but I do not recall of anything that triggered me finally to say let there be a stop to this. Except the fact that we were not in really, really good terms with them.

ADV LEAH GCABASHE SC: Chairman I notice that is a quarter past maybe we should take the tea adjournment?

CHAIRPERSON: Yes let us take the tea adjournment and return at half past eleven.

20 We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Will the police officers present here please make sure that people who have not been authorised to film the proceedings do not do so. The only cameras I have allowed are those that have been here all the time. I have not allowed any other

person to film the proceedings. I just saw somebody a minute ago who has left the venue. Ms Gcabashe let us proceed.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Mbalula I would like to take you to the discussion you had with President Zuma when you expressed your unhappiness about the environment in the Ministry of Police. When you spoke to the President he heard what you had to say and talked about a solution to that. The impression I have from that discussion is that you are quite comfortable with approaching the President with any intractable problem that you faced and maybe I should point you to page 143 of the bundle just to – so you know what I am talking
10 about. Page 143 that is the Public Protector’s interview with you and it is the part where you were talking about leaving or being redeployed from the Ministry of Police. You were Deputy Minister at the time. So what I take from that discussion is that you had a certain comfort level with approaching the President if you had an intractable problem that you – you could not resolve yourself. Now here we are with Mr Ajay Gupta telling you before the President does so that you are going to be appointed Minister of Sport and Recreation and this bothered you quite fundamentally I accept that. Why did you not approach the President in the same manner that you had when you had the difficulties you shared with him while you were Deputy Minister of Police?

MR FIKILE APRIL MBALULA: I did.

20 **ADV LEAH GCABASHE SC:** At what point did you do that?

MR FIKILE APRIL MBALULA: At the level of the National Executive Committee.

ADV LEAH GCABASHE SC: I accept that you shared that at that forum but when you spoke to the President while you were Deputy Minister of Police that issue you were quite comfortable with raising that issue with him in private. So my question is simply was this not the type of problem that you thought not only you but the organisation

faced that you ought to ask for an appointment in the same manner you had asked for an appointment to deal with what you thought should just be a redeployment out of the Ministry of Police?

MR FIKILE APRIL MBALULA: Maybe you are right I should have followed that route which probably I did not but I think the important route that I followed politically for me because I understood the Gupta issue to be a political problem was to place it before the National Executive Committee. Maybe I should have followed that route of going to the President I do not discount that but I did not follow that.

ADV LEAH GCABASHE SC: Prior to going to the NEC meeting of August 2011 did
10 you discuss this problem with any of your colleagues and comrades within the organisation?

MR FIKILE APRIL MBALULA: We had a discussion that did not only happen before that meeting over time about the Gupta issue. And it happened when Ajay Gupta called me it happened whilst I was in the presence of a fellow comrade of mine when that call actually happened. So it just reinforced this thing that indeed these things probably do happen and all of that that somebody can come and congratulate you about a Ministry that you are going to but in my discussions with the President the issue of the Ministry direction I am going to did not arise. I was just told to stay put. But here is an individual who says this and then after some time – remember when somebody
20 congratulates you that time I was not appointed. I think I do not know after that call how many days passed before the actual appointment took place.

ADV LEAH GCABASHE SC: I am still...

CHAIRPERSON: I am sorry Ms Gcabashe before you proceed. In the light of Mr Gupta's version, Mr Ajay Gupta's version of the content of the telephone conversation between the two of you it may be important that you consider making available to the

legal team the name of the comrade who was with you when that call came because he would have – you would have told him or her what you were told on the phone and he might or she might be – she might feel free to say to the commission after that call Mr Mbalula the report by Mr Mbalula to me was that this is what he was told. Okay thank you. You may proceed Ms Gcabashe.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Mbalula I am still focussing on that ten month period – I am not as quick as the Chairman at asking various questions. I still have a bit of a concern around what steps were taken by you because you were the fiery you as you say it is my word but the fiery you in those days. What steps were
10 taken by you to stem the tide of the Gupta family influence on the ANC because it bothered you I have accepted that. So we have dealt with your not speaking to the President directly. We have dealt with you not raising this matter within any of the other structures other than in August of 2011 raising this matter at the NEC meeting. You have however also said to the Chairman earlier during your testimony that you had heard of the Gupta's appointing people – people asking for favours from the Gupta's etcetera, etcetera. So if we move beyond August 2011 where next did you take an important step, a significant step to raise this issue again? So the first time you waited ten months. So we are at August 2011 can you recall when next you raised this issue?

MR FIKILE APRIL MBALULA: I think we have had many meetings but this most
20 significant and that everybody can remember I was the first person to raise the issue and for the first time in the meeting of the NEC. And then from there subsequent to that like I said after the conference there was a absence of me in the NEC but later on I was co-opted and there were discussions about the Gupta family and all of that and the Gupta issues that were – keep cropping up from time to time in the National Executive Committee and I would not recall in those discussions what was my actual input but

there were a lot of discussions like I said that now there were people who found their voices and who were really, really saying no this must come to end. So as you would see subsequent statement of the ANC NEC after that there was sharpness with regard to condemning the landing at Waterkloof and condemning parasitic behaviour of certain business people that include the Gupta's and including the question of stopping them from name dropping, the name of the President. So you will see subsequent to that there were many voices that came up and as and when the information came up from the media and so on about the Gupta family those issues find their way back to the ANC NEC.

10 **ADV LEAH GCABASHE SC:** Now I take it that you do not settle the agenda of the ANC NEC you do not place matters on that agenda?

MR FIKILE APRIL MBALULA: No I do not place matters on the – we are not – we are allowed to adopt and raise issues in the agenda before the opening of the meeting but it is the Secretary General and the officials who decide on the agenda of the meeting and the standard items is political overview, is the Secretary General's report and except administrative issues on the agenda opening, welcome, roll call and apologies and so on.

ADV LEAH GCABASHE SC: Was there no opportunity for you to influence the Secretary General to place this matter back on the agenda after the August 2011
20 meeting? Because the President did not respond that is your evidence

MR FIKILE APRIL MBALULA: We had a fallout after that meeting in the ANC around my candidature for the Mangaung conference of the ANC.

ADV LEAH GCABASHE SC: I am sorry we is always a little bit of a difficulty for me.

MR FIKILE APRIL MBALULA: Me, me.

ADV LEAH GCABASHE SC: You ...

MR FIKILE APRIL MBALULA: Because I was standing in that conference that took place in Mangaung so I suppose in between that there was a lot of camaraderie between those who would have stood with me or whatever towards that particular conference.

CHAIRPERSON: You were a candidate for the position of Secretary General

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: At the Manguang conference.

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: Okay thank you.

10 **ADV LEAH GCABASHE SC:** Maybe we should leave that topic and move onto a slightly different aspect of – I am still on paragraph 5 really of your statement. So you say that Mr Ajay Gupta called you. I know his version is different. Had you taken calls from Mr Ajay Gupta before this particular call?

MR FIKILE APRIL MBALULA: I would not recall.

ADV LEAH GCABASHE SC: Why would you speak to Mr Ajay Gupta at all? Did you have a relationship at all with him?

MR FIKILE APRIL MBALULA: I did not have a relationship with him at all so – at all.

ADV LEAH GCABASHE SC: That is what I have also understood what you saying now from reading the Public Protector's report that you were not particularly friendly
20 with the Gupta's I mean you were not a close associate just from reading the Public Protector's report that is what I have understood of the relationship which is why it was rather strange for me to find that you would take a call from somebody who really meant nothing to you?

MR FIKILE APRIL MBALULA: Calls you take even from your nemesis or anybody who calls you up until you understand what is the subject matter. Even if Afriforum can call

me today I will pick a call.

ADV LEAH GCABASHE SC: Did he introduce himself when he called you?

MR FIKILE APRIL MBALULA: I would not have known if he did not, he did introduce himself as Ajay Gupta.

ADV LEAH GCABASHE SC: Yes and...

CHAIRPERSON: So this was the first call you ever – this was the first telephone conversation you had with him?

MR FIKILE APRIL MBALULA: I would not...

CHAIRPERSON: As far as you recall

10 **MR FIKILE APRIL MBALULA:** I would not recall Deputy Chief Justice this was important because he was talking about

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: An appointment.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: Yes. Okay.

ADV LEAH GCABASHE SC: So there were not any pleasantries he simply said to you this is Ajay Gupta you are about to be appointed as Minister of Sport and Recreation?

MR FIKILE APRIL MBALULA: Congratulations.

20 **ADV LEAH GCABASHE SC:** Yes.

MR FIKILE APRIL MBALULA: Huh okay. Ja.

CHAIRPERSON: Was he calling you on your cell phone?

MR FIKILE APRIL MBALULA: On my cell phone.

CHAIRPERSON: And you do not know how he got it or is it public – is it public knowledge?

MR FIKILE APRIL MBALULA: I think it is easy for a person like him to get phones of people like me. Yes.

CHAIRPERSON: Why do you say like him in particular?

MR FIKILE APRIL MBALULA: Like me to get a phone – if you have got people in the ANC that knows ...

CHAIRPERSON: Ja okay.

MR FIKILE APRIL MBALULA: He would probably would have asked somebody can you give me Mbalula's ...

CHAIRPERSON: Okay yes.I

10 **MR FIKILE APRIL MBALULA:** But I did not ask where did you get my number from whatever that is the case.

CHAIRPERSON: Okay.

MR FIKILE APRIL MBALULA: Like I say I do not recall whether we once had a conversation before.

CHAIRPERSON: Yes okay.

MR FIKILE APRIL MBALULA: We are not friends.

CHAIRPERSON: Okay thank you.

20 **ADV LEAH GCABASHE SC:** Now in paragraph 5.2 you express 1. Your excitement naturally so at being appointed to a full ministerial position but you also then say that you were angered and perturbed that the news of your appointment had been leaked to Ajay Gupta. I want to focus on the word leaked. I know you say more I am just doing it in little bits. What gave you the impression that the information might have been leaked as opposed to being communicated to him quite intentionally?

MR FIKILE APRIL MBALULA: Well sitting down and after effects post factual everything happened exactly like that that then to me came to one conclusion that my

appointment one way or the other he could have known about it or how I do not know but either leaked or in whatever manner but he was accurate in congratulating me for a right position.

ADV LEAH GCABASHE SC: At this point now I know we are talking 2010 had there been no rumours of the influence of the Gupta family in particular in having particular persons nominated or appointed to Cabinet?

MR FIKILE APRIL MBALULA: Come again?

ADV LEAH GCABASHE SC: 2010

MR FIKILE APRIL MBALULA: Yes.

10 **ADV LEAH GCABASHE SC:** Had there been no rumours of the influence of the Gupta's in having particular people appointed to cabinet?

MR FIKILE APRIL MBALULA: There were.

ADV LEAH GCABASHE SC: Back to my question on leaks. So if you knew that out in the street people were saying the Gupta's are able to have you appointed to a cabinet position what you made you think this had been a leak?

MR FIKILE APRIL MBALULA: It could have been a leak because he knew about information that normally such information will not be divulged to anybody up until the last day when people are appointed. So if somebody who is not a cabinet minister who does not belong to the ANC top 6 and all of that has got such crucial information how
20 would he have obtained that information if it was not leaked or he probably could have eavesdrop on a discussion somewhere I do not know.

ADV LEAH GCABASHE SC: You did not...

CHAIRPERSON: So when you talk about a leak in this context you are not talking about media leaks?

MR FIKILE APRIL MBALULA: No.

CHAIRPERSON: You are talking about him getting the information from somebody in particular in government?

MR FIKILE APRIL MBALULA: Yes, yes, yes Chair.

CHAIRPERSON: Probably well maybe not necessarily but...

MR FIKILE APRIL MBALULA: Yes Chief Justice...

CHAIRPERSON: Ja. Okay, alright.

MR FIKILE APRIL MBALULA: Yes Chief Justice, Deputy Chief Justice yes.

CHAIRPERSON: You might wish to even clarify what I have just said yes.

ADV LEAH GCABASHE SC: Chief Justice now I am calling you Chief Justice.

10 **Chairman.** Mr Mbalula did it cross your mind at all that it might have been President Zuma who had discussed this matter with Mr Ajay Gupta? That is a question.

MR FIKILE APRIL MBALULA: Well because there were rumours at that particular time and that suggested there could be such discussion it could be President Zuma or any other person who might have been privy to such information. But appointment of ministers and the information about the appointment and the person who contact ministers it is the President.

ADV LEAH GCABASHE SC: Ja.

MR FIKILE APRIL MBALULA: If it is not himself directly he does it through his administrative staff. So in this particular instance I do not want to speculate.

20 **ADV LEAH GCABASHE SC:** Of course in the Public Protector's report you say that when the President called you to tell you about your appointment as Minister of Sport and Recreation he was with the SG, with the Secretary General?

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Is it possible that the leak might have come from the Secretary General's office?

MR FIKILE APRIL MBALULA: Like I said I do not...

CHAIRPERSON: Well I am not sure Ms Gcabashe how much Mr Mbalula could – can assist as to where it could have come from because he obviously does not have personal knowledge of where it came from. I wonder whether you can go beyond saying who else could the President normally share that information with seeing that he said that the SG of the party is – was with the President when he appointed him and it may well be – I think we have heard from other witnesses before who have said I think Mr Manuel was one of them, Mr Gordhan and Mr Nene may have been others who told us about the presence of the SG of the party when the President breaks the news to
10 people who are going to be appointed as ministers. So I am just mentioning that I am not sure how helpful it could be. Just apply your mind to it.

ADV LEAH GCABASHE: I have Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE: Which is why I asked the question and I ask the question in the context of term of reference 1.3 because it speaks of not only the Gupta family influencing such appointments but any other unauthorised person. So I think it is my duty to explore with you whether you know of any other unauthorised person who might have leaked this information because the President would normally play his cards very close to his chest.

20 **MR FIKILE MBALULA:** Yes.

ADV LEAH GCABASHE: So I am really exploring the second element of any other unauthorised person and trying to get you to reflect back really nine years back to 2010 and think about what other information you might have known that you need to dig out of your memory base, but of course if you cannot assist as the Chairman has indicated we cannot take that matter any further.

MR FIKILE MBALULA: I do not what to say. I cannot assist. I cannot speculate.

CHAIRPERSON: Yes, I think let us put the question this way. You have been Minister in different portfolios over the years under different Presidents. So you have been told a number of times you are being appointed Minister of this or Deputy Minister of that. You are a senior leader in the governing party. You are a Member of the NEC. Do you know who except the President may also have knowledge of who is going to be appointed Minister before that person is officially informed?

MR FIKILE MBALULA: At a political level it will be the Secretary General.

CHAIRPERSON: Yes.

- 10 **MR FIKILE MBALULA:** Of the ANC of which on my appointment as Minister of Sports and Recreation he was present.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: And then at an administrative level it will be the Chief of Staff of the Presidency.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Which then was Lakela.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Before she was promoted as the COO.

CHAIRPERSON: Yes.

- 20 **MR FIKILE MBALULA:** Of the Presidency.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: So that will be the person.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: I have known since I was appointed.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: Will call me.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Or the President directly.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Yes.

CHAIRPERSON: So those are the people who as far as you know would have or could have information, knowledge before the candidate or the person is informed?

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Yes.

10 **MR FIKILE MBALULA:** Deputy Chief Justice.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Okay, thank you.

ADV LEAH GCABASHE: The last element of the same question. I am still on 5.2.

You hear speak about persons, well what you are really referring to is the impression you got that there were people who were improperly privy to knowing the appointment of other persons in Cabinet posts before such appointments had been formally announced even to those persons themselves. So then I underline the words improperly privy to and it is again that unauthorised third party. I am trying to
20 understand where what you have put into 5.2 might find a basis. What brought these thoughts to your mind?

MR FIKILE MBALULA: It is the fact that a person like Ajay Gupta can have information about exactly where I am going without him speculating and it turns out like that. It means you have got a third party which is privy to information that is only meant for the selected few which in this instance will be the persons I have mentioned.

ADV LEAH GCABASHE: I will move on Mr Mbalula and the next paragraph I have an interest in is 5.5 and there you speak of the great honour that you felt you had been privileged to be conferred with by being appointed Minister, but you also then go on to say you were concerned that the circumstances under which you got to know of this appointment and I will quote you here:

“Might be tainted by circumstances that were beyond your control.”

What did you have in mind about this being tainted? If you could help me understand that.

- 10 **MR FIKILE MBALULA:** Tainted beyond my control because here am I. Certain individuals have got information about my appointment which is supposed to be private confidential information and then in that particular regard it is tainted because society and everybody look at me in a different way that I am not the original appointed person with capabilities but simply because somebody would have recommended me. So it raises all sorts of issues and in that sense it taints the whole process.

ADV LEAH GCABASHE: But there was no recommendation that you were told about as I understand your evidence.

MR FIKILE MBALULA: Sorry.

- 20 **ADV LEAH GCABASHE:** There was no recommendation that you were told about as I understand your evidence. This was just a man who decided to communicate a fact to you. He did not, and this is what I understand of your evidence, he did not say to you I recommended your name to the President. That is not what you have set out in your statement.

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: So the recommendation issue or the use of the word

recommendation really has no place in what happened to you or what you got to know.

You really did not know who had recommended you. Is that correct?

MR FIKILE MBALULA: Correct. Whether [intervenes].

ADV LEAH GCABASHE: Sorry Mr Mbalula only because I need to have you say it into the [intervenes].

MR FIKILE MBALULA: Whether I was recommended or not recommended or it was the President's view that I must go to sports what I knew is that there was going to be a reshuffle and that I was told to stay put. Where I will be going and whether in terms of that reshuffle I will go to police or where I would not know. I did not know. The

10 President did not share that with me.

ADV LEAH GCABASHE: So just to summarise your evidence so far, essentially it is Mr Ajay Gupta and not Mr Atul Gupta who made the call and that is where you and Mr Manuel differ. That is one of the areas where you differ. Is that correct?

MR FIKILE MBALULA: Correct.

ADV LEAH GCABASHE: Then secondly Mr Ajay Gupta told you about the specific portfolio you were going to occupy. Is that correct?

MR FIKILE MBALULA: Correct.

ADV LEAH GCABASHE: So on that score you and Mr Manuel and even retired General Nyanda.

20 **MR FIKILE MBALULA:** Nyanda.

ADV LEAH GCABASHE: Make common cause. That one is not a problem. Where there is a dispute is between you and Mr Ajay Gupta in respect of the format of the communication. You say you got a call. Mr Ajay Gupta says you went to Sahara Computers and that is where at the office.

MR FIKILE MBALULA: Can I clarify that issue of Sahara?

ADV LEAH GCABASHE: Please.

MR FIKILE MBALULA: *Ja.* Sahara Computers it is a *post facto*. It had happened. The thing was leaked to the Sunday Times. I met Ajay Gupta where he was explaining himself and saying that my version of what I said in the NEC it is not correct.

ADV LEAH GCABASHE: I have no difficulty with what you have just said.

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: Because that is your version.

MR FIKILE MBALULA: *Ja.*

ADV LEAH GCABASHE: But if you go to page 57 of the papers Mr Ajay Gupta has set
10 out his version and at page 57 paragraph 7 of Mr Ajay Gupta's statement he says:

“I did indeed meet with and had a conversation with Mr Mbalula, but it was not at my house in Saxonwold and it did not involve my brother Atul. In fact it took place at my office at Sahara Computers when Mr Mbalula paid me a visit. Having picked up from the newspapers that he was highly likely to be appointed a full Minister I jokingly congratulated him on his apparently imminent appointment as a full Minister. I did not know this as a fact. I also did not know which ministry he might be appointed to.”

20 And then if I can just complete this thought. At paragraph 9 he says:

“I do not know what Mr Mbalula may have said at the National Executive Committee Meeting, but it would have been wrong and inaccurate of him to have said that I had congratulated him on becoming or being about to become the Minister of Sports and Recreation.”

So all I am exploring with you is what your version is which I have understood and what Ajay Gupta put in his statement, you are with me? I am not saying you are wrong. I am just saying to you Mr Ajay Gupta has given us a completely different version. He says you went to Sahara Computers. He says he never told you what the portfolio was going to be. That is the essence of the dispute between you.

MR FIKILE MBALULA: I met Ajay Gupta at Sahara Computers where he was lamenting my statement in the NEC. I met him at the Wanderers where he was lamenting what I said and then I met him at his house in Saxonwold on a different subject, but arising from this particular issue discussing the issue of the Press
10 Ombudsman which ruled in my favour against them when their newspaper was running a series of stories to attack me and they even suggested that I paid for a certain Julius Malema at the Olympics with the state coffers which was, they were rubbishing my name because of what I did. That I paid for Julius to go to the Olympics and so on and basically campaigning hard against me and among others that is what we discussed at his house and then on this particular issue.

ADV LEAH GCABASHE: No. Again just help me understand, at his house or at Sahara Computers.

MR FIKILE MBALULA: At his house.

ADV LEAH GCABASHE: At his house.

20 **MR FIKILE MBALULA:** At this house that is what we discussed. He offered me some curry there before we could talk. I think that is their culture. Before you talk to them you eat curry. So this thing you see in the public that people eat curry there. It is not a joke. It is true. You eat curry there and then he gave me a good lecture about how most of the things I was eating there are coming from their farm in Midrand. That everything they eat is not from the shops. It is produced from their farm. I did not even

know that they have got a farm. So that is what we discussed at his house.

ADV LEAH GCABASHE: So.

MR FIKILE MBALULA: Ajay Gupta.

ADV LEAH GCABASHE: You had a vegetarian curry on that day?

MR FIKILE MBALULA: Vegetarian curry I do not like, but I had to eat curry. I ate it, but that curry never finished me. I stood firm.

CHAIRPERSON: Well it is, I thought it may have been interesting that that you are saying you ate curry, because there is another witness who gave evidence here and said she had been offered curry, but if you say you were offered vegetarian curry. Then
10 it means it is different from what according to her she was offered because I think she said mutton curry or lamb curry and in his affidavit Mr Ajay Gupta said because of their religion they could never have had I think mutton curry or was it beef curry, but so you say what you were offered was a vegetarian curry?

MR FIKILE MBALULA: Deputy Chief Justice I would not recall whether it was vegetarian or whatever, but it was curry.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: And then it was explained to me that it would be vegetarian because he said everything that we eat there.

CHAIRPERSON: Yes.

20 **MR FIKILE MBALULA:** Is produced from their farm.

CHAIRPERSON: Okay.

MR FIKILE MBALULA: Ja.

CHAIRPERSON: Okay, thank you.

MR FIKILE MBALULA: So that is my recollection at the Gupta compound.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE:

MR FIKILE MBALULA: In Saxonwold.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: I went there to meet Mr Ajay Gupta.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: So as I understand your evidence that meeting took place, you call it *post facto*, after the August 2011 meeting/

MR FIKILE MBALULA: Yes.

10 **ADV LEAH GCABASHE:** What Mr Ajay Gupta refers to in his statement is a meeting that would have taken place in October 2010.

MR FIKILE MBALULA: Yes that is what I think from; that is what he says I think, *ja.*

ADV LEAH GCABASHE: But we leave it at that because you just disagree on the facts?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: *Ja.*

MR FIKILE MBALULA: *Ja.*

20 **CHAIRPERSON:** So your version is that the conversation you had with Mr Ajay Gupta in which he told you that you were going to be Minister of Sports was a telephone conversation?

MR FIKILE MBALULA: Yes.

CHAIRPERSON: It was not a meeting?

MR FIKILE MBALULA: Huh-uh.

CHAIRPERSON: And you say that subsequent to your statement in the NEC when you raised this issue you did have a meeting with him or the Gupta family, Gupta people at

their offices and you did have a meeting with Mr Ajay Gupta at the Gupta residence at Saxonwold to discuss different issues that may or may not have been connected with your statement. That is what you are saying/

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Deputy Chief Justice, yes.

CHAIRPERSON: Okay. The one thing that I want to ask in relation to, I mean you have said that at a certain stage you met with Mr Ajay Gupta because he was lamenting what I think he understood you to have said at the NEC. Is that correct?

10 **MR FIKILE MBALULA:** Correct.

CHAIRPERSON: Yes. What was his understanding of what you had said in the NEC?

MR FIKILE MBALULA: He said.

CHAIRPERSON: That he had a problem with.

MR FIKILE MBALULA: He had a problem with me saying that I was informed by them about becoming Minister of Sports and then things turned out to be exactly like that and then he was lamenting explaining himself to me no, no that is not exactly what, it is because of this and that. He said a lot of things were not tying up, but trying to you know prove that, he did not deny anything. It is just to say but, probably he was trying to say to me you should not have said that, you know. Now when you sit with a person
20 in a room and he says all of these things you end up not knowing what to say basically to him.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: And I said to him at some point in these meetings that I cannot discuss with you matters that arose in the ANC NEC that were leaked to the press, *ja*.

CHAIRPERSON: So there is no doubt in your mind that he understood correctly what

you had said at the NEC?

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Namely that he had called you and told you that you were going to be appointed Minister of Sports?

MR FIKILE MBALULA: Yes.

CHAIRPERSON: But are you saying he was not denying to you that he did; that is what he said to you?

MR FIKILE MBALULA: No, he did not deny.

CHAIRPERSON: *Ja.*

10 **MR FIKILE MBALULA:** That conversation we had.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: *Ja.*

CHAIRPERSON: But he had a lot of things to say around it?

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: He had a lot of things to say around it, because it was a big issue.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: It was a big issue, yes.

20 **CHAIRPERSON:** Yes. Did he say anything along the lines that you know whatever I said to you it was because I read in the media that you might be or will become Minister and that is where I was basing my information from?

MR FIKILE MBALULA: He might have said that.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: He might have said that.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Deputy Chief Justice.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: He might have said that.

CHAIRPERSON: Yes, but when he called you he did not speak like somebody who had read this in the media?

MR FIKILE MBALULA: Yes. I would not make that up.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Yes, because I said it in the meeting.

10 **CHAIRPERSON:** Yes.

MR FIKILE MBALULA: And I would not make that story.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: That I was visited upon by a Gupta which informed me.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: About, I would not have made that up.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Because we are not friends. We do not dine together. So why would [indistinct] Ajay Gupta.

CHAIRPERSON: Hm.

20 **MR FIKILE MBALULA:** And I have heard it correctly.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: Unlike many witnesses here.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Who do not know the difference.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Atul, Rajesh.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: And all of that, I heard it because we even went further to discuss.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: So he introduced himself.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Ajay Gupta.

CHAIRPERSON: Yes.

10 **MR FIKILE MBALULA:** Congratulations.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Yes.

CHAIRPERSON: *Ja.*

MR FIKILE MBALULA: *Ja.*

CHAIRPERSON: And I would imagine that if in that telephone conversation the conversation was on the, he had spoken on the basis that he was just talking about what everybody could see in the media. Maybe you might not have taken it as seriously as you did.

20 **MR FIKILE MBALULA:** I was taken aback by what he said because in the rumours that were doing rounds I was not aware in the media that there was a speculation that I will be Minister of Sports. I was not aware of that. So when I went to the Public Protector the Public Protector told me that Ajay Gupta this is what he says and then I said no I am not aware of those particular rumours that I will be Minister of Sports. Yes, there were speculations about a reshuffle, but as to where I would go even. No, I was not aware of that and that somebody could base his congratulatory note based on

speculations because it could be said in the media that you are going to be Minister of Finance and it turns out you are not. Media can speculate, but the person who takes up a call to congratulate you is a person who is well informed.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: And at that time this thing that they are well informed of such decisions.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Was rife.

CHAIRPERSON: Hm.

10 **MR FIKILE MBALULA:** But Deputy Chief Justice when things like that start I was the first.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: To raise this issue.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: You give your people a benefit of doubt.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Even when I say people kept quiet in the NEC.

CHAIRPERSON: Hm.

20 **MR FIKILE MBALULA:** It could have happened that they wanted to give their own colleague and their President a benefit of doubt.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: These things were coming out.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: And then right early on I raised the issue.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: I said the Gupta issue it did not even end with me being, I made a political statement.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: This thing will put us in big trouble.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Because we are trying to say that there are people outside this body of the NEC.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Who have got privileges that not even a Branch Member of the
10 ANC has got.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: And we respect that decorum.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: That positions are not meant for us.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: We get called and been given position and responsibilities.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: But here is a random somebody who has got big information.

CHAIRPERSON: Hm.

20 **MR FIKILE MBALULA:** About you as a person. It happened to me.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: It happened to me and I raised it in the National #Executive Committee.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Of the African National Congress not in the streets.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Not anywhere else.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Even though it took time, but I raised it there the way it unfolded. I said I am an example of this.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: This is what happened to me.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: And it is Ajay Gupta who raised that issue to me.

10 **CHAIRPERSON:** Hm.

MR FIKILE MBALULA: Yes.

CHAIRPERSON: You said something a little earlier which I understood to be along the lines in effect that you would not have seen any reason why anybody would have called, why Mr Ajay Gupta would have called you on the basis of what was just being speculated in the media. Did I understand you correctly?

MR FIKILE MBALULA: Yes Deputy Chief Justice.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Okay, thank you.

20 **ADV LEAH GCABASHE:** But what Mr Ajay Gupta says, I will take you back to page 57. These are the facts he has put out and at paragraph 9 he says:

“I do not know what Mr Mbalula may have said at the National Executive Committee Meeting, but it would have been wrong and inaccurate of him to have said that I had congratulated him on becoming or being about to become the Minister of Sports

and Recreation. The newspapers did not report at that time.

The newspapers carried only a report of the possible elevation of Mr Mbalula to a full ministerial post.”

So what I understand of what Mr Ajay Gupta is saying here is the newspapers did not talk about the portfolio. The newspapers only said you were about to be elevated from being Deputy Minister to a full Cabinet post. You are with me?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: So the version of Mr Ajay Gupta is not that he said you would be made Minister of Sports and Recreation or that he picked that up in the
10 newspapers. He does not say that. He only picked up in the newspapers that you would be made a full Minister nothing more nothing less. So I give you this response in light of the question the Chairman just asked you and your response thereto. You nod. The mic does not pick up the nod. So [intervenes].

MR FIKILE MBALULA: Okay, yes I agree.

ADV LEAH GCABASHE: Just some response.

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: Helps with the transcribing.

MR FIKILE MBALULA: Okay.

CHAIRPERSON: In other words what Counsel is doing is to give you an opportunity.

20 **MR FIKILE MBALULA:** Yes.

CHAIRPERSON: To reflect on whether your recollection that Mr Ajay Gupta said you were going to made Minister of Sports as opposed to saying you are going to be made Minister whether your recollection of that part that he included the portfolio is correct and to be able to say yes it is correct that is what he said or no maybe I am mistaken. Maybe he only said Minister and not Minister of Sports. So she is giving you an

opportunity to just be clear as to exactly what he said.

MR FIKILE MBALULA: Yes. He said Minister of Sports and then I raised in the NEC. I said that Ajay Gupta said to me I will be Minister of Sports and it turns out like that.

ADV LEAH GCABASHE: Thank you. Can I then ask about the number of meetings you had post August 2011? The number of meetings you had with Ajay Gupta. You had a meeting with him, on your version, at Sahara Computers. You had a meeting with him at his house. You had a meeting with him at Wanderers Cricket Ground. At all three meetings you discussed what had happened at the August 2011 ANC NEC Meeting. Have I understood you correctly?

10 **MR FIKILE MBALULA:** The two meetings it is Sahara and the other meeting is at his compound.

ADV LEAH GCABASHE: *Ja.*

MR FIKILE MBALULA: At the cricket he was lamenting because he had gone there to watch cricket. So I had gone there as a Minister. So he kept on lamenting about this and so on. It was not a meeting.

ADV LEAH GCABASHE: But on all three occasions he took issue with what had happened?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: At the ANC NEC Meeting?

20 **MR FIKILE MBALULA:** He took issue with what had happened. His newspapers TNA, The New Age they took issue with me and attacked me and so on and so on and that led for me to take them to the Press Ombudsman and the Press Ombudsman ruled in my favour and them attacking me the way they were doing it was precisely because of my posture towards them and what I said in the meeting of the National Executive Committee about them. There could not be anything other than that.

ADV LEAH GCABASHE: Thank you. I now just want to move onto paragraphs 5.8 and 5.9 of your statement which is the version you set out of General Nyanda. You confirm here that you do not take issue with what retired General Nyanda has had to say?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: About the August 2011 meeting?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: We then move onto paragraph 6 which is the version of Mr Manuel and as I understand your evidence you take issue with the place that is
10 Saxonwold. You say you did not go the Saxonwold compound to hear the news. I can tick that box and then secondly you did not receive the news from Atul Gupta. Is that correct?

MR FIKILE MBALULA: Correct.

ADV LEAH GCABASHE: What you do agree with is that you were told of the specific portfolio. Correct?

MR FIKILE MBALULA: Correct.

ADV LEAH GCABASHE: Then the last point I want to raise here is 6.1.4 where you say that:

20 “Mr Manuel asserted that your appointment as Minister of Sports was suspicious because you did not have requisite skills and experience to be appointed as a Sports Minister.”

Now can I take you to the Commission transcript?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE: Of Mr Manuel’s evidence?

MR FIKILE MBALULA: Yes.

ADV LEAH GCABASHE SC: Where I believe he deals with this issue but you may actually be locating this complaint somewhere else. We've looked at the transcript and we have only been able to find some reference to qualifications or skills that at page 241 – if you could go to page 241 of these papers or are you comfortable with me reading it to you?

MR FIKILE APRIL MBALULA: Yes I'm comfortable.

ADV LEAH GCABASHE SC: What Mr Manual says at line 14 is the following: "So you take somebody who is a committed well active sports person, in his youth, active sports administrator as he grew a bit older and you place him with somebody in that
10 portfolio who has no visible or no experience of participation in sport apart from, as we've seen, flying to a male weber boxing match. You replace a person who has reached into the sporting fraternity because that's what's important about a portfolio like that than somebody who has no evident communication with the fraternity. These are actually important issues and so it's against that backdrop I ask if there are still some outstanding favours to be called in". Is this the portion of the transcript that you were responding to at your paragraph 6.1.4?

MR FIKILE APRIL MBALULA: Yes, yes advocate yes.

ADV LEAH GCABASHE SC: So let's start with the easy part of this because I've also read your evidence to the Public Protectors.

20 **MR FIKILE APRIL MBALULA:** Yes.

ADV LEAH GCABASHE SC: Favours, there were no outstanding favours?

MR FIKILE APRIL MBALULA: No favours.

ADV LEAH GCABASHE SC: And I draw that conclusion from what you've said today and from what I've read in the Public Protectors report.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Your response to the rest of this paragraph is found at paragraph 7.4 of your statement. So it's 7.4.1 and 7.4.2 and I'll simply ask if you stand by what you have said here?

MR FIKILE APRIL MBALULA: 7 point?

ADV LEAH GCABASHE SC: Page 11, 7.4, 7.4.1, 7.4.2.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Again you simply say that Mr Manual should, himself appreciate that prior experience in a post is not a necessary condition for an appointee to be successful.

10 **MR FIKILE APRIL MBALULA:** Yes.

ADV LEAH GCABASHE SC: 2) Mr Manual has for instance praised Mr Pravin Gordhan who had a pharmaceutical qualification but succeeded at SARS. Mr Manual himself had no qualification in finance when he was appointed as Finance Minister.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: That's your full response to that issue.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: But other than that really, when I look at what you have told the Commission today, the only areas of dispute are the ones we've identified it wasn't Atul and it wasn't Saxonwold. Otherwise really, you have amplified and you
20 have made common cause with the essence of what Mr Manual has communicated to the Commissioner.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: I'm happy with that, the last thing, Mr Mbalula that we'll then deal with is the evidence you gave before the Public Protector. Now the evidence leaders who are assisting me have actually counted how many times you said to the

Public Protector that you were not told by Ajay Gupta about your elevation to full Minister, that is to Minister of Sports and Recreation, you were told by the President.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: I won't take you to those paragraphs unless you would like me to do so, because I know that you've reflected on them, having mentioned them to you earlier.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: What's important for the Chairman, is for you to reconcile what you said to the Public Protector. You said to the Public Protector,
10 President Zuma told me, not Ajay Gupta, you said that under oath.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Today you have said Mr Ajay Gupta told me that was my first source of information. So all I want you to do is to reconcile these two versions for the Chairman.

CHAIRPERSON: Okay you have effectively answered what I'm going to ask but I do want to ask it. The transcript of the interview that you had with the Public Protector on the issue that we are dealing with today, relating to what you said at the MEC reflects on certain areas that you said that you were not told by anybody including Mr Ajay Gupta that you're going to be Minister before – Minister of Sport before you were
20 informed by the President but that you were informed by the President, is that correct, is that – is what the transcript reveals what you said at the Public Protector?

MR FIKILE APRIL MBALULA: Thank you Deputy Chief Justice the context to that was Vytjie Mentor story and Mcebisi Jonas, that they were contacted and offered positions. In this particular instance, when it comes to me it was not the issue and the issue with the Public Protector was not what I said necessarily in the meeting of the National

Executive Committee was around the appointment of the Gupta's and whether or not the appointment was done by Ajay Gupta or whoever or offered me a position which I explained that I was not appointed or contacted by the Gupta's. I was appointed and contacted by the President which is a fact but over and above that if that may arise in terms of inconsistencies the affidavit as presented here today relates to the meeting of the National Executive Committee arising from the evidence of Mr Trevor Manuel and retired General Sipiwe Nyanda which I explained myself very clearly in terms of what transpired in that particular meeting. So in terms of the Public Protector I explained in terms of appointment the processes and all of that. I explained also these meetings

10 that I had with the Gupta's in particular Ajay Gupta in terms of that particular transcript.

CHAIRPERSON: I think it will be important that we go to the relevant transcript. You see it is important that we deal with this because Mr Ajay Gupta has said, in his affidavit it's not true the he told you that you were going to be Minister of Sport and Recreation. If, therefore there may be another forum where it could be said your evidence in regard to whether you were told by him or not told that you were going to be Minister of Sports and Recreation, if there is another forum where, either there is doubt that you said that was your evidence or where it's clear that you may have said something else, it's important that we deal with it and it's important for you to also deal with it because it will be legitimate for them to say, but Chairperson how can you believe this witness when

20 he say, I told him that he was going to be Minister of Sport because before the Public Protector the transcript shows something different, so we have to deal with it, you understand that?

ADV LEAH GCABASHE SC: Yes I understand that Deputy Chief Justice.

CHAIRPERSON: Yes I think we must go to the transcript, we might not need to go to all of the areas, but I think we must go there, do you want to take it from there?

ADV LEAH GCABASHE SC: The first page, Chairman, is page 143 of the paginated papers. Mr Mbaluala, here your response to the Public Protector is as follows, first and foremost – well the paragraph starts,

“no it’s fine, first and foremost I would like to clarify the fact that I was not appointed nor contacted by the Gupta’s about my appointment as a Minister. I was told by President Jacob Zuma that I’m going to be a Minister and we had a conversation prior to that with regard to the altercation we had in the Ministry of Police and then he said to me that I’m going to be moved and then, that’s when I knew, and then I was called by Lakela Kaunda to the presidential house and I found the President and indistinct there and they informed me that I’m Minister of Sports and Recreation as per our earlier discussions. So none of the people you have talked about ever informed about the position of Minister of Sport and Recreation”.

That’s the first reference Mr Mbalula.

CHAIRPERSON: Yes maybe before you go to the next one, let’s give Mr Mbalula a chance if he wants to say anything.

MR FIKILE APRIL MBALULA: Yes Deputy Chief Justice in terms of this context, like I’ve explained, the issue that the Public Protector was probing was in relation being contacted or offered the position by the Gupta’s and that was my reaction to that specific point, not in terms of what I said or in the National Executive Committee meeting as it is what brought me in terms of this particular evidence today. That is the context of what I was dealing with at the level of the Public Protector, to explain that it is the President who actually appointed me as Minister of Sports and I was contacted by Lakela Kaunda I was not contacted by the Gupta’s. So inconsistency that arise from the point of view that prior to that I was called to be congratulated is not raised in this

particular instance.

CHAIRPERSON: When you say at page 143, first and foremost I would like to clarify that I was not appointed – let's leave out appointed, nor contacted by the Gupta's about my appointment as a Minister. As you sit here today is that statement correct?

ADV LEAH GCABASHE SC: Deputy Chief Justice, that statement will be correct in the context of what I've explained that when the question arose from the Public Protector it did not arise in the context of what did you say in the National Executive Committee of the ANC which you were called by the Gupta's and all of that. It related to who appointed you and then who contacted you which I actually explained that I was
10 contacted by Lakela Kaunda and appointed by the President, who in the presence of the President informed me of this particular appointment.

CHAIRPERSON: Well maybe you might wish to proceed, I know there are other areas there that you want to refer to.

ADV LEAH GCABASHE SC: What I do want to say though, Chairman, if we go back a page to page 142, the very last paragraph does speak of a media story regarding Deputy Minister Jonas and Minister Mentor and Mr Maseko, so I just want to point out that, contextually, Mr Mbalula's answer may be related to – this is how Public Protector started making the enquiry.

CHAIRPERSON: Yes.

20 **ADV LEAH GCABASHE SC:** Which is why he gave this particular response but this is why we needed to ask him about that.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Thank you.

ADV LEAH GCABASHE SC: If we then go...(intervention).

CHAIRPERSON: And maybe before we go on, maybe let me ask this and you can just

confirm if what I'm thinking is correct. When you talked about not having been contacted by the Gupta's in this context were you talking about contact that you may have had with somebody which led to you going to see the President when he told you, you are appointed?

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: That's what you were told?

MR FIKILE APRIL MBALULA: That's what I was talking about, which is Lakela.

10 **CHAIRPERSON:** That before you went to see the President when he told you that you were being appointed Minister of Sports you were not contacted by the Gupta's for that purpose?

MR FIKILE APRIL MBALULA: Absolutely.

CHAIRPERSON: You were contacted for that purpose by Ms Kaunda?

MR FIKILE APRIL MBALULA: Yes Ms Kaunda.

CHAIRPERSON: That's what you are talking about?

MR FIKILE APRIL MBALULA: That's what I was referring to yes.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Mbalula the next one is at page 152 and I will read this into the record, advocate Madonsela says to you,

20 "You might, however refer to your counterpart, okay, indistinct laughter in brackets, but back to you then Minister, the leader and thank you for the correction, the leader of the Economic Freedom Fighters, Mr Julius Malema has called on you in the media to admit that you were offered a government position by members of the Gupta family. You earlier on said you've never been offered any position and that the President spoke to you long before and he then indicated that you would, what's your comment and in response

to the allegations that had been repeatedly made in the media by Mr Julius Malema. Your response Mr Mbalula was the following, I was never offered the position by the Gupta family, I was offered by the President and I don't know why Julius Malema is making those allegations”.

Do you want to just, again bring clarity to your response?

MR FIKILE APRIL MBALULA: Yes I was offered by the President, Ajay Gupta did not offer me a position, he congratulated me on the position.

ADV LEAH GCABASHE SC: So you emphasise the word “offered”, she asked about an offer, you're responding to the word “offer”?

10 **MR FIKILE APRIL MBALULA:** I was responding to the word “offer” I was not offered that position by the Gupta's.

ADV LEAH GCABASHE SC: She then goes on at the very last sentence Mr Mbalula, the Public Protector says,

20 “Minister Mbaluuala have you ever discussed the fact that you were going to become the Minister of Sport and Recreation with Mr Ajay Gupta before this position as given to you, your response is a categorical no. Then advocate Madonsela says, he says you did, in his affidavit he said you had a discussion but he was relaying to you what he knew then, he was not offering the post to you. You say, Gupta says that, advocate Madonsela says, Mr Ajay Gupta, his affidavit, when we interviewed him here he said he had a discussion with you about this post but he denies that it was him who was offering it to you and your response again, no he did not and you go on a little later to say, I met Mr Gupta post facto in terms of the issue in the media and then he explained himself to me and then I said, okay that is fine and we met at the Wanderers cricket grounds in the cricket match etcetera,

etcetera”

So here again we're dealing with what Ajay Gupta said to the Public Protector, she then puts that proposition to you and you say, no, do you stand by this evidence?

MR FIKILE APRIL MBALULA: Yes I stand by that, we did not discuss – he did not offer me, he congratulated me for the position and that is what actually happened. Discussing it means, sitting down, offering a person a position and you either agree or not agree, so we did not discuss that.

ADV LEAH GCABASHE SC: There are more...(intervention).

CHAIRPERSON: Oh you're wanting to move from that one?

10 **ADV LEAH GCABASHE SC:** It's exactly the same there are at least six of these if not seven of these, each time there's a different word that is used, this time the Public Protector at page 154 says,

“So your answer, your evidence is, before you are appointed Minister of Sport you never ever had a conversation with Mr Gupta about this post and your response is, I never had a conversation with Mr Ajay Gupta about the post of Minister of Sports and Recreation. She then says yes you did – I beg your pardon, yes did you have a conversation with any of the other Gupta family members before you were and then you go back to saying, the only person I've met in the Gupta family is Mr Ajay Gupta and there were chief among the things that he (indistinct) was the fact that it was reported in the media that they had anything to do with my appointment as the Minister of Sport”.

20

So this time, the operative word appears to be, did you ever have a conversation with Mr Gupta, if you go back to line 7 of page 154?

CHAIRPERSON: I think let's just – because it's important to clarify, both for myself and for Mbalula's understanding. That line 5 to 8 of page 154 advocate Madonsela says,

“So your answer – your evidence is, before you were appointed Minister of Sport you never ever had a conversation with Mr Gupta about this post and then you answer, I never had a conversation with Mr Ajay Gupta about the post of Minister of Sports and Recreation”.

Do you want to comment on that?

MR FIKILE APRIL MBALULA: Yes Chief Justice, like I said before the conversation you’ll have with somebody is when you discuss about a particular position and so on. So what happened here is the fact that somebody calls you and then offers you position, not offers you a position, congratulates you for a position and the conversation
10 ends there and that was it and we further explain down there in terms of that discussion that I did raise the issue of the Gupta’s in the meeting of the National Executive Committee of the ANC even though I did not elaborate about the content of that particular raising in the NEC as I did here today.

ADV LEAH GCABASHE SC: Mr Mbalula I will then summarise your comments right at the end, can I give you the next one, unless you want to deal with it differently. Chairman there are various iterations of the same...(intervention).

CHAIRPERSON: Maybe let’s go to the next one and then up to the next page and then I might have some questions for Mr Mbalula.

MR FIKILE APRIL MBALULA: At page 155 you then say – in fact it’s advocate
20 Madonsela who asks,

“Didn’t the media say, specifically, said that you (indistinct) over the fact that the first time you heard that you’re going to be Minister of Sport, you heard it from the Gupta family instead of hearing it from the President, your response, I heard that too. Advocate Madonsela then asks, yes and you respond yes in the media but the first time I knew that I was going to be

Minister of Sport, I heard it from the President”.

So there are a couple of other...(intervention).

CHAIRPERSON: Maybe let's stop at that, that Mr Mbalula appears to me to be in conflict with your evidence today as well as with your affidavit that is before us. So if you don't think it is in conflict this is the chance to just explain. So in other words here you say, you have heard that in the media it has been said that you heard it for the first time from the Gupta family that you were going to be Minister of Sport and you say, yes you have heard that as well and then you say, yes in the media but the first time I knew that I was going to be Minister of Sport, I heard it from the President and as I

10 understand your evidence, part of – or the main concern you had when you spoke at the NEC was, if I can put it in my words was, why should I hear from somebody else that I'm going to be made Minister why should I not hear it from the right source at the right time. That's how I understood your concern, you were unhappy about the state of affairs so – but this seems to suggest to me that you said before the Public Protector, no the only – the first time you heard that you were going to be Minister of Sport was from the President which suggests it wasn't from anybody else including Mr Ajay Gupta.

MR FIKILE APRIL MBALULA: Yes if you look at the entire transcript there are other questions that are being asked about the National Executive Committee and I do raise the point that I did raise an issue about the Gupta's in the national Executive

20 Committee of the African National Congress which I did not elaborate at that particular time and as I did now specifically in response to Mr Trevor Manual. Now in terms of the National Executive Committee of the African National Congress that particular issue I do raise in the transcript of the Public Protector.

CHAIRPERSON: Yes but the question is, the Public Protector here pertinently asks you the question and you address it about who you heard from for the first time that you

were going to be made Minister of Sport and she says the media says you said in the NEC you heard it for the first time from the Gupta's and you say to her, I've heard that as well – I've also heard that, in other words what the media is saying and then you say but the first person to tell me that I was going to be Minister was the President and not the Gupta's. Now there is some difficulty there to say but what we have heard here is that you have said it's the Gupta's – it's Ajay Gupta and that troubled you and that's why you spoke at the NEC because you wanted the NEC to do something about this because your attitude was, this is wrong and if I put it in my words again, your objection was, I should hear it from the right source, I shouldn't hear it from an outsider. So the

10 concern is why didn't you say to the Public Protector, no it's actually true I heard for the first time from the Gupta's that I was going to be Minister and actually it angered me and subsequently I raised it in the NEC that's why I was – I raised it in the NEC, actually Public Protector I was emotional at the NEC it was my way of appealing to my comrades in the NEC to say, something must be done, why didn't you say that?

MR FIKILE APRIL MBALULA: Perhaps I should have explained as I did her today but the fact – the point that I want to make is that my frame of mind at the time of appearing before the Public Protector we were dealing with a matter that relates to who contacted you and who appointed you, is it the Gupta's or the President and then I stuck with that in terms of explaining that it is the President who actually appointed me, not the

20 Gupta's and there appears to be inconsistencies in me not elaborating further what I said in the National Executive Committee which is what I accept and is what I've done subsequent to that in terms of the affidavit that I submitted before this Commission.

CHAIRPERSON: Well Ms Gcabashe?

ADV LEAH GCABASHE SC: I was going to simply say Mr Mbalula that you – you know in the constitutional court sometimes judges like to say technicalities do not work

and I understand your answer to be one a more technical nature because the words that the Public Protector use were specific and you are responding to those specific words that is how I understand your evidence. Conversation, offered, words like that so it is a semantics issue. What one would have thought you would say to her was they did not offer me, they did not talk to me about it they did – but I heard it from Ajay Gupta first. That is the difference because she did not ask you specifically about where you heard it first. You simply ducked the question and answered you played the words that she was using in her questions and I think what is concerning there is you are not really being of assistance to the Public Protector at that point in time.

- 10 **MR FIKILE APRIL MBALULA:** Well I would not say that because first and foremost in terms of our engagement with the Public Protector where it started the frame of mind was confined in what Mcebisi Jonas said and what Veitjie Mentoor said about them being offered and contacted. And I explained to the Public Protector perhaps you can say I have not been of assistance by not mentioning exactly my response in the National Executive Committee of the ANC which was not the question before me. And the question before me as I come to this commission was in relation to Trevor Manuel, Mr Trevor Manuel and retired General Sipiwe Nyanda about the content of what I said in the National Executive Committee which is different from what the Public Protector at that time was asking me and probably I should have actually gone like you say explain
20 it the way I have actually explained it in the commission.

ADV LEAH GCABASHE SC: Chairman I do not think I want to take this particular matter any further because his evidence is what he has placed on record now and in his statement.

CHAIRPERSON: Yes well did you get a chance to or reflect on what you said before the Public Protector before today's evidence?

MR FIKILE APRIL MBALULA: Yes I did.

CHAIRPERSON: You did yes, yes.

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: So you...

MR FIKILE APRIL MBALULA: Deputy Chief Justice.

CHAIRPERSON: So you are comfortable with being asked questions on that? I am only asking that because I do not want us to be unfair to you. It is an important part of the evidence because in certain respects as I have indicated and as Ms Gcabashe has indicated there does appear to be areas where what you said before her seems in
10 conflict with what you said today. And it is my duty at the end to make findings of exactly what happened and it is important that we have clarifications if there are clarifications. So I just wanted to make sure that you are free, you are happy to deal with questions.

MR FIKILE APRIL MBALULA: I am happy to deal with questions because when I appeared before the Public Protector.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: And the questions he answered.

CHAIRPERSON: Yes!

MR FIKILE APRIL MBALULA: If we raise those issues like we did.

20 **CHAIRPERSON:** Ja.

MR FIKILE APRIL MBALULA: But we look at the entirety of my evidence.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: You will realise that I did allude to the fact that in the National Executive Committee I raised the Gupta matter.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: But I did not go into the details as I did today.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: And then in as far as the Public Protector was interested in that particular [indistinct] my frame of mind was confined to who appoint you and I said I am appointed by the President. And in my knowledge I was contacted and informed by the President about – so to an extent that there could be inconsistencies it is because today it is very clear I was responding to the matter that pertains to what I said in the meeting of the National Executive Committee. But if you read the Public Protector's evidence that I was giving there and so on you will not find
10 what I said here today in detail like I did.

CHAIRPERSON: Well that is important what you have just said is important and I must just disclose this to you that as I was reading the transcript I got the impression that you ought to have talked to her about this call from Ajay Gupta that you received and what you said at the NEC quite distinctly from whether the Gupta's offered you a position or not and I got the impression that quite a few times she tried to get the answer as to whether Ajay Gupta or anybody from the Gupta family told you in advance that you were going to be made – appointed Minister of Sport and I get the impression that you were not telling her yes I was contacted in advance and I was not happy about that but yes it did happen. And one of the areas well here at page 155 is one of the areas
20 where she seemed to really want to make it clear to you this is what I am talking about. Were you ever contacted by the Gupta about this post before the post was given to you? And then you give the answer you gave. So I am mentioning these things so that you are able to see what is going on in my mind and maybe to say what you wish to say.

MR FIKILE APRIL MBALULA: Yes I do understand Deputy Chief Justice and I would

not have gone deeper into the meeting of the National Executive Committee as I did here today.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Like I said again that in the line of questioning and engagement with the Public Protector the main issue evolved around who appointed you and so on but like I said in the prelude of this questioning I was not appointed nor contacted by the Gupta's and then follow the line of questioning and the engagement.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: And that in that I accept that I did not raise my brief to
10 the National Executive Committee about the Gupta's and what I said in the NEC like I do here today in response to the evidence led by the two gentlemen.

CHAIRPERSON: Would you agree that since – would you agree that since the Public Protector was investigating issues connected with alleged improper conduct on the part of the Gupta family that maybe this was an opportunity for you to tell her about a concern that you had had that you had even taken to the NEC to say well I see you ask me about the offer whether I was offered a job by them or not but I was not offered a job but they did contact me and I just want you know that is one of the things that I was concerned about.

MR FIKILE APRIL MBALULA: The issue here that arose out of that among others was
20 what was said by other people in the public domain that I was offered a position by the Gupta's which was not the case. And the other issue that arose was that who actually appointed you? So in responding to that particular question probably that is where I did not go in as detailed as I went today.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: But I was called and then not offered but congratulated

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: On being appointed Minister of Sports. I did not make myself clear in relation to that.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: Because like I say this was the context and the frame of mind

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: That informed my response on these particular issues.

CHAIRPERSON: Yes.

10 **MR FIKILE APRIL MBALULA:** Offer, appointment and all of that.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: This may then appear to be inconsistencies in what probably I said then.

CHAIRPERSON: Yes.

MR FIKILE APRIL MBALULA: But it is not just a matter of semantics it is fundamental that I was not offered.

CHAIRPERSON: Yes.

20 **MR FIKILE APRIL MBALULA:** I was not contacted by them. Indeed in terms of conversation discussing the post and offered it did not happen that way. It was a call that came to me to congratulate me before the appointment by the President to the position.

CHAIRPERSON: Yes but a call is a contact. You were contacted by them.

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABASHE SC: Chairman

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Oh sorry were you going to ask – I just want to clarify a matter.

CHAIRPERSON: Oh ja you may.

ADV LEAH GCABASHE SC: Same point.

MR FIKILE APRIL MBALULA: You may clarify. I think for my purposes the – there is still the next one on page 1

ADV LEAH GCABASHE SC: 175 Chairman.

CHAIRPERSON: Oh there is one at page 156 maybe there is another one.

10 **ADV LEAH GCABASHE SC**: Yes there are some that I skipped.

CHAIRPERSON: Yes okay alright.

ADV LEAH GCABASHE SC: But counsel for Mr Mbalula is correct to say can we please point out the one at 157 which we had earmarked as well.

CHAIRPERSON: Yes okay no that is fair enough ja that is fair enough.

ADV LEAH GCABASHE SC: And at 157 – I beg your pardon 175

CHAIRPERSON: I think he wants to mention something to you before you proceed.

ADV LEAH GCABASHE SC: It is 175 Chairman.

CHAIRPERSON: Okay alright.

ADV LEAH GCABASHE SC: 175.

20 **CHAIRPERSON**: Yes.

ADV LEAH GCABASHE SC: Mr Mbalula's response is the following again to what he had said at the ANC NEC meeting and he says:

“This was – is and I will live with this pain that everybody is appointed by the Gupta's and all of that so nobody did anything about it. I raised it in the meeting of the ANC and there is

context to it and I can tell you now in denial that I never said I was appointed by the Gupta's. If I was appointed by Ajay Gupta he told me that I was going to be Minister of Sport. I tell you now indeed that this is the case. I raise the Gupta issue because it was like a big elephant in the room and I said that this issue is the problem. We have got to deal with it and that is it. That is what I have done and that is what I have said."

Etcetera, etcetera. Again to reflect on this portion Mr Mbalula maybe you just want to explain...

10 **CHAIRPERSON**: Well

ADV LEAH GCABASHE SC: If he could explain Chairman.

CHAIRPERSON: Well he might have wanted you to finish that paragraph.

ADV LEAH GCABASHE SC: Oh yes.

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC:

"And those who are cowards and who could not raise their opinions about it in the meeting leaked it to the press. It was there in the meeting."

20 That is part of the evidence you gave earlier in any event. But what I would like you to focus on is line 11 and 12. If you could go there please Mr Mbalula.

MR FIKILE APRIL MBALULA: Page?

ADV LEAH GCABASHE SC: It is page 175. 175. And you will see the number 10 on the left then it is just two down that is what your counsel would like you to focus on.

MR FIKILE APRIL MBALULA: Yes. 17?

ADV LEAH GCABASHE SC: 175 you see the number 10 on the left hand side.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: That is the line number.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: Just below that. If you start at you say you were never appointed by – if you could just read that and then talk to the issue please.

MR FIKILE APRIL MBALULA: Yes like I said I was not appointed by the Gupta's I was appointed by the President and the question there was about whether or not I was appointed by the Gupta's. Like earlier on the Public Protector asked me and then I explained that I was not appointed nor contacted the Gupta's which I think I did not elaborate further in relation to that matter as it pertains to what I said in the meeting of the NEC.

ADV LEAH GCABASHE SC: Here however you saying

“If I was appointed by Ajay Gupta he told me that I was going to be Minister of Sport”

Just explain that?

MR FIKILE APRIL MBALULA: Yes. He told me in the conversation that I had with him like I have related the facts here before the commission that I was going to be Minister of Sports.

ADV LEAH GCABASHE SC: And you communicated this to the Public Protector as is recorded here?

MR FIKILE APRIL MBALULA: Yes. There is it.

CHAIRPERSON: Ja I think what may have prompted you to ask him to talk to that sentence is what was troubling me but I think it is the typists punctuation. I think probably when Mr Mbalula spoke to the Public Protector he meant to maybe make two sentences one saying I was not appointed by Ajay Gupta. Another one saying he told

me that I was going to be Minister of Sport. But the punctuation sometimes gives a different nuance to a meaning. Maybe that is the reason.

ADV LEAH GCABASHE SC: Indeed so Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Which is why I thought it is important.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: And in fact his counsel pointed it out to be fair.

CHAIRPERSON: Yes, yes.

10 **ADV LEAH GCABASHE SC:** That it is important for this to be brought to your attention.

CHAIRPERSON: Yes, yes.

ADV LEAH GCABASHE SC: Can we move on Chairman.

CHAIRPERSON: Well I – if you are going to deal with paragraph 156 I would like you to deal with it otherwise I can ask Mr Mbalula I can draw his attention to it. In particular I am looking at I think from paragraph – from line 5 to about line 20/21.

ADV LEAH GCABASHE SC: Page 15?

CHAIRPERSON: 6, 156

ADV LEAH GCABASHE SC: Page 156.

CHAIRPERSON: Ja.

20 **ADV LEAH GCABASHE SC:** And maybe I can start. Mr Mbalula Ms Madonsela says to you at line 5 after the two of you had talked about the appointment. She says: “It is not appointment Sir but you heard from them that you are going to be Minister of Sport before you heard from the person who has appointed you.”

And then you say – that is you say:

“I raised the issue of perceptions.”

That is you saying that. Then Ms Madonsela says:

“Okay Sir I want to get you to that perceptions because that is an interesting thought that we would like to follow through. Let us attempt to tie this just for our records I just want on this one issue that [and then] do you deny that you complained that you were informed that the President was going to appoint you as the Minister of Sport.”

Then you respond.

“I deny that vehemently.”

10 Then Advocate Madonsela’s says:

“So you deny that”

And then you say:

“Emphatically”

And the Advocate Madonsela says:

“Then – we then get to the part where that you are raising that you raised the issue you raised was about the perceptions about Gupta’s being involved in the appointment of Ministers.”

I do not know if you want to say anything about that part?

20 **MR FIKILE APRIL MBALULA**: Yes like I explained Deputy Chief Justice that the frame of mind at that particular point was around appointment which was the prerogative of the President and so that is why I raised that particular issue and said emphatically and I did not give the background of the NEC meeting and the Mr Ajay Gupta call.

CHAIRPERSON: Yes Ms Gcabashe.

ADV LEAH GCABASHE SC: I suppose that that is what you are communicating over the page at 157 the answer you have just given to the Chairman now.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: That you were dealing with the question of the ideological and political environment that you found yourselves in.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: And the movement.

MR FIKILE APRIL MBALULA: Yes.

ADV LEAH GCABASHE SC: If we look at page 15...

CHAIRPERSON: I am sorry. I do realise we have gone beyond one o'clock we are at ten past one but if everybody including Mr Mbalula is happy I would like us to continue

10 so that we can finish?

MR FIKILE APRIL MBALULA: I am happy.

CHAIRPERSON: I suspect that we might be finishing by half past one or thereabout.

MR FIKILE APRIL MBALULA: I am happy.

CHAIRPERSON: You are happy?

MR FIKILE APRIL MBALULA: Yes.

CHAIRPERSON: Okay thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. At 158. Right down this middle of the page. Advocate Madonsela refers to what Mr Malema had tweeted and I quote:

“He says Malema tweeted what he attributed ... following no.”

20 And I quote again:

“Malema tweeted that after Deputy Minister Jonas was said to have been offered a position he tweeted as follows: Hope at Mbalula Fikile will also confirm that he was offered the Sport Ministry by the Gupta and unlike Jonas he accepted it and complained later.”

What is your reaction to that statement? Was what the Public Protector then asked you? Your response was:

“There is nothing I can read about it because Malema is a political animal so me and him we know each other from the opposite sides.”

“So okay [this is Advocate Madonsela] okay so is this true?”

Your question

“What?”

Advocate Mandonsela:

10 “What Malema is saying that you were offered the post of Minister of Sport and accepted it but complained later?”

Your response:

“I never accepted. I was never offered a position of Minister of Sport by the Gupta’s and complained later.”

And she goes on to say:

“There is also your response to his tweet where you say what you “what you are saying is simply provocation. I was never offered a job by anyone. I am not accountable to you but to the ANC NEC.”

20 “Is that the position you still hold?”

And your answer is:

“Yes”

And there was a follow up to that which I said this is what you are saying now and there was a follow up to that which I said:

“What you are saying is public knowledge because that issue

about the Gupta's and what I have said in the meeting was actually leaked in the media.”

So the essence here again is the tweets seem to have been referring to you are being offered and having accepted the job of Minister of Sport and Recreation and then having complained later. I do not know if you want to elaborate on what you – your response was here to that particular tweet or if the Chairman should just accept the record as it stands?

MR FIKILE APRIL MBALULA: As it stands it is correct. I was never offered a position by the Gupta's because when somebody offers you a position is that you get called and
10 then you get to discuss and then you are given an offer that we want you to be Minister of Sports. So it never came that way to me in the form of an offer. It was a congratulatory note for somebody who would have probably known that I am going to be Minister of Sport. So I still stand by that that I was not offered a post of Minister of Sport by the Gupta's. I was congratulated by Ajay Gupta for having – for going to become Minister of Sports and Recreation.

ADV LEAH GCABASHE SC: Chairman as I said there are other references at page 14 – 168 again at line 17 the last few words of line 17 are that you say that – let me read the whole – your retire response.

20 “I would not really specifically recall what was the purpose but I know that the instances where I have been there is because me and Ajay Gupta were to discuss the issue and he raised specifically with regard to what was reported in the media with regard to what transpired in the ANC NEC which was apportioned to me that I said I was appointed by them.”

Again the operative word here being “appointed” by them.

Page 170. In the middle of the page again Ms Ganyane says:

“Yes you are in the process of being appointed to the position of Minister of Sport.”

Your response:

10 “I do not know why you will put it that way but I can tell you I met Ajay Gupta after the events and because there was no way that we could have discussed it in the first place. Because there was never any report about the Gupta’s prior so the report about the Gupta’s came after it was leaked to the Sunday Times that Mbalula complained about the Gupta’s in the ANC meeting. And thereafter we actually met and alimented about that particular issue.”

Advocate Madonsela then says:

20 “Just to clarify his version is that when he discussed this matter with you he was not lamenting he was congratulating you in advance based on a rumour that you were going to be appointed Minister of Sport. This was before you became appointed as Minister of Sport. That is his version. That when Malema later came and said you got to know the story from Mr Ajay, Mr Ajay says he was not talking to you because he had exclusive knowledge he was repeating to you a rumour that was doing the rounds in at the time.”

Ms Ganyane says:

“In the media he said.”

Advocate Madonsela says:

“That you are going to be appointed Minister of Sport.”

Ms Ganyane:

“Yes”

Mr Mbalula’s response.

“No there was not such a rumour in the first place. Neither was my name in the rumours about cabinet reshuffle.”

Advocate Madonsela:

“Is he lying or did we misunderstand him?”

Ms Ganyane:

10 “That is also what I wanted to ask the Minister to say: In your recollection before you were moved to the portfolio of police were there media reports about your possible move to the Ministry?”

Your response:

“No.”

Ms Ganyane:

“Because that is his version.”

Ms Ganyane:

20 “That there were – it was nothing exclusive. He had heard it in the media that you were going to be appointed and he called to congratulate you.”

Your response Mr Mbalula.

“No Ajay Gupta I do not know why he would misrepresent facts. I am telling you my version. I do not know. What I can tell you is that there was an ANC NEC meeting that took place and then in

– after that meeting there was a leak in the Sunday Times. You can go check it that I actually complained about the Gupta’s and the fact that whatever I was appointed by Gupta’s in the media. Alright that is what – that is the version that was there. Ajay Gupta right thereafter raised an issue with me that he wanted to see me and all of that. I said to him, fine there is no problem.”

CHAIRPERSON: Ms Gcabashe.

ADV LEAH GCABASHE SC: Sir.

CHAIRPERSON: If you read for too long...

10 **ADV LEAH GCABASHE SC:** He loses track.

CHAIRPERSON: I would not remember what you said two minutes ago. And it would be unfair to ask him to comment on all of those things after a few pages. So if you want him to comment take it in small bits and pieces.

ADV LEAH GCABASHE SC: Well we go back to really – back a page to 171 Mr Mbalula. The version.

CHAIRPERSON: I think his counsel wants to give you something ja.

ADV LEAH GCABASHE SC: The version – the version of Mr Ajay Gupta was being put to you again. Version of Mr Ajay Gupta which is at the top of page 171 and if you look at those passages the essence of what they are saying is that you are going to be
20 – there was a rumour that you were going to be appointed Minister of Sport. Your response is:

“No there was no such rumour in the first place. Neither was my name in the rumours about cabinet reshuffle.”

Maybe you want to comment on that – that rumour?

MR FIKILE APRIL MBALULA: Yes that is what the Public Protector said which is what

Ajay Gupta said about the rumours about cabinet reshuffle and so on. So my point about rumours and what was said about that time I mean it was not clear to me as to whether there were such rumours about cabinet reshuffle that involved my name to an extent that he would have picked up the knowledge that I am going to be Minister of Sports in those rumours, because there were rumours about reshuffle but as to whether it involved my name I would not know about that or I did not become aware of it.

ADV LEAH GCABASHE SC: Then on page 172 Mr Mbalula you give your version what you say is your version and what you say is your version is what you can tell is that:

10 “There was an ANC NEC Meeting that took place and then after that meeting there was a leak in the Sunday Times. You can go check it and they actually complained about the Guptas and the fact that whatever I was appointed by the Guptas.”

Do you want to explain just that? What was that complaint that you are referring to here?

MR FIKILE MBALULA: The version of the media leakage was distorted because it said that I talked about an appointment by the Guptas. Whereas in the National Executive Committee the fact of what I raise is that I received a call about somebody informing me about becoming Minister of Sports and Recreation and it turned out to be
20 like that. So an appointment in my understanding would have meant that you are called and you are informed by somebody about your appointment of which in the chronological order of events the appointment was done by the President of the Republic.

ADV LEAH GCABASHE SC: So here you are responding to what they found in the media and clarifying that what the media was reporting about was not your

appointment. Certainly you did not pick up anything about your appointment to the media.

MR FIKILE MBALULA: No, the media reported according to this and what was leaked that I was offered or appointed by the Guptas not the President. So I am a Gupta Minister.

CHAIRPERSON: One of the things you said today Mr Mbalula is that when you stood up at the NEC Meeting and raised this issue you were raising an issue that involved you personally. You were not talking about rumours and you mentioned that some people were talking rumours and so on. You raised an issue at the right forum in
10 regard to what you knew what happened to you namely being called by Mr Ajay Gupta and being told before you could be told by the President that you were going to be made Minister of Sports. Now in the transcript before the Public Protector there are areas and I think we have at least dealt with one where at least when I was reading it I got the impression that you kept on emphasising that at the NEC what you raised were perceptions about the Gupta family. Do you remember that?

MR FIKILE MBALULA: [No audible reply].

CHAIRPERSON: And as I was reading I wondered why you were not saying to the Public Protector maybe I may have talked about the perceptions as well, but I also talked about what happened to me personally which was I got called by Ajay Gupta and
20 this is what he told me. So I am just mentioning this because it keeps on coming back to my mind that you know somewhere you say you were talking to the NEC about the perceptions, but we do know today that you did say you were now talking to the NEC about something that happened personally not rumours not, personally to you not rumours not hearsay.

MR FIKILE MBALULA: Deputy Chief Justice I have made it clear that I did not go to

the detail about that meeting and what I said as I did here today and that is what if you look at that and what I said here may result in inconsistencies in terms of my evidence. So my frame of mind like I want to repeat again.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Was about appointment and offering which I rejected.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: That I was not offered.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Or appointed.

10 **CHAIRPERSON:** Hm.

MR FIKILE MBALULA: By the Guptas.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: I was appointed by the President.

CHAIRPERSON: Yes, but I think I must also just say it is possible that before the Commission ends its work at some stage in the future somebody may stand in front of me and say Chairperson you must reject Mr Mbalula's evidence that he was phoned, he was told by Mr Ajay Gupta that he was going to be made Minister before he got the appointment, because of the fact that in his interview with the Public Protector, this is what may be argued. Somebody might say the Public Protector's questions to
20 Mr Mbalula were clear. Mr Mbalula's answers to those questions were also clear. Mr Mbalula could not have misunderstood what the Public Protector wanted and the answers he gave were clear and they are not consistent with what he said in his statement before the Commission and before you. So somebody might stand there and say that to me. So I am mentioning this just so that if you want to say anything you may say it.

MR FIKILE MBALULA: If somebody comes up and says that and point out probably to inconsistencies they can do that, but the question is what is before me in terms of the Commission.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Which I actually answered.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Whether I appeared before the Public Protector I did not elaborate on the part of the meeting.

CHAIRPERSON: Yes.

10 **ADV LEAH GCABASHE SC:**

MR FIKILE MBALULA: With; I mean on the part of the content of what I said in that particular meeting.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: In terms of the Public Protector.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: But having appeared before the Commission I have come up with.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: Exactly what transpired and where did that come from.

20 **CHAIRPERSON:** Yes.

MR FIKILE MBALULA: On those particular issues.

CHAIRPERSON: Yes.

MR FIKILE MBALULA: In that particular Public Protector appearance I was being accused one, of being appointed by the Guptas. That is the first thing. Two, I was being accused of having been offered a position of the ministerial position by the

Guptas and that has not been the case and I was not offered, I was not appointed by them. I was appointed by the President and that is what I stuck with and in terms of the Guptas interfering with that particular process in as far as them giving me a call and relating to me about the post. I did not become very clear to the Public Protector in relation to that. So I; that is the point I raised earlier on when the Advocate was pointing to this and I said when I appeared before the Public Protector this was my frame of mind and here I am responding to what Mr Trevor Manuel and retired General have actually raised before the Commission which I stated the facts as I have known them and I have understood them.

10 **CHAIRPERSON:** Thank you, thank you.

ADV LEAH GCABASHE SC: Thank you Chairman. Chairman I would like to move along.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: From this particular point.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Mr Mbalula just to tidy up one or two things. So between 2011 and 2016 when some of the ANC veterans wrote a note to the ANC setting out their difficulties, can I take you to it?

MR FIKILE MBALULA: Yes.

20 **ADV LEAH GCABASHE SC:** It is part, it was part of retired General Nyanda's evidence. So if you go to page 69 that is the memorandum from Senior Commanders and Commissars of the former military wing of the ANC Umkhonto we Sizwe. They here set out a litany of complaints. At page 70 of the paginated papers paragraph 8 they say the following:

“In light of these revelations we demand to know what role if

any do the Gupta family play in influencing the appointment of Ministers and to what end. Which other Ministers have been approached by them in this manner. What private arrangements if any have been made with the Gupta family? What is their role in the appointment of Boards, Members of State Owned Enterprises? Is leadership of the ANC aware of these arrangements? On whose authority does the Gupta family act?"

And so on, paragraphs 9 and 10 and 14. I will just jump to 14.

10 "There are many, many accounts of undue influence on the decisions of the state. We need to establish the veracity and the validity of all these claims."

So my question to you is as a senior member of the ANC and considering that these issues tied into your 2011 complaint what did you do to make sure that these issues were dealt with by the organisation that you serve? So these are the ones raised by the veterans.

MR FIKILE MBALULA: Those issues were raised by the veterans and they were placed before the officials of the ANC and they raised if you talk about the Guptas issues that were already raised as far as back and that the organisation had to attend
20 to them. What role did I play? I played my part.

ADV LEAH GCABASHE SC: When?

MR FIKILE MBALULA: By raising the issues from the onset and then being the only one at that particular time.

ADV LEAH GCABASHE SC: But in 2016 when these issues serviced again and you knew they were unresolved what role did you play?

MR FIKILE MBALULA: The role that I played in relation to those particular issues. They were placed before the organisation and the organisation resolved that they must be processed through the appropriate structures and that that also find space in the National Conference of the ANC which part of the resolutions have brought us where we are today in terms of the state capture.

ADV LEAH GCABASHE SC: Do you know of any particular Ministers or Deputy Ministers or Board Members who were appointed because of the influence of the Gupta family?

MR FIKILE MBALULA: There are many things that I have read about that. I have not
10 been involved with that. I cannot give evidence about it except what relates to me.

ADV LEAH GCABASHE SC: Yes, because we do want personal knowledge and that is what the question is. Do you have personal knowledge of any such undue appointments?

MR FIKILE MBALULA: [No audible reply].

ADV LEAH GCABASHE SC: No personal knowledge?

MR FIKILE MBALULA: I do not know. I do not know Advocate. I would not give you information that I cannot back up.

CHAIRPERSON: Yes. No, I think I just, she is emphasising.

MR FIKILE MBALULA: Yes.

20 **CHAIRPERSON:** That she is only asking you about things that you can stand for that you know.

MR FIKILE MBALULA: Deputy Chief Justice I can only speak of those that have been in the public domain.

CHAIRPERSON: Ja.

MR FIKILE MBALULA: And that have been reported.

CHAIRPERSON: Yes, but not something that you have personal knowledge of?

MR FIKILE MBALULA: Yes [intervenes].

CHAIRPERSON: In other words it is just hearsay?

MR FIKILE MBALULA: *Ja*, it is just hearsay that I have read about which.

CHAIRPERSON: *Ja*.

MR FIKILE MBALULA: Now looking at the hearsay and what happened to me.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: Then it combines with my understanding that indeed in certain instances such could have happened.

10 **CHAIRPERSON:** Hm.

ADV LEAH GCABASHE SC: Did you bump into any Ministers of Deputy Ministers at any time when you visited either Sahara Computers or Saxonwold?

MR FIKILE MBALULA: Not at all. I did not bump, when I was at Sahara I was alone. I did not see any Minister or any Deputy Minister and then the same as at the compound when I met with Ajay Gupta. At the cricket I did not see any of the Ministers there except myself.

ADV LEAH GCABASHE SC: Where you?

MR FIKILE MBALULA: As the Minister of Sports.

20 **ADV LEAH GCABASHE SC:** My apologies. Were you invited to the wedding at Sun City?

MR FIKILE MBALULA: I was invited.

ADV LEAH GCABASHE SC: Did you attend?

MR FIKILE MBALULA: I did not attend.

ADV LEAH GCABASHE SC: The Diwali Celebrations of the Guptas. Were you invited to those?

MR FIKILE MBALULA: I was invited to the Diwali Celebrations of the Guptas. I did not attend.

ADV LEAH GCABASHE SC: Business meetings, did you arrange any business meetings to explain anything about the portfolio that you held? Did you have any of those with any member of the Gupta family?

MR FIKILE MBALULA: I have been with the Guptas to discuss the TNA Breakfast which was expressly exorbitant and I have discussed with members of the Guptas about the TNA Breakfast in my recollection and the fact that Sports Department cannot afford to pay for such a breakfast an amount of R1 million for a breakfast show because
10 we do not have such a budget in our department.

ADV LEAH GCABASHE SC: In fact that discussion was also foreshadowed in your discussion with the Public Protector, because that is an issue she had raised with you as well in 2016. You need to respond.

MR FIKILE MBALULA: Okay. Yes.

ADV LEAH GCABASHE SC: Chairman I believe that there are no other issues that we would like to raise with Mr Mbalula at this point in time.

CHAIRPERSON: Yes. No, thank you.

ADV LEAH GCABASHE SC: Oh Counsel, Chair Counsel would like an audience.

CHAIRPERSON: *Ja*, let me hear, *ja*.

20 **ADV MKHULULI DUNCAN STUBBS:** Thank you Mr Chair.

CHAIRPERSON: Yes, come forward.

ADV MKHULULI DUNCAN STUBBS: Shall I go up?

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: Thank you Mr Chair. I do not wish to take up too take much of time given that I know that we may be about to conclude, but there are

just two issues.

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: Two points if I may that strike me which I respectfully believe it may be beneficial for the enquiry to hear about.

CHAIRPERSON: Okay, do so.

ADV MKHULULI DUNCAN STUBBS: If I may direct them to Mbalula?

CHAIRPERSON: Yes, do so.

ADV MKHULULI DUNCAN STUBBS: Thank you sir. Mr Mbalula if you could follow me please. The first point that I wish to raise with you for your elaboration is on page
10 174 lines 19 to 25, if you are there with me.

MR FIKILE MBALULA: Yes.

ADV MKHULULI DUNCAN STUBBS: Okay. So you have testified that your state of mind in your conversation with the Public Protector was in relation to an appointment as opposed to something else in this conversation with the Public Protector?

ADV MKHULULI DUNCAN STUBBS: Yes. Having said this at page 174 you say in the relevant part.

“I raised the issue of the Guptas. I am the first person who has raised the issue of the Guptas in the ANC meeting.”

And then a couple of lines down.

20 “I raised it in the meeting. I said we need to deal with this issue.”

What I would like to ask you as the first two points is whether you wish to elaborate on this in the context of the questions that my learned friend has been asking you particularly most recently?

MR FIKILE MBALULA: Sorry, come again.

ADV MKHULULI DUNCAN STUBBS: If you would like to elaborate on that passage, beg your pardon Mr Chair. It is the microphone here. If you would like to or okay to elaborate on the passage I have referred you to in relation to the most recent line of questioning. Should I take you back to it again?

MR FIKILE MBALULA: Yes please.

ADV MKHULULI DUNCAN STUBBS: Page 174.

MR FIKILE MBALULA: *Ja*.

ADV MKHULULI DUNCAN STUBBS: Lines 19 to 25. So it is close to the bottom of the page.

10 **CHAIRPERSON:** Page 174.

MR FIKILE MBALULA: I do not have 19.

CHAIRPERSON: Page 174.

MR FIKILE MBALULA: 174.

CHAIRPERSON: And you see the numbers on the left hand side of the page

MR FIKILE MBALULA: Yes.

CHAIRPERSON: You see 20?

MR FIKILE MBALULA: I see 20 up to 25.

CHAIRPERSON: *Ja*, the line before that is not marked 19.

MR FIKILE MBALULA: Yes.

20 **CHAIRPERSON:** But it would be 19.

MR FIKILE MBALULA: Okay.

CHAIRPERSON: So he is directing you to the paragraph that starts with what would be line 19 saying:

“I raised the issue...”

ADV MKHULULI DUNCAN STUBBS: Thank you Mr Chair.

CHAIRPERSON: Can you see that? Can you see that line?

MR FIKILE MBALULA: Yes. I see it.

CHAIRPERSON: *Ja* that is the paragraph he is directing your attention to.

MR FIKILE MBALULA: Yes.

CHAIRPERSON: Do you want to read that paragraph and then he can repeat his question and then you can deal with it?

MR FIKILE MBALULA: Okay.

CHAIRPERSON: Hm.

MR FIKILE MBALULA: *Ja*. The one where I say where I have raised the issue of the

10 Guptas?

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: Yes.

CHAIRPERSON: That is the one.

ADV MKHULULI DUNCAN STUBBS: “I am the first person who have raised the issue of the Guptas in the ANC meeting.”

CHAIRPERSON: Yes. That is the paragraph he wants to talk to you about.

MR FIKILE MBALULA: Okay.

ADV MKHULULI DUNCAN STUBBS: Yes. So my learned friend, she will forgive me or correct me where I am wrong but just to paraphrase the line of questioning I am referring to is in relation to whether your version with the Public Protector is in conflict
20 with the statement that you have delivered to this enquiry, if you follow me.

MR FIKILE MBALULA: Yes.

ADV MKHULULI DUNCAN STUBBS: So what I am asking is when you say:

“I raised the issue of the Guptas to the Public Protector. I am the first person who have raised the issue of the Guptas in the

ANC meeting. I raised it in the meeting.”

I am asking whether you can elaborate what you are referring to. What is the “it” that you are referring to? This issue that you raised with the Guptas that you are discussing with the Public Protector.

MR FIKILE MBALULA: Yes, I was referring to the point that I raised the issue of the Guptas in the meeting of the National Executive Committee of the ANC and I was the first person to raise the issue early on in the organisation and I raised it in the meeting of the ANC because there were rumours that people got offered positions. They get appointed at Saxonwold and that is what I was meaning about that and I raised it with
10 the Public Protector.

ADV MKHULULI DUNCAN STUBBS: Okay.

CHAIRPERSON: I think your Counsel’s question was when you said the issue in that paragraph, the issue about the Guptas exactly what is it that you are talking about. I think that was his question.

ADV MKHULULI DUNCAN STUBBS: Yes sir.

MR FIKILE MBALULA: I was talking about issues about the perception about patronage and the fact that they get to have an added advantage more than ordinary members of the ANC to even decide on appointment of people and for what positions.

ADV MKHULULI DUNCAN STUBBS: Okay, thank you Mr Commissioner. I beg your
20 pardon, Mr Chairman.

CHAIRPERSON: Well Commissioner is also correct.

ADV MKHULULI DUNCAN STUBBS: Thank you Deputy Chief Justice. Then thank you Mr Mbalula. The second point is connected to the first and hopefully equally brief. If you can turn over the page for me to page 175 please it is lines 16 to 18. If you can find the, so the line below 15 in the left hand column.

MR FIKILE MBALULA: Yes, 15.

ADV MKHULULI DUNCAN STUBBS: Yes.

MR FIKILE MBALULA: Yes.

ADV MKHULULI DUNCAN STUBBS: There you refer to:

“Cowards who could not raise their opinions about it in the meeting.”

The “it” that you appear to be referring to is also referred to in line 14 as “a big elephant in the room”. What I would like to ask you please is whether you can elaborate on what you are referring to there in relation to “the cowards”, the “it” and “the big elephant in the room”?

MR FIKILE MBALULA: Yes. It was an act of cowardice that there is nobody who stood to raise the issue of the Guptas and its political ramifications for the ANC and the country in the meeting of the National Executive Committee. It was simply raised in corridors and so on and nobody raised it in the meeting of the National Executive Committee. So that is what I was referring to there that it helps nobody to raise a matter in the streets but not in the meeting of the National Executive Committee. So to me that constitutes an act of cowardice. For you to raise the issue and even to support what I said in the meeting. They found it in their wisdom to leak it to the press rather than us sitting discussing it and taking decisions about it which could have probably brought us earlier on to this point where we are at today in terms of this Commission.

ADV MKHULULI DUNCAN STUBBS: Okay. Mr Chair can I just check with my *instructing attorney* [intervenes].

CHAIRPERSON: *Ja* that is fine.

ADV MKHULULI DUNCAN STUBBS: I beg your pardon Deputy Chief Justice.

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: There is just one more issue that I have been asked to canvas.

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: In slightly more detail.

CHAIRPERSON: That is fine.

ADV MKHULULI DUNCAN STUBBS: It is on the same page Mr Mbalula. From line seven to line 12. My learned friend did address this issue with you, but it is for the purposes of emphasis and in regard to the Chairman's concerns, to the Deputy Chief Justice's concerns. It is particularly lines nine to 12 in fact and in fact particularly lines
10 11 to 12. Let me just take you through it from the beginning of that quote if I may Mr Chair.

CHAIRPERSON: Yes.

ADV MKHULULI DUNCAN STUBBS: Thank you sir.

20 "That was and is and I will live with this pain that everybody is appointed by the Guptas and all of that. So nobody did anything about it. I raised it in the meeting of the ANC and there is context to it and I can tell you now in denial that I never said I was appointed by the Guptas. If I was appointed by Ajay Gupta he told me that I was going to be Minister of Sports."

That is the passage in response to Advocate Madonsela's questions that I would like to direct you too finally and to ask you whether you would like to elaborate in relation to any conflict between the two sets of testimony.

MR FIKILE MBALULA: No, there is no conflict. I think if you understood where I came from like I said to the Chief Justice with great humility and respect that the main issue

before me was appointment and offered a position and that probably handicapped me from elaborating like I did here today. I came here and I gave my affidavit consistent with the facts about what transpired in the meeting of the National Executive Committee. So maybe about Twitter, about somebody saying that I was offered a position of appointment by the Guptas which I dismissed. It is not true, right or I was appointed by them. It is not correct. To a point where what happened is that I was congratulated about a position that somebody even in this affidavit that he gave to the Public Protector which your Advocate GCABASHE SC has actually read. Ajay Gupta says that to the Public Protector which she put the question to me that he picked up the

10 rumours about me becoming Minister of Sports and he actually congratulated me for that and that is the truth of what actually transpired and it was a call. The transcripts can be checked, investigators can check that call did happen. Post facto that is when we then started to have discussions where he complained and complained and lamented about the fact that I could not have said that about him in the meeting of NEC of the ANC and that is what actually happened. Now the fact that this matter in terms of him suggesting that I would be Minister of Sports through a call and so on that actually transpired and that is what happened and when I appeared before the Public Protector and what may arise as inconsistencies is how I relate and answer the question of appointment and been offered the position. I raised the issue in the meeting of the

20 National Executive Committee and the context to which was that there was a call and then I raised the matter in the National Executive Committee of the African National Congress. So if the issue was not appointment and offered and so on, I accept that I did not elaborate on the matter of the National Executive Committee and the background and so on because my frame of mind was I did not admit that I was appointed by them or offered by them a position which I think my last point, when it was

leaked to the press not all the facts were actually properly articulated as in fact what happened in the meeting, because people then simply went to the press and said Mbalula was offered a position. Mbalula was appointed, was a Gupta appointee and then that is it and that is what I was responding to.

ADV MKHULULI DUNCAN STUBBS: Hm.

MR FIKILE MBALULA: *Ja.*

ADV MKHULULI DUNCAN STUBBS: Okay. Thank you. Thank you Deputy Chief Justice.

CHAIRPERSON: Thank you very much.

10 **ADV MKHULULI DUNCAN STUBBS:** Thanks.

CHAIRPERSON: Thank you. In your last answer if I understood correctly there is something that you said which may be interpreted in a certain way, you referred to what Ms Gcabashe read from I think Mr Ajay Gupta's affidavit in terms of his version of that telephone call and you referred to the fact that he says he picked this information up from the media that you were going to be made Minister, and then when you were dealing with the last question from your counsel now you said that's actually true, but based on what – on the evidence you have given before here today I think you must have been meaning that what is true is that he did call you, but this issue of picking up the information from the media I don't think that you are in a position to say that is true,
20 do I misunderstand something?

MR FIKILE APRIL MBALULA: No I can't say that he said he picked up the matter from the media it's true, because that is his version, I was simply pointing that before Protector this is what he said.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: Which is what is true ...(intervention)

CHAIRPERSON: Is that he called you?

MR FIKILE APRIL MBALULA: He called me.

CHAIRPERSON: Ja.

MR FIKILE APRIL MBALULA: And that is the truth I know.

CHAIRPERSON: Yes, no, no that's what I want you to clarify so that there's no misunderstanding. Now are you in a position to assist this Commission in terms of dealing with what you think may have been done better to deal with the situations of State Capture and all kinds of allegations so that maybe they might not have gone on, these activities might not have gone on as long as they have. Are you in a position, 10 have you had time to reflect to say well maybe I as a leader of the government party, as one of the leaders in the government party, I as a Minister I have reflected on some of these things, I think this is where I personally may have fallen short or this is where my government or my organisation may have – this is what they may have done better, or is that something you might not be able to say now, and I ask it simply because I would like to be assisted as much as possible in terms of what everyone thinks maybe should have been done for things to be different and also looking at after the Commission if we want to make sure that these things never happen again what are the things that we are going to say, this is what should have been done, if it had been done this would not have happened in all probability. Going forward should anybody in the future try to 20 engage in State Capture in South Africa in order to make sure that they never succeed this is what, these are some of the things that we must look at as a country, and – or as the governing party or whichever the governing party may be in the future, so I just want to see whether you do have some things that you might be able to say having reflected on these things it was clear from the clip that was played earlier on that you really detest this issue of the State Capture and you want it to be dealt with so if you

are able to I would welcome your saying something about that, but if you haven't had time to reflect properly to be able to talk about it that will be fine.

MR FIKILE APRIL MBALULA: Well thank you Deputy Chief Justice, I think if we acted politically like we should, like we did up until this far, from our side, not dig heads in the sand, when we are confronted with difficult issues and allegations and so on, perceptions, we need to deal with them, because perceptions tend to be reality, so the fact that so many events unfolded after the issue was raised in 2011 the landing and all of that, it meant that those were accused of this were un-repentant and they did not actually seek to help by way of mending their ways, they were in fact ungovernable in
10 the way of their conduct and the manner in which they did things.

As much as they can come before the Commission to say that we did nothing wrong, we did what every business person could do to lobby, in America it's called lobbying and so on, we did nothing wrong about that, but the ways of going about it were totally incorrect because of your proximity next to power it means that most of the things will actually go your way. There is empirical evidence that supports that, that demonstrates that people benefitted because of that perception of evidence that was before, so in future, or even now going forward the responsibility is to ensure that never again will we have a Commission again to look at State Capture, this State Capture Commission must lay the basis for us not to slide again going into the future,
20 it's a very important process, others equate to the Truth and Reconciliation Commission, but it helped us to go beyond perceptions, to deal with the truth and to deal with facts, like the Chinese say extract the truth from the facts.

It is something else to say people have done this, it is something else when you have got to deal with this particular matter from a concrete evidence, so it doesn't heal but it helps us to exorcise in society a difficult cancer that have crept in which was

characterised by our elders as mortgaging of State power, and that's what we are dealing today and we may not have been in a position to deal with it adequately at our level because subjectively we are affected, but the process of the Commission help us to look above all of us and everybody involved to lay the rules but at the same time to bring the perpetrators of such corruption, fraud and everything into book and to help us ourselves to understand how the State functions, what are our responsibilities, that we owe as much as we get appointment our Bill and truthfulness to the oath that we have actually taken and that to respect the people who have put us in those positions but to be truthful to them equally if they vary of the way of how things must actually be done.

10 And importantly to raise issues politically and otherwise in the organisation.

In my conclusion I think this has been like an albatross on me because everywhere I have gone I will be asked are you a Gupta Minister and I accept I have not answered that question the way I have done till today, and today I decided to come to the Commission and put the facts because I am bound by the principles of my organisation that what was discussed in the NEC belongs into the NEC, and that is what I have done over time. Painful as it is it was raised and I've had to endure this thing of what actually happened, what are the facts, even if people dispute or can come forward it's fine. I will be ready anytime if the Commission still needs me to come back, if people want me here to stay to the truth and all of that I am ready for that, because I

20 know what I've raised here is something that over 80 people can testify about what I said exactly in that meeting and what I raised and it's only me who can give an account of those facts, and if there's any way the investigators want to be helped by me I'm ready, and I conclude by saying it has never been my intention to undermine the Commission, I think it has been talking at cross-lines and once things were sorted at some point when Advocate Gcabashe spoke here and said that Mbalula will some morning or

whatever, I was very, very – it is as though I am negative, and I was not and we had a few skirmishes with your people about me coming here, because I needed time to come here, to prepare, and I did not for instance look at the transcript or whatever that is the case, I found them here in the morning and I don't want to hamper in any way, it's just that I needed time to prepare myself but because it was impressed upon me that I need to come because you need to conclude one part I had to succumb and I hope what I've said and said here will assist the Commission going forward.

CHAIRPERSON: Yes, yes.

MR FIKILE APRIL MBALULA: Thank you very much Deputy Chief Justice.

10 **CHAIRPERSON**: Yes.

MR FIKILE APRIL MBALULA: Finally I get it right.

CHAIRPERSON: Yes, no, no I am sure that what you have said here will be very important in the Commission looking at exactly what happened and I just wish that more and more ministers, past and present, who know something and people who might not have been ministers will come forward and share their knowledge, their information with the Commission so that when the Commission finally makes its findings and recommendations it will do so from a point where there would be enough evidence and information placed before it about what actually happened.

20 So that's – you have done the right thing by coming forward and to the extent as you say that maybe between members of the legal team and whoever there might have been interactions and so on in the end I think everybody wanted just to make sure that the Commission is assisted and you would have been right to want more time if you needed more time, but that is why it was important earlier on that I asked you whether you were feeling okay about being asked about the transcript because I just wanted to make sure that there is fairness from your point of view and if you had got –

maybe it was unfair I would have wanted to give you more time, because it's quite important that everybody be treated fairly and it's quite important that we get to the bottom of the issues.

So thank you very much for having come forward, and indeed if there is a need you will be contacted and you will be asked to come back and arrangements will be made, but thank you very much for coming forward and for responding to the request to come forward.

MR FIKILE APRIL MBALULA: Thank you.

CHAIRPERSON: Thank you. Ms Gcabashe?

10 **ADV LEAH GCABASHE SC**: Chairman that's the evidence for today.

CHAIRPERSON: Yes, no thank you very much Mr Mbalula you are excused. That is where we end the proceedings for today and we will continue on Monday, on Monday we will start at ten, the proceedings on Monday may be short, they might take long but we will resume at ten on Monday morning. We adjourn.

INQUIRY ADJOURNS TO 25 MARCH 2019