

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**05 APRIL 2019**

**DAY 79**

20

HEARING RESUMES

**CHAIRPERSON**: Good Morning Mr Mokoena, good morning everybody.

**ADV PHILLIP MOKOENA SC**: Good morning Chair.

**CHAIRPERSON**: H'm.

**ADV PHILLIP MOKOENA SC**: Mr Chair today we will be leading the evidence Mr Mxolisi Dukwana. Mr Dukwana is represented by his counsel Mr Sethene and the attorney of records it is Mr Mashala from Mashala Komane Masekele Incorporation. The notices Mr Chair in terms of Rule 3.3 were dispatched to the implicated parties.

**CHAIRPERSON**: Hm.

10 **ADV PHILLIP MOKOENA SC**: Some of the implicated parties' legal representatives are here today. May be I should afford them an opportunity to place themselves on record?

**CHAIRPERSON**: Yes well I guess starting with Mr Dukwana's counsel maybe.

**ADV PHILLIP MOKOENA SC**: Yes.

**ADV SETHENE**: Good morning DCJ.

**CHAIRPERSON**: Good morning, good morning, good morning.

**ADV SETHENE**: Sethene is my surname spelt S-e-t-h-e-n-e.

**CHAIRPERSON**: Yes.

**ADV SETHENE**: Pronounced Sethene.

20 **CHAIRPERSON**: It is a...

**ADV SETHENE**: It was butchered by the Home Affairs. In the Free State the north.

**CHAIRPERSON**: Oh is it otherwise supposed to be S-i-t-h-i-n-i.

**ADV SETHENE**: Otherwise it is supposed to be S-i-t-h-i-n-i.

**CHAIRPERSON**: Shew.

**ADV SETHENE**: Mr Dukwana has got a similar problem he is going to explain it.

**CHAIRPERSON:** Shew.

**ADV SETHENE:** Thank you very much.

**CHAIRPERSON:** Well I think there are lots of these problems. I think I recently saw a player on TV yes professional soccer player whose surname is written as Matheane and my suspicion is that he is Mthiane.

**ADV SETHENE:** It is supposed to be Mthiane yes.

**CHAIRPERSON:** And Mthiane, the Mthiane's are my people.

**ADV SETHENE:** Correct.

**CHAIRPERSON:** So but now he is Matheane and I think there are quite a few of those  
10 situations and ...

**ADV SETHENE:** But for historical reasons Chair it is best to leave it.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** As it is.

**CHAIRPERSON:** Yes no thank you.

**ADV SETHENE:** Thank you Chair.

**CHAIRPERSON:** No thank you very much. Thank you very much.

**ADV MAZIBUKO:** Good morning Chair.

**CHAIRPERSON:** Good morning.

**ADV MAZIBUKO:** My surname is Mazibuko.

20 **CHAIRPERSON:** Yes.

**ADV MAZIBUKO:** On the instructions of Moroka Attorneys.

**CHAIRPERSON:** Yes.

**ADV MAZIBUKO:** I represent Mr Tshepiso Magashule who has been served with a notice in terms of Rule 3.3.

**CHAIRPERSON:** Yes.

**ADV MAZIBUKO:** Of the Rules of this commission.

**CHAIRPERSON:** Thank you.

**ADV MAZIBUKO:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV PHILLIP MOKOENA SC:** Mr Chair just to place on record two days ago we also received an affidavit.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** Deposited to by Mr Iqbal Sharma. It is not an application in terms of Rule 3.4.

10 **CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** It is simply an application attempting to respond to the witness statement of Mr Dukwana.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** We have since furnished a copy to Mr Dukwana's legal team who also need time to reflect upon it.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** We will engage also in the meantime with Mr Iqbal Sharma in order to clarify whether or not...

**CHAIRPERSON:** Yes.

20 **ADV PHILLIP MOKOENA SC:** He intends participating in this proceedings.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** And – or to make an application to cross-examine any – Mr Dukwana.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** After we have clarified those issues Mr Chair it is only

then that we will place it properly before you.

**CHAIRPERSON**: Okay.

**ADV PHILLIP MOKOENA SC**: That is the reason that you won't see it before you.

**CHAIRPERSON**: Okay that is fine.

**ADV PHILLIP MOKOENA SC**: Mr Chair there are two bundles before you. The one it should be marked as Exhibit X and there is also a supplementary affidavit deposed to by Mr Dukwana which must also – which must subject to your directions Mr Chair be marked as Exhibit X1.

**CHAIRPERSON**: The lever arch file containing Mr Dukwana's main affidavit will be  
10 marked Exhibit X and his supplementary affidavit and annexures will be marked as Exhibit X1.

**ADV PHILLIP MOKOENA SC**: Yes. Mr Chair there are two other further documents which came to our attention today in the morning from Dukwana's legal team. We also propose to hand them in and for them to be marked as X2 and X3 respectively.

**CHAIRPERSON**: Yes.

**ADV PHILLIP MOKOENA SC**: We have taken the liberty to do so for on your behalf  
Chair.

**CHAIRPERSON**: Yes thank you. The one document with the heading "Welkom to  
become SA Silicon Valley?" will be marked Exhibit X2.

20 **ADV PHILLIP MOKOENA SC**: Yes Chair.

**CHAIRPERSON**: And the other document written "Record of Cabinet Decision" will be  
Exhibit X3.

**ADV PHILLIP MOKOENA SC**: Yes Chair.

**CHAIRPERSON**: Thank you.

**ADV PHILLIP MOKOENA SC**: Chair we are ready to proceed with the evidence of Mr

Dukwana may the witness be sworn i?

**CHAIRPERSON**: Yes. Thank you.

**REGISTRAR**: Please state your full names for the record?

**MR MXOLISI DUKWANA**: Mxolisi Dukwana.

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

**MR MXOLISI DUKWANA**: No.

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

**MR MXOLISI DUKWANA**: I do.

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

**MR MXOLISI DUKWANA**: So help me God.

**REGISTRAR**: Thank you.

**CHAIRPERSON**: Well before we proceed Mr Dukwana I just want express my  
appreciation for your coming forward to assist the commission. People who have  
occupied positions such as the position you occupied the Free State Provincial  
Government namely being an MEC as well as people who occupy similar positions in  
other provincial governments and national minister, deputy ministers, DG's and deputy  
20 DG's all over should be having a lot of information that should assist us. And a number  
of them have come forward and we are appreciative of that and we are appreciative of  
the fact that you are one of them. I would believe there are many more who have not  
coming forward who should have a lot of information. I hope that they will appreciate  
the great need for the country to know the information that they have in regard to issues  
of state capture and serious corruption but I really thank you for coming forward to  
assist in the commission. I understand that you went to the extent of instructing

lawyers to bring an Anton Piller Application in the high court in order to try and get information and documents that you believed would be helpful to this commission and you did that at your own personal cost. I just think that you need to know that we appreciate your determination to make sure that this commission is assisted as much as possible and I take this opportunity also to express my appreciation to your legal team because they have also been of great assistance to the commission. They have given the commission a lot of cooperation to try and make sure that you are able to be here today. So thank you very much and I thank your team as well. Thank you.

**ADV PHILLIP MOKOENA SC:** Mr Dukwana next to you there must two exhibits. You  
10 will see that the first one containing your initial statement it is marked as Exhibit X and next to that exhibit there must be another one marked Exhibit X1. Do you have those two exhibits?

**MR MXOLISI DUKWANA:** Yes I do.

**ADV PHILLIP MOKOENA SC:** Yes. May we then for now concentrate on Exhibit X? If I may refer you to Exhibit X you will see that if you open the file you will see that the first document after the cover page it will be the index which you will guide it from time to time as to where to locate documents. Are you there?

**MR MXOLISI DUKWANA:** Yes, yes.

**ADV PHILLIP MOKOENA SC:** And if I may refer you to the next document that follows  
20 immediately after the index it commences from page 1 it runs up until page 29. Could you please identify that document for us?

**MR MXOLISI DUKWANA:** The affidavit, the statement.

**ADV PHILLIP MOKOENA SC:** Yes. It is your statement?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** May I refer you to page 29? Is that your signature

appearing on that page?

**MR MXOLISI DUKWANA:** Yes it is.

**ADV PHILLIP MOKOENA SC:** Yes. And do you confirm that your statement it is a form of an affidavit?

**MR MXOLISI DUKWANA:** I do.

**ADV PHILLIP MOKOENA SC:** But for some corrections that we will deal with in due course appearing from your supplementary affidavit do you confirm that the contents of your statements are both true and correct?

**MR MXOLISI DUKWANA:** They are, I do.

10 **ADV PHILLIP MOKOENA SC:** Yes. You have also furnished the commission with the supplementary affidavit which is to be found on Exhibit X1, could you please turn to page 14 of Exhibit X1. There is a signature appearing there, do you confirm that it is your signature?

**MR MXOLISI DUKWANA:** It is.

**ADV PHILLIP MOKOENA SC:** And you do also confirm the contents of that supplementary to be true and correct?

**MR MXOLISI DUKWANA:** Yes they are Sir.

**ADV PHILLIP MOKOENA SC:** Yes. You can keep Exhibit X1 with you because I need for us to deal with the corrections appearing in Exhibit X1. Please turn to page 7 and  
20 under the heading: "Amendments and Additions" would those be corrections that you have effected in relation to your main statement Mr Dukwana?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Yes. Could you please very quickly take the Chair through those amendments so that we can appreciate to what extent have you amended your initial statement?

**MR MXOLISI DUKWANA:** From paragraph 7 in relation to paragraph 38 of statement this amendment should read as follows: That the last sentence should read as, and I quote:

“As soon as Tony left to make a copy Magashule then intimated to me that he was going to be involved in a business relationship with Tony.”

**ADV PHILLIP MOKOENA SC:** Mr Chair for ease of reference paragraph 38 is to be found on page 12 of the main statement.

**CHAIRPERSON:** Yes.

10 **ADV PHILLIP MOKOENA SC:** Of Exhibit X.

**CHAIRPERSON:** Yes thank you.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** You may proceed to deal with other amendments?

**MR MXOLISI DUKWANA:** Number 8 relates to paragraph 47. The airline – the correction to the airline and that correction should be SA Express and not SA Link.

**ADV PHILLIP MOKOENA SC:** Yes. And that is on page 15 of Exhibit X. You may proceed.

**MR MXOLISI DUKWANA:** Number 9 relates to paragraph 63 which should read as:

20 “The meeting in issue took place in February 2012 and I am not certain about the dates but I was dismissed on the 22 February 2012 after the visit with Magashule to the Gupta compound.”

**ADV PHILLIP MOKOENA SC:** Yes and that is page 19 of Exhibit X. Proceed.

**MR MXOLISI DUKWANA:** Number 10 relates to paragraph 67 in the first sentence must read:

“I was also startled that the Premier of the Province brought me to the Gupta compound with the sole intention of corruptly and unlawfully advancing commercial interests of the Gupta’s.”

**ADV PHILLIP MOKOENA SC:** Yes proceed.

**MR MXOLISI DUKWANA:** Number 11 paragraph – it relates to paragraph 71. The correct date is to be 25 October 2018.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** Paragraph 87 the correction there is the date the 22 February 2012.

10 **ADV PHILLIP MOKOENA SC:** And that is to be found on page 25 of Exhibit X yes. You may proceed.

**MR MXOLISI DUKWANA:** Paragraph 93 should read as:

“MEC for Economic Development and Tourism”

Not Sport as it is reflected.

**ADV PHILLIP MOKOENA SC:** And now in paragraph 14 you have now added to paragraph 87 can you please take the Chair the additions in relation to paragraph 87?

**MR MXOLISI DUKWANA:** In paragraph 87.

20 “On the 22 February 2012 whilst in the meeting I received a call from Ms Elzabe Rockman who was the Director General of the Free State Province indicating to me that the Premier wanted to talk to me? Instead the person who spoke to me was Me Mamiki Qabathe who informed me that at eleven o’clock that day the Premier would make an announcement on the Cabinet Reshuffle. Ms Qabathe went on to state to me that the Premier has decided to drop me and replace me with a female in his

endeavour to advance empowerment of women in the province. Following the call I excused myself from the meeting and flew back to Bloemfontein. On arrival my VIP Protection Persons received me and whilst in the car to the office it was breaking news that indeed I have been relieved of my responsibilities as MEC. On arrival at the office I found emotional support staff some of whom were in tears. Ms [indistinct] then told me that Ms Qabathe had addressed them concerning the developments. I tried to gain access to my office in order to remove my personal  
10 belongs in particular my books and the office was locked. I called Ms Qabathe concerning access to my office and she advised me that all my belongings would be couriered to my residence.”

**ADV PHILLIP MOKOENA SC:** Yes. Now for now you can put aside Annexure – Exhibit X1 as we have been focusing on Exhibit X. Can you please in relation to paragraph 9 of Exhibit X summarise for us your academic qualifications?

**MR MXOLISI DUKWANA:** I obtained a secondary teachers diploma from the College of Mphohadi in Kroonstad and I went on to teach the school in Kutlwanong, Rearabetswe Secondary School from 1986 up until 1993. I have gone through other  
20 courses but could not complete some of them.

**ADV PHILLIP MOKOENA SC:** Yes. Are you a member of any political organisation?

**MR MXOLISI DUKWANA:** Yes I am. I am a very disciplined member of the ANC and I served in different positions in the ANC. Earlier after the unbanning of the ANC the ANC in trying to set up structures in the province in the Free State established two regional structures the North and the South. The North related to mainly your Welkom,

Virginia that is the South, the North in fact will relate to a number of area up until you go to Bothaville, Parys and up until Vrede and Qwaqwa, Bethlehem until the Gold Fields and the South – the South related to Bloemfontein, Botshabelo as well as Thaba Nchu as well as the Gariep region. And there was a structure that was headed – a structure that was established that was headed by Ndada Vincent Matsipe and after structures of the ANC were put in place in late 1990 I was elected the first regional chairperson of the ANC in the Northern Free State. And that – it was for a year and we went to a conference the following year in 1991 to 1992 and I must say during the time when I was a regional chairperson one had an opportunity also as an ex-official member of the

10 National Executive Council and it is also a – what actually has guided me throughout my life since the experience in serving with gallant leaders and members of the ANC at the time. It was at that time that one realised I mean with everything that one thought we had as a young energetic member of the ANC getting into the NEC and finding such brains such men and women of such character encouraged me and this is actually what has motivated me to try and leave a legacy that such men and women who served in the ANC at that time represented. I mean just to make an example. It took me a long period just to participate in the NEC in terms of debate and some instances I remember especially during the negotiations. That you had great members you know and matters were put to the table and one you know you trying to participate and you thinking what

20 to say and your find you know some members, some leaders expressing it in a manner in which I never thought that you know I never even thought about it and you think that this person had said something that you know was odd only to find that somebody else will come up with something much better than the initial one and you could imagine my confusion in that you know and I felt very, very little in the company of such giants. But one learnt a lot in that space of time. And that carried me and one wished that many

young members of the ANC today could have had the experience that one had in serving in such a structure. And in 1991/1992 I was then elected as a Deputy Chairperson to the then the late Ndade Ngonyedi and in 1992/93/94 I then served as the Deputy Chairperson also to Ace Magashule. And in fact it is very interesting what the development at the time but what is of interest is that it was agreed that because the members who were serving in the structure that time were not working. I was the only one who was teacher working at the time when the top 5 was elected. That consisted of Ace Magashula the Chairperson, myself as the Deputy Chairperson, Secretary Pat Mathosa, Deputy Secretary was the late Vax Myekiso and the Treasurer was Tate Magwe. And in 1994 when the ANC dissolved the region in order to establish a provincial structure I was then elected in the PEC and later on 1995 went on to serve also as the Treasurer. I served as the Treasurer of the ANC in 2005 up until 2012. I served two terms as the Treasurer of the ANC, the Provincial Treasurer of the ANC.

**ADV PHILLIP MOKOENA SC:** And from 2012?

**MR MXOLISI DUKWANA:** From 2012 I – I became an ordinary member of the ANC and [indistinct] in my ward.

**ADV PHILLIP MOKOENA SC:** Yes. Now I take it that from 1994 up until 2012 you did hold some official capacities within government and can you take us through them?

**MR MXOLISI DUKWANA:** After leaving teaching in 1993 I decided that it will be in the best interest to move out because being involved in the ANC activity took me away from the kids that I was teaching and I felt that it was unfair and instead of staying on I then decided to resign and went on to be fulltime and worked in the ANC up until the elections. After the elections of 1994 I was then elected in the legislature of the Free State as part of the 30 member of the legislature. I think the ANC could have received about 24 or 25 seats at the time and the Premier was Ndade Terror Lekota and I served

as a member of the legislature and became the chief whip and the RDP Commissioner together with Pat Madosa. And in 1996 – in fact in the province of the Free State from 1994 because of the history between the North and the South a lot happened that led to a situation where the ANC was disbanded and the executive council – you know the ANC was the first provincial structure in the Free State to be disbanded in 1996. And the executive council was also disbanded in 1996. I remember we were called to Lethuli and because of all other issues that were creating problems for government to function properly and we were admonished by the likes of the late Comrade Nelson Mandela and we had also Thabo Mbeki in attendance and many other leaders. And the

10 ANC from that meeting were disbanded and when we – we went there as members of the – some members of the executive council, some members of the PEC. When we went back we were no longer members of the PEC. We were told you no longer because we were not deserving of such an honour because of what behaviour. And in 1996 when after the disbandment of the executive council Mr Lekota was then taken to the NCOP became the Chairperson of the NCOP and Ace Magashule went to the National Parliament and – the National Assembly and we – the late Me Ivy Matsepe-Casaburri came in as the Premier and I was then appointed as a MEC for Education in 1996. In 1998 I was dismissed as the MEC for Education and the reason was at the

20 time there was a project to develop College Square and those who wanted to develop College Square came to me because in terms of the law the public school if it does not use the land available or chose not to use the land available that land should go back to the municipality and they will do the rezoning or they would come to the MEC and make recommendations. When they came to me they sought to ask for a - you know that we recommend that they use the land for a commercial purpose - for commercial purposes. I then intimated with these guys that it will be amiss of me if I were to allow them to do

that and instead it will be better that whatever the proceeds that would come from such a venture should also benefit the other schools especially the disadvantaged schools in the area because the land belonged to them. The municipality was just holding the land on their behalf. Therefore it will make more sense if that was the case and we – it took long to convince these people, but ultimately they agreed. When we were about to sign the agreement some of my colleagues wanted us to engage and discuss this matter further and I felt that in fact it was not appropriate because they had invited the same people I had negotiated this deal with and wanted us to restart the negotiations and I refused to do that and then later that day I received a call – a phone call from the  
10 late [indistinct] who indicated to me that she would prefer to make sure that there is stability in the Executive Council and if members – some members had threatened to resign if I was not dealt with. She would rather, you know, release me and I thanked her for that and that was it and this is very interesting that during the time that I was in the Executive Council on two occasions every time I was fired it was through her call and fortunately the first time I had the courtesy of being given a call by the Premier the person who appointed me and not with the last one that I will talk about and then 1999 after the elections I became a Deputy Speaker of the Legislature up until 2004 where I became a Speaker and it went on up until 2008 when I was then brought in as a  
20 Member of the Executive under the leadership of Beatrice Marshoff to serve as a MEC for Safety that was Police at the time and Transport and up until that year 2008 late where there were changes and I had to move Economic Development. It was just before the elections. I went serve also as the MEC for Economic Development and Tourism and I also had an opportunity when Mr [indistinct] who was then the MEC for Education. He left to join Cope. The ANC gave me the responsibility also through the leadership of Beatrice Marshoff to also act as an MEC for Education. So during that

year up until the – after the election I was responsible for two portfolios, the Economic Development as well as Education and after the elections I was then also elected or appointed by Ace Magashule into the Executive to continue as an MEC for Economic Development, Tourism and Environmental Affairs up until 2012 when I was summarily dismissed.

**ADV PHILLIP MOKOENA SC:** Yes, we will deal with your dismissal later. Now before dealing with the specific topics which you are ventilating in your statement may we deal with you know the Anton Piller which was touched upon by the Chair earlier today which you brought before the High Court. Can you remind us by the way when did you bring

10 that High Court application?

**MR MXOLISI DUKWANA:** I think it is on the 25<sup>th</sup>.

**ADV PHILLIP MOKOENA SC:** Of October 2018?

**MR MXOLISI DUKWANA:** Of October 2018.

**ADV PHILLIP MOKOENA SC:** So it is almost approximately seven months back?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** What was the reason for approaching the High Court in Bloemfontein?

**MR MXOLISI DUKWANA:** Chair I come from a province. I have worked in that province. I have come to understand the ins and the outs of what is happening in that  
20 province and I then felt that if I were to alert anyone that I was going to come to the Commission and I needed information I can say here and now that the information would not have been provided to me. Let me make an example. Throughout this saga where we were going through the Provincial Government intimated that I should not have gone there. They could have provided the information that we requested, but if that was the case why did they oppose the application. In fact common sense dictates

that they would because they support the – you know they were willing to give me the information they would not have chosen to do that, but also it went on to prove me right because some of the information for instance a simple – my diary that you would need and whatever you have in the office you take everything. You take stock of everything as an asset and then you private and it was also on the roster of things that were in the – that were taken from my office, but when we requested the diary it is nowhere. As we speak as we are sitting here we have not been given the diary. You know that was the reason why I was chose to do that. I just wanted the – you know the court to give the authority that would allow them not to do anything to the information that was  
10 requested.

**ADV PHILLIP MOKOENA SC:** Yes. May I refer you to EXHIBIT X1 with particular reference to page 9 from paragraph 15? Mr Dukwana.

**MR MXOLISI DUKWANA:** This one?

**ADV PHILLIP MOKOENA SC:** X1, yes.

**MR MXOLISI DUKWANA:** Okay.

**ADV PHILLIP MOKOENA SC:** If you go to page 9 from paragraph 15 you are dealing with an issue pertaining to the status quo of the Anton Piller. Are you able to simply summarise to the Chair your journey from that time to date so as we can appreciate your attempts which you have undertaken in order to obtain the necessary documents?

20 **MR MXOLISI DUKWANA:** Chair.

**ADV PHILLIP MOKOENA SC:** Just in summary.

**MR MXOLISI DUKWANA:** Oh. We did everything that we could on the date and my legal representatives and I we had hoped that by – by the time the Commission adjourn in 2018 all that we requested would be here, but on 13 February 2019 my legal representative had caused a letter to be addressed to the Learned Judge asking for the

date on which the judgment would be heard – will be handed – would be handed down and in annexure marked – is it Annexure D?

**CHAIRPERSON:** So just to make sure the application for an Anton Piller Order was heard on 25 October 2018. Is that correct?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** That is date when it was heard?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** And it was dealt with as an urgent application?

**ADV PHILLIP MOKOENA SC:**

10 **MR MXOLISI DUKWANA:** Yes, it was Chair.

**CHAIRPERSON:** And are you saying that as at 13 February 2019 no judgment had been handed down?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** Yes Chair.

**ADV PHILLIP MOKOENA SC:** And as you will see that as a result there was a letter dispatched to the Judge that is Annexure DNS – DNS1. Am I correct?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Yes. Did you receive the judgment ultimately?

20 **MR MXOLISI DUKWANA:** We received the order. I am just checking.

**CHAIRPERSON:** Was that last week?

**ADV PHILLIP MOKOENA SC:** Go to page 11 paragraph 23.

**MR MXOLISI DUKWANA:** Yes. The correspondent attorney phoned my attorney that only an order was made and the judgment was to follow by 5 April 2019.

**ADV PHILLIP MOKOENA SC:** So as you are testifying before the Commission today

you have only had an order dismissing the application and have not yet received any judgment?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Before?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** May I then refer you to EXHIBIT X with particular reference to page 29? X is the big bundle Mr Dukwana. X1 is that small bundle.

**CHAIRPERSON:** Mr Mokoena I do not know, I think your voice is.

**ADV PHILLIP MOKOENA SC:** Is it fading Mr Chair?

10 **CHAIRPERSON:** Low, soft.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** So maybe you could raise it.

**ADV PHILLIP MOKOENA SC:** X, Bundle X page 29.

**MR MXOLISI DUKWANA:** Huh-uh.

**ADV PHILLIP MOKOENA SC:** You will see that from paragraph 98.1 to 98.6 you table there the documents which you requested. Are these the documents which you sought in the Anton Piller application?

**MR MXOLISI DUKWANA:** Yes they are Chair.

20 **ADV PHILLIP MOKOENA SC:** Yes. Just for the record could you please tell the Chair, reads them into the record as to what you sought in the application?

**MR MXOLISI DUKWANA:** The cellphone records of the official mobile phone that was 0825559981. That was the phone that I used during my tenure as an MEC.

**ADV PHILLIP MOKOENA SC:** And why was it necessary for you to obtain those cellphone records?

**MR MXOLISI DUKWANA:** It will also help to prove the discussions that we had with

Ace Magashule especially in - in relation to him asking me to go to – to attend an - a fundraising dinner in Sandton that he had arranged because he called me and so I thought that would be very helpful.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** And the second item.

**MR MXOLISI DUKWANA:** My travel records during my tenure as an MEC.

**ADV PHILLIP MOKOENA SC:** And why was that necessary for you to obtain?

**MR MXOLISI DUKWANA:** It will show that on a particular date the date that will be reflected on the – on the diary as a trip to Johannesburg will also be reflected. That is

10 why I needed that.

**ADV PHILLIP MOKOENA SC:** Yes and item number three, 98.3?

**MR MXOLISI DUKWANA:** The travel records of Mr Magashule as Premier during that period will also help to collaborate that we travelled on the said date. We were in the same plane.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** And 98.4?

**MR MXOLISI DUKWANA:** The presentation regarding the initial presentation on the data hub concept which is the work that we were doing to establish an ICT Hub in the

20 Matjhabeng area.

**ADV PHILLIP MOKOENA SC:** Yes and why was it important to obtain this presentation?

**MR MXOLISI DUKWANA:** Because it would demonstrate that the work that we were doing and why there was such an interest from the other quarters, in this case the Guptas to get, to lay their hands on what we were doing.

**ADV PHILLIP MOKOENA SC:** Yes and 98.5?

**MR MXOLISI DUKWANA:** My diary during my tenure as an MEC, 2009 to 2012.

**ADV PHILLIP MOKOENA SC:** And it is the one that you were telling the Chair that up until today you have not received it?

**MR MXOLISI DUKWANA:** Yes. The – Chair the importance of this would have demonstrated the fact that there is nowhere where I was told that I was going to the – to meet with the Guptas, but on the said date as normal as we do once you get a booking if it did not come through your office you will inform your office and they would put it down as you have indicated to them.

10 **CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:**

**MR MXOLISI DUKWANA:** And when I called my office I indicated to them that on this particular day.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** I will be going to Sandton for an ANC fundraising dinner.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And it would – it would be recorded as such.

**CHAIRPERSON:** Hm.

20 **MR MXOLISI DUKWANA:** So that was very important for me to get such information, yes.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** And 98.6?

**MR MXOLISI DUKWANA:** Any electronic documents such as emails in my official email account relating to state capture activities.

**ADV PHILLIP MOKOENA SC:** Were you able – were you able to obtain any of those –

of that information?

**MR MXOLISI DUKWANA:** No.

**ADV PHILLIP MOKOENA SC:** And what was the importance of you obtaining same?

**MR MXOLISI DUKWANA:** This – these documents especially the ones that would be coming from my emails would demonstrate the and also in my office the Manager of the office and the PA will demonstrate the discussions that pertained or that went on between us and the people would be – I would be referring to later.

**ADV PHILLIP MOKOENA SC:** Yes. Now it is apparent Mr Dukwana that you are not able to obtain all the documents which you wish to obtain for the purpose of your  
10 testimony here. How does that impact on your evidence if at all?

**CHAIRPERSON:** Maybe before we do so let me just make sure, I understand if - if we go back to paragraph 98 at page 29.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** That we have been dealing with just now Mr Dukwana from 98.1 to 98.6 you have listed certain items of information of documents that you needed?

**MR MXOLISI DUKWANA:** That is true.

**CHAIRPERSON:** Now did you not get any of those listed in 98.1 to 98.6 or are there some that you did receive?

**MR MXOLISI DUKWANA:** Let me just mention what I got.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The cellphone records [intervenes].

**CHAIRPERSON:** That is 98.1.

**MR MXOLISI DUKWANA:** As we are speaking, when we visited the office.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Of the Premier last week.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** It came to our attention that they – I do not whether it was deliberately that they used a wrong cellphone number.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And at the time they did not have any difficulty to get.

**CHAIRPERSON:** [Intervenues].

**MR MXOLISI DUKWANA:** The Information from Vodacom.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** But they came back to indicate that they are in a meeting.

10 That they were – Vodacom was indicating that it happened a long time ago and they could not retrieve some of the information especially after three years.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** You know, but it became clear that they had used a wrong number.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And funny enough when we gave them the number and the reason that I am saying it is funny is because member would know that at the time almost every MEC there was a sequence of the cellphone numbers.

**CHAIRPERSON:** Hm.

20 **MR MXOLISI DUKWANA:** Every number would have a 082555.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Or 55 and something.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** But it will always be 082555.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And 99 or.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** 081. The other one was 07 something.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** That was a later phone that I used.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** You know, so it was very strange that it was the one that they used to request the information.

**CHAIRPERSON:** Hm.

10 **MR MXOLISI DUKWANA:** And then when we gave them this number what we got later when we were supposed as the due date that was on a Friday as they indicated the information that then came that – where they communicated with my legal team was that we needed now to apply the Section 205 or something like that so to get the information for this cellphone number.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And then the – so as we sitting now here.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** I do not have that. The.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** The travel records during my tenure as MEC.

**CHAIRPERSON:** Huh-uh.

**MR MXOLISI DUKWANA:** We also – you will get - we had to try and get something that would – the investigators trying to get something, but from the province you know. The travel records of Mr Magashule as Premier during the time, yes we got and also you know.

**ADV PHILLIP MOKOENA SC:** Was it in a complete form, the one 98.3?

**MR MXOLISI DUKWANA:** No, no, no. The – if you check – if we look into – if we were to look into what was given to us you will find in some instances for instance on 22 February when the Premier was to make an announcement of reshuffle the record points him somewhere, you know. So I am just saying with that and many others it demonstrates that it could not be a record that could be trusted.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And used if.

**CHAIRPERSON:** Hm.

10 **MR MXOLISI DUKWANA:** One – just simple – one of these were also falsified.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And that is what we got.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And I do not think it will be useful [intervenes].

**CHAIRPERSON:** So you did get the travel records?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Referred to in 98.2?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Okay and 98.3?

20 **MR MXOLISI DUKWANA:** The presentation we got. With regard to [intervenes].

**ADV PHILLIP MOKOENA SC:** No. Look at the numbers carefully.

**CHAIRPERSON:** Ja. Maybe.

**ADV PHILLIP MOKOENA SC:** The Chair is now talking to you about 98.3 not 98.4.

**MR MXOLISI DUKWANA:** Travel records of Mr Magashule as Premier during 2009.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Yes, we got as we say although it was not the – you know – the true reflection of.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Of what I would think.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** It would reflect exactly what happened.

**CHAIRPERSON:** Okay. You got them?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** But you were unhappy with the content of what is written there/

10 **MR MXOLISI DUKWANA:** I am unhappy because as I say.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** Just picking up one.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That would – I mean – you cannot be in the province to announce a reshuffle and at the time he was engaging. I was in Johannesburg.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** When the announcement was made.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** When I was reshuffled I was called from Johannesburg.

20 **CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And I was told that Mr Magashule wanted to speak to me and he was in the Free State.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** But the records that we have point to something else.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** That he should have been in Johannesburg.

**CHAIRPERSON:** Yes. Okay, but you did get.

**ADV PHILLIP MOKOENA SC:**

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Those. That is 98.3?

**MR MXOLISI DUKWANA:** We did indeed, yes.

**CHAIRPERSON:** And then 98.4, the presentation? Did you get that?

**MR MXOLISI DUKWANA:** We got the presentation with regard to the New City.

**CHAIRPERSON:** Hm.

10 **MR MXOLISI DUKWANA:** But with regard to the ICT Hub, the work that we were doing with the university – Central University of Technology.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** We did not.

**CHAIRPERSON:** And what was the Provincial Government's explanation as to why they could not provide that?

**MR MXOLISI DUKWANA:** I think they were to as we say some of this information when the legal team of the Commission and the investigators and my team met with them they promised to provide some of this information and the due date was the Friday. We went there it was on a – I think it was.

20 **CHAIRPERSON:** On a Wednesday.

**MR MXOLISI DUKWANA:** On a Wednesday we went there or was it a Thursday and then they said on Friday it was the due date.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Yes and.

**ADV PHILLIP MOKOENA SC:** Mr Dukwana let me assist you. While you opening

EXHIBIT X can you also go to EXHIBIT X1 go to page 19 and open both pages so that you may be able to provide clarity as to the responses furnished to you – your legal team by the province. Page 19, 1-9.

**MR MXOLISI DUKWANA:** *Ja.*

**ADV PHILLIP MOKOENA SC:** Could you please firstly identify that document? What is that document?

**MR MXOLISI DUKWANA:** Status of availability of requested information.

**ADV PHILLIP MOKOENA SC:** And it was dispatched to your legal team from the province. Am I correct?

10 **MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** And it lists in the left column the information required.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** And in.

**CHAIRPERSON:** Just before - just before you proceed do not move too far away from the microphone. Yes, okay. Thank you.

**ADV PHILLIP MOKOENA SC:** Thanks Mr Chair.

**MR MXOLISI DUKWANA:** Thank you.

**ADV PHILLIP MOKOENA SC:** As I was explaining to you that in the left column you will see that it says information required and the next column provides you with a status  
20 as to what was their response. Then you may be able to take the Chair through both documents so that at least we get a full picture of the status of those documents.

**CHAIRPERSON:** May be let us do it a little differently just to complete what we have on – what I want on page.

**ADV PHILLIP MOKOENA SC:** 39.

**CHAIRPERSON:** Paragraph 98.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** You can look at EXHIBIT X1 page 19 for purposes of seeing what answer you should give me. If that is what – if you need it to help you what the information what happened, but I do want to follow the list in paragraph 98 of your affidavit. So we were at 98.4. You said you did get the – or you did not get the presentation on the data hub concept. Is that correct? You said you did not get that.

**MR MXOLISI DUKWANA:** Chair in responding to that can I – can I go to just to demonstrate?

**CHAIRPERSON:** Yes.

10 **MR MXOLISI DUKWANA:** What I am trying to say?

**CHAIRPERSON:** Huh-uh.

**MR MXOLISI DUKWANA:** First I will say the presentation regarding the initial presentation on the data hub.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** I think it could be also the problem in understanding what we are talking about.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** In this case.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** And if you allow me just to explain.

**CHAIRPERSON:** *Ja. Ja,* do that.

**MR MXOLISI DUKWANA:** There are two issues here.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** There is an ICT Hub.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That was conceptualised by the – Professor Mthembu.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And.

**CHAIRPERSON:** That is the ICT Hub?

**MR MXOLISI DUKWANA:** ICT Hub.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And this would be that presentation.

**CHAIRPERSON:** Okay.

**MR MXOLISI DUKWANA:** And then there is also a presentation on New City Concept.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And that – the New City Concept we got.

**CHAIRPERSON:** Oh, okay.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** So what is reflected in 98.4 you did not get and that is the one relating to the ICT Hub?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Yes Chair.

**CHAIRPERSON:** That you did not get?

20 **MR MXOLISI DUKWANA:** Yes Chair, but we got the one.

**CHAIRPERSON:** But you got the one. The other one.

**MR MXOLISI DUKWANA:** On the New City.

**CHAIRPERSON:** On the New City?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Had you asked for the one on the New City?

**MR MXOLISI DUKWANA:** Yes, we had also asked for that.

**CHAIRPERSON:** Oh, okay alright. Thank you and then 98.5, your diary you did not get?

**MR MXOLISI DUKWANA:** I did not Chair.

**CHAIRPERSON:** And what was the explanation given in regard to your diary?

**MR MXOLISI DUKWANA:** They claim that they could not get it.

**CHAIRPERSON:** They could not get it?

**MR MXOLISI DUKWANA:** They could not get it.

**CHAIRPERSON:** Do you think you might have stood a better chance of getting it if you  
10 were allowed to look for itself in whatever offices or wherever or archives or you are  
happy to accept that if they say they cannot find it then they probably cannot find it? I  
know it is many years. So it might be difficult to find it. I do not know. So I am just  
asking. I want to [intervenes].

**MR MXOLISI DUKWANA:** I do not think we will get it. Just to explain.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** In the office of the MEC.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** In my office there would be a hard copy.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** Of a diary.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** What the secretary – the PA will do.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Would also put down every – every engagement.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** Even if somebody calls for next month whatsoever.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** They will do that.

**CHAIRPERSON:** *Ja*.

**MR MXOLISI DUKWANA:** And then they will put it down.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And then they will bring it to you.

**CHAIRPERSON:** *Ja*, to approve.

**MR MXOLISI DUKWANA:** And once you approve.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Of this they will then bring – they will then bring everything onto a piece of paper.

**CHAIRPERSON:** *Ja*.

**MR MXOLISI DUKWANA:** That will be your weekly program.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That will outline everything.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** But – and then it will be put in my diary.

**CHAIRPERSON:** Yes.

20 **ADV PHILLIP MOKOENA SC:**

**MR MXOLISI DUKWANA:** A diary that will be in my office.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Plus this weekly program.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** To allow me in an event that there were to be a person who

might need anything and I could refer to the diary that I have in the office and if for instance without also referring to them I accept any invitation etcetera, I would also be informed by what I had, and that would be in my office and there would be, this is very strange you would have one with the PA, you would have the same with the office manager, and the one with me in my office. For one to say you can't get all three of them it's – I would say it's ridiculous to say the least.

**CHAIRPERSON:** Yes, so is there – but do you think if you were given access to look for it yourself do you think that you would have a good chance of finding it if it is there, or – I just want to know whether it's something we still have reasonable prospects of  
10 finding if we try or whether you think that it's not worth the effort, you would be able to, you have a better understanding of how things ...(intervention)

**MR MXOLISI DUKWANA:** I would like to get such an opportunity but as I say you – I might go there, but also if somebody does not want you to find anything might give you the chance to look for it when they know exactly that they have removed in, so the question is you take something from the office the – what is expected of every department or every public – in the public service that your record you take everything and you record everything and what never needs to be archived should be archived. The question is why is my diary not archived you know.

**CHAIRPERSON:** Well that might be an important thing because if the normal  
20 procedure is that after a year to which a diary relates has ended it gets archived so it ought to be possible to go to the archives and then find diaries from whatever year to whatever year, then you ought to be able to say well let me go and have a look where it is supposed to be, it may be, I don't know, I don't know whether after X number of years those documents get destroyed or not, I don't know, you know but if they are supposed to be placed or stored in a particular room there's no reason why if they say they can't

find it you or the commission can't be allowed to have somebody go there and have a look and be able to say indeed it is not there, but maybe all the other diaries are there, or what the position is.

**MR MXOLISI DUKWANA:** I hope that, we will try that and that would only be important just to demonstrate that this is what actually happened. I know people who are concerned in this case would rebut what I'm saying but the fact of the matter is the truth is the truth and you can't hide it.

**CHAIRPERSON:** Ja, you see it may be important to see whether the position is that all the diaries of all MEC's which were supposed to be stored somewhere are no longer  
10 there or whether only some or only yours is not there, that kind of thing.

**MR MXOLISI DUKWANA:** Ja.

**CHAIRPERSON:** Okay, alright.

**MR MXOLISI DUKWANA:** Okay.

**CHAIRPERSON:** So with regard to 98 the list in 98 so ...(intervention)

**MR MXOLISI DUKWANA:** 98.5 Chair.

**CHAIRPERSON:** Sorry?

**MR MXOLISI DUKWANA:** 98.5 that's where ...(intervention)

**CHAIRPERSON:** Yes, 98.5 you didn't get and then 98.6 you also didn't get is that  
right?

20 **MR MXOLISI DUKWANA:** There are some emails that we got but there are many that we did not get.

**CHAIRPERSON:** Yes, okay, and 98.1 you did not get because they used, they said they used a wrong number, the cell number I think that's what you said.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Now in regard to that I know that in regard to other witnesses who

have come here or I've heard that the cell phone companies apparently don't keep records of phone calls beyond a certain number of years, I don't know if it's five years, I think five years seems to ring a bell with me, but there is no reason why as far as the Commission is concerned the Commission has to only rely on the cooperation of the Provincial Government, I'm sure that there are procedures in terms of which they can approach the cell phone companies.

**MR MXOLISI DUKWANA:** They have already done that.

**CHAIRPERSON:** They've already done that.

**MR MXOLISI DUKWANA:** They're just waiting for feedback yes.

10 **CHAIRPERSON:** Yes okay, not that's fine, so that has been done and in due course we will know what the result is.

**MR MXOLISI DUKWANA:** But can I get some clarity here Chair, or give some clarity, when we met on the said date we were with the DG and others, we were informed that the cell phone company had indicated that if you have you know a certain number of years had lapsed it would not be easy to get the information, so when we insisted we then got this letter and if you allow that I read this letter just for you to understand.

**ADV PHILLIP MOKOENA SC:** Yes, identify the letter and then share with us as to where is it coming from so that it can be interpreted.

**CHAIRPERSON:** Ja, who it comes from, who it is addressed to.

20 **MR MXOLISI DUKWANA:** It is addressed to my attorney.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** It is from a Mr Venter the person who had undertaken an instruction of the DG to provide us with the information.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Yes and it's addressed, the letter ...(intervention)

**CHAIRPERSON:** Just raise your voice again.

**MR MXOLISI DUKWANA:** The letter reads:

“Mxolisi Dukwana/the Premier of Free State Province

1. We unfortunately have to inform you that despite submitting your client’s permission to Vodacom they still persist that the information should be obtained through a Section 205 subpoena. As we have informed your client on 15 March 2019 the only option appears to be a subpoena from the Commission. They have been requested to provide the response in writing and enclose their response herewith.”

10 The reason that I wanted to put this on record is to demonstrate that this was not the case when the other wrong number was used, the information that came back from them was that the information could not be accessed because a number of years had lapsed.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** But when we gave them the correct number we are now told to go this route, the question is why did we not go the same route earlier on for this time. That’s basically what I’m trying to point out here.

**CHAIRPERSON:** Yes, no, no that’s fine you know it may well be that – it may well be that it’s not just the Provincial Government that is at fault and maybe it is not at fault,  
20 maybe it is the Commission, why all along steps were not taken to get that information irrespective of any position taken by the Provincial Government but I know that Mr Mokoena you might not have an answer for that and I am not asking for an answer but I’m just saying we have to look at the Commission ourselves because Mr Dukwana came up and told the public part of his story at least last year, we became aware of him last year and as a matter of fact I wanted him to give evidence before the end of last

year and I spoke to the Premier already last year in October to arrange that investigators of the Commission should travel to Bloemfontein and help him to access whatever he wanted and as I said a week or two ago I had not been told by then that there was – that the Provincial Government was not cooperating and we should long have had that so but again Mr Mokoena I know you are looking at me helplessly because you might, this is something that you might not be ready, but we will have to look at the Commission in terms of the – of what needs to be done but I am happy that I think from what you have said that step has been taken now and in due course we will know the outcome.

- 10 **ADV PHILLIP MOKOENA SC:** I was assured by the Commission's investigators that this issue is receiving the attention it deserves.

**CHAIRPERSON:** Yes, yes, okay but thank you for bringing that to our attention Mr Dukwana. Thank you. So now with regard to leaving out the cell phone records which it looks like we will get at 98.1 then the only two items that you did not get at all are 98.4 and 98.5, 98.4 being the presentation in relation to the ICT Hub and 98.5 being your diary for the period you have indicated and we have talked about your diary and in regard to 98.6 you said you did get some emails but not all. What was the explanation for you not being able to get all the emails you were hoping to get?

**MR MXOLISI DUKWANA:** There was ...(intervention)

- 20 **CHAIRPERSON:** Were you given your I assume this would have been some computer that was used at some stage and were you given access to the actual computer, it might or might no longer be working, I don't know but or did you just get told whatever and you didn't get a chance to satisfy yourself as to what was there and what was not there?

**MR MXOLISI DUKWANA:** I think Chair if you allow with Exhibit X1 on ...(intervention)

**ADV PHILLIP MOKOENA SC:** Page 19.

**MR MXOLISI DUKWANA:** 19, the laptop used that is number 4 on the left hand side, the lap top used by myself during the term of office that was also to help get this and also for the team, the investigating team that had gone there with a person ...(intervention)

**CHAIRPERSON:** A technical person.

**MR MXOLISI DUKWANA:** You know a technical person who would help this, and I think that one would be better dealt with by such people.

**CHAIRPERSON:** Yes, but do you know whether the actual computer is still in  
10 existence or you don't know, that you used, that should, that you used or where the emails are supposed to be?

**MR MXOLISI DUKWANA:** You know a strange thing happened you know when I was after I was dismissed I think almost in 2014 I then got a call from a station commissioner or commander in one station in Bloemfontein who indicated to me that there were people who were to come, who were intending to come to me for an arrest that I had stolen these items and then when I indicated to him that you know it would have been better that there you know – it would have been better if they had come so that we could deal with all these lies that were now coming out because the laptop and all those things, even the cell phone, when I came back I could not be in terms of what  
20 the governance asked, in terms of the regulations once you are an MEC and when you are removed there is a period of time that you are given to make sure that you wind up everything but in my case it was on that day I was to vacate the office and I was to hand over everything and the unfortunate thing was that this, the laptop was still in my office, the office that was locked when I came in, so when they took everything out as the normal procedure would be to record everything you take out of the office so that

you know exactly what you took out of the office and do that, that would also have been reflected in that but it came out that some of these issues were actually in the use of the person who came to the office, who worked in the office, who actually replaced me.

So I'm just saying ...(intervention)

**CHAIRPERSON:** So you don't know whether it still exists or not?

**MR MXOLISI DUKWANA:** Ja, I don't.

**CHAIRPERSON:** You don't know?

**MR MXOLISI DUKWANA:** I don't.

**CHAIRPERSON:** Were you told whether it's no longer there or were you not told?

10 **MR MXOLISI DUKWANA:** I was trying to relay that with this story.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And many others, it is easy to – not to get the laptop that we need.

**CHAIRPERSON:** I wonder Mr Mokoena whether in page 19 there's anything about whether the ...(intervention)

**ADV PHILLIP MOKOENA SC:** Yes Mr Chair if you go to item 4 the last sentence on the column status it says that efforts to recover the specific laptop is still underway and I can also assure you that the Commission's investigators are constantly engaging the Department in the Free State in order to also to have access to the hard drive, I'm told  
20 that that is also underway.

**CHAIRPERSON:** Yes you know these things being underway you know either there should be a computer sitting somewhere or there is no computer, you know.

**ADV PHILLIP MOKOENA SC:** Exactly.

**CHAIRPERSON:** You know and if it is there then people with necessary expertise can do what they need to do to see if those things can be, if emails can be retrieved, why

should it take ages?

**ADV PHILLIP MOKOENA SC:** We can only rely on the expertise of the investigating team and those that are having the knowledge to do that Chair.

**CHAIRPERSON:** Yes, just remind me, we need to really get that sorted out ,either there is a computer sitting somewhere or there's no computer and it should – we should be knowing that by now, we should have known it a long time ago. Okay, okay alright, okay let's continue.

**ADV PHILLIP MOKOENA SC:** I see Chair it's way beyond the tea adjournment, maybe this is the moment to adjourn.

10 **CHAIRPERSON:** Ja okay, alright, it's twenty past eleven, we will adjourn and resume at twenty five to twelve, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Thank you Mr Mokoena let us proceed.

**ADV PHILLIP MOKOENA SC:** Yes. Mr Dukwana just to complete this topic on the documents can you refer to Annexure X1 page 19 you have dealt with some...

**CHAIRPERSON:** Exhibit X?

**ADV PHILLIP MOKOENA SC:** X1.

**CHAIRPERSON:** X1. Exhibit?

20 **ADV PHILLIP MOKOENA SC:** X1.

**CHAIRPERSON:** Not annexure. Yes, yes.

**ADV PHILLIP MOKOENA SC:** Yes Exhibit X1.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** Page 19. Just to complete a picture is there any other things that you want to highlight to the Chair in relation to the document that you

required?

**MR MXOLISI DUKWANA:** Yes, yes Sir. Yes Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The – I just want to indicate that if you check that where with regard to the presentation to the executive council that is number 7.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** Of the ICT Hub. The Free State were saying there is no record that could be found that such a presentation was made to the executive council. And this came – this could not be the truth in the sense that on the – on the 23 July  
10 2009 in my budget vote speech of the department I made the following announcement:  
The partnership with the central university of technology and [indistinct] one of the largest information technology companies in the world based in India in creating a regional half or software development and information technology skills. So I introduced – I spoke about this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And I could not have spoken about this in my budget vote without going to the executive council.

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI DUKWANA:** So this also demonstrates...

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That there was – there is something untoward.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That needs to be dealt with in relation to this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So this is the first one. The second one Chair if you allow

that relates just to demonstrate that what has been the difficulty from my side in getting the information including the role of the judiciary in the Free State and that would be in reference to the Anton Piller Application. As I stated that on the said date on the 25 October 2018 that is where we did the application. And on the 13 February 2019 my legal representative caused a letter to be addressed to the learned judge. And that was Annexure marked DNS1. The letter that was addressed the judge. And on the 14 February I would like also to read some of this:

10                   “2019 an email confirming receipt of the said letter was received  
                      from the office of the Judge President of Free State confirming  
                      that the letter was referred to the judge concerned.”

For ease of reference Annexure DMS2 is given. And the – if you remember that my – the legal team had to ask for postponement on the 25 March 2019 and on the same day my legal team addressed a letter to the Judge President of Free State to intervene for ease of reference Annexure – annex hereto marked DMS3 a copy of the letter dated 25<sup>th</sup>. And I would like also at some stage to go back to that letter.

**CHAIRPERSON:** Yes.

20                   **MR MXOLISI DUKWANA:** And on the 27 March my legal team the Commissions legal team and investigators went to the meeting and we have this. But what is – what is very interesting is on 20 – on page – that is the page 11 of the Exhibit X1 it is whilst we were in Bloemfontein on the 27 March my attorney received a telephone call from his correspondent attorney stating that the judgment is to be handed down on the 1 April. On the 1 April 2019 my legal team was meeting the Chair of the commission together with the members of the commission’s legal team and investigators to brief the Chairperson about the visit to the Premier’s office. In that regard my attorney’s correspondent went to court to note the judgment. Now I just want to bring the

attention to you Chairperson. If you read this that is what my attorney's wrote to the judge that will be on page 17. Just reading this for your attention.

"We act for and on behalf of the first and second respondents in the matter in the subject of this correspondence."

"Our correspondence are e.g. Cooper Majiedt Incorporate and this is – I am raising this deliberately to demonstrate something you know on the order..."

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:**

10 "Offer that we received. On the 25 October an Anton Piller Application between the parties was heard by the acting deputy judge president. The reason for the application was to preserve documents as we have expressed. On the 13 February 2019 our correspondents addressed a letter to the learned Judge asking for the date on which the judgment will be handed down. To date there is no response to the said letter which for ease of reference is attached marked A." And if you read the DCG's directive that is number 5 at the commission has the effect of rendering the appendages that nugatory however on behalf of Mr Dukwana we  
20 are of the considered view that an order by the court might still help in assisting the commission to get the information required to execute the mandate."

Now the fact that I am raising this Chairperson is I then on page 20 my attorney received the order from the high court. This will be in the high court of South Africa Free State division Bloemfontein the case is there in the matter between myself and the

Premier of the Free State.

“Having considered the notice of motion and the other documents filed of record and having heard counsel for applicant it is ordered that the Rule Nisi is discharged with cost – which cost include the reserve cost of the 1 October 2018.”

And also advised by my attorney it was the time when they went there and the judge requested that it was – they were in the chambers of the judge and for us to be – for the judge to ask for charges for cost in this matter is something that you know even myself as a person who is a layman in this case it was my attorneys that went there and met  
10 the judge. But the judge is asking for a – for cost in this case.

**CHAIRPERSON:** So which date – to which date does that relate?

**MR MXOLISI DUKWANA:** It is the 1<sup>st</sup> – when the – my attorneys – my legal team went to meet with the said judge.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And it was – and on the 18 October

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The same judge of 2018 requested the postponement to the 25<sup>th</sup> because she wanted to go through the documentation herself. But if you check it is – this is the order now given to us with all this it was at their request that the things  
20 should – this should be postponed.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** To the 25<sup>th</sup> that she is now hitting us with the cost.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And also I – I read the – my attorney ...

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The correspondent and E J Cooper and – but if you check that there is Heel and Mchardy and Herbst I do not know them. And the correspondents that we used...

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Not appearing anywhere on this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So this is just a reflection and as an activist in the ANC in the Free State it has actually become a challenge especially looking at the judiciary in the Free State and a number of things that had happened to extent that many of us  
10 started having problems when it comes to any matter that would relate to the Free State you know situation especially in any matter that relates to Ace Magashula and others. This would have been their tendencies and this I can relay the whole story including the constitutional court ruling in 2012 and what then happened you know? In 2007 there was a ruling against the Free State but also if you go 2012 every time you have a problem with the – what happens in the Free State you know high court. So I am just saying – I am just stating this as a problem for instance one would have expected that this arm of the justice system, this – the judiciary in this case would do everything to help the commission to do its work. If it is for instance when we met with the DG he indicated to us – it was like we are doing you a favour. Because he said we are  
20 prepared to give the information even if the court has not given us or you know there is no ruling from the court. So we are still – it is like, we are doing you a favour by giving this information even before the court could have ordered us. But we have got this now what the court is saying, the ruling from you know this order and this is going to create a problem and an attitude in the province in terms of giving us this information. The province can easily say the court has actually ruled in this and then it now depends on

what they are willing to do and not willing to do in terms of giving us this information. So I am just saying this is a challenge that many of us have and many of the people who would like also to come especially in the Free State would like to come to the commission who would be deterred by behaviour such as this that we see. And this is what I just wanted to put on the table on this matter.

**CHAIRPERSON**: No thank you Mr Dukwana. I understand that today is the date when you are expecting reasons for the order that was made by the judge, is that correct? Was an undertaking I seem to have seen something to the effect that the full judgement or reasons would be given by today or did I misunderstand something? You do not  
10 remember whether any undertaking has been made in that regard? Oh I thought I saw something like on the 5 April. Well maybe Mr Sethene might be able to assist?

**MR MXOLISI DUKWANA**: I think that – that...Yes.

**ADV SETHENE**: May I assist Chair?

**CHAIRPERSON**: Yes.

**ADV SETHENE**: That is paragraph 23.

**CHAIRPERSON**: Yes.

**MR MXOLISI DUKWANA**: Yes.

**CHAIRPERSON**: Of Exhibit X1?

**ADV SETHENE**: Of Exhibit X1.

20 **CHAIRPERSON**: Yes.

**ADV SETHENE**: Paragraph 23.

**CHAIRPERSON**: Thank you. And is it to the same effect or is it – did I misunderstand?

**ADV SETHENE**: It is to the same effect from...

**CHAIRPERSON**: Yes.

**ADV SETHENE**: From the correspondent attorneys.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** Yes.

**CHAIRPERSON:** Okay. So I guess that hopefully the full judgement will be out today and we will – everybody will get to hear what – to read what the judge's reasons are, that is number 1. And I guess that that who maybe will be something to deal with the delay in disposing of the matter. Three – it may be that either the commission's legal team or your legal team or the two of them working together they may need to apply their minds to what you have said about for example the date, I think the 1 October when you say I think your legal team went to the judge, the judge's chambers and then  
10 now costs are being awarded against you for that. And then I do not know whether that is the date or another date when you say the matter was postponed.

**MR MXOLISI DUKWANA:** The 18<sup>th</sup>.

**CHAIRPERSON:** Sorry?

**MR MXOLISI DUKWANA:** The 18<sup>th</sup>.

**CHAIRPERSON:** The 18<sup>th</sup> October.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** As I understand the point you are making is – seems to be that the postponement had nothing to do with you it was the judge who had not had a chance – as you understand the position to read the papers but now the order here says you  
20 must pay for those costs that is part of your concern. So it maybe that either the commission's legal team or your legal team or both work together to look at those concerns because they would know if for example in relation to the 1<sup>st</sup> for example what the position was. They would know if normally costs would be awarded for what happened and so on. And once they have looked at that maybe a supplementary affidavit if it is necessary can be made where one then can understand your concerns

maybe better you know. So maybe the teams can look at that. At this stage you have certain concerns but you are not a lawyer and the lawyers might know some of the things that you do not understand. But from that affidavit or after they have – you have spoken to them they might be able to say no this is something that should go to a supplementary affidavit or they might explain things to you to your satisfaction. I am not sure. I am just mentioned that they hear what I am saying and then at some stage they will inform me of what they think. Okay. Mr Sethene you do look like you would like to say something?

**ADV SETHENE:** Thank you very much DCJ. I think my understanding from Mr  
10 Dukwana is that his journey to the commission has been littered with difficulties.

**CHAIRPERSON:** Yes, yes.

**ADV SETHENE:** He had approached the high court.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** Seeking to get information.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** And what has since transpired.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** Is that from 25 October

**CHAIRPERSON:** Yes.

20 **ADV SETHENE:** When the matter was heard.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** To the 13<sup>th</sup> February when the first letter was addressed to the judge.

**CHAIRPERSON:** Ja.

**ADV SETHENE:** Asking the judge when are we going to get ...

**CHAIRPERSON:** The judgment?

**ADV SETHENE:** The judgment.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** 25 March after meeting with a DCJ.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** Coming here to postpone the matter.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** A letter was addressed now the JP of the Free State asking him to intervene. 27 whilst we were in Bloemfontein a correspondent called our attorney to say the judge wants to see you on the 1<sup>st</sup> April. What Mr Dukwana is saying the letter  
10 of the 25<sup>th</sup> of March addressed to the JP might have caused what one may call judicial irritation? That much is explained in the order granted. Mr Dukwana says the correspondents that are listed there are unknown to himself and to his correspondents – and to this attorney.

**CHAIRPERSON:** Okay.

**ADV SETHENE:** And what also he is saying is on the 1 October that is when we approached court in camera where he heard in camera in judge's chamber – that it is a different judge who granted the Anton Piller. This is the 1 October.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** And the matter was set down for 18 October.

20 **CHAIRPERSON:** October.

**ADV SETHENE:** On the said day 18 October there was an issue about – well the judge said that he needed time to go through papers properly and was inclined to hear the matter on the 25 March – no of...

**CHAIRPERSON:** Of October.

**ADV SETHENE:** Yes of October. That happened. Now what Mr Dukwana is saying

why should he be [indistinct] with costs of the 1 October and the 18 October?

**CHAIRPERSON**: Yes.

**ADV SETHENE**: When the postponement is not even occasioned by him.

**CHAIRPERSON**: Yes.

**ADV SETHENE**: Why on the 1<sup>st</sup> because the order the 1<sup>st</sup>...

**CHAIRPERSON**: Yes.

**ADV SETHENE**: Says in the main application the issue of cost will be dealt with.

**CHAIRPERSON**: Yes.

**ADV SETHENE**: Now the order does not address.

10 **CHAIRPERSON**: Ja.

**ADV SETHENE**: In any way the – the what happens on the 25<sup>th</sup> whether costs are not awarded or bio watch principles apply. So that is what I think.

**CHAIRPERSON**: He is talking about.

**ADV SETHENE**: He is talking about.

**CHAIRPERSON**: Okay.

**ADV SETHENE**: And I doubt there will be any need for...

**CHAIRPERSON**: Yes.

**ADV SETHENE**: Any supplementary...

**CHAIRPERSON**: For a – any supplementary affidavit.

20 **ADV SETHENE**: Yes because this one clarifies that.

**CHAIRPERSON**: Okay.

**ADV SETHENE**: And perhaps...

**CHAIRPERSON**: Yes.

**ADV SETHENE**: What will be – what will be – what would be important is for Mr Dukwana to be guided.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** To read things into record.

**CHAIRPERSON:** Ja.

**ADV SETHENE:** So that he is not...

**CHAIRPERSON:** Yes.

**ADV SETHENE:** He does not talk from his memory.

**CHAIRPERSON:** Yes.

**ADV SETHENE:** Because some of the things may escape his attention.

**CHAIRPERSON:** Yes. Yes.

10 **ADV SETHENE:** Thank you very much DCJ.

**CHAIRPERSON:** No thank you Mr Sethene. Mr Dukwana is – do you confirm that that captures your what you really wanted to raise?

**MR MXOLISI DUKWANA:** Yes it does.

**CHAIRPERSON:** It does?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Okay, no thank you.

**ADV PHILLIP MOKOENA SC:** Mr Dukwana I need to move to another topic. But before we do that can I refer you to Exhibit X with particular reference to paragraph 96 simply to capture the essence of what you have been conveying to the Chair about the  
20 documents. Could you please read that paragraph?

**MR MXOLISI DUKWANA:**

“I am aware that the evidence or the contents of my affidavit do not have precise dates in certain incidences referred to above. That is due to the fact that I have not been afforded requisite information to be of assistance to the commission. I verily

believe that the information I require to provide sufficient particulars of the state capture activities referred to above is in the custody of the Free State government.”

**ADV PHILLIP MOKOENA SC:** And that is the essence of your testimony pertaining to documents, am I right?

**MR MXOLISI DUKWANA:** Yes, yes.

**ADV PHILLIP MOKOENA SC:** Yes. In paragraph 97 you say:

“I have a reasonable apprehension that some crucial information or evidence I require has already been destroyed.”

10 **MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Can you please elaborate why do you say that?

**MR MXOLISI DUKWANA:** Recently some of the people who were working in my office, some who had taken some of the trips that to India had had some of the information in their files removed and as I say this with all the understanding that I have it is very possible in the Free State.

**ADV PHILLIP MOKOENA SC:** Yes. May I refer you to page 11 paragraph 34. From that paragraph you are now introducing a new topic. You are dealing with your visit to Sahara offices, am I correct?

**MR MXOLISI DUKWANA:** Yes.

20 **ADV PHILLIP MOKOENA SC:** And that trip according to your statement occurred in February 2008?

**MR MXOLISI DUKWANA:** Yes it did.

**ADV PHILLIP MOKOENA SC:** Now before February 2008 did you encounter the Gupta brothers in any capacity?

**MR MXOLISI DUKWANA:** No not at all.

**ADV PHILLIP MOKOENA SC:** Now could you share with the Chair in your own words what – the events leading to you having to visit the Sahara offices?

**MR MXOLISI DUKWANA:** Chair on this particular day in February we – we were – I was at the Southern Sun Catherine Hotel in Sandton and I had finished my meeting. I was just relaxing and Ace Magashule came and I was not surprised that he was there because it has been the hotel that he used frequently or he frequented.

**ADV PHILLIP MOKOENA SC:** What was your capacity at the time and what was Mr Ace Magashula's capacity?

**MR MXOLISI DUKWANA:** At the time Mr Magashula was the MEC of Economic  
10 Development – of – was the MEC of – it was Sport.

**ADV PHILLIP MOKOENA SC:** And your capacity?

**MR MXOLISI DUKWANA:** I was the MEC of Safety.

**ADV PHILLIP MOKOENA SC:** Yes. Okay. Proceed.

**MR MXOLISI DUKWANA:** We were in Johannesburg and – and he then asked me to accompany to Midrand. Because I was not doing anything and I felt it would be good to go with him.

**ADV PHILLIP MOKOENA SC:** Did you ask him – did you ask him where in Midrand and what were you going to do in Midrand?

**MR MXOLISI DUKWANA:** No he said "let us go to Midrand there is something that I  
20 want to go there and do quickly."

**ADV PHILLIP MOKOENA SC:** Okay.

**MR MXOLISI DUKWANA:** And so there was no reason for me because I was not doing anything at the time. I was just waiting for traffic to slow down and be able to move. And we went. We went to – we drove together in the car that he was using and we arrived at the Sahara offices because the – there was – the writing was too big for the

signage for anyone to see it is Sahara offices. At the time I did not know what these offices were about and we were welcomed by a person who introduced himself to me as Tony. And it was Tony Gupta. Later that I then learnt that he is actually referred to as Rajesh but I was introduced to him as Tony Gupta. And he took us through their offices and in the main the computer warehouse and as he was doing this he was narrating the history how they came about you know the family ended up in South Africa and how they started their businesses from whatever little money they had. So he – you know he was excited in relating this story. You could see a person who was very proud of their achievements etcetera, etcetera. And as we were doing...

10 **CHAIRPERSON**: I am sorry. Did you get any impression about whether that history was for your benefit or whether it was for the benefit of both you and Mr Magashule or you cannot tell?

**MR MXOLISI DUKWANA**: Because I did not – I did not under – I did not know whether they had met before.

**CHAIRPERSON**: Yes.

**MR MXOLISI DUKWANA**: I took that he was telling us this history.

**CHAIRPERSON**: Okay.

**MR MXOLISI DUKWANA**: For all of us to know, both of us to know.

**CHAIRPERSON**: Okay, alright.

20 **ADV PHILLIP MOKOENA SC**: But did Mr Magashule participate in the conversation with him?

**MR MXOLISI DUKWANA**: No he was the only one who was talking at the time and we were – he was showing us around and narrating this history. And then he then asked Mr Magashula if he had brought that. He just said: 'Did you bring that?' And just extending a hand just you know 'did you bring that' and at that time Ace handed him a

copy of his ID and then he then said, ‘let me go and make a copy of this.’ I think – I do not think at the time Ace expected that this would be requested in my presence. Because I could see the surprise in his face and it was at that time when he then indicated to me that you know I am going to be getting into business with – with this – with Sahara and he then indicated to me that – because of his exposure as a political person he will rather have his son Tsepo dealing with this and he deliberately said to me that there is no law in the country that prohibits his son from doing business with any person and it cannot be the fact that because he is involved in Government that the son can be stopped from doing business. So I did not – I was not arguing with him and  
10 at the time I did not understand why the explanation and everything, but as I say I could only deduce that it was because it was said in my presence and he did not expect that although he had taken me there I think he would have expected that they would go somewhere and deal with this matter just. So he then explained – he explained himself in that way.

**ADV PHILLIP MOKOENA SC:** So did he explain to you what type of business was he going to engage with the Gupta brothers?

**MR MXOLISI DUKWANA:** I just thought that they were just in the space of these computers etcetera. So I just thought that maybe it was that.

**ADV PHILLIP MOKOENA SC:** Yes and what happened then?

20 **MR MXOLISI DUKWANA:** And then after sometime Tony came back and handed over to Mr Magashule his ID and looked at me and said did you bring yours. Do you have your ID with you and I just shrugged and said no and then we laughed and he took us – he accompanied us back to the hotel and he drove back.

**ADV PHILLIP MOKOENA SC:** Did you converse with Mr Magashule about that event? Did he give you any more details about what had transpired?

**MR MXOLISI DUKWANA:** No, in the car all that he was saying is it is high time that one also starts doing business and that I think I will be much more comfortable with my son doing business with them.

**CHAIRPERSON:** Did it appear like the main reason for going there was to deliver the ID so that a copy could be made?

**MR MXOLISI DUKWANA:** That – that is the thing. That is what happened other than the.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** The tour of the warehouse, because after that we did not go  
10 to any office etcetera.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** We just went through the warehouse and.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** You know back to where we parked our car.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** So to me that would have been the only reason that he was just taking the ID there.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** Yes. Now from paragraph 41 you are dealing with  
20 another topic which is the trip to India. Before we deal with the contents of it do recall when more or less did that trip take place to the best of your recollection if you may?

**MR MXOLISI DUKWANA:** It was in – it was somewhere in – I think it will be October 2009.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** And in what capacity were you undertaking that trip?

**MR MXOLISI DUKWANA:** I was the MEC of Economy Development.

**ADV PHILLIP MOKOENA SC:** Now do you recall if there were any other delegations that accompanied you?

**MR MXOLISI DUKWANA:** Yes. The Professor Mthembu and at the time I also that [indistinct] who was also the HOD – I cannot remember which department, but he was responsible for the cluster. He was heading the cluster – Economic Cluster. So he also accompanied me.

**ADV PHILLIP MOKOENA SC:** And what was the purpose of that trip?

10 **MR MXOLISI DUKWANA:** If I – if I can.

**CHAIRPERSON:** Maybe before the purpose, just repeat the name of the other person who was in the delegation other than Professor Mthembu?

**MR MXOLISI DUKWANA:** [Indistinct].

**CHAIRPERSON:** Okay. Do we need the spelling?

**ADV PHILLIP MOKOENA SC:** No.

**CHAIRPERSON:** Okay, alright.

**ADV PHILLIP MOKOENA SC:** I am sure that I have got it right.

**CHAIRPERSON:** The transcribers will know it?

**ADV PHILLIP MOKOENA SC:** Yes.

20 **CHAIRPERSON:** Okay, alright. Thank you. Yes.

**MR MXOLISI DUKWANA:** If – I will refer X2 as to that deals with Welkom to become South Africa's Silicon Valley.

**ADV PHILLIP MOKOENA SC:** Chair X2 is that document that was handed over today. It is a separate page with the heading Welkom to become SA.

**CHAIRPERSON:** Yes. Welcome to become.

**ADV PHILLIP MOKOENA SC:** Welkom.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** To become SA's Silicon Valley.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That read with what I indicated on 23 July 2009 in the Economic Development, Tourism and Environmental Affairs Budget Vote Speech.

**CHAIRPERSON:** Huh-uh.

**MR MXOLISI DUKWANA:** This was a project that the Professor had actually initiated.

**CHAIRPERSON:** Huh-uh.

10 **MR MXOLISI DUKWANA:** He found.

**CHAIRPERSON:** That is Professor Mthembu?

**MR MXOLISI DUKWANA:** Professor Mthembu, Thando Mthembu.

**CHAIRPERSON:** And at that time where – what institution was he attached to?

**MR MXOLISI DUKWANA:** The CUT.

**CHAIRPERSON:** Central University of Technology?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Is that right?

**MR MXOLISI DUKWANA:** Yes sir.

**CHAIRPERSON:** Yes, okay. Yes, continue.

20 **MR MXOLISI DUKWANA:** And when.

**CHAIRPERSON:** And I am sorry - I am sorry Mr Dukwana. I just want to make sure I can make a certain link. Does EXHIBIT X2 relate to what you earlier on referred to as the ICT Hub?

**MR MXOLISI DUKWANA:** It does Chair.

**CHAIRPERSON:** Okay, thank you.

**MR MXOLISI DUKWANA:** It does.

**CHAIRPERSON:** Thank you.

**MR MXOLISI DUKWANA:** We have had the institution – with the university as the department with the intention of looking at how we can rebuild the economy of the Free State and we are taking into consideration the fact of the matter that we are a province that was if you like at the centre of the country and at the time we had almost about five fibre optic cables that were running through the province. From Western Cape we had about three and from Mtunzini in Natal we had about two and we found that it was high time that we benefitted from all this infrastructure that was going through our province  
10 and we looked at the province and we found that the mining area was very depressed and needed some catalyst project that would bring Welkom, Odendaalsrus, Virginia, Allanridge, Henneman – you know – bring some like in the area as the decline in mining was having a stall on the economy of the area as it had depended heavily on mining. So we then found that we needed to start a hub in the area and the Professor had worked a lot in trying to come up with the proposal for this kind of a hub – the IT Hub and we agreed that we need to have an electronics manufacturing hub that would be placed in Matjhabeng area and at the time we – as we were working on the details we also felt that and we were working with the National Association of Manufacturers in Electronic Components and they were also prepared to occupy – to be the first group  
20 that will occupy the new side and we – this project unfortunately as I relate was the initial project that was going to catapult the Free State especially the Matjhabeng area into becoming a Silicon Valley if you like of the – of South Africa. We were looking at this as the project that will be a high way to Africa in terms of IT as well as the manufacturing of electronics and the fact that also you have younger people. The population was young. We felt that it was a better way of making sure you have a

sustainable development in the area that would help grow the economy of the place. So we worked on this idea and the CUT was working with Sathya and Sathya had actually indicated to them or given them an offer to bring about 42 or so students who would undergo training and these students would then be the pioneers in terms of what was going to happen in the area and that was the reason why this trip was undertaken where we went Sathya to further discuss this working together relationship.

**ADV PHILLIP MOKOENA SC:** So this was a Government project that was supposed to be spearheaded by the province.

**MR MXOLISI DUKWANA:** Yes.

10 **ADV PHILLIP MOKOENA SC:** And what happened to it ultimately? Is it linked to the City of Tomorrow in any manner?

**MR MXOLISI DUKWANA:** As we were discussing this kind of a project we felt that it should not be in isolation from other issues that can develop in this. We also looked around at the time after 1994. There was no – you know – a post-apartheid city that had been developed by the new Government and we felt that we needed to build a new city that would incorporate the five or six towns in the [indistinct] and provide that boost in the economy of the area. So the ICT Hub was just a catalyst project that will attract many other interested parties into the new city that would be developed.

20 **ADV PHILLIP MOKOENA SC:** So you will also develop that testimony in relation to what you are stating in paragraph 75 page 22 Mr Chair of EXHIBIT X.

**CHAIRPERSON:** Did you say page 22?

**ADV PHILLIP MOKOENA SC:** Yes, page 22 of EXHIBIT X. So that becomes linked later with the City of – the City for Tomorrow?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Yes. We will deal with it in due course.

**CHAIRPERSON:** Just to – I am sorry just to clarify. You have the ICT Hub Project. Then you have got the City for Tomorrow Project. Were they two separate projects, but they needed to be managed closely together or were they not two separate projects?

**MR MXOLISI DUKWANA:** They were.

**CHAIRPERSON:** I just want to understand.

**MR MXOLISI DUKWANA:** The first one, the ICT Hub, as I say was a concept coming from the university and working together with the university.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So that was building the ICT Hub and the university helping  
10 in establishing that.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** In the department we felt we needed also something.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** To piggyback on this kind of a project.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That will be a bigger project.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** That will include other things.

**CHAIRPERSON:** Yes. That is the City for Tomorrow?

20 **MR MXOLISI DUKWANA:** Yes sir.

**CHAIRPERSON:** Okay. So they started at different times?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** The first one was the ICT Hub because that one was conceptualised at the university of technology – Central University of Technology, but once the department became aware of this concept the department then began to think about

City for Tomorrow and then – but City for Tomorrow would be maybe an extension of ICT Hub or a consequence of ICT Hub?

**MR MXOLISI DUKWANA:** A consequence of ICT Hub.

**CHAIRPERSON:** Of ICT Hub. Okay, but it would be correct to view the two as separate projects?

**MR MXOLISI DUKWANA:** Yes, it will be correct.

**CHAIRPERSON:** Okay, alright. Thank you.

**ADV PHILLIP MOKOENA SC:** Chair we will deal with what transpired with the City of Tomorrow in due course.

10 **CHAIRPERSON:** In due course?

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** That is fine. You are still at trip to India?

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** Now Mr Dukwana what is the relevance of this trip to India in relation to the issues that you are canvassing in your statement?

20 **MR MXOLISI DUKWANA:** The – as I said that the – our visit there was a process that would help us get the best people in terms of developing the ICT Hub, but as it became as I said it became a bigger project later on. We felt that we needed this. This becomes important in the sense that it links with the City of Tomorrow and which also became a subject later when there was this visit to the Guptas.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** So it is important in the sense that it is actually the ICT Hub that also gave birth to the idea of building a new city wherein we felt that because of the young generation and also the fact that we were in the 21<sup>st</sup> Century and so many things

were happening we thought that it would be appropriate not only to look into ICT – you know. We should also look into sports. Look into creative economy and make sure that we encompass everything and that is what would then go into the City of Tomorrow Project, but this one the ICT Hub was the initial project conceptualised by the university and we bought into that and worked with the university in order to realise this. So that trip with the – also with the fact that we were also going to negotiate the – putting up some of the students. They had actually – I think it was 42 or so. We thought that if we can negotiate with them to increase the number that will be better for us in terms of making sure that we have the requisite skills when we start the project.

10 **ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** And why – why India? Why was India chosen for this trip and for this kind of engagement?

**MR MXOLISI DUKWANA:** The university had started discussions and comparative with.

**CHAIRPERSON:** With [intervenes].

**MR MXOLISI DUKWANA:** Corporations with Sathya at the time.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So it was not because we preferred India. It was because of already existing relationships.

20 **CHAIRPERSON:** Okay, alright.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** We will deal with the City of Tomorrow. From paragraph 46 you are dealing with the visit to the Gupta compound. Can you share with the Chairperson as to the events relevant to that visit?

**CHAIRPERSON:** Oh, I am sorry. I do not know if I missed this. That trip to India did it

produce anything?

**MR MXOLISI DUKWANA:** Unfortunately I should say no not what we expected.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Because when we got there the – there were some expectations from our side.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** As we were engaging with the said company or institution. They were willing to come to the party, but it was now a different view all together from what they had communicated with the university.

10 **CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** In fact they were requesting us also as Government – as a department to facilitate for them to get work in the country or in the province for them to be able to fund these students who would be placed at the centre.

**CHAIRPERSON:** So they – they were putting some conditions to them agreeing to assist with the 42 students?

**MR MXOLISI DUKWANA:** Yes and the – also the fact that at the time Professor Mthembu was not happy that these were conditions that were not put to them before. The understanding was that they were willing to take in the students and the – and this is what we were made to believe and the university believed, but upon arriving  
20 there we – it was something different now. They wanted in exchange for us to do that.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** That we should then do something.

**CHAIRPERSON:** Okay. So – but other than simply that the trip did happen and that it did not produce anything. There is nothing of any significance about the trip to India. Is that right?

**MR MXOLISI DUKWANA:** Yes especially with regard to what we were expecting.

**CHAIRPERSON:** Yes, okay alright.

**ADV PHILLIP MOKOENA SC:** I was referring you to page 15 paragraph 46 where you are now dealing with your visit to the Gupta compound.

**MR MXOLISI DUKWANA:** 40?

**ADV PHILLIP MOKOENA SC:** 46. Can you please take the Chair through the relevant events pertaining to the trip or pertaining to that visit?

**MR MXOLISI DUKWANA:** It is 2012 Chair. We are going for the provincially elective conference. I am the Treasurer of the ANC and my responsibility with other members is  
10 to raise funds for such an activity – for such activities and here an opportunity arises when the Chairperson – the former Chairperson at the time Ace Magashule then approached – called me and indicated that he had arranged a fundraising dinner for me with some businesses who were mostly from the Free State but based here and that we needed to do that – to come. It was not the first time that has happened. At some stage we ended up at a house owned by one lady that was in the province and we had such an event taking place and then when this opportunity arose we then took it upon ourselves. Then I accepted and I agreed. He then told me that I should not worry in terms of arranging the travelling. He will do that for me and my office would not do that. His office will do.

20 **ADV PHILLIP MOKOENA SC:** And how did you travel to Johannesburg?

**MR MXOLISI DUKWANA:** We flew.

**ADV PHILLIP MOKOENA SC:** You flew, yes.

**CHAIRPERSON:** At that time you were MEC for Economic Development plus Treasurer – Provincial Treasurer of the party?

**MR MXOLISI DUKWANA:** Yes. Yes Chair.

**CHAIRPERSON:** Okay, alright.

**ADV PHILLIP MOKOENA SC:** Yes. You flew to Johannesburg. Then what happened?

**MR MXOLISI DUKWANA:** Hm.

**ADV PHILLIP MOKOENA SC:** On arrival at [intervenes].

**MR MXOLISI DUKWANA:** On arrival here we were met. We were met.

**CHAIRPERSON:** Or maybe let us say first what airline did you use? Do you remember which airline?

**MR MXOLISI DUKWANA:** Yes. Express – SA Express.

**CHAIRPERSON:** SA Express okay, alright. Yes, you arrived and then?

10 **MR MXOLISI DUKWANA:** When we got to O R Tambo as usual if you – you are talking about a person now who is the Premier and we are not accompanied by VIP protection. The normal process would be the office would make arrangements for such even if it is an ANC activity because he is the Premier he would – they would make arrangements that VIP services would meet him here. So I thought that was going to be the case, but that was not the case. We were met by people there and driven by White guys – driven in separate cars and followed each other and.

**CHAIRPERSON:** Were you in different cars the two of you/

**MR MXOLISI DUKWANA:** Yes, yes.

**CHAIRPERSON:** Okay.

20 **MR MXOLISI DUKWANA:** Yes and I – the other thing that I want to point out was the dinner was going to be in the afternoon, but we left early and I – to me it did not make any sense but I did not ask him why and when we got into the – into these cars I thought that it was his own arrangement, but still it puzzled me that it was now a waste, because at the time I thought you know here is a White person - you know as a security and dressed so I thought that it was security or VIP and they took us – they drove us.

We got into Saxonwold and well with my little knowledge of Johannesburg or Gauteng I thought maybe there is an easier way to [indistinct] running away from traffic or so, but it was not to be. When I immediately noticed as we were approaching this Saxon – this avenue or so that immediately we got into a corner. I could see a building that became familiar to me, because it was – for some time it was on the news for a number of things. One was because of the DA Councillor in that ward had raised misgivings to what was happening in terms of the construction that was taking place in the compound and there was an argument that it was not in terms of the bylaws etcetera and also there was an issue – a story that had gone about the Guptas landing a helicopter at Zoo Lake. So that became to me as soon as I saw that and where we were stopping I then - you know we were here at the Guptas compound and we were met as soon as we got through the – there was a security house. We arrived as – you remain in the car – the right side of the car. We got into the compound and there was this man who I met at the Sahara Offices again, Tony, who welcomed us and as we went through up the stairs into the compound - into the house he politely requested me to hand over my cellphone which I did.

**ADV PHILLIP MOKOENA SC:** Do you know why?

**MR MXOLISI DUKWANA:** I thought maybe this is what they do. I do not know why. I did not even ask. So I gave them and I expected they would do the same, but they did not do the same with Ace Magashule.

**ADV PHILLIP MOKOENA SC:** At that time did you ask Mr Magashule as to why had he brought you to the Gupta compound?

**MR MXOLISI DUKWANA:** No, there was no reason for me to ask, because as I say with the information with what I knew at the time that – and by that time I knew that he was also working with the Guptas in terms of businesses as we had taken that trip

there. So I thought that it was a visit that – you know – he was taking. It was a detour for him to meet this and then it made sense to me why we left earlier. So that he could meet with these people. So there was no reason for me to ask him. So I thought it was his business. My business was going to be in the afternoon.

**ADV PHILLIP MOKOENA SC:** Yes. So you are being ushered into the house and what happens?

**MR MXOLISI DUKWANA:** We get into the house, the phone is taken and I am given – I am shown you know – I am directed to a room and I then found a pile of newspapers and I am given one to read, but I – you know – I just did not feel like reading and I was  
10 then asked if I needed something and then I asked for a Grapetiser red and I was given that and they disappeared. I do not know where they went. So it was not my business to ask.

**ADV PHILLIP MOKOENA SC:** When you say they disappeared. Who disappeared?

**MR MXOLISI DUKWANA:** I was with Ace and we met with Tony and it was only the three of us at the time and I am given a place to sit – a room to go into and sit and then after asking what I would drink – you know – and then they went away.

**ADV PHILLIP MOKOENA SC:** And then what happened?

**MR MXOLISI DUKWANA:** I stayed there for some time. I mean and I do not think it was more than 15 minutes or so and then they came out, but when they came out when  
20 I saw people coming into this room it was no longer the two that is Ace and Tony. They had other people and the person who I could recognise was Duduzane and also Iqbal Sharma, because we had met before.

**ADV PHILLIP MOKOENA SC:** You say Duduzane. Duduzane Zuma?

**MR MXOLISI DUKWANA:** Duduzane Zuma.

**ADV PHILLIP MOKOENA SC:** And who?

**MR MXOLISI DUKWANA:** And Iqbal Sharma, but there were other people that were there.

**ADV PHILLIP MOKOENA SC:** Now they came into the room. Then what happened thereafter?

**MR MXOLISI DUKWANA:** And then.

**CHAIRPERSON:** I am sorry. So the names that you can remember of people who came into the room apart from Mr Magashule. It was Tony, it is Rajesh Gupta, Mr Sharma, Mr Duduzane Zuma. Those are the names you can remember, but you say there were other people but you cannot remember or you did not know who they were?

10 **MR MXOLISI DUKWANA:** No. I did not know who they were.

**CHAIRPERSON:** Hm, but how many, those that you didn't know, or you couldn't ... (intervention)

**MR MXOLISI DUKWANA:** They could have been more than four.

**CHAIRPERSON:** Okay, alright, thank you.

**ADV PHILLIP MOKOENA SC:** Please proceed.

**MR MXOLISI DUKWANA:** And it then dawned to me at the time that there's going to be a meeting and I looked straight at Ace Magashule's eyes and he – throughout he was looking down, so I wanted to you know ... (intervention)

**CHAIRPERSON:** Did you want to communicate something?

20 **MR MXOLISI DUKWANA:** Yes I wanted to know what was happening, and immediately Tony did not waste time, he shot straight to the point.

**CHAIRPERSON:** But you didn't get a chance to communicate with Mr Ace Magashule, with his eye, he was looking down.

**MR MXOLISI DUKWANA:** He looked down, he was just looking down.

**CHAIRPERSON:** So you were not able to communicate with him?

**ADV PHILLIP MOKOENA SC:** And I did not sit, he was just sitting across you know across the table.

**CHAIRPERSON:** Okay alright.

**MR MXOLISI DUKWANA:** And immediately there the – when we were there when the meeting started he then said, Tony introduced himself and said you know I am Tony and he did not introduce any other person, and he said these would be with me and he said the reason we called you we wanted you to be here, it's simple, he then said I am a businessman, all I know is business, I don't know anything about politics so you guys know about politics and immediately there he was referring to me as a brother, you see  
10 my brother we are into business and you are into politics and you know you're trying to find your feet in the whole thing, my mind is going on and I'm just asking myself what's going on here and immediately he then gave me a letter and he then said this is the letter we would like you to sign, you can go through it.

Immediately I got the letter you know I saw a letterhead of the office, my office at the time, the MEC. In Government you have the MEC's office, there will be a letterhead of the MEC, the MEC's office, that will be to communicate, to make sure that you're not using the Department because that would be the responsibility of the Accounting head. In this case it would be the head of the Department and you will have a – the Department's letterhead, but this was the office of the MEC and immediately  
20 that worried me how did it end up here because I don't remember any person asking me to provide them with the letterhead and as I read the letterhead it was addressed to Nulane Investments and it was stating all the processes that we were taking in terms of the ICT hub, the City of Tomorrow and all that it was doing was actually it was kind of an appointment letter that I was appointing this company.

**ADV PHILLIP MOKOENA SC:** Did you know that entity at the time, Nulane

Management?

**MR MXOLISI DUKWANA:** Yes, yes.

**CHAIRPERSON:** Alright, maybe just so – just articulate what company or companies you were going to be appointing if you signed the letter?

**MR MXOLISI DUKWANA:** It was addressed to – the letterhead was Nulane Investment.

**CHAIRPERSON:** Yes okay.

**MR MXOLISI DUKWANA:** And I knew because the time we had a number of exchanges I had met earlier in – I think it was 2010 or – I think 2010 or 2011 we had  
10 met with a representative, I think it was Mr Thomas also from P3 and the investment, Nulane Investment, Mr Iqbal Sharma, so we had had some discussions with them, trying to find a way in which, they wanted to play a role in the development and there was some exchange and some discussions in the process, so when the letter that was addressed to them now and asking you know it was like a letter purported to be written by me, and at the end it was written my surname.

Now in Government, and everybody that has worked with me would see  
Chair that my surname is Dukwana, it's a Xhosa name, but it ended up being written as  
Dukoana, so everybody that works with me would know that the surname that I use  
every time I – anything that I you know I use it will be this surname, Dukwana, and this  
20 would be an official thing when you know official documents etcetera it will be written as  
Dukoana, and not many people knew that, only those who were very close with me and  
that exactly know what was happening, and in this case this letter was written Dukoana  
and it was very interesting that the letterhead is written this way, it's an official whatever  
and I'm expected to sign, and by signing would be to give in this company this authority  
to do this project.

**ADV PHILLIP MOKOENA SC:** How would they have known about these differences in the surname?

**MR MXOLISI DUKWANA:** I concluded that it was Ace, because there was no other reason, this is the man who indicated to me that we are going to Zanzibar to – we are going to (indistinct) to raise funds and meet with the business people in there. He did not say anything throughout the journey he did not say anything about meeting the Guptas.

**ADV PHILLIP MOKOENA SC:** Now Mr Dukwana at the time when you are now handed this letter by the person that you referred to as Tony, what was the reaction of  
10 Mr Ace Magashule, did he participate in any discussion?

**MR MXOLISI DUKWANA:** No when I went through, I did not look at him when I read the letter, when I was reading the letter, I just read through the letter and found that the letter is now saying Mxolisi Dukwana that I must sign and that is what they were asking me to do, and when I looked at him his eyes was like you know and then I asked but what is this.

**CHAIRPERSON:** Please just complete that, his eyes were like what?

**MR MXOLISI DUKWANA:** They were looking down you know, they were looking down.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** We did not have eye contact at the time.

20 **CHAIRPERSON:** Did that have a meaning for you or not?

**MR MXOLISI DUKWANA:** I think you know you can be brave, but when you know that you are doing something that is not right you know you would feel the way I was feeling and I think it might be the fact that he knew that I would raise these matters with him and I think that he was hoping that I would not burst in that meeting so you know I thought that it was his way of just telling me not to do anything.

**CHAIRPERSON:** Yes, okay.

**ADV PHILLIP MOKOENA SC:** And what did you do after reading the letter?

**MR MXOLISI DUKWANA:** I asked what was this, and then they said to me we had spoken to our brother here, Ace, and we think that this is a project that we can do together and we are going to exclude Ace in this project, and we will, it will be you and I, that's what Tony was saying so you need to sign this thing that would start this process.

**CHAIRPERSON:** Hmm.

**MR MXOLISI DUKWANA:** So I then said but I can't sign this, because I am an MEC,  
10 the Executive Authority, this should be signed by the HOD if it needed to be signed, but also ...(intervention)

**ADV PHILLIP MOKOENA SC:** Mr Dukwana before you proceed let me direct you back to paragraph 55 on page 17.

**CHAIRPERSON:** I'm sorry Mr Mokoena I am going to forget this so let me just go back Mr Dukwana if I may to the issue of how your surname was spelt in that letter. There is a Dukwana, am I correct to say originally that is the correct spelling of your surname?

**MR MXOLISI DUKWANA:** That is correct.

**CHAIRPERSON:** Yes, but you make the point that the – in that letter your surname was written as Dukoana, is that right?

20 **DV PHILLIP MOKOENA SC:** It is right and this is – if you check even now in my affidavit because this is what officially in terms of my ID etcetera its written D-u-k-o-a-n-a.

**CHAIRPERSON:** Yes, that is what I wanted to find out, which one is on official documents like in the ID.

**MR MXOLISI DUKWANA:** It is D-u-k-o-a-n-a, the correct is D-u-k-w-a-n-a.

**CHAIRPERSON:** Yes which is what I think your counsel mentioned earlier on when he talked about his own situation. So but – so if at that time as MEC if you wrote on – if you wrote an official letter you would use the spelling that has got “oa”, is that correct or would you use the spelling that has got “w”?

**MR MXOLISI DUKWANA:** It will only be when I sign documents that are official that I would insist on using the surname with “kw” and it was only when I was advised that the – it would be correct that when you sign documentations like your affidavits etcetera and everything you use what is written in your ID, but throughout my communication whether as an – when I write a letter the surname that would come will be my right  
10 surname, the correct surname even if I use the letterhead of my office, the letter would go out as Dukwana.

**CHAIRPERSON:** Yes, which is with a “w”.

**MR MXOLISI DUKWANA:** With a “w”.

**CHAIRPERSON:** Yes, so at that time when you were an MEC whenever you wrote any letter official or unofficial you would write your surname using the spelling that has got “w”?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** The correct one.

**MR MXOLISI DUKWANA:** But when it comes to contracts anything that is of that  
20 importance I would use “doa” but in this case as I say since I became an MEC and even when I was the Speaker what I used was D-u-k-w-a-n-a-.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** But the reason that I’m pointing this out would be a person who knows exactly that for the documents to have any you know to have any relevance in terms of what is in all my ID would be people who know exactly what is happening it

will not be a company outside that will know the right surname that appears on the ID is D-u-k-o-a-n-a.

**CHAIRPERSON:** Yes, okay.

**MR MXOLISI DUKWANA:** Yes, if you check all the documentations that will go to the Executive that would be D-u-k-w-a-n-a.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So as I say any person who would come – you know who come across my documentation will see this but this would only be put by a person who knows exactly my surname and you don't expect that Nulane would have known that  
10 my surname is Dukoana that appears on my ID.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** But in terms, now I understand in terms of official documents like when you sign contracts as I understand it even at that time as MEC you would then put your surname, you would put the spelling that uses "oa" after "k"?

**MR MXOLISI DUKWANA:** No "w".

**CHAIRPERSON:** "w" even if it was contracts at that time.

**MR MXOLISI DUKWANA:** As MEC you do not sign contracts.

**CHAIRPERSON:** Oh you wouldn't sign contracts.

20 **MR MXOLISI DUKWANA:** I was just making an example of that.

**CHAIRPERSON:** So I'm trying to try and distinguish whether during that time there would be documents which you would have signed as Dukoane or whether the position is that all documents at that time, not now, at that time whether all documents which you signed would be signed with the spelling Dukwana or whether it would depend what document it is, that is what I'm trying to establish.

**MR MXOLISI DUKWANA:** Oh, just to make it simple Chair everything would be Dukwana.

**CHAIRPERSON:** Okay.

**MR MXOLISI DUKWANA:** And I was advised ...(intervention)

**CHAIRPERSON:** Afterwards.

**MR MXOLISI DUKWANA:** Yes, that – by my legal team if you check the first statement was Dukwana and it had to be corrected to reflect what is on my ID.

**CHAIRPERSON:** Yes, I did pick that bit up ja.

**MR MXOLISI DUKWANA:** Yes, so basically everything else it would be ...(intervention)

10 **CHAIRPERSON:** That's a recent thing.

**MR MXOLISI DUKWANA:** Everything else it would be "w".

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So the issue that I'm trying to point out is it will be a person very close to you who knows exactly that my ID has a Dukwana so not any person would know that.

**CHAIRPERSON:** So but is it factually correct, would it be factually correct to say as at that time when you were MEC, whenever you signed any letter, whether it's a personal letter or official letter, you would reflect your correct surname with "kw"?

**MR MXOLISI DUKWANA:** I insisted on using the correct surname.

20 **CHAIRPERSON:** Yes, so therefore this letter that was prepared for you to sign was strange in that sense?

**MR MXOLISI DUKWANA:** Yes Chair.

**CHAIRPERSON:** That it reflected the spelling of your surname that you would never use in a letter?

**MR MXOLISI DUKWANA:** Yes Chair.

**CHAIRPERSON:** That is the first thing, the second thing is it reflected that somebody who knows something that's not generally known outside give information about the fact that your surname in terms of official or ID actually there's another spelling that is used with "koa" so something that was not generally known, is that right?

**MR MXOLISI DUKWANA:** That's correct.

**CHAIRPERSON:** Okay, no I just thought it's important that we clarify this because it is an important feature of your evidence. Mr Mokoena please you may proceed.

**ADV PHILLIP MOKOENA SC:** Mr Dukwana I interrupted you at the time when you wanted to tell the Chair that Tony told Mr Magashula that he was not going to benefit  
10 from the project but before you complete that testimony can I refer you back to page 17, paragraph 56, and paragraph 55 and take us through the contents of that paragraph because I think they're important.

**MR MXOLISI DUKWANA:** Ja, before I get here just to explain this that throughout when it became clear that I was reluctant to sign as I was advising that the – this should be on the letterhead of the Department, not this, so there was an insistence you know oh it would be fine, we will correct this, and I think the other thing was the sweetener that came in and that sweetener was you know if you sign this meaning ignore all that you are raising but sign this and upon signing this we will give you, this project will be between us you and I and Mr Magashula would be out of this, we have spoken about  
20 this, he would be out of this deal, and because there is a lot that we are doing together with – he was not saying Mr Magashula, he was saying Brother Ace, there's a lot that we are doing and dealing with or working together with Brother Ace and specifically in the Free State, he mentioned Jagersfontein Mine and he then said we are getting just to demonstrate that this is a trustworthy man who delivers on his undertakings. He was saying we will give you this amount of money for this project, we will give R2million and

upon signing you will get R2million immediately and R2million for the duration of the contract and that will be a monthly payment to me, and that will go to you and because together with Mr Magashule, with Ace my brother Ace Magashule we will then not involve him here, and then he tried to when he said that he gave me the letter again to sign but when I refused he said you know I'm trustworthy, you can trust me, ask Brother Ace, ask Brother Duduzane. We get R3million every month. I give them, I drive after month after getting the money I drive to Ace Magashule's place and I give him his million and I give Duduzane his million and I get my million and then they said isn't it so and strangely enough Ace said yes you know and Duduzane agreed and I looked at  
10 them at the time I was like this man does not know me, he is now giving me this information and – about the people that he is working with, and then he then continued trying to insist that I get this, I sign this and I will get this money.

**ADV PHILLIP MOKOENA SC:** Now where are these other people, remember that you said it was not only yourself, Mr Gupta and Mr Magashule but there were other people whom you don't know their names, where were they at this point?

**MR MXOLISI DUKWANA:** They were in the meeting, quiet. The person who was doing the talking in that was Tony.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** And let me just ask this, did Mr Tony Gupta say from what you are  
20 saying if you sign this letter you will get R2million immediately?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** And thereafter you will get R2million per month is that so?

**MR MXOLISI DUKWANA:** It is so.

**CHAIRPERSON:** Until when?

**MR MXOLISI DUKWANA:** The duration of the contract.

**CHAIRPERSON:** For the duration, for the whole duration of the contract?

**MR MXOLISI DUKWANA:** The contract.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The whole project could have lasted for more than ten years.

**CHAIRPERSON:** Yes okay thank you.

**ADV PHILLIP MOKOENA SC:** Mr Chair I see that it is one o'clock, would this be an appropriate time to adjourn?

**CHAIRPERSON:** Yes I think let us take the lunch adjournment, we will take the lunch  
10 adjournment and we will resume at two. May I see Mr Dukwana's legal team and the  
Commission's legal team, those who are here, or at least Mr Mokoena and Mr Pretorius  
for a few minutes. We adjourn.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**CHAIRPERSON:** You may proceed Mr Mokoena.

**ADV PHILLIP MOKOENA SC:** Yes. Mr Dukwana just before the lunch adjournment  
we were still dealing with your visit to the Gupta compound. Can I refer you please to  
page 17 of Exhibit X with particular reference to paragraph 55? If you can please read  
the contents of that paragraph into the record and please explain them to us?

20 **MR MXOLISI DUKWANA:** Paragraph 55?

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:**

“In an effort to try to persuade me to append my signature to the  
said letter Tony intimated to me that both Magashula and  
Duduzane Zuma were recipients of monies in cash from a mining

project from Jagersfontein Mine. Neither Magashula nor Duduzane disputed Tony's claim. They both nodded their heads in agreement."

**ADV PHILLIP MOKOENA SC:** Yes did you know anything about the Jagersfontein Mine project at the time?

**MR MXOLISI DUKWANA:** I know there has been some challenges regarding to the community at Jagersfontein with regard to the mining dumps that were – that were mined [indistinct].

**ADV PHILLIP MOKOENA SC:** And when Tony said this about Mr Magashule and Mr Zuma none of them objected or said anything to the contrary to what you are saying?

**MR MXOLISI DUKWANA:** Absolutely they did not – they did not object.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** You earlier on testified that Mr Tony Gupta told you that every month there would be an amount of R3 million that would be distributed among himself, Mr Duduzane Zuma and Mr Ace Magashula and you said if I understood you correctly that Mr Tony Gupta said he would drive to Mr Magashule's place to give him his share of R1 million and he would then – then he would also go to Mr Duduzane Zuma to give him his share of R1 million and then he would keep R1 million for himself. Was that in relation to this mine or was that separate from this mine?

20 **MR MXOLISI DUKWANA:** It was in relation to the money that was he said was coming from this project.

**CHAIRPERSON:** Okay. Okay thank you.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Then turn over please to page 18 paragraph 56 you did testify on some of the issues in that paragraph but I think that you might have missed

other important aspects of – you went off what you wanted to convey to the Chair.  
Could you please also read that paragraph carefully and also take us through it.

**MR MXOLISI DUKWANA:** Paragraph 56 reads:

“Further Tony told me that Magashule would not benefit from the project because it belonged to me and him that is Tony. Magashule did not dispute Tony. From this project Tony told me that I will receive the monthly payment of R2 million – R2 million. I was told by Tony that if I append my signature at the time an instant payment of R2 million would be given to me in this regard. A gentleman of Indian descent was called by Tony and he whispered something – some words in the language unknown to me. The gentleman left the room and came back with a bag – the pilot – a black pilot bag the same bags used – frequently used by lawyers.”

**ADV PHILLIP MOKOENA SC:** Yes then what happened thereafter?

**MR MXOLISI DUKWANA:** He then indicated to me this is what I will get. Immediately I would go home with this amount of money if I signed.

**ADV PHILLIP MOKOENA SC:** Were you shown the money?

**MR MXOLISI DUKWANA:** Yes he opened the bag it – at the top I could see it was – then he took out a stash and he says this is R2 million. It was a R200 bank notes.

**ADV PHILLIP MOKOENA SC:** And at that time where is Mr Zuma and where is Mr Magashule?

**MR MXOLISI DUKWANA:** They are in the house, they are in the same room as I.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** The bag that you say is normally used by Lawyers can you give more

– a fuller description or would it be one that lawyers briefcase that they pull sometimes?

**MR MXOLISI DUKWANA:** Normally lawyers and pilots they say.

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** Ja that bag.

**MR MXOLISI DUKWANA:** But...

**MR MXOLISI DUKWANA:** That is why I say lawyers because I have seen many.

**CHAIRPERSON:** ja.

**MR MXOLISI DUKWANA:** Lawyers pulling this one.

**CHAIRPERSON:** Ja but one that they can pull.

10 **MR MXOLISI DUKWANA:** Yes that you pull.

**CHAIRPERSON:** From behind.

**MR MXOLISI DUKWANA:** Yes, yes.

**CHAIRPERSON:** Okay alright.

**ADV PHILLIP MOKOENA SC:** I refuse tender my bag as an exhibit Mr Chair. I can see that people are looking at me.

**CHAIRPERSON:** We note that you admit that you have one.

**ADV PHILLIP MOKOENA SC:** Perhaps Chairperson you could be sure that Ms Molefe has it.

**CHAIRPERSON:** Oh is that so? Maybe it could be...

20 **ADV PHILLIP MOKOENA SC:** So that Mr Dukwana can confirm what is...

**CHAIRPERSON:** It could be. He could confirm ja. Will you just raise it if – ja just up so that everybody can see it. Oh she is saying you must raise yours. Mr Dukwana was that the type of bag you talking about?

**MR MXOLISI DUKWANA:** Yes, yes, yes, exactly so.

**CHAIRPERSON:** Okay thank you.

**ADV PHILLIP MOKOENA SC:** For that accord Mr Chair that is Ms Molefe's bag.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** And did you sign after you have been persuaded by the – by Mr Tony showing you the money and indicating that you will get this instant payment of R2 million, did you sign the document ultimately?

**MR MXOLISI DUKWANA:** No.

**ADV PHILLIP MOKOENA SC:** And then what happened thereafter?

**MR MXOLISI DUKWANA:** I felt that a lot of information was now given to me and at that time one needed to think fast. And I decided that the only way that one could  
10 actually get out of here and without any threat to one's life. I then said, you know there is also a better way this can be dealt with and that if we – if you can give me the document and I will take the document to the legal advisor Mr Venter and at the time I knew that Mr Venter will not entertain this. That is why I just said because he is in the office of the Premier. So I said if you give it to me I will take to the legal advisor and then we can see how to deal with this matter. Then at that time I would then append my signature on the document. And then he – he gave it to me and it was at the time that Mr Magashule then leaned over to him and whispered something that I did not hear. And immediately Tony then said let me see there is something that I need to correct and as soon as I gave him the report, the letter he took it and he said to me,  
20 well I think my brother here will – he is in best – in the better position to deal with the matter of the letter. And then – but still he then said to me "you can actually sign this thing and you can be – it can be ratified and I have spoken to my brother here the executive council can ratify this. Then I said I do not think that that is how it works. I cannot do – I cannot do something that is wrong and the executive ratifying it. And then I said the only person who can sign this document if you want to do this it will be when

you put it in the – on the letterhead of the department and signed by the HOD. And should I continue?

**ADV PHILLIP MOKOENA SC:** Yes but I what I want to understand I mean whether or not the letter was going to be put in your – the name of MEC or the HOD at that point it was clear that there was no procurement that has taken place at all to appoint this [indistinct}, am I correct?

**MR MXOLISI DUKWANA:** The project was at you know at an initial stage. There was nothing we were just looking at the design and everything. And so there was nothing to put on tender and for them to be eager to get this document – this project I did not  
10 know what informed that.

**ADV PHILLIP MOKOENA SC:** Yes Who wa...

**CHAIRPERSON:** That – I am sorry at that stage you were just looking at some ideas about this project and you had not even reached the stage maybe and you must tell me if that is so or not of doing a feasibility study or anything like that?

**MR MXOLISI DUKWANA:** We had not reached that stage Chair.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** All that we were doing we had an idea and we were working on this idea. And we were putting ideas around how to approach this. And to have this project taken over by this company was not something that we had actually anticipated.  
20 Because we thought that once we have dealt with this you need to go through the processes that should be followed in terms of procuring some of aspect that will be needed to deal with the project moving forward.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** And who was the HOD at the time?

**MR MXOLISI DUKWANA:** At the time the – oh that is in 2012 the HOD was Mr Ozzy

Osman.

**CHAIRPERSON**: While Mr Mokoena is looking at his papers can I go back to the bag? Did you get a chance to see how – how much space was taken by the money in the bag – by the cash? Was it full – was it about half or was it virtually empty except maybe a few stashes of cash?

**MR MXOLISI DUKWANA**: No it was full and then when he picked it you know it was also a struggle just to pull the stash of the notes.

**CHAIRPERSON**: Yes okay.

**ADV PHILLIP MOKOENA SC**: Now in – may I refer you to paragraph 61 and take us  
10 through the contents of that paragraph?

**MR MXOLISI DUKWANA**: Should I read it first?

**ADV PHILLIP MOKOENA SC**: It is fine you can summarise it.

**MR MXOLISI DUKWANA**: Okay. Chair when it became clear that I was not willing to sign the – Tony then suggested that you can fire your HOD and then I have a replacement for you. And then I said to him, I am not the person that is responsible for this. Ace Magashule is. It was so because I was getting irritated on this. If you check Chair if I can take you. The – everything that had happened in the province – at the time when I was sitting in that meeting I was – I was working now with the fourth HOD. From the period of 2009 to 2012 I had four HOD's in the department.

20 **CHAIRPERSON**: Why such a high turnover of DG's?

**MR MXOLISI DUKWANA**: You see the powers were still with the Premier. He did not delegate any of the power of – for those powers to any person. They were centralised to him and throughout all these HOD's he was the person central in discussing with them without my knowledge. I will only be informed by the HOD that he is leaving. For instance when I got into the department I found Mr Gonyeti he was an education

[indistinct] coming the background of education and he then told me he was there only up until the 13 July 2009. And then he told me that he was told to go and assist the HO the newly appointed HOD of Education Stanley Molohe. And if you allow Chair just to bring this point about this newly appointed HOD. When I was the acting MEC of Education there was pressure on me to appoint Mr Stanley Molohe as an HOD and I refused to do that because my argument was at the time we had very capable people who were in senior positions in the Department of Education. He was at the time coming from Packoffs as the director in Packoffs after having worked as a director at the regional office at the district office of education. So there were many people who were quite you know qualified and experienced etcetera. So I refused to do that and the pressure was put on my by Ace Magashule to do this. When I refused the – I then after the elections the first appointment that was done was that of Mr Stanley Molohe as HOD of Education. So...

**CHAIRPERSON**: The very same person that you had not wanted?

**MR MXOLISI DUKWANA**: Ja that I refused – I refused to appoint yes.

**CHAIRPERSON**: Yes. But are saying that at the time that pressure was being on you to appoint him Mr Molohe he was at the level of Director?

**MR MXOLISI DUKWANA**: Yes, yes Chair.

**CHAIRPERSON**: And you were being asked to appoint him as Director General of the Department?

**MR MXOLISI DUKWANA**: Yes Chair.

**CHAIRPERSON**: And therefore if you had appointed him he would have skipped the position of Chief Director, the position of Deputy Director General and gone up to the level of Director General straight away?

**MR MXOLISI DUKWANA**: Yes, yes Chair.

**CHAIRPERSON:** Okay but you say after the elections he was then appointed?

**MR MXOLISI DUKWANA:** He was the appointed.

**CHAIRPERSON:** As Director General of the Department of Education?

**MR MXOLISI DUKWANA:** Of the Department of Education.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** You are still summarising for us the contents of paragraph 61 to 63.

**MR MXOLISI DUKWANA:** So the reason why I brought this – this matter is to illustrate when this HOD Gonyedi was asked to go and assist you were taking an HOD from a  
10 department, you relieve him of his responsibility and you place him in the office of the newly appointed HOD to go and assist and help this HOD. That is what was done to Mr Gonyedi and that was because of the insistence of Ace Magashule. And all that he did was to come and thank me Mr Gonyedi and indicated to me and indicated to me that he was leaving and he left on the 13 July 2009. And then later in 1 October 2009 I then – I was outside the country in Germany and at the time the person who was acting was Thaba Monyoni na dhe called me to congratulate me that he has actually found a good replacement as the head of the department and that was Doctor Mohakeem.

**CHAIRPERSON:** Who called you?

**MR MXOLISI DUKWANA:** Thaba Monyoni.

20 **CHAIRPERSON:** Thaba Monyoni called you?

**MR MXOLISI DUKWANA:** Yes he was the MEC and when you leave you leave somebody to act in the – in your position yes.

**CHAIRPERSON:** Oh yes okay.

**MR MXOLISI DUKWANA:** So he was acting as an MEC of the Department.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** When I was –

**CHAIRPERSON:** Oh okay yes.

**MR MXOLISI DUKWANA:** And during that time they went on to go – they went ahead with the – with

**CHAIRPERSON:** The appointment.

**MR MXOLISI DUKWANA:** The interviews and appointed a person.

**CHAIRPERSON:** A person who would be the head of your own department?

**MR MXOLISI DUKWANA:** Yes, yes Sir.

**CHAIRPERSON:** Without you knowing?

10 **MR MXOLISI DUKWANA:** I was not there.

**CHAIRPERSON:** You were not there?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Ja you knew there was a process for appointment?

**MR MXOLISI DUKWANA:** There was a process.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The process that had...

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And the interviews were called when I was away.

**CHAIRPERSON:** Yes, yes.

20 **MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Okay.

**MR MXOLISI DUKWANA:** And then he only [indistinct] if you check it was from October 2009 to the 31 July 2010. And then it was they said he was only good as a you know in the local economic development because he was coming from a municipality and then he was then sent he was then taken to be a municipal manager in one of the I

think it was Fezile Dabi District and I am trying to illustrate this deliberately to indicate that whilst Ace would deny any involvement in appointing people the fact that he could speak to the HOD's and direct them to go and take a decision illustrate clearly that he was heavily involved in doing that. And he did not even have the courtesy to talk to me at the time. I did not know. I would be told that this person is leaving and the same happened with Doctor Mohakeem. He left and then in October 2010 to November 2011 Mr Rama Yema was then – became the HOD in the department. And he only lasted also up until the 14 November. If you check it will be almost a year or so. And then there on the 15 November 2011 and I think he went on to up until 30 September 2014 it was Mr Ozzy Osman who became the HOD. It was when I was told to fire an HOD the HOD that I was told to fire was Mr Ozzy Osman.

**ADV PHILLIP MOKOENA SC:** And the replacement that Mr Tony spoke about whom did he have in mind?

**CHAIRPERSON:** I am sorry before – before – before that. Can I just establish in regard to these HOD's that you have talked about when they left are you saying you were not consulted about whether they should go or not?

**MR MXOLISI DUKWANA:** Exactly I am saying that Chairperson that is what I am saying. From Mr Gonyedi Ace did not find it necessary to engage me as an MEC. All I could get would be Gonyedi is going to assist this guy, the newly appointed and with Mr Mohekeem was that he is not good. It would be after the fact and when it has happened I would see this happen. And it happened again with the Mr Rama Yema.

**CHAIRPERSON:** But one would have expected that if a head of department was to leave you as the MEC for that department would probably know before the Premier would know. Did you never get to know in advance that they were about to leave or to be asked to leave?

**MR MXOLISI DUKWANA:** It will be a normal practice in other provinces surely not in the Free State.

**CHAIRPERSON:** And had you voiced any complaints to the Premier about any of them before they left in terms of their performance.

**MR MXOLISI DUKWANA:** Several times.

**CHAIRPERSON:** You had expressed?

**MR MXOLISI DUKWANA:** Several times.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** I would complain about these things. In fact I even went to  
10 an extent of asking him that sometimes ...

**ADV PHILLIP MOKOENA SC:** Mr Dukwana I think you are missing the question of the Chair. The question of the Chair is that whether when this HOD's were told to leave did you raise any concerns pertaining to their performance? Were you not happy about what they were doing?

**MR MXOLISI DUKWANA:** Okay no.

**CHAIRPERSON:** Yes, yes, no ...

**MR MXOLISI DUKWANA:** I did not understand that.

**CHAIRPERSON:** Before that – before the decision whether they were resigning?

**MR MXOLISI DUKWANA:** No.

20 **CHAIRPERSON:** Or they were being asked whether that had been preceded by any complaints or concerns from your side expressed to the Premier about their performance?

**MR MXOLISI DUKWANA:** No not with Gonyedi.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Not with Doctor Mohakeem.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And the only concern I had...

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** At the time was with Mr Rama Yema.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** There were issues that we had and I wanted to raise the matter.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** With the Premier.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And I did not get the opportunity.

**CHAIRPERSON:** To raise...

**MR MXOLISI DUKWANA:** To meet with him.

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** I would point out that at the time I asked for an appointment I was given an appointment at – it was in the morning and to discuss this matter with Mr Rama Yema. And an appointment was granted to meet with the Premier. I could not meet with him at the said time and instead he kept on postponing me and he would take me to go to a meeting. There was a HIV and Aids meeting that he was chairing he  
20 then asked me please accompany me to this meeting. I will go with him and because I wanted to raise these issues and some of the issues and concerns that I wanted to raise with him regarding the then HOD. And it did not materialise. After the meeting he then suggested that we go to another meeting. So we moving up the 8<sup>th</sup> floor, 4<sup>th</sup> Floor and I became patient because I wanted – he was avoiding meeting with me so I became patient. I wanted to meet with him at the time and ultimately late that – about

half past three he then said to me I must join him he was having a delegation from Malasia. So we sat there and after the meeting he then said, I am tired. And I could understand now I was also tired from all these things. And he said we meet again and we will talk about this matter. But unfortunately this matter was then presented to the PEC meeting. I think it was the PWC meeting where Ace himself came with a complaint to the PWC that Mr Rama Yema wanted to raise with the PEC about me and started raising issues and you know about me not attending meetings etcetera. A number of lies. When we rebutted – when I rebutted those lies and retracted and the PWC then said Mr Rama Yema should go. Ace then said no you do not have the powers. The powers are with me and the question was, why then did you bring the matter here? He could not explain. And that is exactly the situation in the province.

**CHAIRPERSON:** Okay.

**MR MXOLISI DUKWANA:** That we were subjected to.

**CHAIRPERSON:** Okay, okay. No thank you. It was a detour but I think it might be important to give certain perspective.

**CHAIRPERSON:** Yes, yes.

**CHAIRPERSON:** Ja.

**ADV PHILLIP MOKOENA SC:** Tony – Mr Tony Gupta told you about his suitable replacement. Who did he have in mind when he said that to you?

20 **MR MXOLISI DUKWANA:** He just made a call. He made a call. He even said I have a person who can become your HOD fire this one and I explained why I cannot fire this person only Ace Magashula has the powers. And then he took his phone, he made a call and within a few minutes it was not long suggesting to me the person must have been around the compound. And Mr Richard Seleke appeared but I did not know him to be that he was introduced me as – here is your – the person who can actually

replace – become your HOD. And it was Mr Richard Seleke. He introduced as Mr Richard Seleke. And if my memory serves me well all that I remember was that he was the Chief Director at the time. It was said he is the Chief Director but I do not know whether it was Forestry or whatever but it was in those departments. So it was said this is a good guy who can actually help you through this and this is Mr Richard Seleke. So that was what was introducing – when he was – when he came in he was introduced to me as such.

**ADV PHILLIP MOKOENA SC:** And was there any reaction from Mr Magashule?

**MR MXOLISI DUKWANA:** No.

10 **ADV PHILLIP MOKOENA SC:** When Mr Tony Gupta said that this would be the replacement of the HOD?

**MR MXOLISI DUKWANA:** No.

**ADV PHILLIP MOKOENA SC:** Now how did this meeting conclude, your visit to the Gupta compound?

**MR MXOLISI DUKWANA:** Alright after – after it became clear that I was not about to sign anything and then Tony stood up and indicated that it is clear that this is not going to happen and I was then ushered out and given a driver to take me back to the airport.

**ADV PHILLIP MOKOENA SC:** Yes.

20 **CHAIRPERSON:** Now I am sorry. Throughout this meeting as all of these things you have told us about were being said was Mr Ace Magashule quiet throughout except for one when according to your evidence he nodded when Tony – Mr Tony Gupta mentioned that every month he would take R1 million to him and two when he leaned towards Mr Tony Gupta asked you to give him back the letter. Was he quiet throughout that time or is there something that he said which I may have missed or which you might remember?

**MR MXOLISI DUKWANA:** No, the other occasions but he did not say much. He would only agree. It was at the occasion when Mr Tony indicated that this matter can be rectified through the Executive Council and he said I have spoken to my brother here and he nodded also and also when he spoke about the money that they were receiving and I think there was also one occasion where after he – he asked if – that the project was between myself and him and that Ace was excluded and he said I have spoken to him. He agrees and Ace nodded again. So I found it very interesting because I know him to be a person who could talk, but I found him subdued in that meeting.

**CHAIRPERSON:** So on your evidence there is not much that you are able to recall that  
10 he articulated other than nodding?

**MR MXOLISI DUKWANA:** He said nothing.

**CHAIRPERSON:** He said nothing?

**MR MXOLISI DUKWANA:** Except nodding.

**CHAIRPERSON:** Hm and you did not at any stage while this was being – while pressure was being put on you to sign this letter. You did not at any stage say Premier or Mr Magashule what do you say to all of this. You did not say that?

**MR MXOLISI DUKWANA:** You know Chair I was – I was really angry with him.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** So I did not want to say anything to him.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Because at the time I found really he had betrayed my trust.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Here is a person who we had worked since 1992.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And could not even tell me – you know.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Just hint that this is what is going to happen. So.

**CHAIRPERSON:** This meeting about how long did it last if you are able to estimate.

**MR MXOLISI DUKWANA:** Yoh.

**CHAIRPERSON:** You arrived in the morning and in terms of what he had told you.

**MR MXOLISI DUKWANA:** I think we should have.

**CHAIRPERSON:** You were expecting to address or to have a dinner with business people at 06:00 pm?

**MR MXOLISI DUKWANA:** At six.

10 **CHAIRPERSON:** So around what time did you arrive at the Gupta residence if you remember?

**MR MXOLISI DUKWANA:** I think it should have been roundabout 11/12.

**CHAIRPERSON:** Around about 11/12?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** And about what time was it when you actually left the meeting to be taken to the airport?

**MR MXOLISI DUKWANA:** I think I was at the airport roundabout to three or 3 o' clock.

**CHAIRPERSON:** Around 3 o' clock?

**MR MXOLISI DUKWANA:** Yes, because I had to arrange a flight moving out.

20 **CHAIRPERSON:** Yes. Now you have just told me that when the meeting concluded arrangements were made for you to go to the airport and as I understand it without Mr Magashule even though you had arrived together. Did you ask anything about him remaining behind or anything before you left?

**MR MXOLISI DUKWANA:** All I wanted was to get out of that place.

**CHAIRPERSON:** Sorry.

**MR MXOLISI DUKWANA:** I just wanted to get out.

**CHAIRPERSON:** You wanted to get out of that place?

**MR MXOLISI DUKWANA:** I was pleased to get out of that place.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And the way I was angry I felt that I could do something that I was.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** I was going to regret.

**CHAIRPERSON:** Hm.

10 **MR MXOLISI DUKWANA:** And I actually did not want to speak to him at the time.

**CHAIRPERSON:** Yes. So you left and he remained behind?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** And everyone else who was in that meeting remained behind?

**MR MXOLISI DUKWANA:** They did.

**CHAIRPERSON:** *Ja*. When Mr Richard Seleke came into the room did he say anything after you had been told that he was the person who you could have as the HOD for your department?

**MR MXOLISI DUKWANA:** He was just introduced and he said nothing.

**CHAIRPERSON:** *Ja*, but he did not say much?

20 **MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** But did he remain in the meeting until you left or did he just get in [intervenes]?

**MR MXOLISI DUKWANA:** At the time.

**CHAIRPERSON:** And left?

**MR MXOLISI DUKWANA:** At the when I was introduced and then the meeting was

over.

**CHAIRPERSON:** Oh, he was like the last item?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Okay, thank you.

**ADV PHILLIP MOKOENA SC:** Mr Dukwana you neatly capture the conclusions on this topic. If you have regard to page 20 paragraphs 65, 66 and 67 please take us through and you can read them. It will speed up the process.

10 **MR MXOLISI DUKWANA:** “I was also startled that the Premier of the province brought me to the Gupta compound with the sole intention of corruptly and unlawfully advising commercial interest of the Guptas. I am not sure why Magashule deemed it apt and under a false pretext to bring the name of the ANC to a corrupt activity when he knew the ANC had nothing to do with the appointment letter I was expected to sign for a Gupta company.”

**ADV PHILLIP MOKOENA SC:** And paragraph 66.

**MR MXOLISI DUKWANA:** 66?

**ADV PHILLIP MOKOENA SC:** Yes.

20 **MR MXOLISI DUKWANA:** “I remain startled to this day as to why the presentation is made in the Executive Council. Its details ended up outside persons who were not in Government. I can only deduced that Tony possibly received the details of representation from Magashule. I cannot rule out the possibility that Magashule might have instructed someone to furnish Tony with the said presentation.”

**ADV PHILLIP MOKOENA SC:** Which presentation are you talking about here for completeness?

**MR MXOLISI DUKWANA:** The content of the letter had in it the ICT Hub information and also the relationship with Sathya and that information was not out to any person.

**CHAIRPERSON:** How long before that meeting – if you are able to remember – had you presented – had you made that presentation to the Executive Council a few weeks, a few months?

**MR MXOLISI DUKWANA:** It is not clear.

10 **CHAIRPERSON:** If you are able to remember. You might not be able because of the timelines.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** I am just asking [intervenes].

**MR MXOLISI DUKWANA:** But it was – I think it was 2011 sometime there in October something like that.

**CHAIRPERSON:** Oh, okay. So it was the previous year probably?

**MR MXOLISI DUKWANA:** Yes. Yes sir.

**CHAIRPERSON:** Yes and had it been presented anywhere else other than in the Executive Council?

**MR MXOLISI DUKWANA:** No.

20 **CHAIRPERSON:** Yes and the only other.

**MR MXOLISI DUKWANA:** No. Let me explain. It was presented in the cluster.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The Economic Cluster.

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** And it was also presented in the Executive Council.

**CHAIRPERSON:** Executive Council, but did you say that this letter which had this information that Mr Tony Gupta came with that letter into the room where the meeting ultimately was held came there with that letter when he was coming in together with Mr Magashule after having left the same room earlier with Mr Magashule or not really?

**MR MXOLISI DUKWANA:** They – they did not get into the room.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** I was ushered into the room.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And then they.

10 **CHAIRPERSON:** They passed onto another room?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And then they came back.

**CHAIRPERSON:** And then they came back Mr Tony Gupta had this letter in his hand?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** And he was coming in together with Mr Magashule and Mr Duduzane Zuma and about three or four other people?

**MR MXOLISI DUKWANA:** Yes sir and what is very strange we - all that we had was our cellphones.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And Mr Magashule was not carrying a bag.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** He as in the car, but.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** You know.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So I do not know how the letter came into the hearing.

**CHAIRPERSON:** Yes, okay. Thank you.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** And you have already told the Chair that you left the compound and Mr Magashule remained in the compound?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Yes. May I refer you to page 22 from paragraph 75? You deal with a new topic the City for Tomorrow. Could you please summarise for us  
10 the 11 facts pertaining to this City for Tomorrow?

**MR MXOLISI DUKWANA:** The City for Tomorrow was a concept document that we were working on for what I had earlier intimated to and this would be relevant in as far as it relates to some of the information that were in the letter that I was supposed to sign, but also with the communication that had earlier occurred between myself and Mr Iqbal Sharma and the P3, Mr Thomas.

**ADV PHILLIP MOKOENA SC:** Yes. Now on paragraph 75 Mr Dukwana you say that:

20 “On 6 July 2011 two days after the Cabinet deliberated on the City for Tomorrow concept Sharma directly addressed an email to me into my private email account at 04:40:19 asking for my comments.”

And you annex it as Annexure DM4. Who is this Sharma that you are referring to?

**MR MXOLISI DUKWANA:** Iqbal Sharma.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** Of Nulane Investments.

**ADV PHILLIP MOKOENA SC:** How did he know about the deliberations that were in

Cabinet? I mean within a period of two days.

**MR MXOLISI DUKWANA:** I do not know about that, but what I know is we had had – I had met with them and related what we wanted to do and it was at the request – the meeting was at the request and we explained and they showed interest in helping us with the City for Tomorrow in terms of helping with the master plan, helping with the raising of funds or getting investments to do this. So this was not communicated to them at the time.

**ADV PHILLIP MOKOENA SC:** Yes. May I refer you to page 82? That is where you will find Annexure DM4. Is this the email that you are referring to in paragraph 75?

10 **MR MXOLISI DUKWANA:** Yes, it is.

**ADV PHILLIP MOKOENA SC:** And you can take us through that email.

**MR MXOLISI DUKWANA:** Should I read it?

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** This a forwarded message. It comes from Iqbal Sharma and it was dated the – it was on a Wednesday 6 July 2011 at 14:13. The subject was “City of Tomorrow Agreement” and it was directed to my email address [m.dukwana@gmail.com](mailto:m.dukwana@gmail.com). That is not an official address – an official email and here he said:

20 “Dear Honourable MEC, please find attached the contract for a master plan in relation to the City of Tomorrow Project. Your comments will be appreciated. Kind regards, Iqbal.”

**ADV PHILLIP MOKOENA SC:** Yes. Were you not surprised when you received this communication from him?

**MR MXOLISI DUKWANA:** I was and then I sent especially from – that it came through to my email address, my personal email address and I immediately sent it – redirected

it to Nono Malgas.

**ADV PHILLIP MOKOENA SC:** Yes. If you turn to page 83.

**CHAIRPERSON:** I am sorry. Before that – before you received this email had you had any prior discussions involving Iqbal Sharma about the City of Tomorrow Project?

**MR MXOLISI DUKWANA:** As I say sometime I think it was early 2011.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Somewhere in February.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** We had a meeting.

10 **CHAIRPERSON:** Some discussion?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Okay. Thank you.

**ADV PHILLIP MOKOENA SC:** If you turn to page 83 Annexure DM5 would this be the Master Plan Agreement which he was annexing to the email?

**MR MXOLISI DUKWANA:** This is the purported Master Plan Agreement.

**ADV PHILLIP MOKOENA SC:** Yes. Now who are the parties to this Master Plan?

**MR MXOLISI DUKWANA:** There it says:

20 “The Master Plan Agreement entered between the Provincial Government of the Free State acting through its Department of Economic Development, Tourism and Environmental Affairs and the Consortium consisting of P3 International LLC, registration number 201014610054. A company duly registered in terms of the law of the State of California United States of America and Nulane Investments 204 (Pty) Ltd t/a Nulane Management services, registration number 200A/020988/07. A company

duly registered in terms of the law of the Republic of South Africa.”

**ADV PHILLIP MOKOENA SC:** Do you know who drafted this agreement?

**MR MXOLISI DUKWANA:** I beg you.

**ADV PHILLIP MOKOENA SC:** Do you know as to who drafted this agreement?

**MR MXOLISI DUKWANA:** It was surely not drafted from our offices, but it came out that it was drafted by either Mr Iqbal Sharma or his associates.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** I see the name there a certain Nulane Investments. Now that is one  
10 of the entities whom you were required to appoint in terms of that letter that Mr Tony Gupta presented to you. Is that right?

**MR MXOLISI DUKWANA:** It is. It was the only.

**CHAIRPERSON:** It was the only?

**MR MXOLISI DUKWANA:** That was the only entity.

**CHAIRPERSON:** Oh, *ja*. Yes, but now in terms of sequence of events this email from Mr Sharma together with this Master Plan Agreement happened earlier than that meeting or as I see your statement. Is that correct?

**MR MXOLISI DUKWANA:** That is correct. I think this sequence of events we would explain as we continue.

20 **CHAIRPERSON:** Yes, okay.

**MR MXOLISI DUKWANA:** So that.

**CHAIRPERSON:** Okay.

**MR MXOLISI DUKWANA:** The Chair could understand what is happening.

**CHAIRPERSON:** Yes. So that by the time you had meeting you would have been able to associate Nulane Investments with that project because there would have been

some communication before. Is that right?

**MR MXOLISI DUKWANA:** That is right.

**CHAIRPERSON:** Okay, thank you.

**ADV PHILLIP MOKOENA SC:** If you turn to page 23 paragraph 77 in order to follow on the chronology of the Chair.

**MR MXOLISI DUKWANA:** Page 23?

**ADV PHILLIP MOKOENA SC:** Yes. Paragraph 77.

**MR MXOLISI DUKWANA:** Hm.

**ADV PHILLIP MOKOENA SC:** And please take us through the contents of that email –  
10 of that paragraph.

**MR MXOLISI DUKWANA:** “Strangely the said concept was also known to Tshepiso Magashule’s son to Magashule on 25 February 2011. Tshepiso Magashule addressed an email to me at the request of Sharma. The latter requested Tshepiso Magashule to email what is called a Free State letter to me. For ease of reference I annex hereto marked DM6. A copy of the email on 25 February 2011 and DM7 being an email from Sharma to Tshepiso Magashule dated 24 February 2011 and DM8 being a copy of the Free State letter an attachment to both emails.”

20 **ADV PHILLIP MOKOENA SC:** Yes and do you know what was the role of Mr Tshepiso Magashule?

**MR MXOLISI DUKWANA:** The first encounter when I came to realise that he was now in the picture was when these emails came to my attention.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Can I take you back a little bit to that Master Plan Agreement? Can

you talk briefly as to what it sought to achieve if it had been signed by everybody who was supposed to sign it what would it have sought to address or [indistinct]?

**MR MXOLISI DUKWANA:** I would – I would not if you allow Chairperson.

**CHAIRPERSON:** Or you want me to refresh your memory?

**MR MXOLISI DUKWANA:** No, not that.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** That if we go through this.

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** It has other issues that I think are needed.

10 **CHAIRPERSON:** That you can.

**MR MXOLISI DUKWANA:** To be clarified.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** Because this was as I indicated if you look at the document itself.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** It was not also written by any legal person from the department.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** It came from Nulane.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And at some stage if you check the signatures it would also come in that in that agreement.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** It is alleged that I signed as an HOD.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And I also went into sign as an MEC.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** In the same document that we are talking about.

**CHAIRPERSON:** Okay. Maybe Mr Mokoena just warn me if there is something you deliberately leave out because otherwise in my mind it is something that is left hanging and I do not want to forget about it. Just warn me if.

**ADV PHILLIP MOKOENA SC:** We will deal with the issues as and we address them Chair.

**CHAIRPERSON:** Ja.

10 **ADV PHILLIP MOKOENA SC:** So that I do not forget them.

**CHAIRPERSON:** Yes. So that I know that there is a reason to leave it.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** For now.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** We still want to play in the chronology. If you may go to page 102. That is now Annexure DM6. If you look at the bottom is that the email that you are referring to saying that it was dispatched by Mr Tshepiso Magashule and it was addressed to you Mr Dukwana?

20 **MR MXOLISI DUKWANA:** Yes it is.

**ADV PHILLIP MOKOENA SC:** Yes. Let us now deal with the contents and if you turn to page 103 Annexure DM7. This is now a letter or it is an email dispatched to Mr G Magashule and it is by Mr Iqbal Sharma. Am I right?

**MR MXOLISI DUKWANA:** Yes, you are right.

**ADV PHILLIP MOKOENA SC:** This – he says that please can you forward attached

letter to the MEC Economic Development in the province. The letter should be sent to Mr John Thomas and cc to me on the email address as provided there. What was happening here? Was Mr Iqbal Sharma writing a letter and saying that that letter has been written by you?

**MR MXOLISI DUKWANA:** This is what came out to – you know – when you read; when it came – when it first came I did not understand that Mr Magashule was now brought into the picture and remember Mr Chairperson that.

**CHAIRPERSON:** Is that Mr Magashule Junior?

**MR MXOLISI DUKWANA:** It is Tshepiso.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That the – I had had the discussions with Iqbal Sharma and Mr Thomas of P3 without Mr Tshepiso Magashule being present and when this came through to me it was a surprise that now they were sending this information to Mr Magashule to send to me.

**ADV PHILLIP MOKOENA SC:** Yes. Now if you have regard to DM8 on page 104.

**CHAIRPERSON:** I am sorry, but I am not sure if your answer Mr Dukwana covered the question. I think the question was, was Mr Sharma preparing letters as if they had been written by you and having them sent to you for you to sign.

20 **MR MXOLISI DUKWANA:** The department in question had very capable people who could do this. You had legal people. You had DDGs and all this. They were all capable to write any letter that needed to be written or any contract that needed to be entered into. There was no reason for any letter to be written by Mr Iqbal Sharma and addressed to me for me to write and send it over. There was no reason whatsoever and if ever there was any letter that needed to be written I also was capable of writing any letter or if I were to – you know – to recall any of the meetings that we had and

whatever we shared I was capable of doing that. There was no reason for me to have Mr Iqbal Sharma doing this. So as I am saying there was no request. There was nothing that.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Into this that could have prompted this to happen.

**CHAIRPERSON:** But are you confirming that what was happening now in terms of what we are dealing with here is that Mr Sharma was sending draft letters or I do not know if there is also.

**MR MXOLISI DUKWANA:** Yes.

10 **CHAIRPERSON:** A draft agreement for you to sign.

**MR MXOLISI DUKWANA:** Draft letters, draft.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** Resolution and.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Master Plan everything.

**CHAIRPERSON:** Yes and.

**MR MXOLISI DUKWANA:** And they were sending them.

**CHAIRPERSON:** And you say this was not by any arrangement between the two of you?

20 **MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** That he could draft letters for you to sign?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** Yes, okay. Thank you.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Let us clarify further that aspect Mr Dukwana. If you

have regard to Annexure DM7 on page 103. You will see it is stated there that:

“Please can you forward attached letter to the MEC?”

Can you see that?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** And then if you turn to page 104 Annexure DM8 is this the letter which was attached?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Who wrote this letter?

**MR MXOLISI DUKWANA:** It was written by Iqbal Sharma, sent to Tshepiso to send to  
10 me.

**ADV PHILLIP MOKOENA SC:** Even though at the bottom it reflects the MEC Economic Development. It was not written by you?

**MR MXOLISI DUKWANA:** No, it was not.

**ADV PHILLIP MOKOENA SC:** And it was not written on your instructions as well?

**MR MXOLISI DUKWANA:** No, it was not written by me nor my instructions.

**ADV PHILLIP MOKOENA SC:** Yes and does Mr Sharma or Magashule have any authority to write letters on behalf of yourself or the department?

**MR MXOLISI DUKWANA:** Not at all.

**CHAIRPERSON:** So the letters were not coming on your letterheads already, on the  
20 letterhead of your office. They were coming simply as drafts and you would, if you agreed with them and were prepared to sign. You would simply need to put them on your letterheads and then sign.

**MR MXOLISI DUKWANA:** That is what the intention was.

**CHAIRPERSON:** Ja, okay.

**ADV PHILLIP MOKOENA SC:** Now let us go to DM8 page 104. So as for us to

appreciate what did they want you to convey in the letter. Could you please read the contents of that letter?

**MR MXOLISI DUKWANA:** “The City of Tomorrow: Dear Mr Thomas, thank you for meeting with us to discuss our vision for the City.”

**ADV PHILLIP MOKOENA SC:** Now when it says Dear Mr Thomas it is as if it is you who is now writing the letter?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** So the letter that you received from Mr Sharma through Mr Magashule junior that is at page 104 namely DM8 reflects to be a letter by the MEC  
10 for Economic Development Free State which was you, but it is addressed to Mr John Thomas, P3 Africa (Pty) Ltd and it is Sacramento and it is about the City for Tomorrow and it is addressed – it says Dear Mr Thomas as you have indicated. So it was meant to be a letter from you to Mr Thomas.

**MR MXOLISI DUKWANA:** [No audible reply].

**CHAIRPERSON:** Okay.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** You can read the contents.

**MR MXOLISI DUKWANA:** “...thank you for meeting with us to discuss our  
20 vision for the City for Tomorrow Project. The purpose of this correspondence is to confirm our discussion and general agreements and to chart a path moving forward. As you know we shall endeavour to design and construct a new high tech city complete with all of the public and private improvements one would expect from a more than cutting edge city. This will schools, parks, hospitals, universities, theatres, libraries,

hotels, convention facilities, recreational facilities and all necessary streets and infrastructure. The public portion of the project will be funded by the Provincial Government of the Free State South Africa while the private improvements will be funded through private investments as we had discussed. Crucial to the development of this project will be a suitable Master Plan that gives form and substance to our vision. P3 Africa has agreed to prepare the Master Plan for the project at its expense. The Master Plan will be completed and delivered to the Government of Free State within 12 weeks. P3 will also attach a complete end to end proposal to develop and manage the entire together with a funding a solution. If the Master Plan is properly delivered and found to be acceptable we will then engage with P3 to discuss a possible engagement on the implementation of the project. Thank you for visiting our province and for your participation in this exciting project. Kind regards, MEC Economic Development Free State.”

**ADV PHILLIP MOKOENA SC:** And you never conveyed this thing to Mr Thomas at all?

**MR MXOLISI DUKWANA:** No.

20 **ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** As a matter of interest letters that you wrote say official letters would you end them like that or would there be your name just before the designation of your portfolio?

**MR MXOLISI DUKWANA:** It will be – it will not be like this. It will be my name.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And then followed by the designation of the.

**CHAIRPERSON:** Yes so – so the way this one ended is different from the way you normally ended your letters that you wrote – official letters?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Ja, okay.

**ADV PHILLIP MOKOENA SC:** This was not the end nor the only letter which was written on your behalf Mr Dukwana. Can you take us through the contents of paragraph 78 on page 23? Page 23.

**MR MXOLISI DUKWANA:** Yes, I am getting there. Paragraph?

10 **ADV PHILLIP MOKOENA SC:** Page 23, paragraph 78 take us through the contents of that paragraph.

**MR MXOLISI DUKWANA:** “In the Free State letter it will be noted that both  
P3 and...”

**MR MXOLISI DUKWANA:**

20 “In the Free State letter it will be noted that both P3 and Nulane had indicated that their expenses for the Masterplan will be borne by them respectively but on a date I cannot recall a letter from both companies prepared for me to address and assign to them authorising payment of approximately R140million to be paid to them in six instalments. I annex  
hereto a copy of the said letter marked DM9.”

**ADV PHILLIP MOKOENA SC:** So for ease of reference Mr Chair that letter is to be found on page 105, is that the letter that was also prepared on your behalf?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** You did not write this letter?

**MR MXOLISI DUKWANA:** No.

**ADV PHILLIP MOKOENA SC:** Now this one, if you turn to page 106 it ends slightly different than the one that we're dealing with initially, you can see that it says, "kind regards and it says M Dukwana Office of the MEC", is this how you'd normally write your letters?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** But this one was not written by you?

**MR MXOLISI DUKWANA:** I beg yours?

**ADV PHILLIP MOKOENA SC:** This one was not written by yourself.

**MR MXOLISI DUKWANA:** No this was not written by me.

10 **CHAIRPERSON:** Who did this – who prepared this one it was somebody different from Mr Sharma or was it somebody else?

**MR MXOLISI DUKWANA:** It was Mr Sharma himself.

**CHAIRPERSON:** It was Mr Sharma himself okay.

**ADV PHILLIP MOKOENA SC:** So it was Mr Sharma and if you got to page 105 it says, "Dear Mr Sharma and Thomas", so he was writing to himself?

**MR MXOLISI DUKWANA:** Yes he was

20 **ADV PHILLIP MOKOENA SC:** Now may I refer you to page 23 paragraph 79, in that letter you say – in that paragraph you say, "on the 13<sup>th</sup> of October 2011, Sharma emailed me requesting assistance to co-ordinate a two-day workshop session with relevant HOD's and other stake holders for the purposes of the project in issue", and you also annex Annexure DM10, the email in question and you say that one Mr Salem Essa was also copied in that email. Did you receive Annexure DM10, it's on page 107?

**MR MXOLISI DUKWANA:** 107?

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** Yes I did.

**ADV PHILLIP MOKOENA SC:** And then you say that one Salem Essa was copied, do you know why Mr Salem Essa was copied, he did not appear on the previous correspondence and on this one he is now appearing, do you have an idea as to what was his involvement, why he's now – was he also involved in these City of Tomorrow?

**MR MXOLISI DUKWANA:** I can't recall why but if I can also help in this case the – all these came from the meeting as I said we had a meeting their request, you know, and we sat down and discussed what we wanted to do.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR MXOLISI DUKWANA:** But unfortunately they took it further, they were in a hurry,  
10 when issues needed to be dealt with, first there was not even a land that was identified, we had not identified any land where this city would be situated. We had not done any work whatsoever and we were just dealing with the concept and the idea and we then agreed with them that all you need to do is to look for funds and help us with the investment for this kind but for that to happen we need to have a master plan that would clearly show, you know, what our intentions were that would detailed everything and for that to happen you would need to have a workshop with the officials from the Department and the HOD's in the province so that we get to understand what exactly we want so that by the time you start working on this, at least you know what this entail and the workshops were supposed to take place sometime in November.

20 **ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** And you were speaking in October with them?

**ADV PHILLIP MOKOENA SC:**

**MR MXOLISI DUKWANA:** We started early in February.

**CHAIRPERSON:** Oh do you have a number – did you have a number of these meetings or discussions before November?

**MR MXOLISI DUKWANA:** Yes, I think we had two meetings but in these meetings, as I say, the last meeting we were to look into the workshop and then this matter came. So that is why I was surprised having met with them, they would then ask Thabiso to send, you know – and also send all these other things but if you check, also, at some stage when they came back with the other letter that purport to be written by me, that was outlining the details of the payments etcetera, it was also in relation to what we were talking and there was no relevance whatsoever in the decisions that we had taken.

**ADV PHILLIP MOKOENA SC:** And at that stage when you engaged with them, there was no – I mean they were never appointed at any stage, during that time.

- 10 **MR MXOLISI DUKWANA:** No they were not because I made it clear that the only time that we would engage in any meaningful discussions would be once we have dealt with the master plan and we are happy with whatever they brought to us and 2) that they had actually managed to get an investment, then we can talk of the possible relationship moving forward with this. So the - as we were – in November at the time even before the workshop then these kinds of letters were coming in and the master plan agreement etcetera, when there was no workshop that needed to take place in November. So they were just moving ahead of themselves but it was clear – the intention here was just put papers and documents and allow us to get money and it was going to be easy money flowing from the Free State where people will request
- 20 R140million and the project and you pay them R140million and nothing, you know – if you check also what they claim to have been, what they were requesting as a master plan it will be the presentation on the City of Tomorrow and this is what – if you look into that document this was the document they claim was worth R140million. If you can check there you will see it was simply what they wanted to do, drain the State and take the money, it is not even worth what the paper that it is written on.

**ADV PHILLIP MOKOENA SC:** May I refer you to page 24 it appears that they were very energetic in writing those letters on your behalf. If you go – you go, you can take us through paragraphs 81 and 82 then later I'll refer you to Annexure DM12.

**MR MXOLISI DUKWANA:** 81, "attached to the email of 29 October 2011 was the notice to proceed which appears to be a letter drafted on my behalf, it was intended that I put the said letter on the letterhead and duly transmit it as requested. I do not recall ever signing this said notice, certainly I did not draft it neither was any official in my office. I Annex hereto marked DM12 being a copy of the notice", 82...(intervention).

**CHAIRPERSON:** Before you go to 82 you say you do not recall having signed it that  
10 sounds like you may have signed it you don't want to commit yourself and say you didn't sign it only to find that somebody produces...

**MR MXOLISI DUKWANA:** All I know is, I gave them permission to continue to proceed with the workshop.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Not this that the signing of the notice that was to proceed with the master plan.

**CHAIRPERSON:** Yes what I'm asking is, whether you had been deliberately cautious in saying you do not recall signing it or whether you are quite clear that you never signed it?

20 **MR MXOLISI DUKWANA:** With reference to the notice to proceed in terms of the master plan to proceed with the master plan thing, I did not sign but I was saying, I'm not certain if I signed a letter that was giving them permission to continue with the workshop because we, as the department went out to arrange such a workshop.

**CHAIRPERSON:** Yes okay.

**ADV PHILLIP MOKOENA SC:** But we can establish this with much more certainty may

I refer you to page 110 Annexure DM12, this Annexure DM12 is the one that is being referred to on paragraph 81. Now if you look at the contents of Annexure DM12, do you recall writing such a letter and signing a letter that contains what is being stated in – therein.

**MR MXOLISI DUKWANA:** This as it has happened, it was a letter prepared by them and I did not sign this letter.

**ADV PHILLIP MOKOENA SC:** So as a matter of fact you can say that you did not sign this letter, you did not write this letter?

**MR MXOLISI DUKWANA:** Yes certainly.

10 **CHAIRPERSON:** Just tell us what the letter says please, or read it please.

**MR MXOLISI DUKWANA:** “Dear Mr Sharma and Mr Thomas, based on our master plan agreement I’m pleased to give Nulane Management Services and P3 the notice to proceed with the development of the master plan for the City of Tomorrow project a new city to be designed in the province of the Free State as well as prepare a schematic design for the new government centre to be located in the project. The master plan will involve the creation of overall plans for the project’s infrastructure, public transportation facilities, sustainability and integration of services that is governmental housing, medical, hi-tech private development, entertainment, public safety parks etcetera. In light of local conditions and within a broader original context the design of the master  
20 plan will also incorporate a site for a new government centre. We look forward to the planning workshop set for November 15 and 16 2011 and would like to wish you well on this groundbreaking exciting project, kind regards”, it’s my name again.

**CHAIRPERSON:** Yes so this is what they wanted you to say to them but you did not, you were not prepared to say that?

**MR MXOLISI DUKWANA:** No I was not prepared to.

**CHAIRPERSON:** Thank you

**ADV PHILLIP MOKOENA SC:** And fundamentally on the first sentence it begins by saying, “based on our master plan agreement”, was there ever signed a master plan agreement by yourself or by the department?

**MR MXOLISI DUKWANA:** No.

**ADV PHILLIP MOKOENA SC:** May I then refer you to page 25 and if you can take us through the contents of paragraph 84.

**MR MXOLISI DUKWANA:** On 2<sup>nd</sup> January 2012 Sharma addressed an email to the HOD of my department, at that time Mr Ozzie Osman, the said email was also copied to  
10 Ms Nonomagas, the context of the email are self explanatory I annex marked DM14, a copy of the said email.

**ADV PHILLIP MOKOENA SC:** Chair DM14 is on page 112, can you please read the contents of that email and tell us what was happening at this time (indistinct).

**MR MXOLISI DUKWANA:** It's now from Iqbal Meer Sharma the date is Monday the 2<sup>nd</sup> of January 2012 at 9h48 the subject is the City of Tomorrow, addressed to Ossie Osman and you can see the address is the (indistinct) and every time the cc me using my Gmail private email – all these letters are going through my Gmail private, not official but these ones were written to the HOD's and others, they were official letters or on official letterheads, in fact email addresses.

20 “Dear sir, I’m writing to you in the context of your lack of response to my mail of December 13, 2011, in terms of the agreement executed by MEC Dukwana on October 5, 2011 you were duly notified to rectify your breach within 30 days January 13, 2012...(intervention).

**ADV PHILLIP MOKOENA SC:** Let me interrupt you, are you aware of any agreement that you executed as stated in that email on the 5<sup>th</sup> of October 2011?

**MR MXOLISI DUKWANA:** No.

**ADV PHILLIP MOKOENA SC:** You can proceed.

**MR MXOLISI DUKWANA:** “Your failure to respond or to rectify your breach by January 13, 2012 is going to force us to go ahead with legal proceedings against the MEC and your department. I did, however, on December 15, 2011 receive a telephone call from the DG in the office of the Premier indicating that a communication will be forthcoming from your office but such has not been received. In the context of this period of engagement I would like to invite you to meet with me between January 9 to 12 at my offices in Sandton or I would be willing to meet with you in the Free State to try to find a  
10 resolution to your department’s breach. In my previous email, I had urged you to treat this matter with the seriousness that it deserves but you chose to ignore me. This communication will be my last, therefore to reach out to you and your failure to respond will result in me pursuing legal proceedings against the MEC and your department with the assistance of the Public Protector on charges of breach of contract and fraud. I remain hopeful that we will be able to resolve the matter at hand, however, your response will determine my status going forward, sincerely”.

**ADV PHILLIP MOKOENA SC:** Yes what happened after you received all this correspondence...(intervention).

**CHAIRPERSON:** I’m sorry, before that, I’m getting confused, this letter, this DM14 of 2  
20 January 2012, I see when I look at the bottom of the page it says sincerely and there is no name as to who the author is supposed to be, who was supposed to be the author of that letter or who was supposed to write that letter.

**MR MXOLISI DUKWANA:** It’s Iqbal Sharma because if you check the letter is from him at the top, from Iqbal Meer Sharma and there is his email address.

**CHAIRPERSON:** Is he addressing it to the head of your department?

**MR MXOLISI DUKWANA:** Yes he was addressing it to Mr Ossie Osman.

**CHAIRPERSON:** Yes as his letter not what he was doing with you, namely, to send a letter for him to sign this was now addressed to him?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Yes okay, alright.

**ADV PHILLIP MOKOENA SC:** This is now him writing a letter not pretending as if it was written by yourself.

**MR MXOLISI DUKWANA:** No it was him now writing the letter to the HOD.

**ADV PHILLIP MOKOENA SC:** Now after receiving all this letters that we've canvassed  
10 those that were prepared on your behalf and this one DM – on page 112, what then happened about the issues that were raised by Mr Sharma?

**MR MXOLISI DUKWANA:** If you check throughout, the impression is created that I was a willing person to accept letters written and prepared on my behalf and I would then attach my signature and send over to them to do this but if you read this letter, also it comes out with the frustration that now they were not receiving their money that they wanted. For instance if I was this willing participant throughout they would have received their money by now but because there is no way where I accepted any of what they were doing and this, Chair, if you read everything, all these emails and everything throughout the year from the time that we met up until now – up until the last letter, this  
20 letter that was threatening to take the legal action for fraud etcetera it was then followed by the meeting early in February at the Gupta's compound. So basically when it became clear that nothing was happening we were not playing along and they were not receiving what they wanted to get then they decided to call in the masters in this case and that is the reason – the only reason that one, looking back throughout all these things that one could come to that – my going to the compound and asked to sign the

letter. It was going to force my hand in saying all these other letters that were purported to have been written by me or signed by me, in this case, now I have accepted and signed then given this. It was actually their attempt, their last attempt now to make me do what they had failed to make me do during all this writing of these letters and the last was to take me to the Gupta's compound where they thought that I would be made to sign the letter that was there because the letter was not necessarily different from many of these letters it was bringing everything, but in this case it was actually giving them the authority to be the people who were dealing with this, you know if you like the then key project manager. So they will take over everything, that was

10 actually handing now everything that is here even it was at an initial stage and it is clear that all that was this – it was not an interest in developing the city, what we were aspiring to do but it was actually to milk the province dry and get the money out of the province and this all that I can conclude on what actually transpired on this project.

**CHAIRPERSON:** That is now by the time that you – the meeting at the Gupta residence happened, you are saying this is the background to that meeting and what happened at that meeting must be viewed against this background of these emails and these requests and the fact that you are not co-operating?

**MR MXOLISI DUKWANA:** Yes that's what I'm saying.

**CHAIRPERSON:** Yes let's go back to this letter from Mr Sharma, addressed to the

20 head of your department, DM14, in the second sentence, or he says in the first sentence his writing to the HOD in the context of his lack of response to his email of December 13, 2011, is it your understanding that there had been such a letter directed to him as opposed to any emails and correspondence that was directed to you by him or is it something that you're not sure about that reference to a previous letter of December?

**MR MXOLISI DUKWANA:** I don't know about this letter but I know of the emails that they had written and wanting me to attach my signature the agreement – the master plan agreement and everything so it was, I think, in reference to some of these things.

**CHAIRPERSON:** Did you have – did your HOD report to you any attempts to – by Mr Sharma or by Mr Sharma and them to him to get certain things done, you are not aware that they were writing to him directly asking him for anything?

**MR MXOLISI DUKWANA:** No I was not aware.

**CHAIRPERSON:** Ja and you just knew of the correspondence directed to you?

**MR MXOLISI DUKWANA:** Yes sir.

10 **CHAIRPERSON:** Yes okay so you never discussed with him, you don't know whether, even this reference to that letter of December 13 is something that existed or didn't exist, you don't know?

**MR MXOLISI DUKWANA:** No, can I just indicate just to bring this to you, if with what I had explained in terms of the HOD's when it became clear to me that I was actually being set to fail in the department with this turnover of HOD's just to make sure that I'm being disorganised deliberately and not to move anywhere but also it was informed, you know, by what I had observed that any project that will bring any sustainability in terms of development is not what was in the interest in what was happening in the province an so when all these things happened, I then decided to establish a Trustee and  
20 because you would – every time you would have to go to a new HOD and explain yourself, what you wanted. So it was then the task team that was driving this, it was in November when the HOD was appointed and it was a time when we were now going on recess and you know on holidays and when we came back, you know, it was in January when these things were now happening and late January we were back in office. So I did not have any time to have any briefing and engagement with Mr Osman on this

matter and many other issues in the department. So in fact, I did not get an opportunity to discuss many issues because immediately after this saga it was a visit to the Gupta's and later on, two weeks or so I was then fired.

**CHAIRPERSON:** Okay thank you.

**ADV PHILLIP MOKOENA SC:** Now whilst still on page 112, if you look at the date of that email is the 2<sup>nd</sup> of January 2012, can you see that?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** And earlier on you told the Chair that you then visited the Gupta compound around February 2012.

10 **MR MXOLISI DUKWANA:** That is correct.

**ADV PHILLIP MOKOENA SC:** That is now after this letter being written by Mr Iqbal Sharma.

**MR MXOLISI DUKWANA:** Yes that's correct.

**ADV PHILLIP MOKOENA SC:** And you were then fired.

**MR MXOLISI DUKWANA:** Yes I was.

**ADV PHILLIP MOKOENA SC:** Around February 2012.

**MR MXOLISI DUKWANA:** 22<sup>nd</sup> of February.

**ADV PHILLIP MOKOENA SC:** Can you take the Chair through how you were dismissed.

20 **MR MXOLISI DUKWANA:** Chair, I think it was on the – it was on a Monday I don't know what the 22<sup>nd</sup> was but it was on a Monday some of the MEC had gone out, were out of the province and I went to the Premier and wanted to know if we were going to have an Executive Council meeting that Wednesday because I needed to go somewhere and seeing that many of my colleagues were out of the country and he responded that, no there's nothing and I then – I left on the 21<sup>st</sup>, I came to Joburg for an

official meeting – an official engagement and on the 22<sup>nd</sup> in the morning whilst I was in the meeting there was, you know, a call that will come in because, you know, frequently. I then decided not to ignore it anymore I went out and then when I answered the call it was Elsa Rockman the then DG of the Free State who indicated to me that the Premier wanted to talk to me and I held on and then the – we got cut and the phone call, the same call came through from the same number and when I answered I thought I was speaking to the Premier then I said yes Mr Premier and it was only to discover that it was Mamiki Qabathe on the other side. I cannot remember what portfolio she was occupying because there was a lot movement in the Free State. But she was a MEC  
10 and she was the Deputy Secretary of the Province. And then Comrade Mimiki indicated to me that the Premier was unfortunately to talk to me because he was busy in consultation because of what he intend doing. And that was to reshuffle the executive council and he was making sure that by eleven o'clock because the announcement was going to made at eleven o'clock on the 22 February 2012. And now she was sent to talk to me. She then intimated to me that the Premier wanted to bring about 50/50 spread in the executive council and wanted to bring in a woman and therefore had decided that I must go. I knew then and there but the reason was not because of the 50/50 but it was because of the frustration that they did not get what they wanted. But I chose to take it in my stride on the chin and immediately I asked to be excused. I just  
20 told the meeting that something had happened in the province and there were changes in the executive there is going to be a reshuffle etcetera. So I left, when to the airport, flew back and when I got into the office I found the stuff already because I was worried I wanted to be the first one to tell them. But already on my way to the airport – on my way from the airport on the news it was now coming in as a new item that a reshuffle has taken place and Mxolisi Dukwana being myself had been sacked and a new MEC I

think it was Me Maliethu and was now sworn in and I was to vacate the office with immediate effect. And...

**ADV PHILLIP MOKOENA SC:** And at the time Mr Dukwana did you receive any communication from the Premier? Did he speak to you at any time?

**MR MXOLISI DUKWANA:** Up until today.

**ADV PHILLIP MOKOENA SC:** No up until the time when – were – you even saw your dismissal from the media.

**MR MXOLISI DUKWANA:** No the Premier had not said anything from that day and up until it was in then news. And even as I say up until now he has never said anything.

10 **ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Do you mean since the day you were told that you were being dropped from the executive council, provincial cabinet the Premier has never spoken to you and you have never spoken to him?

**MR MXOLISI DUKWANA:** Yes that is exactly what happened. The only person who gave me the information – the news was Mamiki Qabathe. And you know she indicated that she was sent by the Premier. But the Premier never communicated to me not any time after – even after the announcement and nothing and even we met in the PWC in the PEC he pretended that nothing had happened. He said nothing and I chose not to even bother him about that.

20 **CHAIRPERSON:** Oh well I was about to ask whether you did not say that he was still Provincial Treasurer in 2012 and how it would be – it could be that you have never spoken to him but I think what you meant was he has never spoken to you about your dismissal?

**MR MXOLISI DUKWANA:** No he has never.

**CHAIRPERSON:** You have – the two of you have spoken about other things maybe in

a PC meeting or something like that since then?

**MR MXOLISI DUKWANA:** I think our relationship for some time soured because he believed that I was managing him. I will make an example Chairperson. At some stage when there was this [indistinct] Project the Premier had a tendency of calling all other officials and without the MEC concerned and would deal with the [indistinct] thing. He asked my department to provide R50 000 for each municipality about five municipalities which would be used to – to build the cash wash in those municipalities for young people as this [indistinct] project was going to [indistinct]. When the official the late Boetie Mathebula came to inform me about that I felt that it was unfair because every  
10 department you have – you know budgets etcetera and the budget, the Free – the Economic Development Department was actually cut to the bone. And so I went to him and I expressed my dissatisfaction on the matter and explained to him and advised them that I mean it is not fair that the Free State young people should only be thought of better to be involved in businesses that relate to car washing etcetera. And that were not sustainable at the time. I mean if you go the city in Vredefort if you have a car wash you know we – I used to joke with the – the colleague's Bongile Pesane that it will only be the cars your teacher, your police and some people who will come to the funeral. So it was not going to be a viable project that I said to him when I argued the matter. And he agreed with me and asked me to okay give me R5 000 because I have already  
20 promised them that I will do something. So that I can buy you know machines you know – what do you call this – cutting of [indistinct]

**CHAIRPERSON:** For the – what was it for – the car wash or something else?

**MR MXOLISI DUKWANA:** No, no.

**CHAIRPERSON:** For the hair, the salons?

**MR MXOLISI DUKWANA:** Clippers, the clippers.

**CHAIRPERSON:** Oh.

**MR MXOLISI DUKWANA:** Hair clippers. So and then I agreed it was cheaper R25 000 for five I said okay. It took place on the Thursday that meeting. On the Friday and on a Monday nothing. On a Wednesday after the executive council I received the notice from my office that there was a meeting on Thursday on the 8<sup>th</sup> floor - in the one building now the OR building and everybody is expected. No apologies. So I went to this – I went to this meeting the following day Thursday and only find the Premier was rumbling saying all sorts of things. I mean you had called CFO's. You have called HOD's in the department. MEC's and he was just talking about people who want to  
10 manage him etcetera. So I did not worry because I thought that he was not talking about me or referring to me we had sorted our things. I had gone to him and to mend. And only when my colleague Gustav Gothule then said you have actually spoken so long why do you not mention these names here whoever is doing this? And then he said my brother Mxolisi Dukwana here. You think you can manage etcetera. So at the time I felt bad because you know I wanted to respond to him and I felt that if I responded in the presence of the officials it will be bad. It would be undermining the office that you know even if I had issues with him out of respect of the office I was like let me not respond. But at the same time also I was put in a fix because here are the officials that I had spoken to and indicated to them I agreed with the Premier so I will be  
20 now dubbed a liar by these officials and they will never believe in me or you know. So I then decided and asked the Premier that I want – if I could speak and he said yes. And I said would it be advisable that you allow these people to move the officials because I do not think this needed them here. If there was anything else – if there was nothing else to – and he said no I have spoken to them. I have spoken about this in their presence. You can go on. And I pleaded with him and when I realised that he was not

going to budge so I spoke and I told him how I felt about him at the time. And it was at the time when I raised all these issues. In fact I – it was – it went to a situation where I was ridiculing him in fact. An example I indicated I am not surprised that he was such a slow learner because I found that from Thursday you realise you are not happy with what I had gone to you man to man, one on one and you still thinking about up until Wednesday. It took you so long to realise that you are managed here something you could have raised with me. You are in the PWC meeting or during the executive council. Or you could have called me and told me ja either way you the Premier, you the boss. You could have just told me I do not agree with you I do this. But you chose

10 to call the officials. You know the MEC's just to address this matter and I found it very ridiculous. At the time the MEC was now the Premier then asked that there should be an executive council caucus. That was the first executive caucus and the last executive caucus. So I am just saying at the time I found that the relationship between the two of us was not okay. And also it was at the time that it was becoming clear because I went to him and indicated to him that I am going to – I have been asked to stand for the position of the chairperson I was going to contest this position and I think knowing him I think he did not take it kind. But when I was there he pretended that it is okay but you would know Chairperson that he has been the chairperson for this long but we know it is not because he was this popular person in the province but it was because of his

20 manipulation of all the processes also and everything that he has done up until this time. So it was not surprising to me that he felt this way about me. That also that I was contesting him in the elective conference was to be later in 2012 and the fact that also that he took me to the compound and I said nothing happened. And I think that actually broke the camel's back.

**CHAIRPERSON:** So – so going back to the question you – the two of you never talked

about the dismissal?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** Your dismissal but that does not mean you have never spoken to each other about whatever else.

**MR MXOLISI DUKWANA:** No we have spoken about or other things but not this one.

**CHAIRPERSON:** Other things ja. Ja okay thank you.

**ADV PHILLIP MOKOENA SC:** May I refer you to wrap up the point to page 27 paragraph 88 please read it and please comment on it? Page 26.

**MR MXOLISI DUKWANA:** 26?

10 **ADV PHILLIP MOKOENA SC:** Ja 26 paragraph 88.

**MR MXOLISI DUKWANA:**

“I verily believe that I was fired as MEC for refusing to approve and cooperate with a P31 and [indistinct] in common purpose with Magashula to loot the state resources to advance commercial interest of the Gupta family through state capture.”

**ADV PHILLIP MOKOENA SC:** And that is the reason why you believe that you were fired?

**MR MXOLISI DUKWANA:** Yes I have no doubt that was the reason as well as the fact that I was contesting him.

20 **ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Let me ask. After you had been dismissed from the executive council on the basis that he wanted to ensure 50/50 representation of women in the executive council were you replaced by a woman?

**MR MXOLISI DUKWANA:** Yes I was by Mathabo Leeto.

**CHAIRPERSON:** Yes and before your dismissal what was the representation of

women on the executive council compared to men?

**MR MXOLISI DUKWANA:** There were six men and four women.

**CHAIRPERSON:** Yes and...

**MR MXOLISI DUKWANA:** In – excluding the Premier.

**CHAIRPERSON:** The..

**MR MXOLISI DUKWANA:** If you bring that Premier it would be seven and then four because the executive is made of ...

**CHAIRPERSON:** Eleven people.

**MR MXOLISI DUKWANA:** The ten people plus the Premier it is eleven.

10 **CHAIRPERSON:** Yes. So with the – with you being replaced by a woman that brought the representation of women to five. So it was if you look at the whole executive council it was seven men and five women.

**MR MXOLISI DUKWANA:** It was six.

**CHAIRPERSON:** Six.

**MR MXOLISI DUKWANA:** And five.

**CHAIRPERSON:** Six and five sorry.

**MR MXOLISI DUKWANA:** But if you check.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Because it is ten.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** MEC's 1 Premier.

**CHAIRPERSON:** Yes so it was 50/50 if you look at MEC's?

**MR MXOLISI DUKWANA:** Ja at MEC's it would be 50 – it was 50/50.

**CHAIRPERSON:** Ja, yes so from that point of view it may look like he achieved what he wanted if by 50/50 he meant an equal representation of men and women in terms of

MEC's? It may look like that. That is what I am saying.

**MR MXOLISI DUKWANA:** It was just a justification of what he wanted to do.

**CHAIRPERSON:** Yes but you are saying it was not the true reason for your dismissal that is what you are saying?

**MR MXOLISI DUKWANA:** It is not because the resolution that they referred to was taken in 2007.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** At the national conference and 2009 he was appointed Premier.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And it was him who constituted the executive the way he did.

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI DUKWANA:** And to come in 2012

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** To say as an after thought

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That there was this executive – that there was this decision taken in conference.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** To make sure that it is 50/50

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And now I am implementing this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And also the fact that I am – I was also an official as well as

the deployment committee member. This matter was never discussed anywhere.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** It was a decision that he took alone.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And then consulted others.

**CHAIRPERSON:** Yes. Okay thank you.

**ADV PHILLIP MOKOENA SC:** From paragraph 89 you make certain observations. Mr

10 Dukwana could you please take us through them?

**MR MXOLISI DUKWANA:**

“Today they find it startling how persons outside government knew of the data hub my department are proposing a cabinet meeting. Even startling is the involvement of Tsepiso Magashula in this project directly or indirectly. 89.1 Did the Gupta family members had access to letterheads of Free State government including that of my office? This is in reference to the letterhead that was the – that I saw in the letter that I was supposed to sign at the Gupta family house. Who authorised this meaning who authorised the access of letterheads of Free State government by the family and who invited P3 and Ulani to make representation at the cabinet meeting? Surely because I did not.”

20

And this Chairperson was also a strange habit that happened in the province of the Free State that the executive council is supposed to as an executive authority you

supposed to move away from any matter that has to deal with tender's etcetera. You set up policy and what you want to do but in the province since the takeover I have served in many other executive council. But you could see that there was a change in pattern and how the system was operating. This time you would have business people who would be invited to make presentations to the executive council in the presence of all other officials. Your HOD's, you CFO's and it will happen during the same day when the executive council is supposed to sit. In the morning it will all these presentations. You will start the executive council at nine o'clock it will go on presentation after presentation and then after five o'clock or so you go for a break and then you go start

10 with executive council that will run up until very late in the evening. So in essence what we were then brought into as the executive members was in conflict with what the law demanded of us. We were indirectly now participating in what was happening. When we make a presentation to the whole executive council plus the HOD's when an instruction goes out to say you go and help these people. Any person, any HOD would not question this because the whole executive council was there. So this is actually the tendency that helped propel the capturing if you like of the province of the Free State and the corruption that then followed throughout the reign of Ace Magashule.

**CHAIRPERSON:** You speak as if this was a normal occurrence of business people making presentations to the executive council. Was it a normal occurrence or was it

20 something that happened once here, twice there?

**MR MXOLISI DUKWANA:** During – if just to give – during the Terror era it never happened. During the late Ivy Matsepe-Casaburri it never happened. During Mayor [indistinct] the late Mayor [indistinct] it never happened. During Me Beatrice Marshoff it never happened. It started happening here in the province. In fact just to simply – what actually happened. You destroy the system and you create your own system. In

fact as a member of the executive council you have taken oath of confidentiality and now for you to be in the executive council and many other people who had not taken that oath would be in the executive council. Any information that is supposed to be you know dealt with by the executive council found itself to other people, wrong elements. In fact you will sit in the meeting as an executive council there will be other people who are not members of the executive council, not the DG, not the secretary of the executive council and you would get many people who would just sit in the meeting and this led to information getting out. Some business people getting information beforehand and coming back and making presentation. So I think this would also be  
10 elaborated when I come back again in terms of the capture of the Free State and the corruption and the abuse of office by the former Premier in the Free State.

**CHAIRPERSON:** So you will still deal with a number of these issues in due course? You will come back and deal with that?

**MR MXOLISI DUKWANA:** In detail, in detail.

**CHAIRPERSON:** Yes okay thank you very much.

**ADV PHILLIP MOKOENA SC:** 89.4.

**MR MXOLISI DUKWANA:** Why did Magashule take me to the Gupta compound? These are the question that one is asking. Those are questions I leave to the commission to investigate.

20 **ADV PHILLIP MOKOENA SC:** Yes. You preface a topic which you said you were going to deal with later when you come back for the second time to the commission. The trip to Nkandla do you want to summarise to the Chair the importance of that topic?

**MR MXOLISI DUKWANA:** The importance of this is to introduce the some family in the Free State, the Pillay brothers Deena and Dhiloson Pillay who were introduced to us way back in 1994 when we were still two regions. And after the elections in 1994 the

five of us were – we were taken on a trip to Wild Coast paid for, organised and paid for by the Pillay brothers. It was myself...

**CHAIRPERSON**: Did you say the five of you?

**MR MXOLISI DUKWANA**: Ace Magashule, myself as the Deputy Chairperson of the Northern Free State region. The late Vax Mayekiso, Pat Madosa and Tatae Magwe. So we...

**CHAIRPERSON**: Yes.

**MR MXOLISI DUKWANA**: We were introduced to this Pillay brothers and at the time it was in 1994 and apparently they were in QwaQwa or operating in QwaQwa so they were – they came into the picture and you will find them when we got into government then Pillay, Deena Pillay became Ace's PA and you will see immediately when I come back when the – when Ace was dismissed in 1996 they disappeared. When he came back especially when he came back as a Premier they were back in full force and we will explain in details some of what they have [indistinct]. But for in relation to the trip to Nkandla immediately after the – we were – we were sworn in we took – we had two official trips. One was to Nkandla and the trip to me was what I think the Premier at the time felt that he owed this to the then President just to thank the President because he would know that since 1994 in fact not on – 1994 it was – it was a decision that he also he had taken but later subsequent years he was overlooked as the Premier of the Free State. And in 2009 when he was appointed we had a – you know we went to Nkandla. We were led, directed by these brothers and the – all the way to Nkandla where we were met by the then President Mr Jacob Zuma in his compound. Yes.

**CHAIRPERSON**: No thank you. Thank you. But you say when you come back you will give – you will deal with...

**MR MXOLISI DUKWANA**: The details. We will give all the details.

**CHAIRPERSON**: All the details.

**MR MXOLISI DUKWANA**: That we have of this family and everything.

**CHAIRPERSON**: No thank you. Thank you.

**ADV PHILLIP MOKOENA SC**: Chair we should be done in fifteen minutes I see we are closer to four o'clock but we are just about to finalise.

**CHAIRPERSON**: No that is fine we can finalise.

**ADV PHILLIP MOKOENA SC**: May I refer you to Annexure X1, Exhibit X1.

**CHAIRPERSON**: Exhibit so when we read the transcripts later on Mr Mokoena we do not confused.

10 **ADV PHILLIP MOKOENA SC**: It is Exhibit X1.

**CHAIRPERSON**: As to which one is Exhibit X1 which one is AnnexureX1.

**ADV PHILLIP MOKOENA SC**: It has been a long day Chair. It has been a long day.

**CHAIRPERSON**: Okay. Alright.

**ADV PHILLIP MOKOENA SC**: Are you there?

**MR MXOLISI DUKWANA**: Where?

**ADV PHILLIP MOKOENA SC**: If you may turn to page 12 and take us through that heading, the contents of that heading "The invitation to the Oakbay offices".

**MR MXOLISI DUKWANA**: Invitation to the Oakbay offices.

20 **ADV PHILLIP MOKOENA SC**: You can summarise it and I am sure that you know what transpired unless you want to read it?

**MR MXOLISI DUKWANA**: Yes I think the date was Friday the 10<sup>th</sup> January 2014. The meeting was scheduled for half past two. I was invited by Tony remember it was after I had resigned as a member of the legislature. I resigned in 2012 and 2013 I was not involved with government or the legislature. So in 2014 Tony called me and invited me to their offices in Catherine Street in Sandton and in that – out of interest also and

curiosity I wanted to find out what could be the reason. So I came and I was given the direction and I came and then I met him and in the meeting he just wanted to know as a caring person he wanted to find out how I was doing, what was happening in my life, whether I had plans etcetera and all those things. And referring to me as a brother and all those things. And then in the midst of the discussion he then indicated to me well that he warned me against standing or contesting Ace Magashule should have left him to finish with the province and work with you know as a Premier in the province and you know we could have had some plans etcetera. And he wanted to know of my plans. And I then indicated to him that with the time that I had spent from 1994 up until now I  
10 thought that it was wise just to take a backseat and be with my family because I had neglected them for quite a long time. And then he understood and as I was about to leave he then said to me for all your troubles here is the travelling expense and he gave me R10 000,00.

**ADV PHILLIP MOKOENA SC:** He gave you R10 000 in cash?

**MR MXOLISI DUKWANA:** Yes, in cash.

**ADV PHILLIP MOKOENA SC:** And the Tony who you are talking about is it Tony Gupta?

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** Is it the Tony Gupta who you told the Chair that you  
20 visited at the Sahara Offices with Mr Magashule?

**MR MXOLISI DUKWANA:** The same Tony.

**ADV PHILLIP MOKOENA SC:** Yes and you also told the Chair how he interacted with Mr Magashule about their intended businesses?

**MR MXOLISI DUKWANA:** The same Tony.

**ADV PHILLIP MOKOENA SC:** Yes. You also told the Chair how you were

uncomfortable during the meeting at the compound when he offered you a bribe at the time. I think it was in 2012.

**MR MXOLISI DUKWANA:** Yes. The same Tony.

**ADV PHILLIP MOKOENA SC:** Yes, but then why did you meet with him in 2014?

**MR MXOLISI DUKWANA:** As I [intervenues].

**ADV PHILLIP MOKOENA SC:** Against the background and the facts that you have told the Chair?

**MR MXOLISI DUKWANA:** You know Chairperson when everything has happened – you know - and also because of what I was busy doing especially emanating from the  
10 Jagersfontein issue. I started trying to find out – you know – to follow the story and find out exactly what happened and why this Jagersfontein saga and when I came back again I would explain and how it linked with everything especially in the diamond sector. So I wanted to – you know- it was out of curiosity for me. So I wanted to go to him and when he called I then went and it was very interesting, because I thought he would be angry or something, but he came out as a person who was like trying to find out more about me and my family and what was happening, but it – you know – the other I could say also it was like a person who was like ridiculing me that I told you not to contest Ace because at some stage there was that engagement. So I am just saying when he then offered the 10 000 I mean I travelled from Welkom and the person says it is your  
20 petrol money. It is not in a bag anything so I took it. Not because it was meant to do anything. I was out of Government and there was nothing. He was not linked to anything. So here is a person who says you have used your petrol to come here and I am giving you this. So they have a lot of money. They give you 10 000 and it is okay. So.

**ADV PHILLIP MOKOENA SC:** 10 000 for petrol?

**MR MXOLISI DUKWANA:** Yes. It was very interesting that one.

**ADV PHILLIP MOKOENA SC:** This.

**CHAIRPERSON:** When he called you subsequent to which you travelled and you met with him did he say - did he ask you to come and see him? How did that happen?

**MR MXOLISI DUKWANA:** No, he called and as I say it is very strange – you know – all these things. He called and it was not only the last call.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** This time he called and he wanted to know and said please you can come over this date and then we met. I went as I said it was in January, but  
10 was is also of interest is later in 2017 whilst we were preparing for the National Conference way back towards November he called and he was in Dubai.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And that is why I wanted all these records – the telephone records. He was in Dubai and he indicated to me that there were people who were out to destroy them and they had moved out of their country and all that and now they are based in Dubai, but they are coming in and out of the country and that was it. It was just that [indistinct]. So I – it kept on my mind that I wanted to establish but why all these that were happening after this saga with them, but this is exactly the record of my experience with them.

20 **CHAIRPERSON:** Now before you got this call from him subsequently you had a meeting with him, before that and after your dismissal in between had you been in touch with him at any stage or had he been in touch with you or this was just the first call since you had been dismissed?

**MR MXOLISI DUKWANA:** No, after that meeting.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** There was one call and he was just talking generally.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** That.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** You know – no blood, no bad feelings. It was way after the Provincial Conference.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And then the next one was this, but that one was just – he just wanted to say hi and how are you. Then that was it.

10 **CHAIRPERSON:** Hm. So there had been two or so or one or two?

**MR MXOLISI DUKWANA:** One.

**CHAIRPERSON:** One phone call.

**MR MXOLISI DUKWANA:** One phone call and then that was it.

**CHAIRPERSON:** And then the next one was about.

**MR MXOLISI DUKWANA:** And then the last call.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** About the last call it happened in 2017.

20 **CHAIRPERSON:** Yes. It may – it may look strange that you would travel all the way to meet him in circumstances where you had parted in a very different atmosphere where he was the person who was trying to pressurise you to sign something you were not prepared to sign and you had left, but there is something you did say to explain how come you agreed to come. I just want to make sure I understand that clearly. Will you just repeat the explanation why you would get a call from him and travel all the way from the Free State to Johannesburg to meet with him particularly as I understand the position? It does not look like on the phone – in the phone call he told you anything

specific that he wanted the two of you to discuss.

**MR MXOLISI DUKWANA:** No. I accept – I accept, but being a – I was a man – you know – on a mission Chair. I wanted to uncover some of the things that I wanted to add the dots to – especially with regard to this. I thought that I would get the – you know – just to get to know and maybe he would say something. So as I say it was just curiosity driving me and there was nothing, but also the fact that after all – all these he was able to make a call way back in 2013 and just – it was a friendly call and nothing. So there was – there was nothing that actually could have given me an impression otherwise that would make me feel that there was no need, but also as I say I really wanted to  
10 hear what he wanted to say and what he had to say. That is all that I wanted to do, yes.

**CHAIRPERSON:** And after that meeting with him were there any telephone conversations between the two of you prior to him phoning from Dubai?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** In 2017?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** So there was just this other call which he made from Dubai?

**MR MXOLISI DUKWANA:** Huh-uh.

**CHAIRPERSON:** *Ja*, because that does sound strange as well against all the background that he would phone you in 2014 and the two of you meet. Then  
20 something like three years or so passes and then he phones you all the way from Dubai to just say that now he is in Dubai and so on.

**MR MXOLISI DUKWANA:** It is strange.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** It is strange – you know.

**CHAIRPERSON:** But it happened.

**MR MXOLISI DUKWANA:** If you look at it – it is strange.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** But very interestingly.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** He - to me – you know – I took it that the man was under pressure.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** And at the time I was involved in the campaign.

**CHAIRPERSON:** Hm.

10 **MR MXOLISI DUKWANA:** In the ANC.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** I was involved – you know – in this campaign for President Cyril.

**CHAIRPERSON:** *Ja.*

**MR MXOLISI DUKWANA:** And I thought that he – the call was made deliberately.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Because he was aware.

**CHAIRPERSON:** Hm.

20 **MR MXOLISI DUKWANA:** That – you know – that I am in this campaign and therefore he needed to have an ally in an event trying to find out what I would say. So it was not strange in that regard to me when he made that call because I think he thought that oh – he might have thought that I would say somethings or he would start trying to establish some relationship of some kind because to me he was just saying look there are many people – there are people after us and after all that we have done good we have done in the county and now we are out and I am left and my family has moved

out. We are just coming out business. That is all that we are looking after and I mean for a person to call you and say that and knowing the relationship that you might have – I had no other relationship with Tony. I had no other relationship with the family other than these meetings that took place and also what happened in 2012 and these other calls, but other than that that is would be strange, but I think it could be unravelled if the Commission were to investigate further.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** On some of these things.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI DUKWANA:** But as I say to me.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** I just understood that here is a person from the other side.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Trying to get a person.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** They would think they have actually dealt with at some stage.

**CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** You know – it would be easy for them to talk to me.

20 **CHAIRPERSON:** Hm.

**MR MXOLISI DUKWANA:** Because I do not think he would have felt comfortable speaking to any other person.

**CHAIRPERSON:** Hm, okay thank you.

**ADV PHILLIP MOKOENA SC:** Just – you know – to assist you to clarify this aspect of your testimony. The picture that you painted before the Chair about Tony is that he

must be this corrupt person who wanted you to engage in unlawful activity including having to sign a letter an offering a bribe. Why did you take his money, the 10 000?

**MR MXOLISI DUKWANA:** Chair as I said the situation here is a person I have travelled to a meeting that is arranged by him and if a person give you that the money to travel back – the petrol money, right. I did not find anything untoward. I did not think about that as money that was meant to ask me to do anything because I was out of Government and all that, but also I think looking at where he is seated etcetera it was that of pity or it was just pity me if you like. It was really truly me. That is what I thought as I was leaving that - you know.

10 **CHAIRPERSON:** Maybe [intervenes].

**MR MXOLISI DUKWANA:** With hindsight.

**CHAIRPERSON:** Ridiculing you that you turned down R2 million a month over [intervenes].

**MR MXOLISI DUKWANA:** *Ja*, no ridiculing me that we told you not to do this.

**CHAIRPERSON:** Now you take R10 000.

**MR MXOLISI DUKWANA:** *Ja* and then you take this. So that – to me at a later stage I thought okay this could be the case, but it could also not be the case.

**CHAIRPERSON:** Yes, okay.

**ADV PHILLIP MOKOENA SC:** I wish I could also be ridiculed by 10 000 Mr.

20 **MR MXOLISI DUKWANA:** Well, it is very interesting ridicule.

**ADV PHILLIP MOKOENA SC:** Yes. Can I – can I refer you to page 13?

**MR MXOLISI DUKWANA:** Page?

**ADV PHILLIP MOKOENA SC:** Of XX1, 13.

**MR MXOLISI DUKWANA:** Yes.

**ADV PHILLIP MOKOENA SC:** You are dealing with a new topic there on the Gangster

State by Pieter-Louis Myburgh. Can you simply summarise what you want to convey to the Chair about what you have heard?

**CHAIRPERSON:** Well maybe before he does that Mr Mokoena. I hope you understand what I was saying.

**ADV PHILLIP MOKOENA SC:** I did.

**CHAIRPERSON:** From his own point of view he may have been thinking look at him. He rejected a lot of money, but he does not need money now. That might have been from his point of view. That is what I was saying.

**ADV PHILLIP MOKOENA SC:** Yes.

10 **CHAIRPERSON:** *Ja.*

**ADV PHILLIP MOKOENA SC:** I agree with you.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** I will not repeat what I said. Can I refer you to page 13? Gangster State by Pieter-Louis Myburgh, if you can simply summarise to the Chair what did you convey to him?

**MR MXOLISI DUKWANA:** Chair.

**ADV PHILLIP MOKOENA SC:** After having read the book.

20 **MR MXOLISI DUKWANA:** The – this is an interesting book that came onto our – our shelves, the book stores on 31 March this year. I had an opportunity to be interviewed several times by the author and the most interesting thing is a number of issues that are raised in this book are things that one is familiar with and the characters that are mentioned here are people – are characters that I am familiar with and events that are taking place are actually events that are reflected here. Many of these events are actually a reality that exists in the province and when the author who was at some stage – you know – characterised as advancing money monopoly capital etcetera all

these other things – you know – as I said at the time coming from the history of these gallant leaders Nelson Mandela, Walter Sisulu you name them, Govan Mbeki – you know - and there are commitment in building a non-racial society. It is sickening every time when people have to deal with issues. We found a way of hiding behind racial and at homes. For instance nobody – corruption is – you know – is corruption. It has no colour. If you White and you go commit this – you know - you know what you are doing and the ANC in that has not sent any person to do all these other things that many of our current leaders are accused of and in this case when this book was – some people tend to refer to it as fake news or fabrication and the question to me that came to mind

10 was had they given themselves enough time to read this and look into what this book is raising. An example Chairperson, you have a project of R230 million that is meant for helping the poor in terms of dealing with asbestos – the asbestos house and that not only for auditing of the asbestos houses in the Free State, but it was also meant to remove this asbestos roofing, but the money was spent and as we speak there is no house that or any roofing that was removed from this project and you are talking about a project - if you check into the details – it is a project that for auditing one house each house that you audited you paid 1 500. That is ridiculous to understand also that you are dealing with a state that has no money. That is – you know - this could have been dealt with in any primary state that you have visionary leaders. It could have been dealt

20 with by sending out your ward committees without spending a cent to do the audit. If you were - as a ward committee in my ward you would know how many of these houses that are asbestos roofed and that information would be related to Government without spending a cent on auditing these asbestos and then the project to remove this asbestos house will then commence. For instance the logic if you take this to the logical conclusion how would you quantify the project to be 230 million when you have

no idea how many of these houses are – that you need to deal with and then this amount of money is paid and to make it worse you still also as I say when one comes back these things would be laid bare and clarified further. If you have this amount of money and you spent where it is spent and the way things happen you cannot have even there must be something wrong with your – the bill of quantity to have a project of 230 million. Throughout you are getting every time. Every time you do this you have – you – there us some profit you make but at the end of it the department pays R77 million as the final settlement to the project and to this company and this company in their own papers the person who is now – you know – in court trying to get the other

10 amount of money is actually intimating that that was their profit. That 77 million was their profit from the deal and they shared 17 million because it is alleged that one of the Directors indicated that the Public Protector had warned them that they had been overpaid by 60 million and therefore that was the reason why he removed money to this other account by this – there is a court – you know – challenge to get the 30 million and the department also – the head of the department [indistinct] her deposed evidence – you know – her affidavit to this effect relating to this project. So I am just saying just simply to dismiss the book as fake news without getting into the details and what actually transpired. You are talking about the houses in 2009/2010 when Tokyo Sexwale then Minister actually wanted to take the money from the Free State

20 and there was an advanced payment that was meant to make sure that money was not taken from the province and as we speak almost 500 million that was meant to deal with providing a proper shelter for people is unaccounted for and this is right in the book and this is the information that we are simply dismissing it as fake news. It is like – you know – running away from facing the reality that is taking place in the province. I am from that province. I know exactly what is happening in the Free State. You have

municipalities that are corrupted. We do not have municipalities that are functioning. So there is a whole range and myriad of processes and we will detailed – we will detail how this started and why you have Ace at the helm of everything and the only excuse that he will always come – bring to fore is I do not sign anything, but everything we will show that it has the hallmark of this person and the intention to corrupt everyone that you know came across him, but as I conclude Chair in this case the – as you look into this and not out of disrespect for the statement that was released by the NEC etcetera – you know – as I say when one looks back and you know the kind of leadership that the ANC had and you look at what we have and what is actually happening you begin to

10 understand some of the things as they unfold especially when you have a person in the – now as the Secretary-General who from time to time since when he was the ANC in the Free State Chairperson he has always hid himself behind the organisation. When he has to face everything on his own he does this thing and every time he is challenged. It is like we challenging the ANC when we are actually dealing with an individual. I think it is with this in mind that as a disciplined member of the ANC not coming here to – you know – I am not here because I need publicity etcetera. I am here because of what I have come to experience and also know exactly what happened in the province and what is happening in the province and one would like to see as we talk of a better life for all etcetera that we actually leave what we say and that people at

20 the moment – people will think that it is everything that people are talking about that is the ANC – that is not the ANC that I know an surely these are not the calibre of ANC leaders that we have come to know and one would like to have an opportunity to make sure that the young ones that are coming would actually learn that there was a time when you had good leaders. There was a time when you had a leaders that cared much about society and not selfish leaders not toxic leadership that we have come to

experience in our lifetime now especially for the young generation and for a person like me who had experienced that kind of leadership and coming in, in the environment of toxic leadership in the province this is one thing that motivated me to come here and say I really would want to put everything to the Commission and hopefully the – this matter would be dealt with and those who are guilty and those who are found guilty the law will take its course and these people will be brought to book because with what has been happening people are doing all these things knowing exactly that there is nothing – you know – there are not consequences and that is why in the country we have this rampant corruption taking place because people know that if you hide your tracks you

10 will not be found. It is like a person who is a rapist, but because he has not been – you know - caught and he has not been charged he would be parading as he is not a rapist, but he is a rapist. The only thing is he has not been caught and there are many of these in the – in our country actually in the ANC who are actually thieves, corrupt to the bone and they actually just diminishing the good name of many gallant fighters of this movement and many people who actually are leaders in society and this also is motivated by the fact that as politicians as Executive members we are unable to take responsibility. Every time we push the officials under the bus. They are the ones who have to take the responsibility for our responsible selfish and greedy actions, but unfortunately these poor officials now find themselves under the bus all the time and

20 nobody and in fact we have got many of these politicians who are seen to be brave just like bullies, but they are afraid to face the reality and nobody is able to take – stand up and say I did this and I say you know and defend the officials. They tell – for instance in the case of Ace he will not sign of course, but he would take a phone and call you and instruct you and if you challenge him he will tell you surely I did not sign, because they believe that when it comes to this it will be your word against their word. They

have not signed anything, but the intention and everything you will see it points out to what they are actually saying and for people to talk of – you know – the leaders that have not stolen anything that is not for me to comment, but I am just saying I am hopefully that this Commission would help us unravel a number of things using this book and many other information will unravel what has been happening in the province of the Free State and why this rampant corruption taking place in this province and the fact that the municipalities in the Free State were not seen as the sphere of Government, but they were seen only controlled at the provincial level and operating without power – you know - to deal with this. You have a municipality in

10 Maluti-a-Phofung owing almost R3 billion to electricity and you have an official who is there who is responsible for many other things. What do you do? You see this person in the list coming in and being defended by Ace and going out and parading this Vusi Tshabalala as the one great leader who has ever led the Maluti-a-Phofung when you have this mess. So I am just saying this was with that in mind that I needed to bring this and to say we will come back to this Commission and provide more details of what we are saying.

**ADV PHILLIP MOKOENA SC:** Mr Dukwana in conclusion may I refer you to page 2 of Exhibit X1, we are now concluding your testimony. With particular reference to paragraph 4 where you state that:

20 “Before I deal with the amendments, it is apt that I clarify something in relation to my appearance at this Commission. My appearance at this Commission does not in terms of the ANC constitution constitute and act of misconduct as per clause 25.17.”

Then you quote it in and may I also refer you to page 6, paragraph 5, meaning that’s how you want to conclude the evidence. Can you read that into the record?

**MR MXOLISI DUKWANA:** “In the circumstances my appearance at the Commission is consistent with that is expected of a disciplined member of the ANC who wants good for his or her country.”

**ADV PHILLIP MOKOENA SC:** Mr Chair, that concludes my questions for this witness.

**CHAIRPERSON:** Thank you. Let me just ask a few questions, Mr Dukwana. Let’s go back to me Master Plan Agreement, annexure DM5 at page 83 in Exhibit X where your main statement is, page 83.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Now you remember that you said that this Master Plan Agreement was  
10 sent to you by Mr Sharma is that correct?

**MR MXOLISI DUKWANA:** That’s correct, sir.

**CHAIRPERSON:** But I think you did say something which I understood to be that it may have been drafted by somebody within the department, your department or within government, Provincial Government?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** Or not really?

**MR MXOLISI DUKWANA:** No, I indicated that we have capable people who could draft and these kind of agreements.

**CHAIRPERSON:** You could, yes, but as far as you know it was either drafted by Mr Sharma  
20 or by other people outside of the Provincial Government.

**MR MXOLISI DUKWANA:** Yes, correct.

**CHAIRPERSON:** Yes. And now obviously it makes various provisions for various things. Do you know – did you ever get a chance to read the terms and conditions of that Master Plan Agreement?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** You never looked at them.

**MR MXOLISI DUKWANA:** No because I found there was no need for me to read this because it's not my document, I have no interest in this.

**CHAIRPERSON:** Yes. You were not coming across the name Master Plan or Master Plan Agreement for the first time or were you?

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** Yes, you knew about a Master Plan or Master Plan Agreement.

**MR MXOLISI DUKWANA:** Yes, I knew about us developing a Master Plan or agreement.

**CHAIRPERSON:** Yes, yes, a master plan.

10 **MR MXOLISI DUKWANA:** Yes, sir.

**CHAIRPERSON:** Yes and in the discussions that you had had with them, Mr Sharma and them, whoever they were that you said you were talking to from about February, you had talked about the Master Plan but you had not talked about concluding any Master Plan Agreement.

**MR MXOLISI DUKWANA:** No.

**CHAIRPERSON:** No.

**MR MXOLISI DUKWANA:** As I stated, Mr Chairperson, that it started from February 2011 up until the issue was to be dealt with in November.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** After the workshop they would then go back and they would then do their work and once they have dealt with everything they will come back to us and then we will discuss.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** It would be then that we would agree on the way forward.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And that was what we had discussed them, with Nulane and a P3 representative.

**CHAIRPERSON:** Petrie, ja.

**MR MXOLISI DUKWANA:** So it became strange when they now presented a master plan before the workshops, before all other things and also worse was when they presented what they would call a master plan of the City of Tomorrow and if you look at this, that is Exhibit – that's DM3 on page 38.

**CHAIRPERSON:** What page?

**MR MXOLISI DUKWANA:** 38.

10 **CHAIRPERSON:** 38.

**MR MXOLISI DUKWANA:** If you look at this, Chair, and I'm saying any person who is not even a technical person like myself, the question, Chairperson, is can anyone in his right mind pay 140 million for this. This is what they call the master plan that needed to be – that we needed to pay 40 million for what they have done and this was the work that they say they had done and they wanted us to pay 40 million for this.

**CHAIRPERSON:** Oh, so they wanted you to pay 40 million for...?

**MR MXOLISI DUKWANA:** It's 140 million but they wanted a first payment of 40 million.

**CHAIRPERSON:** Oh, okay. So otherwise in terms of what they were communicating to you, these pages starting at page 38 represent the Master Plan as far as they were concerned.

20 **MR MXOLISI DUKWANA:** Yes, this page, this page is from page 38 up until 81.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Would represent the master plan.

**CHAIRPERSON:** The master plan.

**MR MXOLISI DUKWANA:** And this will be – this, as a presentation master plan, this is what they wanted money for.

**CHAIRPERSON:** The 140 million for preparing.

**MR MXOLISI DUKWANA:** For this and then other work that will happen where they would be demanding – like the workshop.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** The workshop that they had for two days.

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** They wanted also to be paid 40 million for arranging that workshop.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI DUKWANA:** So it was going to be like that, milking the State for work that they did not do.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And this is what they wanted to do.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And that is why he was – if you read that letter that he wrote to the HOD, that was showing a person who was now angry and threatening.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And the issue – when they go – that’s why they went to the HOD. When they spoke to me I said you can go take me to court if you say I committed fraud, it was  
20 a breach of contract, etcetera, take me to court because they presented a master plan thing that they said I signed, agreement.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Where they said I signed both as an HOD and both as an MEC. I’m not stupid, I mean, really, I’m not that foolish.

**CHAIRPERSON:** Well are you saying that at some stage you had signed to approve the

master plan and they said you signed as MEC and HOD.

**MR MXOLISI DUKWANA:** They said – I think it could be – it could be. I don't know if, Mr Mokoena, it is here, it is in this Master Plan Agreement.

**ADV PHILLIP MOKOENA SC:** No.

**MR MXOLISI DUKWANA:** Where they indicated in fact – there's a place where they showed, they said I had signed the Master Plan Agreement.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And there's a space for the HOD.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI DUKWANA:** They were aware that the HOD must sign.

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** But then they attached what seemingly – that seems like my signature as well as the MEC and throughout, that document where they say I attach my signature, there is nothing, there is no [intervenes]

**CHAIRPERSON:** There's no signature.

**MR MXOLISI DUKWANA:** No, there is the – this was their plan.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** And then they say that there's no letter head of government, there's nothing and all that they say, there's not witness, I mean who – you can't sign any document, there are no witnesses, it's only them who would have witnesses, I'm alone, I'm signing the document with them and then I sign as an HOD and they are sitting there, if they say this is what happened. Let's assume that it happened, they are sitting there, I'm signing HOD and then I'm signing MEC. I mean...

**CHAIRPERSON:** Yes, but what I'm trying to establish is this, is there a document that you were once shown or that you once saw where on their version you had signed as HOD and as

MEC? It may or may not be here, I didn't see anything. I just want to know whether there is such a document that might not be here maybe but that you have seen at some stage.

**ADV PHILLIP MOKOENA SC:** Mr Chair, he's referring, I think, not to the documents that are before you.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** He's referring, I think, to the affidavit of Mr Iqbal Sharma which is still not before you because of what we'd explained in the morning.

**CHAIRPERSON:** Yes but I just want to understand – but is the position that there is some document somewhere where on your understanding that is the position where they were  
10 saying you did sign. You might say I did not sign but they say you signed as HOD and as MEC.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Okay, so at some stage maybe when you come back maybe we will get to know more about that.

**MR MXOLISI DUKWANA:** Yes, yes.

**CHAIRPERSON:** But coming back to the Master Plan Agreement, I just want to confirm, are you saying that all these terms and conditions that are in this draft agreement are terms that were never discussed with you or are you saying well, because you have never gone through them you won't know whether it is things that may have been discussed in the meetings that  
20 you had with them but which they had decided to put into an agreement without your approval.

**MR MXOLISI DUKWANA:** What would be the page that the...?

**CHAIRPERSON:** 83. Master Plan Agreement. You see, there's a whole agreement and I'm interested to see whether they just decided what the terms and conditions of the agreement were going to be on their own or whether there was some discussion as far as you know

either with you or with somebody else in relation to the Master Plan and they took that discussion and they used that discussion as a basis to come up with some terms and conditions.

**MR MXOLISI DUKWANA:** Well, I don't fully understand the question that all I'm just – I will respond to is the discussion that we had, as I said, was only to an extent that there is an interest in developing this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** If you are willing to help us in terms of raising and bringing investments and we then deal with the programme moving forward. We will then – because  
10 we said we wanted to have a master plan that would allow us to work this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So that might have informed them to go out and say this would be the Master Plan Agreement.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That they would work on but that was not going to start.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** You would not do any master plan, anything without – because it needs your technical people who would – your surveyors, etcetera, etcetera, who would also get into the land that you have identified.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And then they would know exactly what we're talking about.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So there was no way we could actually enter into any agreement without all these other things dealt with first.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And we could not have gone to that extent outside the executive council.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So any project of this magnitude needs to be approved by the executive council.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So I would not have agreed to or signed anything to that amount of money without authorisation from the executive council.

**CHAIRPERSON:** Yes, okay. Maybe when you come back next time if you could – if you  
10 might have just looked at the terms of the agreement just to be able to say something along  
the lines that yes, some of the things that they put into this agreement seem to have a  
connection with prior discussions that I'd had with them or there is no connection, they just  
came up with their own terms and conditions that they thought should go into the agreement,  
there is no connection with whatever we might have discussed. That's the angle that I would  
like. And then can you go to page 104? Now that is DM8, that's the draft letter that you told  
us Mr Sharma drafted for you without your asking him to do so which was addressed to Mr  
John Thomas. In the first paragraph he says or your were supposed to say thank you for  
meeting with us to discuss our vision for the City for Tomorrow project. My question is, had  
you been involved in a meeting with Mr Thomas where there was a discussion of the City for  
20 Tomorrow project?

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** There had been such a meeting?

**MR MXOLISI DUKWANA:** Yes, there had been such a meeting.

**CHAIRPERSON:** Okay. Now you did read this letter.

**MR MXOLISI DUKWANA:** Yes.

**CHAIRPERSON:** Yes. Now did it – its contents, does it reflect things that you knew had happened?

**MR MXOLISI DUKWANA:** Yes, to the extent that they referred to the project itself but not to confirm some of the issues and the general agreements that they are referring to.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** But in terms of what we were saying, for instance the question that we would want this city to include schools, parks, hospitals, etcetera.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** This is what we were talking about.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** In the meeting that that is what we want.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** About it being a modern cutting edge city of course.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** These were the discussions.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** But as to other thing that we needed to deal there was a need to make sure that at some stage after we were certain and had approval from the executive council we would then deal with this matter of the Master Plan after the workshops and everything else.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And that was also the workshops were not only going to end with us, it was going to be a workshop in the provincial department first and then with the municipality that was going to be affected or involved in this.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So before all those things could happen there was no way we could have spoken about an agreement in relation to the master plan with them.

**CHAIRPERSON:** Yes, yes. Okay and there is the other letter at page 105. Before we go to 105, at 104. So is your evidence that some of the things that the letter talks about at 104 are correct but you were not ready at that stage to write any letter of this kind to them because it was too early, there were still things to be done. What had happened was just still discussions.

**MR MXOLISI DUKWANA:** Yes, it was too early.

**CHAIRPERSON:** Yes.

10 **MR MXOLISI DUKWANA:** If you check, for instance, what we had discussed then they indicated, P3 indicated – I had no clue in terms of what they were saying they can do.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So then that's why we said let's have the workshop, let's do this, let's work with this matter.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Then they said – they offered, they said no, no, we can do – we can prepare the master plan for the project at our expenses.

**CHAIRPERSON:** Yes.

20 **MR MXOLISI DUKWANA:** So we said if you can do that, let's see what we can do. Then we then said to them – I then said in that meeting – if you check the – before thank you, if the master plan is properly delivered, the words that I used was if you have – if we find that what you have actually meets our requirements and we are happy with that, we will then engage.

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI DUKWANA:** We then said we will engage, not sign anything.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** We said we will then engage with you and discuss a possible engagement on the implementation of the project.

**CHAIRPERSON:** So that last sentence might not be so incorrect. Subject to some qualification it does reflect what you had said.

**MR MXOLISI DUKWANA:** Yes, it does.

**CHAIRPERSON:** Yes. Okay, but the bottom line [intervenes]

**MR MXOLISI DUKWANA:** But strangely enough...

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Strangely enough, after all this, you would then have them  
10 bringing in what they said is the Master Plan Agreement.

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI DUKWANA:** Before [intervenes]

**CHAIRPERSON:** Before the engagement.

**MR MXOLISI DUKWANA:** Ja, only of this engagement, etcetera.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That we had agreed.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And remember also they had said they will do that at their  
expenses. So there was no need for us. We then said – because I pointed out here is a  
20 company that says we are capable of doing this. We can do this. But the question was – as  
they were [indistinct], we have not identified land. So where would you do this?

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** You see? So the understanding was that at the time when we  
have identified that land when the executive council had made approval, national is involved  
in the whole thing, we would then look into you dealing with this matter.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** But they were just in a hurry to get money.

**CHAIRPERSON:** Yes, yes. And then you have page 105, that's the letter that was prepared again by Mr Sharma for you to sign. You did have a look at – did read the contents of the letter, didn't you? I just want to do the same exercise, to what extent in brief, some of the things that says emanated from discussions that you had had or is it just a letter that they may have just decided to prepare without really anything connected with your – any previous discussion?

**MR MXOLISI DUKWANA:** I think here – I don't know what they were trying to do but as I say,  
10 that part of the letter there and if you look at this one, they were now becoming, you know, specific, speaking about approximately the government centre and vision to be approximately 160 000 square metres in size. What would have informed that? You have not engaged any government department [intervenes]

**CHAIRPERSON:** You knew nothing about that.

**MR MXOLISI DUKWANA:** No needs, etcetera, no.

**CHAIRPERSON:** The 160.

**MR MXOLISI DUKWANA:** You would not have arrived to this, this is too specific, you know? For you to arrive at this you would have dealt with the needs of the Provincial Government and would know what we are looking at and you would not just come in and put this and it  
20 would not also have been addressed by a workshop. It would have been a detailed engagement to find out exactly what is it that government needs and all that and that will only come out after the executive council had approved and said we need to move.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** I mean, if you have this as your government centre it is in the Free – it is in the [indistinct] in Machabeng and government is in Bloemfontein. I mean, were they

here in their mind thinking of moving the Provincial Government from Bloemfontein to Welkom? I mean, this was – you know, it's ridiculous just to think about this. But just saying that these were in here, Chairperson, throughout. The attempt is just to make sure that there is something signed, there's some agreement of some kind and then go back and claim money.

**CHAIRPERSON:** Would it be correct to say at least in respect of some of the contents of the letter at page 105 to 106 would it be correct to say some of the information, some of the contents of the letter are things that you really knew nothing about?

**MR MXOLISI DUKWANA:** If we check paragraph 2.

10 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That the master plan involved the creation of overall plans for the project's infrastructure, the public transportation facilities, sustainability and integration of services, housing, medical, hi-tech private development and public safety parks and in light of local conditions within in a broader regional context the design of the master plan we also incorporated a site for a new government centre. Now if you check this, what actually we were here conveying not in the exact term or words, it was this thing, when you speak of the master plan, you involve much bigger scope.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** That will include several of these issues.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And even more but it will not be something that would be taken, you're meeting with this people in February and late in February they come in, you know, and speak about a Master Plan Agreement and all those things, I mean...

**CHAIRPERSON:** Ja.

**MR MXOLISI DUKWANA:** That was something.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So there are some of these things that we would have spoken in our meeting and – but if you check, when they would go down, they would then write what they would want me to sign.

**CHAIRPERSON:** Yes, yes.

**MR MXOLISI DUKWANA:** And this, Chairperson, comes out, you know, it smacks of – you know, when people think that probably all of – there are people who think that we are stupid, that you'll just attach your signature and do this and that starts working and this would have relayed in fact to what happened with the dairy saga and everything and this. So if you check,  
10 this has been the *modus operandi* that members of the executive council or, you know, the HODs would be made to sign documents and these documents would then be used to siphon money from the coffers of the State under the disguise that there is a project that needs to be taken on board and this is not far from what the *modus operandi* had become of what these groupings had been associated or familiar with. So all these things and even the amount of money that is mentioned there, honestly, Chairperson, how would we have come to the agreement of – or spoken about 140 million? What would have informed that amount of money?

**CHAIRPERSON:** At that time.

**MR MXOLISI DUKWANA:** At that time, 140 million, that is in 2011.

20 **CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** You're speaking about 140 million. That is not about any construction, it's about schematic design, master plan, everything, you pay them 140 million. It's basically what has become accustomed to what has been happening in the province.

**CHAIRPERSON:** So at least in respect of some of the things were they trying to feed you something that you knew nothing about, like that amount? Were they trying to let you say

something that you really knew nothing about, like that amount? It's not something that you had discussed, it's not something that had any – was related to any reality as far as you know?

**MR MXOLISI DUKWANA:** You see, Chairperson, the way they would couch the letters and prepare these letters for you to sign, it is designed to hide a lot and put you in a fix in terms of your attaching a signature. People have become accustomed to members of the executive council or other people who would only say you attach your signature, you attach your signature without reading. So they could have become, you know, accustomed to working with such individuals and they would – that's why a number of letters – they would prepare a  
 10 number of letters and do this and deal with this. If they were dealing with me in my official capacity, why would they, Chairperson, every time send documentation to my Gmail, not government, my private mail, not government, you know, email? And would all other things when you communicate with others they do this. It's actually – you see, this is also something that one has come to realise, that probably we are thought to be all stupid, we're just like signing and, you know, and money goes out and that would come, as we would say, why I'm saying this, because it happened in the province where people signed, money went out, people signed, money went out when they had no business to sign. So in this case it was going to be the same thing had I signed this and, for instance, if what they say was signed they would have demanded money and that should have been paid. For instance, if I had  
 20 signed this documentation as they claimed that I might have signed I would have forced the HOD to pay, you know, as it has become a habit in other instances and this, when it did not happen, the best way now to go was to go to the HOD and when the HOD did not play, the best was to go to the DG and the DG referred them back to the – with the department, that the department will deal with this matter and when all this failed it was now time to go to the – to Saxonwold and this is what - everything points out to that direction.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** So, sign this, you're out, sign this, this happened.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And this actually happened with a colleague of mine.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** Who would have signed documents without actually knowing what he was signing and ended up in hot water and people with money ended up with a big cheque without doing anything in the province. So this was part of that scheme and when it did not happen I was fired.

10 **CHAIRPERSON:** Mr Mokoena you said you had finished, that remains the position?

**ADV PHILLIP MOKOENA SC:** Yes Chair.

**CHAIRPERSON:** It remains for me once again to thank you Mr Dukwana for coming forward to assist the Commission, as I said it is very important and I wish more people who know things that happened which should not have happened will appreciate the importance of helping the Commission and helping the nation to know exactly what happened so that we can find a way of making sure that steps are – measures are put in place to make sure it doesn't happen again and to also make sure that we build our country to be a better country and to do that we need people who know things that happened that shouldn't have happened, to have the courage to come forward and to  
20 appreciate how important it is for them if they love this country to come forward and help us to establish what happened and see what measures should be taken.

I appreciate the fact that you will come back, you are committed to assisting the Commission further and to make sure that you give the Commission all the information that you know of in order to give us a full picture of what you know has happened in various parts of the Free State or the country. I hope that others will be

encouraged to come forward, and also assist.

Thank you very much.

**MR MXOLISI DUKWANA:** Thank you. Can I ask something Chair?

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** For this to happen sitting here and speaking English you have many other colleagues, many other people who are willing to come but I was joking with my legal team and the legal team of the Commission that you have got people who are saying (indistinct) and people would not want ...(intervention)

**CHAIRPERSON:** Or saying (indistinct)

10 **MR MXOLISI DUKWANA:** That have you also in the back of your mind considered at least when there are witnesses who would want to have an interpreter that could be you know afforded with that people would be willing, many people would be willing to come forward. I think what also has become a stumbling block is people are afraid that they might be exposed in terms of expressing themselves in English.

**CHAIRPERSON:** Yes.

**MR MXOLISI DUKWANA:** And that I think it would assist very much if there was such a request and people are granted and an interpreter is provided.

**CHAIRPERSON:** Yes well I'm grateful you mentioned it Mr Dukwana I have never thought that there could be a situation where people would think that if they came here  
20 they would be forced to speak in English, certainly everyone who wants to give evidence here in their own language can come here and the Commission will provide an interpreter, certainly when we talk about the official languages of the country but even when it's a language that is not official, an official language we will try and get somebody who can interpret from that language into English and from English to that, so certainly convey the information to them that there's nobody who is going to be

asked to speak in a language other than the language with which he is comfortable or she is comfortable so interpreters will be available, we have made provision for them, there's a budget for interpreters, and it's just that almost everybody who has come here seems to have been comfortable to just speak in English, whether somebody speaks in Afrikaans, isiSotho, Setswana, isiZulu, isiXhosa, Sepedi, Tshivenda, they can come and we will provide interpreters.

**MR MXOLISI DUKWANA:** Thank you.

**CHAIRPERSON:** Yes so thank you very much. You are excused and we will see you again when you come back.

10 **MR MXOLISI DUKWANA:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV PHILLIP MOKOENA SC:** That concludes the proceedings for today Chair.

**CHAIRPERSON:** Yes and next week from Monday we deal with Law Enforcement, yes it is Law Enforcement next week, we will hear evidence from witnesses that deal with issues relating to Law Enforcement Agencies. Thank you very much, it is five o'clock and we adjourn, and we will resume on Monday.

**INQUIRY ADJOURNS TO 8 APRIL 2019**