

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

26 FEBRUARY 2019

DAY 8

20

PROCEEDINGS HELD ON 26 FEBRUARY 2019

ADV JANNIE LUBBE SC: Good morning. Mr Commissioner can we just press the red button, the red button.

CHAIRPERSON: Sorry I was just saying, sorry let me say good morning again. I just want to correct something that I raised with Mr Nemagovhani yesterday, I think I challenged him regarding his evidence that Mr Seanie did a desktop research only.

ADV JANNIE LUBBE SC: That's correct.

CHAIRPERSON: I went through Mr Seanie's statement and indeed in, I think in paragraph 45, that's what he says.

10 **ADV JANNIE LUBBE SC:** Correct.

CHAIRPERSON: Which means in respect of the paragraph that I was referring to the inference must be, it must be the inference that he means that he bought relating to the desktop research.

ADV JANNIE LUBBE SC: As it pleases you Mr Commissioner.

CHAIRPERSON: So in that sense then there is no contradiction between the two of them, that's what I need to correct on the record.

ADV JANNIE LUBBE SC: Correct, thank you Mr Commissioner.

CHAIRPERSON: Yes fine.

20 **ADV JANNIE LUBBE SC:** Mr Commissioner my next witness is ready to go, she is Mrs Dudu Rosemary Hlatshwayo and she is ready to take the prescribed oath.

CHAIRPERSON: Yes. Just give me a moment. And today's the 26th?

MS GILL MARCUS: 26th.

CHAIRPERSON: Your full names please Ma'am?

MS DUDU HLATSHWAYO: Dudu Rosemary Hlatshwayo.

CHAIRPERSON: You have no objection to taking the prescribed oath?

MS DUDU HLATSHWAYO: Not at all Commissioner.

CHAIRPERSON: If so do you then swear that the evidence you're about to give will be the truth, the whole truth and nothing but the truth, raise your right hand and say so help me God.

MS DUDU HLATSHWAYO: So help me God.

CHAIRPERSON: Thank you.

ADV JANNIE LUBBE SC: Mr Commissioner can I request, without in any way trying to limit the Commission, by requesting that answers be perhaps noted, that questions be noted and that answers will be provided after the testimony just to assist the witness to
10 keep her train of thought.

CHAIRPERSON: If I understand you correctly you are suggesting that we note whatever questions we have and after she is done we ask the questions then?

ADV JANNIE LUBBE SC: But again not limiting them, there may be situations where there's an immediate question necessary but can we please limit that?

CHAIRPERSON: Yes certainly.

ADV JANNIE LUBBE SC: Mrs Hlatshwayo you have prepared a statement can you proceed with that statement on page 1?

MS DUDU HLATSHWAYO: Thank you Adv Lubbe and good morning Commissioners. My name, as I indicated, is Dudu Rosemary Hlatshwayo. I am an adult female I have a
20 bachelor of social science honours degree obtained from the University of Cape Town in 1986. I have an MBA from the University of South Africa obtained in 2000 where I specialised in corporate finance. I attended a senior executive leadership development program from Wits University in conjunction with Harvard in 2001. I also have a diploma in marketing management from the Executive Education obtained in 1997. I was admitted as a member of the Institute of Business Advisors of Southern Africa in

2009. I was a partner at Ernst & Young, worked as a director in corporate finance of Andisa Capital a subsidiary of Standard Bank. Worked for ABSA Bank as a general manager in the retail bank; worked for Transnet as a group executive driving restructuring and turnaround initiatives of Transnet. I was a senior manager at Telkom and currently I run a small corporate advisory firm called Change EQ I've been running this business since 2006.

I was appointed as a non-executive director of the PIC on 1 December 2013. My second term comes to an end in 2020. At PIC I sit in the Investment Committee in the Information and Communication Governance Committee. I chair the Private Equity
10 Priorities Sectors Small and Medium Enterprises Fund Investment Panel which is an equivalent of a committee. My affidavit will try and assist the Commission with sketching the scenario in the life of the PIC before the James Noko allegations. I will also try and sketch the scenario in the life of the PIC after the arrival of James Nogu with a G-U at the end and of late it's actually James Noko so I don't know if it's the same person.

Then I go to my statement at number 10. PIC before the James Nogu or Noko era before the arrival of James Nogu on the 13th August 2017 PIC was characterised as stable, peaceful and productive.

ADV JANNIE LUBBE SC: Can I just interrupt here and to follow the sequence who
20 was then the chairperson of the PIC?

MS DUDU HLATSHWAYO: The chairperson of the PIC was Mr Mcebisi Jonas.

ADV JANNIE LUBBE SC: Thank you.

MS DUDU HLATSHWAYO: Stable in the sense that PIC had never experienced resignations of Board members before their terms came to an end. I think it was peaceful in the sense that Board members could debate, argue and disagree with each

other professionally. Boardrooms were places where each member's view were heard and respected. Board members were united in the mandate and vision of the PIC. There had never been a James Nogu or Noku in the life of the PIC before. In essence before James Nogu the Board was unidirectional and focused on carrying out its fiduciary duties. It was also productive in the sense that meetings were scheduled and not cancelled at short notice. Board packs were prepared by management on time with late submissions here and there. Employees were not disgruntled with regards to their bonuses and incentives and I think I will elaborate on this at a later point.

I get to item number 11 which is PIC after the arrival of James Nogu or Noko.

- 10 The PIC environment became very fearful, stressful, suspicious, disgruntled and very unproductive. Fearful and stressful especially when anonymous e-mails started floating around a myriad of allegations being revealed not only to the Board but also to political parties, to Parliament and to newspapers. Board meetings were held in evenings until some times very late hours into the night. And later on I will make a distinction between the Board under the leadership of Mr Sfiso Buthelezi as Chairman of the Board and the Board under the leadership of Mr Mondli Gungubele as Chairman of the Board.

- I further indicate that the characteristics of the Board were also the fact that there was some toxicity and suspicions. Suspicions grew firstly among Board members and throughout the environment where all of us began to suspect one another. We
- 20 began to watch each other's behaviours in and outside of meetings. Employees became increasingly disgruntled whenever National Treasury arbitrarily slashed employee bonuses and incentives regardless of the remuneration policy of the company and the applicable formula that would have been applied to calculate the bonuses and incentives also having been approved by the Board and also the performance contracts having been entered into with employees.

There was also low staff morale and there were also very low levels of productivity these could be fact throughout the organisation when James Nogu arrived. Board meetings started to centre around the allegations and also how to deal with these. The board held several meetings in quick succession to deal with the James Nogu allegations. I have to say that normal meetings were put in a back burner. To some degree meetings will be cancelled at short notice.

I then get into the era under the Deputy Minister of Finance Mr S Buthelezi. Former Minister Gigaba and Deputy Minister of Finance Mr Buthelezi were appointed on the 15th March 2017. After Minister Gigaba had been appointed there was an embargo on the holding of Board meetings or Committee meetings and literally everything came to a standstill. For months there was a complete lull of inactivity. PIC had been given an instruction that no meetings of the Board or subcommittees would be undertaken until further notice.

ADV JANNIE LUBBE SC: Can I interrupt, who gave this instruction?

MS DUDU HLATSHWAYO: It was Minister Gigaba.

ADV JANNIE LUBBE SC: Thank you.

MS DUDU HLATSHWAYO: Minister Gigaba appointed Mr Buthelezi into the Board on the 15th May 2017 and Commissioners I've given an indication of the table which shows the lapse in time between the meetings that were held during Mr Jonas's tenure and the times that meetings were continued now under Mr S Buthelezi. I'm not going to take you through the table itself, I think it's self-explanatory.

ADV JANNIE LUBBE SC: Thank you.

MS DUDU HLATSHWAYO: And then I get to item number 13 which talks about the James Nogu e-mails and their treatment by the Board in particular in relation to the MST transaction. The first James Nogu e-mail arrived in the Board members mailboxes

on the 13th August 2017. On 15 August 2017 the Board had its first meeting to deal with the allegations presented by the anonymous whistleblower. My former Board member Dr Claudia Manning presented the ebbs and flows of the meeting of the Board on the 15th August 2017 and therefore I do not wish to repeat what she said as I agree with what she said 100%. However, I would like to point to the Commission a few points for emphasis and the first one being the fact that the said meeting lasted for approximately six hours. There was extreme debate and differences of opinion as to the right thing to do and the way forward to be undertaken. The majority of Board members were concerned about how it could deal with the allegations in a nonpartisan
10 manner and at the same time protect the PIC. The Board was at the time aware of the State capture and the Gupta narrative that was pertaining at the time. In corridors we would honestly ask ourselves as to whether or not by immediately suspending the CEO before we had satisfied ourselves that there was substance to the allegations and by so doing the Board would not be delivering the CEO and the CFO and the PIC to the Guptas on a silver platter. That was just the sentiment in the corridors.

CHAIRPERSON: Can I just suggest just for purposes of completeness you are talking in this paragraph about differences of opinion as to the right thing to do in respect of what, we know but just for the purposes of the record?

MS DUDU HLATSHWAYO: Ja whether to immediately suspend the CEO and go with
20 an independent forensic investigation or to satisfy ourselves first that there was indeed veracity to the allegations that had been tabled.

CHAIRPERSON: And the allegations were?

MS DUDU HLATSHWAYO: The allegations were allegations of impropriety relating to the MST transaction wherein the PIC CEO at the time Dr Dan Matjila had been accused of having funded the MST transaction and not having followed due process but also

there was an allegation that as part of that he funded the business of the girlfriend utilising the funds through a director of an investee company. There was a variety of allegations that were submitted.

CHAIRPERSON: And for our purposes it's the alleged girlfriend.

MS DUDU HLATSHWAYO: Correct Commissioner.

ADV JANNIE LUBBE SC: Can you also when you talk about this State capture feeling, sentiment refer to what happened at the time at the PRASA Board?

MS DUDU HLATSHWAYO: At more/less the same time Commissioner we were aware of the Board of the PRASA which one day we woke and the Board had just been
10 dismissed and when I followed the media speculation as to what had happened it was not clear at the time what indeed had happened but there was a narrative that was pertaining at the time that was seemingly insinuating that it could be the work of the Guptas where one they would have wanted the Board to be fired then remove the CEO and remove the Exco team. That was what was taking place outside in the media space and therefore we're asking ourselves as to aren't we faced with the same situation as this Board of the PIC.

ADV JANNIE LUBBE SC: Can you proceed, you then allowed as I understand your affidavit, that you allowed the CEO and the CFO to present to the Board their versions?

MS DUDU HLATSHWAYO: Their versions. I have to indicate Adv Lubbe that Dr
20 Mkhwanazi had been requested by the Chairman of the Board Mr Buthelezi to write to the CEO and request that the CEO and the CFO present their responses to the allegations in writing. So at the time when we met for the first time to deal with this meeting already we were having the responses of the two individuals in the Board pack and therefore we had actually read the responses of the two individuals. When then the two individuals were called in into the room so that we could hear their side of the

story we were then, we were able to confirm that indeed in as far as the policies of the company, in as far as the funds of the company having been utilised improperly that had not happened.

ADV JANNIE LUBBE SC: Can I just, again I'm sorry to interrupt, as I understand your evidence the debate centred around the question whether to go immediately for a forensic investigation or to allow the two individuals to come and state to the Board in person their versions?

MS DUDU HLATSHWAYO: So I did indicate earlier Commissioner that the Board was divided, it was divided in the middle. There was a group of Board members that felt
10 that we needed to really satisfy ourselves on the veracity of the allegations first and once that is done then we can take a decision to go out with the forensic investigation. However, there was another group of directors that felt that we were not supposed to ask any questions, we were supposed to go straight into conducting the forensic investigation so the Board was divided.

ADV JANNIE LUBBE SC: Please proceed.

MS DUDU HLATSHWAYO: Okay so when the Board had heard the CEO and the CFO's version the Board wanted to satisfy itself that the CEO and the CFO's version was truthful and complete. To meet this test the Board instructed internal audit to
20 conduct a verification of the responses that had been provided by the two individuals to check for accuracy, to check for completeness and validity of the documentation but also to check whether applicable policies and procedures had been complied with. The Board was also aware that certain Board members had been lobbying other Board members canvassing support for an immediate no questions asked forensic investigation.

The Board was also cognisant of the labour law requirement that requires

that implicated individuals be given an opportunity to state their case and I think the same requirement is encapsulated in the Companies Act where an implicated individual must be asked to present their version before a drastic step is taken. So this Board took that into consideration and it's at that point that we then requested the two individuals to come and present their version to the Board. Even after they had presented their written responses to the Board, because we had received that overnight and we had read the responses. But when a decision was taken to say maybe we need to go out with a forensic investigation we thought that we needed to tread cautiously and allow the two individuals to actually tell us their version of the story.

10 For these reasons the Board wanted to tread carefully and cautiously I've indicated that Commissioner. It should be stated however that should the findings of Internal Audit had come out negative with respect to the accuracy, the validity and completeness and the adherence to policies the Board was ready and willing to commission an independent forensic investigation. So in other words if the Internal Audit Verification Report had come back and said the two individuals have not been truthful in their responses, they have not answered all the questions relating to the allegations the policies of the company have been breached, we actually don't know where the 21 million went to, it actually didn't go to MST the Board would have taken a decision to then go out with a forensic investigation to close that leak. However, the
20 report that came from Internal Audit came back saying 99.9% of the responses were complete, they were valid and the policies had not been breached.

ADV JANNIE LUBBE SC: Can I again interrupt, I'm sorry. The Chair at the moment, the Deputy Minister testified yesterday that the Board expressed their satisfaction with the responses of the two individuals even before the Internal Audit Report was received back verifying their responses is that correct?

MS DUDU HLATSHWAYO: I have to say that's correct Commissioner in the sense that as I indicated the Board had already been presented with the written responses. The Board had read the written responses so when we met being a Board member, being aware of the policies that are in place, having been support – having been provided with the supporting documentation relating to the MST transaction even at that point Commissioner we were comfortable that the allegations were baseless and nothing untoward had actually taken place. However, the Board was cautious like I indicated, we wanted to make sure that the responses that we had read overnight in our Board packs were complete and were valid and nothing had been omitted by the two
10 individuals. So the Chairman of the Board was correct in saying the Board was comfortable, I was one of those people that were comfortable at that time.

ADV JANNIE LUBBE SC: Can we then proceed to point 14 the next point is in August about a month after this meeting of the 15th September there was the meeting with the Minister of Finance.

MS DUDU HLATSHWAYO: Thanks Adv Lubbe. Minister Gigaba called an urgent meeting of the Board on the 26th September 2017. This was at the time when Internal Audit was still undergoing the verification process of the responses from the executives. I'm not sure, 14.2 I'm not going to repeat the testimony of Dr Claudia Manning but I would like to point out the following in relation to the meeting that we had with Minister
20 Gigaba on the 26th September 2017. The first point is that the meeting was tense; it was very aggressive and very unpleasant. Minister Gigaba was demanding answers from the Board as to why the media had dragged him into the PIC issues. He wanted the Board to answer specifically to that question and he raised several times in the meeting.

He wanted to know what the Board was going to do to cleanse his name. He

also wanted to know what the Board was going to do to protect the IT systems of the PIC from the alleged hacking or the possible hacking. He wanted the Board to conduct an IT forensic investigation to ensure that the systems were still intact. When Mr Gigaba opened the floor for comments he allowed Mr Buthelezi, Dr Mkhwanazi, the National Treasury Director-General Mr Dondo to speak having said that he was going to allow Dr Dan also to speak after the above individuals had spoken. Minister Gigaba then allowed Ms Zulu to speak. Ms Zulu spoke for a good 45 minutes.

ADV JANNIE LUBBE SC: What did she speak about?

MS DUDU HLATSHWAYO: Ms Zulu, the Board member, took the meeting on a very
10 detailed account of what had taken place at the meeting of the Board when the allegations of James Nogu were being dealt with.

ADV JANNIE LUBBE SC: For the record that is the meeting of the 15th August 2017?

MS DUDU HLATSHWAYO: That's the meeting of the 15th August 2017.

ADV JANNIE LUBBE SC: Yes?

MS DUDU HLATSHWAYO: So when, having said that he was going to allow Dr Dan Matjila, I'm repeating myself there Commissioner, he then allowed Ms Zulu to speak for a good 45 minutes. Board members were allowed to speak briefly after Ms Zulu at which point Mr Gigaba had indicated that the journalists had been waiting in the next room for a while and therefore we needed to wrap up. It was at this time that I pointed
20 out to Minister Gigaba that he had actually not allowed Dr Dan Matjila a chance to speak as he had indicated earlier. It appeared to me that the meeting with the Minister was completely out of turn in that the Board processes were still underway. In this regard I requested Minister Gigaba to allow the Board space to complete its process when Internal Audit would have been complete with the verification report and the report itself would have been presented to Minister Gigaba. Other members were

allowed to speak as well and they were immediately allowed to speak by Dr Dan. After Dr Dan had spoken the Minister's tone changed and became reconciliatory wherein he indicated his support and confidence in Dr Dan and the PIC Board. When the press was engaged after the Board meeting Minister Gigaba reiterated his support and confidence in Dr Dan as well as to the Board.

In the next clause I'm making my own observation where I feel that it was not clear to me why the meeting had been called in the first place and why they journalists had been invited as well.

ADV JANNIE LUBBE SC: You mention at the start of this paragraph 14 that the meeting was tense, aggressive and unpleasant, where did this come from, from the Board, from Treasury or from the Minister?

MS DUDU HLATSHWAYO: The Minister adopted a tone that was very aggressive in my view wherein I found it difficult for the Minister to demand that the Board clear his name from what the media had been saying and obviously implicating him in some matters of impropriety at the time. My issue Adv Lubbe was that I'm not in control of what the media writes about and therefore I found it difficult for me to take the responsibility of clearing his name however I was aware that the Board could issue a statement and clarify how the MST transaction had taken place and whether the policies had been followed. But I felt that above that it was beyond the responsibility of the Board to clear the Minister's name in what was being written about in the media.

ADV JANNIE LUBBE SC: To just get it clear, after Dr Matjila had spoken, the mood changed.

MS DUDU HLATSHWAYO: The mood changed.

ADV JANNIE LUBBE SC: Thank you.

MS DUDU HLATSHWAYO: I then get to the period after the internal audit report.

Following the internal audit review process report, the Board issued a media statement and cleared Dr Dan of all wrong doing and I think I alluded to it earlier on when Advocate Lubbe asked the question earlier on, however I need to indicate that even after the Board had cleared Dr Dan, the uproar in the media was not dying down and the public interest in the matter was still growing. Minister Gigaba issued a media statement on 9 October 2017 wherein he indicated the Board was to conduct a forensic investigation into all transactions undertaken from 2014 to date then and subsequently the Board was instructed by the Minister in a letter that he sent to the Board on the same day.

10 There were clauses in the letter of the Minister that the Board was not clarified about, so we therefore requested a meeting with Minister Gigaba. The proposed meeting with the Minister never materialised. Instead the Board had started compiling responses to the actions requested by Minister at his meeting held on 26 September. Part of the actions requested by the Minister was the protection of the PIC IT systems. PIC appointed the IT system specialist to investigate as well as to verify whether the systems had been compromised.

ADV JANNIE LUBBE SC: Is that the service provider, Naledi that testified.

MS DUDU HLATSHWAYO: That is correct Advocate Lubbe. So, given the fact that The Commission has already heard the testimony of Mr Frans Lekuba and I do not wish
20 to repeat it. From the report provided by Mr Lekuba to the Board, it became clear that there were serious matters that had been found by Frans Lekuba. One of those related to the interception of confidential information, specifically from the laptop of Dr Dan Matjila, it also related to the fact that one of the findings that a certain individuals in the IT department had already given themselves the override [Intervenes]

ADV JANNIE LUBBE SC: Authorisation.

MS DUDU HLATSHWAYO: The overriding authorisation to allow themselves to then access certain information in the server and when that information was brought to us by Dr Dan as well as the CFO in a meeting. It was a joint meeting of the Auditor in this Committee as well as the ICT Committee. The Board was concerned and when the two individuals, the two Executives then recommended that there be suspensions of the two individuals who had been alleged to have done something, the Board supported that management execute their suspensions.

Commissioner, I then get to the [Intervenues].

COMMISSIONER: Do you mind mentioning the names of the people?

10 **MS DUDU HLATSHWAYO**: The two individuals that were suspended were Ms Vuyokazi Menye as well as Mr Simphiwe Mayisela.

ADV JANNIE LUBBE SC: And just to complete that for the record Mr Commissioner, Ms Menye, the Executive Head IT, there was a separation agreement and the other gentleman went through a disciplinary process and he was dismissed. You can then proceed with paragraph 16.

MS DUDU HLATSHWAYO: Paragraph 16 deals with the area under Deputy Minister Mr Mondli Gungubele as Chairman of the Board of the PIC. Minister Nhlanhla Nene, in his letter dated 14 May 2018, had requested a response from the Board with regards to the James Nogu emails or allegations. He wanted to understand how the Board had
20 resolved the issues raised by Minister Gigaba in his letter dated 9 October 2017. He also wanted to understand the process followed by the Board in addressing the James Nogu allegations against the two individuals, the two Executives. He further wanted to understand whether the Board had actually taken through the two individuals through a disciplinary process and Minister proposed that an urgent meeting be convened with the Board after he had been furnished with the written responses.

The proposed meeting with Minister Nene never took place, however a written response with relevant supporting documentation was prepared and sanctioned by the Board to be submitted to Minister Nene before or on 21 May 2018 which was the deadline of the Minister. The Minister had given to the Board. Whilst awaiting the meeting with Minister Nene, Chairman Gungubele convened an urgent Board meeting on 18 May 2018 at 18:00. I stand to be corrected. This was his very first meeting with the Board.

ADV JANNIE LUBBE SC: Again, before we get to that meeting, as I understand your evidence, the Board dealt with the allegations in the email. They satisfied themselves.

10 There was nothing improper. They had a meeting with the Minister of Finance then, Mr Gigaba. He was informed of what happened. After he listened to the Board and Dr Dan Matjila, he was satisfied with the explanation. He expressed confidence in Dr Matjila and the Board. Why is this thing then going on? Is it because of the press or what was the reason for still carrying on with this?

MS DUDU HLATSHWAYO: It was actually surprising Mr Commissioner when we met with Mr Gungubele on 18 May, because we had never met him before and the first question that he asked the Board was, how the Board dealt with the matter of the MST transactions and in that meeting he raised a number of issues, which I am going to deal with right now.

20 So, in this meeting, I have to indicate to The Commission that the meeting was very confrontational. It was very accusatory in tone and contents, wherein Chairman Gungubele accused the Board of having not followed due process. Due process in his view would have been one where the Board went with the external independent forensic investigation and the fact that the Board did not undertake that process, he felt that due process was not followed.

He also felt that the Board exonerated the CEO based on incomplete evidence and having failed to conduct an independent forensic investigation. The tone in this meeting Mr Commissioner was very belittling. I felt that way personally and I remember being in tears trying to respond to some of the allegations that Minister Gungubele was levelling against the Board. Most [Intervenues].

ADV JANNIE LUBBE SC: Are you okay?

MS DUDU HLATSHWAYO: Yes. Some Board members Mr Commissioner I have to indicate, for example Ms Tantaswo Fubu who was on the telephone on that day, he used the word 'ambush' and I had used the same word myself where I indicated to the
10 Minister to Chairman Gungubele that I felt ambushed and attacked by his accusations. When I indicated that Mr Gungubele, to his defence Mr Gungubele retracted and he said okay, maybe I should have provided the Board with an opportunity to respond before coming in with my views of how the process was undertaken, however immediately when he said that, it was Ms Zulu who then came forward and said Minister, I do not understand, because this Board should be able to answer your question, even in the middle of the night.

I do not understand why this Board is saying they feel ambushed. They should be able to respond to your questions right now and that is when I felt that we were being treated... I had never been treated in a manner like that. I have been a
20 Board member of the PIC for the last five years, if not more. I just felt the meeting was very confrontational and secondly Mr Commissioner, most Board members found it odd that whilst the Chairman had not been in office at the time, when the James Nogu allegations were taken place, he seemed to have very strong views on the process followed by the Board, but also given the fact Minister Gigaba who was in office at the time had already sounded his support on the process followed by the Board and he had

provided his support to Dr Dan and the Board.

The expectation of the Board in that meeting Mr Commissioner was that Chairman Gungubele would adopt an enquiring approach or an inquisitive approach and seek to understand. In the view of the majority of Board members, it appeared as if Chairman Gungubele already had a view at that time. I then proceed to [Intervenues]

ADV JANNIE LUBBE SC: Sorry before you do that. Was there at that meeting a final resolution taken how to proceed with the matter or was there... Was it just left?

MS DUDU HLATSHWAYO: So, that meeting was not conclusive. There was no conclusion reached as to the way forward, but I think the Board was at pains trying to
10 explain to Gungubele... To Chairman Gungubele, the process that was followed by the Board and how the Board arrived at the conclusion that it reached with regards to Dr Dan Matjila.

ADV JANNIE LUBBE SC: You can proceed with 18.

MS DUDU HLATSHWAYO: Item 18. I then get into the UDM court application and the allegations that were presented in the UDM affidavit. I think it was mid-June in 20
[Intervenues].

ADV JANNIE LUBBE SC: 18.

MS DUDU HLATSHWAYO: 2018.

ADV JANNIE LUBBE SC: Important, Mr Commissioner is to emphasise the sequence
20 of events that is now following.

MS DUDU HLATSHWAYO: The UDM had filed an affidavit with the court where several allegations had been made. There were four respondents to the affidavit. The first one was Dr Dan Matjila; the second respondent was the PIC or Board. The third respondent was Minister of Finance and the fourth respondent was Deputy Minister Mondli Gungubele.

At the same time allegations had been made in the media about the Board having doctored the minutes when it dealt with the James Nogu MST allegations. At the Board meeting held on 22 June 2018, the Board deliberated on how to respond to the UDM application and resolved to appoint a three member task team which was made of myself, it was Dr Mkhwanazi. It was also Ms Zulu. The task team was tasked with seeking legal counsel with regards to how to respond to the UDM application and the speculation in the media which purported that the Board had doctored the minutes of the Board. [Intervenues].

ADV JANNIE LUBBE SC: Can I... I am sorry again to interrupt. We had the evidence
10 of the Chair and Ms Wilna Louw from the PIC that stated on the oath, they had no experience of the alleged doctored minutes. What is your experience of this allegation?

MS DUDU HLATSHWAYO: Mr Commissioner, I think the allegation is totally unfounded. Normal Board processes require that once the Board has sat, in the following Board meeting, the Board then needs to apply its mind on the correctness of the minutes and that is exactly what happened. When the Board does that, it makes corrections, it puts areas of emphasis and it cannot be alleged that that was the doctored minutes and in this particular instance, the Board corrected the minutes as it usually does with all sets of minutes.

20 **ADV JANNIE LUBBE SC:** Thank you.

COMMISSIONER: But insofar as the James Nogu / Noko emails are concerned, there were no such allegations of doctored minutes. Am I right? Were there?

MS DUDU HLATSHWAYO: It... The first time we picked that the doctored minutes was in the UDM affidavit, but also the media then picked up on it, because I think it was written about in the media to say this Board actually doctored the minutes.

The Board issued a resolution and the terms of reference to guide the work of the task team that are indicated earlier. The task team that Advocate Trengove that on 27 June 2018, the legal opinion with supplementary notes was provided to the Board on the same day, which was 27 June 2017 and the crux of the advice from Advocate Trengove was that the Board needed to oppose the UDM [Intervenues].

MS GILL MARCUS: Sorry to interrupt. Can we just check those dates, because the task team met Advocate Trengove on 27 June 2018 in your note. It is 2017? Both of them?

MS DUDU HLATSHWAYO: Sorry. That is a correction Mr Commissioner. It is it is
10 actually 2018.

MS GILL MARCUS: 18 for both.

MS DUDU HLATSHWAYO: Thank you.

ADV JANNIE LUBBE SC: And just to get it clear, because we are going to get to Budlender. There are two Bundlenders'. This is... This Advocate Trengove is Wim Trengove SC.

MS DUDU HLATSHWAYO: Yes. The advice from Advocate Trengove was that the Board needed to oppose the UDM application and secondly that the Board must appoint a legal firm to represent the Board. It also advised that we should not oppose any relief or any prayer that was sought from Minister Nene, because that was in the
20 preserve of Minister Nene. It also advised that we should abide by the findings relating to costs and that Dr Dan and the Board should be represented separately.

As per the advice of senior counsel, the Board then appointed Advocate S Budlender. I think it is Steven Budlender. [Intervenues].

ADV JANNIE LUBBE SC: For the record Mr Commissioner, it is Steven Budlender. It is the son of Geoff Budlender SC who did the forensic investigation.

MS DUDU HLATSHWAYO: Correct. Mr Gungubele was represented by Luyolo Poswa from Poswa Incorporated, however Mr Gungubele took a decision to file a separate affidavit from the Board, but he also decided to not oppose the UDM application.

ADV JANNIE LUBBE SC: Is this matter still pending?

MS DUDU HLATSHWAYO: The matter is still pending. It has not been closed to my knowledge.

ADV JANNIE LUBBE SC: According to Dr Manning, this action by the Chair, Deputy Minister caused a huge problem for certain Board members and I believe as I remember evidence correctly, that as a result of that, she saw that as a motion of no
10 confidence in the Board and then she resigned as a Board Member.

MS DUDU HLATSHWAYO: A lot of things happened Mr Commissioner. We would wake up and find media statements having been made by Chairman Gungubele in the media and the question that the Board would ask is, Chairman Gungubele is a member of the Board and governance requires that before he makes media statements that he concurs with the Board and he has got the support of the Board, however we would wake up and we would find that there are statements being made. There are interviews being conducted *et cetera, et cetera*, but I think what then perturbed the Board to a large degree was the statements that were made by Minister Gungubele. Deputy Minister Gungubele. Our Chairman, where in the media, he was indicating the fact that
20 he did not agree with the process followed by the Board and that the Board actually did not follow due process and I think a lot of Board members then took that to be a vote of no confidence on their part. They believed... I believed personally that we all had in good faith followed a process which after we had followed that process, we received sufficient information for us to be able to clear Dr Dan or the two individuals at the time, however that view was not shared and indeed it was not shared by Chairman

Gungubele and because of that a lot of Board members wanted to resign. I was also tempted to resign a lot of times. The situation was so untenable at the time that it just became very difficult to continue being a Board member at the time.

ADV JANNIE LUBBE SC: The Chairperson testified and I think it is now confirmed by you and it was also confirmed by Dr Manning that this whole issue of the Nogu mails, Dr Matjila and the CFO caused a split in the Board. Is that correct?

MS DUDU HLATSHWAYO: I think that is true Mr Commissioner. When the issues were discussed, there was always a line in the middle. There would be a group of Directors that would have a particular view and then there would be another group of
10 Directors that would hold a particular view, so I think that is true.

ADV JANNIE LUBBE SC: And this action by the Chairperson, Deputy Minister to file his own affidavit just strengthened this split in the Board. Is that correct?

MS DUDU HLATSHWAYO: I think it did Mr Commissioner. We... I personally expected that as a member of the Board once the process had been explained to him, even if he did not agree, he would support the view of the Board which was a majority view that was taken by the Board in 2017, however Minister Gungubele... Deputy Minister Gungubele, our Chairman then took a view to file a separate affidavit where he decided that he was not going to oppose the affidavit and I think with all that it was at that time that Dr Claudia Manning and she was immediately followed by Tantaswo Fubu. They
20 resigned. They both resigned immediately because they just felt that they could not take it anymore.

So then I get to item 19 which is the urgent special general meeting with Minister Nhlanhla Nene. This meeting took place on 25 July 2018. It was called an extra-ordinary general meeting. At this meeting, the Board was instructed to conduct a forensic investigation on the James Nogu allegations. The Board was further requested

to provide to Mr Nene with a plan of action by 17 August 2018 on how it intended to deal with the challenges at the PIC. Following the instruction from Minister Nene and the Board having deliberated on the matter on 1 August 2018, The task team was appointed by the Board to consult Advocate Trengove. Wim Trengove to see guidance on the question of whether the CEO and the CFO should be suspended as the concerned employees had contended for in their letter that was hand delivered to Chairman Gungubele and the same letter was leaked to the media.

ADV JANNIE LUBBE SC: I am sorry to interrupt again. The task team referred to, is that the same task team that previously consulted with Advocate Trengove?

10 **MS DUDU HLATSHWAYO:** So here, this task team was short of Ms Zulu. It was myself as well as Dr Mkhwanazi in the task team.

ADV JANNIE LUBBE SC: You mentioned the hand delivered letter by concerned employees. You will deal with it later in your [Intervenues].

MS DUDU HLATSHWAYO: I will deal with it later on Mr Commissioner.

ADV JANNIE LUBBE SC: Thank you.

MS DUDU HLATSHWAYO: The senior counsel opinion guided the Board as follows, that it would be premature to suspend the CEO and CFO but that the Board should appoint the investigator immediately and that in choosing the investigator, the Board must be satisfied that the investigator was a credible and independent individual. He
20 also indicated that it could be either an auditor or an advocate.

COMMISSIONER: Can I just take you back to paragraph 19.1.1.

MS DUDU HLATSHWAYO: Yes.

COMMISSIONER: The concerned employees. Are you referring to the two Mayisela... Mr Mayisela and Ms Menye or is it somebody else now?

MS DUDU HLATSHWAYO: The concerned employees were not identified. It was an

anonymous letter that was hand delivered to Chairman Gungubele.

COMMISSIONER: I see.

ADV JANNIE LUBBE SC: The witness will deal with it in more detail later in the evidence Mr Commissioner.

COMMISSIONER: Thank you.

MS DUDU HLATSHWAYO: The terms of reference... This is guidance still from senior counsel Trengove. He indicated that the terms of reference needed to determine... must be determined and must include also the recent allegations. In other words, he was saying, do not restrict the scope of the investigation only to the MST allegations.

10 He must also include the allegations that were made by the employees in their anonymous letter and he said, once it is understood what the cope would entail, only then a decision can be made whether to suspend the two individuals. He advised that it would be advisable to appoint the senior advocate to conduct the investigation and we received the opinion from senior counsel Trengove.

After receiving the opinion from senior counsel Trengrove, one member of the task team believed that possibly a firm of forensic auditors needed to be appointed as opposed to the list that had been given by Advocate... I mean senior counsel Trengove, however when the matter was presented to Board by the task team, which is myself and Dr Mhkwazi, the Board wanted to stick to the list of six that had been

20 presented by senior counsel Trengrove and not deviate from that and I must indicate that in the list of six, it was a prioritised list. The first advocate on the list was advocate Geoff Budlender and he said these are the six names that I believe are credible and they will be able to do a good job on this investigation. So the Board decided that because it is a prioritised list, rather check if Advocate Budlender is available and if he is not, move to the next one *et cetera, et cetera, et cetera*.

However the Board, its meeting... Okay, so I have indicated that Mr Commissioner which item 19.1.2.7 that the Board agreed to then appoint senior counsel Geoff Budlender. He was then briefed on 9 August 2018.

ADV JANNIE LUBBE SC: Chairperson it is... I notice that it is 11:00. Before we proceed with this Budlender investigation, is it convenient to take the tea adjournment.

COMMISSIONER: Yes. We will adjourn until 11:15.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON**: I think Advocate Lubbe the tea time must be extended by another five minutes because you just start with your cup of tea and it's time to come back.

ADV JANNIE LUBBE SC: We'll have to do that thank you Mr Commissioner. We ready to proceed but before I do so. I was informed during the tea break by ...(indistinct) just to make a correction that he not personally represented the Chairperson but one of his partners in ...(indistinct) Incorporated represented the Chair.

CHAIRPERSON: Okay I thought it was a reference to the company or the business. Whether it was he or someone else ...(intervention).

ADV JANNIE LUBBE SC: Yes it was his firm but not him personally.

CHAIRPERSON: Carry on.

20 **MS DUDU HLATSHWAYO**: Thank you Commissioner. I'm now on item 19 129.

“On 7 August 2018 the task team made up of Dudu Hlatshwayo and Dr Mkwanazi and the company secretary Deon Botha were preparing documents for submission to Advocate Geoff Budlender.”

ADV JANNIE LUBBE SC: Just to correct that. Mr Botha at the time was the acting company secretary.

MS DUDU HLATSHWAYO: Acting company secretary Deon Botha.

“One of the supporting documents that needed to be presented to Senior Counsel Budlender was a letter from the concerned employees. That letter had been hand delivered to Chairman Gungubele. This letter had not been circulated to the board and the only person who had a hard copy of the letter was the Chairman.”

ADV JANNIE LUBBE SC: Can you perhaps explain why was this?

MS DUDU HLATSHWAYO: When the Chairman indicated to the board that he had received this letter he indicated that it was hand delivered to him. The board requested
10 that the letter be circulated but the letter was not circulated for a few days. Eventually it was circulated but it was not circulated for a few days.

“On the day that the company secretary and myself and Dr Mkwanzazi sat to prepare the documentation for submission to Advocate Budlender. One of the documents that we needed to obviously submit was this letter from the concerned employees. Because it was hand delivered to the Chairman we never had an electronic copy of it in our possession. When the company secretary then – acting company secretary then indicated that he didn’t have a copy of this letter to my surprise Dr Mkwanzazi had this letter in his Ipad or computer and he immediately forwarded it to the company
20 secretary. I then requested company secretary to also forward to me. But when he did I then discovered that in actual fact Dr Mkwanzazi had also copied me in his email when he was sending it to the acting company secretary.

When I then conducted the properties check of the document I discovered that the original author of the letter was Simpiwe Mayisela the

former IT manager that had been taken through a disciplinary process of the PIC and had been dismissed.”

ADV JANNIE LUBBE SC: I think it's important that you just explain to some of us what is meant by a property check of the document?

MS DUDU HLATSHWAYO: So a properties check is when you receive an attachment and you on the attachment you go file and then you go properties. It then opens a page that tells you who the originator of the document is and it gives a date when that document was originated.

10 That's when I discovered that the actual author or the original author of the document was Mr Mayisela. The employee that had been dismissed ...(intervention).

ADV JANNIE LUBBE SC: And this letter was as I understand you correctly and please correct me if I'm wrong. This letter was generated after his dismissal?

MS DUDU HLATSHWAYO: He had been dismissed at the time.

MS GILL MARCUS: Sorry just a further clarity on that. If it had been after he had been dismissed was the origination from the PIC systems or was it from an external PC?

MS DUDU HLATSHWAYO: I could not verify that Commissioner but I do have a copy of that page that tells you who the originator is and I've got here – I've got it here in the file.

MS GILL MARCUS: Can we ensure that that goes to the in leading evidence?

20 **ADV JANNIE LUBBE SC:** We will ensure that.

MS DUDU HLATSHWAYO: On 29th August 2019 we sat with a representative of Cheadle, Thomson & Haysom. A lady by the name of Doris Tsepe she had been appointed as the instructing attorney to Advocate Jeff Budlender. We also had to brief her because she was not part of the team that was briefing Advocate Budlender.

ADV JANNIE LUBBE SC: She is a partner of Cheadle, Thomson & Haysom, is that

correct?

MS DUDU HLATSHWAYO: Correct.

“Therefore when presenting her with the documentation she was also given the letter from the concerned employees. The same letter had appeared in the media at more or less the same time when the concerned employees were demanding that Dr Dan and the CFO be suspended to allow them to come forward with evidence and make representations to Advocate Jeff Budlender.

10 The concerned employees’ feared victimisation if the two individuals were not suspended. This is according to the letter itself. Advocate Budlender and Ms Tsepe concluded their investigation and submitted the report on 12 August 2018. I then moved to the events that took place whilst Advocate Jeff Budlender was conducting the investigation. A month into the investigation Chairman Gungubele requested to meet with the investigator. As a member of the task team I expressed my disapproval and concern as this could be misinterpreted as interfering with the investigation itself.

20 Dr Mkwanazi committed to raise this concern with Chairman Gungubele. Whilst the investigation was going on Advocate Budlender wrote to the task team on 25th September 2018 requesting that the disciplinary hearing of Ms Bongani Mathebula be halted or postponed pending conclusion of his report. He provided reasons. One of those was the fact that the events leading to the suspension of Ms Mathebula appeared to be material to the forensic enquiry. He indicated that he had conversed these issues with the CEO.

Advocate Budlender in his email indicated further that he was aware that the disciplinary enquiry was not complete and was to continue until the 10th October. He requested to be requested – he requested that he be provided with specific information. One the documents that Mr Mathebula was alleged to have leaked. He wanted to know to whom were those documents leaked. He also wanted to know when. He requested that the disciplinary enquiry be postponed until we – meaning himself and the team had produced the report which in all likelihood he said will deal with the events leading to the suspension.

10

There is correspondence in this regard which the commission have access to should that be required. On the same day I responded to Advocate Budlender's email and cautioned Advocate Budlender that the Mathebula disciplinary hearing was a PIC company matter and therefore needed to be treated separately from the James Nogu investigation which had been outsourced to an independent third party which was himself.

20

I further indicated to Advocate Budlender that Ms Mathebula was going through an internal disciplinary process which was guided by PIC policies and was chaired by an independent chairman. I recommended that the Mathebula matter – that Ms Mathebula's legal team should raise their concerns directly with the Chairman of the disciplinary hearing as well as the PIC lawyers. By return of email on that same day Advocate Budlender responded and agreed that he would advise Ms Mathebula's lawyers to direct their request to the PIC lawyers.

Also on the same day Dr Mkwanazi responded and supported the view to refer the matter back to the PIC. However he still wanted to discuss

this matter with Chairman Gungubele. Subsequently Chairman Gungubele called an urgent task team meeting where he wanted to understand from the task team whether the board had powers to instruct the CEO to stop the Mathebula disciplinary hearing. I was opposed to this and I made it clear that I did not find it proper for the board to interfere with an independently lead disciplinary process.

10 Subsequently the Chairman wrote to the CEO Dr Dan Matjila conveying the wishes of Advocate Budlender. There were a few engagements between the two and eventually the Mathebula disciplinary process was never stopped or postponed.”

There is a lot of detail that I have not covered in this matter Commissioner.

ADV JANNIE LUBBE SC: Mr Chairman just for the record. I have confirmed this morning that this disciplinary hearing has been finalised last week and the PIC is awaiting the decision of the independent Chairman in that hearing.

CHAIRPERSON: Yes.

MS DUDU HLATSHWAYO: I then move Commissioner to item number 20 which is the Budlender forensic report.

20 “The Budlender report was released on the 12th October to the task team. I requested Dr Mkwana to circulate the report to the whole board immediately. The report was never circulated to the board for a few days because Mr Gungubele first wanted to share the report with the Minister of Finance.”

ADV JANNIE LUBBE SC: Is it days or weeks?

MS DUDU HLATSHWAYO: In my recollection Commissioner I think it might have been weeks but I stand to be corrected.

CHAIRPERSON: Okay I'm sorry can we just go back to 19 210. I think you mentioned that there is some detail that you have left out. Is that on purpose? Are we not supposed to hear or what's the reason for you to leave it out?

MS DUDU HLATSHWAYO: The specific detail that I've left out was the correspondence that took place between Chairman Gungubele and the CEO. There were letters being written and there were responses being received directly from the Chairman. If I could summarise in two line Commissioner. The Chairman wanted the CEO to stop the disciplinary hearing.

10 The CEO responded in essence saying that he does not have the power to stop the disciplinary hearing. He also pointed out that he was conflicted in the matter and therefore he did not want to get involved. He requested that the matter be handled by the board.

Where am I?

ADV JANNIE LUBBE SC: 20.3.

MS DUDU HLATSHWAYO: 20.3.

20 "When the report was eventually shared with the board I personally requested that given the media and public interest in the matter the board needed to issue a media statement to communicate to South Africa that no adverse findings had been made against Dr Matjila. The board only issued a media statement that confirmed that the forensic report had been received from senior counsel Budlender and the board was still awaiting guidance from the Minister of Finance.

No further guidance was received from the Minister of Finance in this regard and the report was never released officially to the implicated individuals nor to South Africa at large to quell the public interest that had

been created.”

ADV JANNIE LUBBE SC: You are aware that the report was handed in formally to the Commission yesterday?

MS DUDU HLATSHWAYO: I was not aware Commissioner.

10 “It is also important to mention that the Budlender report arrived at similar conclusions as the ones reached by the board in as far as the MST transaction was concerned. Without quoting the report it confirmed that the company policies had not been breached. It also confirmed that the approval processes have been followed and that the funds had actually reached their intended destination which was the MST Company.”

I then move to item number 21 Commissioner. It deals with the events following the resignation of the CEO Dr Matjila.

20 “Dr Matjila’s resignation was discussed at the board meeting held on 23rd November 2018. Again the board was divided on the matter. On specifically whether the CEO could be allowed to serve notice that was one issue or whether he needed to be released immediately. The view to let the CEO serve notice was informed by the fact that the CEO had served the company over a number of years and the performance of the company – the results were speaking for themselves.

This section of the board felt that the board could still be served by retaining the CEO at least to serve notice. There was however another view that felt that it didn’t want the CEO to dictate the times of his exit to the board because the CEO had written and asked if he could be allowed to serve notice until the end of April 2019 and to be pivotal in the handover process to the – would be the next CEO acting or otherwise.”

law where a similar case had happened where somebody had to let go because they had written a letter along the lines written by Dr Dan.

Therefore the point being made was that he needed to be allowed to go immediately.

“Even those that disagreed were then bound by the decision of the board to accept the resignation.”

I’ve mentioned the legal opinion Commissioner. I think for me on item 21.6 it appeared ...(intervention).

10 **ADV JANNIE LUBBE SC:** Before you go there just read to the Commission the last part of 21.5.

MS DUDU HLATSHWAYO: The last portion of 21.5.

ADV JANNIE LUBBE SC: Ms Zulu immediately.

MS DUDU HLATSHWAYO: “Ms Zulu had already had a caption of case law which she read out to the board to prove that indeed the CEO had resigned. Ms Zulu immediately started writing resolutions of the board.

She also started writing the media statements and the letter to the CEO on the termination of his employment. We were all then requested to give input into those letters and they were finalised.”

ADV JANNIE LUBBE SC: Were you comfortable with that?

20 **MS DUDU HLATSHWAYO:** It appeared odd Commissioner that one of us would be the one drafting those resolutions. In the five or so years that I’ve been on the board whenever there is a requirement to produce a media statement or a letter etcetera, etcetera we would then engage the employees of the company to help us with that.

Of course we would provide input into those letters or resolutions or media statements.

“It appeared to me that there were members of the board who came to the meeting already knowing what was to take place. Ms Sandra Beswick a member of the board also voiced also voiced her concern or discomfort with not allowing the CEO to serve his notice.

A task team made up of Ms Zulu, Ms Mokoka and Dr T Goba was formed at this meeting to work out the remuneration that needed to be paid out to the CEO and to finalise other matters. The board also appointed Ms More as the acting CEO. Also on this matter the board was split in the middle. There was a view that wanted to appoint an executive that had not
10 been mired in any of the allegations in the past.

The name of Mr Sholto Dolamo was put forward and supported by at least four directors. Chairman Gungubele had a casting vote in this meeting and he used it to appoint Ms More who was supported by four other directors.”

ADV JANNIE LUBBE SC: Can I just take you back to 21.8. We heard evidence yesterday from the Deputy Minister about the financial settlement. As far as you know has that ever been finalised? Has it been approved by the board?

MS DUDU HLATSHWAYO: So Commissioner on that one I remember being apprised on the calculations - apprised by the task team. The task team made up of Ms Zulu, Ms
20 Mokoka and Goba. Where I’m not sure is whether the board actually has approved the calculations then therefore the payment thereof. So I can verify that and I can come back to the Commission.

ADV JANNIE LUBBE SC: Thank you. 21.10 I think ...(intervention).

MS DUDU HLATSHWAYO: Yes.

“I requested the Chairman to allow me to form part of the task

team in the spirit of *tumamina* the vehemently refused for me to join the task team. When the CEO was called in to be informed of the decision of the board the then CEO Dr Dan Matjila he reiterated that he had actually not resigned as purported by the board and so the decision of the board as a bridge of his contract.

Fast forward three months later the board continued to work. We held meetings and we appraised transactions. The atmosphere in the company and in the boardroom continued to be tense and the staff morale was very low.”

10 **ADV JANNIE LUBBE SC:** Did the board consider after Dr Matjila against reiterated that he had actually not resigned, did the board not consider asking for a legal opinion?

MS DUDU HLATSHWAYO: The issue of the legal opinion had already been muted in particular by Mr Pitsi Moloto and I supported Mr Pitsi Moloto in obtaining the legal opinion.

In actual fact when the decision of the board was carried it was not a unanimous decision because I abstained from the decision on the basis on that I felt that I still needed to be guided by a legal expert. So at that time the decision was made not to obtain the legal opinion.

ADV JANNIE LUBBE SC: Thank you.

20 **MS DUDU HLATSHWAYO:** Commissioner I then move to item number 22 the process followed by the board following the draft internal audit forensic report on IO. This is now in January 2019.

“My testimony below does not seek to deal with the merits or demerits of the IO transaction at this point but to deal with the process followed by the board on that day that the internal audit heard presented the

draft report to the board and that was 21st January 2019.

The Chairman told the board that following the SCOPA meeting – that meeting had taken place in December 2018 – he had spoken to the CEO and agreed to commission a forensic audit into the IO process ...(intervention).”

MS GILL MARCUS: Sorry can I just ask you a question going back to your 22.1. Sorry to interrupt you. You talk about the 21st January 2019 but the initial internal audit flagging of the matter of process was a year earlier roughly.

Was this the first time that it had come to the board or were you aware of the
10 issue in various stages by the auditing risk committee that the board had ever considered this matter prior to this?

MS DUDU HLATSHWAYO: So it was not the first time Commissioner. Around May 2018 internal audit had raised a finding on the process followed by PMC which is the portfolio management committee listed.

When he brought the matter to the investment committee he indicated that there was a misstep where that committee which is a management committee needed to approve the first step of approving due diligence in three areas.

In legal, in risk, in ESG to then say we are happy to proceed with this transaction. When he brought the matter to the committee he indicated that that step
20 was never covered.

The committee never approved that step. So he therefore raised a finding that said when then the committee later approved the transaction itself – that was the 20th December 2018 it needed to rectify that step that was not carried.

So he brought that matter to the investment committee and because the delegation on this matter is the preserve of management the committee noted the

finding and requested internal audit to go back to that strata so that the matter then gets rectified and regularised and that's how then the matter was resolved.

So in January 2019 when internal audit then brought the matter back again it was because Chairman Gungubele had requested internal audit to conduct this forensic investigation. I have to say I was not aware but it was my mistake because I then discovered that there was an email that Chairman Gungubele had sent out to say I want internal audit to verify.

I only found that email at a later point. So on the 21st January 2019 I asked Chairman. I said Chairman but you never told us about this investigation and then it
10 was clarified that indeed the email was sent. So this is now the follow on investigation by internal audit where he made quite a few findings that resulted in the suspension of the two executives.

“The Chairman indicated that he had invited Lufuno Nemagovhani – that's the head of internal audit to present the first draft of the report at this meeting 21st January 2019. Immediately thereafter Mr Nemagovhani walked in with only his copy of the report in his hand. Board members requested the copies be made so that they can also try and follow what was being said because the board had not been given a copy of the report beforehand to read.

20 It was then Lufuno left the room and made some copies for board members and twenty or so minutes later the copies were distributed so all members and Lufuno then started taking the board through the – it's actually 51 page Commissioner, a correction there. There were serious discrepancies and concerns that were pointed out in Lufuno's draft report. Lufuno then committed to fixing some of these issues raised by the board at that meeting

before finalising the report.

Board members also raised concerns about the fact that the report had not been distributed and members given sufficient time to read and apply their minds. Dr Goba in particular requested that the Chairman allow the board to take the report home so that all of us could then read and assimilate the contents of the report.”

That request was denied. The Chairman went on to instruct each Board member to put their name on the hard copy, to date it and sign it and to return it before the end of the meeting. Each board member did as instructed and all copies, hard copies were
10 returned back to Chairman Gungubela. Board members raised concerns about being asked to take drastic decisions based on a preliminary draft report.

And I have to point out an inconsistency here Commissioner. When we took a decision on the MST transaction as a Board and cleared Dr Dan of all allegations, we were wrapped around the knuckles because the view in South Africa at large and the view was carried also by some of the Board members, was that she should not have exonerated the CEO on the basis of a draft report.

And I am pointing out that inconsistency here because in this particular instance the Board was actually asking us to take a very drastic decision of suspending certain individuals on the basis of a draft report, that still needed to be rectified and
20 corrected. I specifically requested that the Board notes the report of internal audit, but immediately Commissioner forensic investigation so that the Board is not accused of having acted on the basis of a draft report.

This was agreed to by the Board members and recorded. It is in the minutes. Some Board members questioned why only two members were suspended when there were other members implicated. However, the Chairman and some

members of the Board were adamant that certain actions needed to be carried out, carried out on that same morning.

This was now Tuesday the 22nd of January 2019. When Chris Pholwane, the Head of HR was called into the room, the time was 01:30 more or less in the morning, he was given letters of suspension of the two individuals which was Mr Madavo as well as Victor Seanie. And these letters had been drafted by Ms Zulu whilst the meeting was still carrying on. And eventually the two individuals were suspended.

ADV JANNIE LUBBE SC: Can you please explain to the Commission why and for what reasons the most junior person at the meeting of the 20th of December 2017 was
10 suspended, while other senior officials also implicated were not suspended? Can you explain that?

MS DUDU HLATSHWAYO: The Board questioned that. The Board put that question forward and asked why if in a transaction that then involves quite a number of touchpoints because that is how PIC works, PIC would never approve a transaction in one corner. The question was asked as to, why only these two? And I think I recall if my memory serves me right, the response that was given at the time was that this Board must be seen to have acted on this matter.

The Board questioned why the Finance Team which is the one that actually released the funds, the 3.4 billion is actually not implicated in this and actually not
20 suspended. We questioned why the teams that presented the due diligence reports are actually not suspended. Indeed, I think the Chairman is the one that said this is a draft report, it does not mean that the other individuals, the other employees are not going to be dealt with, but for now we need to suspend the two individuals.

Whether Mr Seanie, who was junior as you indicate Advocate Lubbe, it was indicated that Mr Nemagovhani's report that he withheld information. When he was

asked questions he was not forthcoming with information. And because of that there was a group of Directors that felt that he was not, he was not honest.

ADV JANNIE LUBBE SC: Thank you. 23.

MS DUDU HLATSHWAYO: 23. James Nogu - Nogu, the anonymous whistle-blower is back in town Commissioner. This was on the date of the 29th January 2019. Allegations of impropriety are forwarded to Minister Mboweni by an anonymous whistle-blower. On 30th January 2019, the Board issues a media statement committing to conduct a forensic investigation in this regard.

A task team made up of myself, Ms Beswick and Dr Mkhwanazi was formed
10 to then lead the forensic investigation and it is the same team that actually met with Advocate Lubbe on the 31st of January 2019. Where Advocate Lubbe being concerned about the Board, taking its eye off the work of the PIC, he proposed that the investigation be conducted independently by the Commission. The proposal was presented to the Board the following day which was – I can't remember the date.

It probably was the 1st of February 2019, and the Board supported the proposal and was positively received indeed. The Committee presiding over the current bid transaction, it is called the PEP's Feeb(?), was scheduled to meet immediately after the Board meeting on the 1st of February 2019. The day before this committee meeting on 1st February 2019, yet another PIC scandal anonymous email
20 from James Nogu was forwarded to Mr TT Mboweni.

Ms Mokoka was a member of the Board who was seemingly copied, I think blind copied by the anonymous whistle-blower and Ms Mokoka forwarded the email to the rest of the Board members. Social media picked up on the story, but not the newspapers. Till today Commissioner I have to indicated that not one newspaper has written a story on the current bid transaction.

The Commission of Inquiry is in the process of investigating all allegations, including the first set of allegations that implicated Ms Zulu, Mr Gungubela as well as the CFO, the Acting CEO of impropriety including the James Nogu allegations – sorry Commissioner. The Commission of Inquiry is in the process of investigating both allegations. The first set, but as well as the later ones, the ones that relate to the current bid transaction. For the record and under oath, I deny emphatically and with contempt all the allegations that have been levelled against me.

And I challenge and invite the person or persons spreading this false rumours to come forward to the Commission and present their evidence in as far as the
10 current bid transaction is concerned.

ADV JANNIE LUBBE SC: Unless you don't want to reveal them, but we will disclose them. We would like to know what are these allegations against you?

MS DUDU HLATSHWAYO: Against myself?

ADV JANNIE LUBBE SC: Yes.

MS DUDU HLATSHWAYO: I think, if I can find it ...(intervention)

MS GILL MARCUS: Perhaps while you are elaborating on that and just for the record and clarity so that we are all aware at the same level. On 23.2 if you could also just elaborate on the allegations against the implicated Directors and who they are, so we just have a clarity of previous allegations, current allegations and so on for the record.

20 Thanks.

MS DUDU HLATSHWAYO: Ja. So Commissioner on 23.2 the allegations there they implicated Mr Gungubela, Ms Mathapemore(?) as well as Ms Zulu. It was a variety of allegations, quite a long list. If ...(intervention)

ADV JANNIE LUBBE SC: You can do that, it is fine.

MS DUDU HLATSHWAYO: If the Commissioner so wishes.

ADV JANNIE LUBBE SC: No, no, no. We do have got that.

UNKNOWN MALE: We do have those ja.

MS DUDU HLATSHWAYO: You do have it.

UNKNOWN MALE: We are just on it to make sure are these the persons who we are referring to.

UNKNOWN MALE: Must I help the Court? It is fine.

MS DUDU HLATSHWAYO: But would you like to hear about the one ...(intervention)

UNKNOWN MALE: The current beef. Yours yes.

MS DUDU HLATSHWAYO: I think it will be quicker to find them here, sorry. Okay

10 Chair Commissioner, the emails begins as thus:

“From James Nogu, James Noko, from Webmail 30th January 2019 at 19:35.

To: Tito Mboweni Treasury. It says in subject: Yet another PIC scandal.

Good day, PIC Board members approved – okay so it is an English problem there. PIC Board member approves 4 billion deal for her boyfriend and TG

Paul Mashatile. Last we circulated proof of corruption by PIC Board member Dudu Hlatshwayo and Dr Daniel Matjila in his quest to protect his corruption

and frustrate the investigation. He quickly promised very powerful people within the ANC to give them transactions, namely Current Beef. We have

recordings of meetings held between Dr Matjila and the current TG Paul Mashatile. Some of them took place at Aventro(?) Offices in Melrose,

20

Aventro is owned by Paul Mashatile’s Alex Mafias. Ms Dudu Hlatshwayo was taken to Mashatile by Dr Matjila to be endorsed as the Chairman of the

Board when a resolution is taken that a politician must not chair the Board and Mondli Gungubela is removed. In the meeting Dan complained that

Mondli is frustrating him. He watches him like a hawk and he will not be able

to deliver for Mashatile if Gungubela is not removed and replaced with Dudu Hlatshwayo. To prove to Mashatile that she can deliver, Dudu approved Current Beef as Chair of the Fine Investment Panel, a Committee. The players and the beneficiaries in current beef are Malungelo Zilimbola of Mazi Capital. It is known in the market that Mazi is Dr Matjila's proxy. Matjila has invested more than 40 billion in Malungelo's asset management company, gave him a JSE listed fence for renewable energy – but I think company for renewable energy called Hulisani and a big stake in current beef. In Hulisani Dr Matjila told Malungelo to put Dudu Hlatshwayo as a Director and gave her

10 shares. Reggie Kukama of Yaetsho Projects, Reggie is the one who holds Mashatile's stake in Current Beef. Silo Matau(?) of Tek O Capital, he came in through Dudu Hlatshwayo to hold her shares. The deal is that Matau will also receive advisory fees so that he can channel them to his girlfriend Dudu Hlatshwayo. Hlatshwayo has an entity and Silo will use that entity Hlatshwayo and Matau are well known lovebirds who played golf together and have many private meetings, Hlatshwayo's office in Midrand and at her home, we have proof of this. The corruption in this deal is known in the market. The original evaluation of Current Beef was inflated by 2 billion. 1 Billion rand in not negotiable. It is for Paul Mashatile. Dudu Hlatshwayo

20 knows this plan and made sure it was approved. We asked the following questions: Why did the Minister of Finance not remove Dudu Hlatshwayo from the PIC Board when she was a Director of Kaymac(?), Air and Energy. This is a Nigerian oil company that was sequestered in the United States last year after Dr Matjila was told that the company was now in sequestration, he told Hlatshwayo to resign immediately. She did but it was

too late. Why did the Board not question Hlatshwayo's resignation after the fact? Did Hlatshwayo declare conflict of interest when Current Beef was done? That Matau is her boyfriend and business associate?"

It continues commissioner.

CHAIRPERSON: Let us hope that is fine. I think now that you have read it that we have come across it. But it is fine that it is now in the record. You do not have to go further.

MS DUDU HLATSHWAYO: Alright. Thank you.

ADV JANNIE LUBBE SC: These are the allegations that you challenged the people
10 who are spreading this in the media to come forward to the Commissioner and bring proof? Is that correct?

MS DUDU HLATSHWAYO: I do Commissioner. As a matter of fact I would like to point out to this Commissioner that the transaction was submitted to this Committee on the 14th of August 2018 and it was supported on the basis that the team would go and further negotiate with the seller who had requested a purchase price of 6,2 billion. The Committee felt that that amount was too exorbitant and needed to be negotiated. And the valuation had come out below the figure of 6,2 billion.

It had come out at 4,5 billion. We had conducted an independent valuation by RMB. That valuation came up with the figure of 4, 5 billion and that is the figure that
20 the Committee approved on the 14th of August 2018. So it cannot be true Commissioner that the valuation on this transaction was ballooned by 2 billion, because in actual fact it was reduced by almost 2 billion from the purchase price of 6,2 billion.

CHAIRPERSON: Just for the record, RMB is?

MS DUDU HLATSHWAYO: Rand Merchant Bank. But our internal team also conducted valuation which they placed in the range between 4,7 billion and 5 billion.

And the range for RMB as well was 4,5 billion and 5 billion. So the Committee then approved the lower range which was the 4,5 billion. The transaction is not concluded as yet Commissioner. It is still pending. And the funds have not been dispersed as yet.

CHAIRPERSON: When talking about the Committee, is it – what is that? The Investment Committee?

MS DUDU HLATSHWAYO: It is a sub committee of the Investment Committee. It is a private equity committee but it reports directly to the Investment Committee of the PIC.

CHAIRPERSON: Just to check something, sort of all these allegations there none are true. So in terms of Directorships and shareholdings and all that? Are they true or not
10 true, completely not true?

MS DUDU HLATSHWAYO: So Commissioner I have given a blanket statement that denies all the allegations. And I can indeed maybe pronounce on some of them. There is one allegation that says 2 billion was then reserved for Paul Mashatile, that is actually not true. There is an allegation that says I was taken to meet with Paul Mashatile and for the record of this Commission I would like to point out that I have never met Mr Paul Mashatile with my own eyes, except for seeing him on television.

I do not know with where the Melrose – I think it is a restaurant that is mentioned here, I have never been there. It is also alleged that I was appointed into the Hulisani Board through the recommendation by Dr Dan. The Hulisani Board, it is a
20 fund that was supported by Mazi Capital through the funds of Funds Model of the PIC. The company then gets given a discretionary mandate that allows the company to appoint its Board independently. It also allows the Board to then do the acquisitions and to list on the Stock Exchange without the connection to the PIC.

The funds came from two asset management companies. One of those was Mazi Capital, the second one was Mergent(?). There is a share hold in between the

two of them in terms of their location that they made into Hulisani. I need to confirm also Commissioner that I don't have any links whatsoever with Mazi Capital. I do not sit in their Board. I don't have shares. I have never had shares in Hulisani, neither in Mazi Capital. And I also maybe need to confirm also that Mr Matau is never – I have never been in a romantic relationship with Mr Matau.

The two instances where I had an encounter with Mr Matau was when the PIC appointed me into the Board of the Lanseria Airport in 2017. He was already sitting in that Board, that is where I met him. And secondly, when I was appointed by MEC Mabuya-kulu in KZN, he was MEC for Economic Development and Environmental
10 Affairs etcetera. He was appointing individuals into the Board of the KZN Gold Fund. It is also an asset management fund, it funds infrastructure projects.

I was appointed as the Chairman there and I sat in that Board for close to six years. At a certain point in time we struggled to find the Chairman of an Audit (inaudible) Committee and I knew about Mr Matau, he is an auditor, he is an accountant. I invited him then to come and join the Board of the KZN Growth Fund. So those are the two instances where I have had a professional relationship with Mr Matau. There is also an allegation that says I played golf with Mr Matau.

That is true Commissioner. Mr Matau plays golf, I play golf. I play golf with quite a number of individuals who are my acquaintances, some of them I work with,
20 some of them I do sit in boards with. And in the same manner I have played golf with Mr Matau. What is not true in the allegations is what is said about him having a relationship, a romantic relationship with me. That is totally not true. So if you wish Commissioner then we move to item 24.

CHAIRPERSON: Yes, carry on.

MS DUDU HLATSHWAYO: PIC Board meeting held on 01 February 2019: Chairman

Gungubela had indicated unavailability to attend the meeting on this day. However, he was then available on the day and I met him in the lift. And I jokingly asked him, I thought you were not going to be available to him and he said, no I was excused from the Legwhatla(?) Meeting. So then I accepted the explanation. During the *in camera* meeting of the Board on that day, Mr Gungubela left the board room to take a call which he later confirmed was a call from Minister – from the Minister of Finance.

On coming back he indicated that he was about to tell the Board something significant which was going to change everything. This is when he told the Board that the Minister wanted the whole Board to resign immediately, failing which the Board will
 10 be fired by Monday the 4th of February 2019. Minister was going to appoint the new Board that following week. Shocked and confused, I personally asked if by resigning we were now being declared – especially me because there had been allegations in relation to me and in relation to the current Beef transaction.

If by then resigning is required, we were now admitting to being guilty. And the response that I received was the one that said: You resign today or face being fired on Monday. The mood in the room was one of indignation and despair and basically people were saying: Maybe it is for the better that we leave this place. Meaning we will leave this PIC. I personally had to weigh the weight of being fired by Monday vis a vis resigning with the rest of the Board and salvaging my dignity.

20 At this point Ms Zulu came up with this wonderful idea of resigning enmas(?). She quickly and flawlessly dictated the letter of resignation to Company Sec and after having been proofread by everyone, the letter was signed by all members of the Board. Then on Monday the 4th of February 2019, came – this date came and Minister Mboweni had not responded to the Director's letter of resignation, nor appointed the new Board and yet all Committee meetings were being cancelled on that same Monday

on the 4th of February.

Concerned, I then wrote an email to Chairman Gungubela requesting clarity with regards to being asked to remain in the Board and retain responsibility and accountability in all matter of the PIC. And yet the only platform that empowers the Board to exercise that duty was being taken away. As Board members we only are able to execute our fiduciary duties through attending meetings, through being provided information in the Board pack. So when that was removed, I then wrote this email on the 4th of February 2019 asking the Chairman but also pointing out the contradiction because I did not want a situation where I am accountable and yet the authority has
10 been taken away.

So the following day if I am not mistaken then the Chairman, Mr Gungubela responded and indicated that he was not aware that meetings were being cancelled. And requested that all Board members continue with their fiduciary duties. He requested that all meetings be reinstated in the diaries. The only meeting that was never reinstated Commissioner was the Special Committee Meeting that had to preside and to finalise the current Beef transaction. And till to date there, that meeting has not been convened.

And right now Commissioner, the Board is in the so-called business as usual. Ira, after also having received a letter from Minister Tito Mboweni where he
20 requested and pleaded with Board members to remain in the Board, to continue to exercise their fiduciary duties until further notice. That is where we are Commissioner. And maybe as conclusion Advocate Lubbe I would like to say, I the undersigned Dudu Rosemary Hlatshwayo Non-Executive Director of the PIC do hereby confirm to the best of my knowledge and belief that the contents of my submission are true.
And should the Commission so wish the contents of my submission may also be

verified against Board meetings, transcripts of meetings of the Board which may be obtained from the company's secretary, as well as the file which I have prepared for the Commission. This file contains all the correspondence that I have made reference to. If it is not in here, it is by omission Commissioner. I can make it available at any other time. So if it is not available Commissioner and I would like to make it available to the Commission thank you.

ADV JANNIE LUBBE SC: Can I, in conclusion there are two aspects I need you to deal with. You are aware that another director resigned recently and that the number of directors are now below 10 as required by the Memorandum of Incorporation?

10 **MS DUDU HLATSHWAYO:** Yes indeed the Board was communicated and informed on the resignation of Ms Lindiwe Toyi following the confusion as to whether the Board has actually resigned or not resigned she then just handed in her resignation. Commissioner I am not a legal expert, I would advise that we obtain a legal opinion on the status of this Board now with the numbers that it's got whether it is now in breach of the MIO prescripts.

CHAIRPERSON: What is the number now?

MS DUDU HLATSHWAYO: It's 9.

CHAIRPERSON: Well the legal advice is not going to come from us.

ADV JANNIE LUBBE SC: We'll deal with that Mr Commissioner. There's a last aspect
20 that I need to mention and it's not in your statement and it's something you mentioned to me during consultations and that is the meeting with the GEPF Board in 2018 March regarding the MIO of the PIC.

MS DUDU HLATSHWAYO: Indeed Commissioner we were visited by the Board of the GEPF the date can be confirmed but it was March 2018 where the Board of the GEPF raised a concern with the breach of the MIO given the fact that the structure of the

organisation had eliminated two key positions i.e. the position of the CIO as well as the COO. In that engagement with the GEPF they were categorical, they were clear that PIC Board needed to rectify this in the structure with immediate effect and if I'm not mistaken the words that were used was 'we reserve our rights' 'failing which we reserve our rights'. It indeed was an urgent matter that the Board needed to look into. It took a while though before the Board could look into the matter simply because, okay let me first clear the fact that the matter was then presented to the HR Committee in August 2018 which is five months later and when we requested clarity from management to say what has taken so long the issue was in reviewing the structure they did not want to

10 arbitrarily just come up with a structure that now depicts the two positions that were not there. They wanted firstly to understand the strategy of the company and the vision and the direction where it wanted to go and say therefore the position of the COO versus what it's going to entail from a job description point of view but also from a job grading point of view to do the benchmarks etcetera, etcetera and similarly to the position of the CIO. However because those processes were still being undertaken by the executive team in August 2018 they requested the Committee to support the appointment of an acting CIO position and there was a name that was put forward, I can disclose the name of the executive that was put forward by management.

The further proposal was that for the position COO and I think the position of

20 the CRO which is the Chief Risk Officer, was also going to be looked into, an open transparent process was going to be undertaken with recruitment in relation to those however given the concerns of the GEPF when we met in March where they were pinpointing the issue of the CIO position not being there and the gaps that the lack of that position or the non-existence of that position had created the management team wanted to then close that gap. In August the Committee supported, in October there

was a meeting of the Board, I can confirm the dates Commissioner. In that Board meeting the recommendation of the HR Committee was rejected by the Board on the basis that the matter still needs to be discussed further, that was the Chairman of the Board. He recommended that the matter be tabled at our next strategic planning session that was going to take place in October 2018. Unfortunately the matter was never discussed at that strategic planning session until to date Commissioner the concerns raised by the GEPF have not been addressed or resolved.

ADV JANNIE LUBBE SC: Mr Commissioner that concludes the evidence. I just want to put on record and I've just been informed by Mr Poswa that a formal instruction has
10 been given already for a legal opinion on the status of the Board regarding whether they can operate legally where the number is now below 10 as provided for in the Memorandum of Incorporation. I forgot to deal with certain specific questions on the terms of reference I can keep that in abeyance pending the questions by the Commission or do you want me to deal with it now Mr Commissioner?

CHAIRPERSON: You can carry Adv Lubbe.

ADV JANNIE LUBBE SC: Thank you Chair. You had sight of the terms of reference of this Commission of Inquiry is that correct?

MS DUDU HLATSHWAYO: That's correct Commissioner.

ADV JANNIE LUBBE SC: Now I know you can't speak on all these but you've already
20 dealt with them but let's ask specifically 1.3 whether you know of any facts or evidence whether any PIC director or employee used his or her position or privileges or confidential information for personal gain or to improperly benefit another person?

MS DUDU HLATSHWAYO: The answer is negative Commissioner.

ADV JANNIE LUBBE SC: Do you know of any flouting of whistleblower policies?

MS DUDU HLATSHWAYO: On that one Commissioner I would say yes given the

history around the James Nogu allegations and the fact that they were not channelled through the normal whistle blowing channels of the company. I would then say the policy of the PIC that requires that all employees channel their grievances, complaints or fraudulent alerts through that channel I would say then that that was the case.

ADV JANNIE LUBBE SC: You've already dealt with the minutes ... (intervention)

CHAIRPERSON: Sorry that assumes if James Nogu was actually from within?

MS DUDU HLATSHWAYO: Correct Commissioner.

ADV JANNIE LUBBE SC: The 1.6 whether all the investigations into the leakage of information and the source of e-mails containing allegations against senior executives
10 of the PIC and media reports in 2017 and 2018 while not thoroughly investigating the substance of these allegations were justified?

MS DUDU HLATSHWAYO: Please repeat that Advocate?

ADV JANNIE LUBBE SC: The terms of reference, 1.6 says whether all the investigations into the leakage of information and the source of e-mails containing allegations against senior executives of the PIC and media reports in 2017 and 2018 while not thoroughly investigating the substance of these allegations were justified?

MS DUDU HLATSHWAYO: I would argue that some of the allegations were found to be unjustified and baseless through the process of the Board but maybe not all the allegations because some of them remain to be tested.

20 **ADV JANNIE LUBBE SC:** 1.7 deals with whether employees of the PIC obtained access to e-mails and other information of the PIC contrary to the internal policies of the PIC or legislation.

MS DUDU HLATSHWAYO: That is true Commissioner, some employees were found through an independent process to have committed acts of impropriety in that regard and having had access to systems that they were not supposed to so I would say that

that was indeed the case.

ADV JANNIE LUBBE SC: I think 1.8 you have already answered and that is whether any confidential information of the PIC was disclosed to third parties without the requisite authority or in accordance with the Protection Disclosure Act and if so to advise whether such disclosure impacted negatively on the integrity and effective functioning of the PIC and I think you have strongly come out to say that the Nogu e-mails had a very negative effect on the functioning of the Board and the PIC in general?

MS DUDU HLATSHWAYO: Correct Commissioner, Ms Mathebula in particular one of the allegations was the leaking of information or proprietary Board information to
10 external parties. So indeed that was one of the allegations however the jury is out because the report of the officer that presided over the disciplinary hearing has not released the findings of that process.

ADV JANNIE LUBBE SC: The last term of reference I want you to comment on is 1.10. In your experience whether measures that the PIC has in place are adequate to ensure that investments do not unduly favour or discriminate against the domestic prominent influential person and immediate family member as contemplated in the Financial Intelligence Centre Act of a domestic prominent influential person and lastly known close associates of a domestic prominent influential person. Are those measures presently in place, are they adequate?

20 **MS DUDU HLATSHWAYO:** Commissioner I would raise my hand and say to the best of my knowledge the systems and processes and policies are in place however, it depends on the people behind those processes, systems and procedures to act in a non-ethical way. If they act in a non-ethical way it's not because of the absence of processes, policies and procedures but those are in place indeed.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner.

MR EMMANUEL LEDIGA: I've got a couple of questions ja so you can you know tell me if you want to answer them and continue to answer those given the fact that you have been on the PIC Board for a long time so you might sort of help the Commission to answer some of the questions. The first one do you think that James Nogu could have been linked to State capture by any chance?

MS DUDU HLATSHWAYO: Commissioner I think it's difficult to say for sure. You recall my evidence earlier where I said we had questions ourselves as a Board whether the whole James Nogu anonymous allegations were linked to State capture, we didn't know and up until now we do not know who James Nogu is, we have our own suspicions as
10 human beings however we don't know who the individual is. So I cannot say for sure that that link was there even at the time when the first set of e-mails came out.

MR EMMANUEL LEDIGA: And do you think that James Nogu could be two people actually not one or two because it looks like there could be sometimes where they say something to back one faction and then sometimes to back another faction?

MS DUDU HLATSHWAYO: I think James Nogu is a number of people and I believe that some are inside the PIC and some are outside the PIC, it's more than two, it's more than three.

MR EMMANUEL LEDIGA: So it could well be that that name is just being used but there are various people pushing their you know agendas?

20 **MS DUDU HLATSHWAYO:** Correct Commissioner.

MR EMMANUEL LEDIGA: Next point it appears to me just listening to you and the Chairperson of the PIC that there were two groupings generally probably sometimes changes, you know changes sometimes but there was sort of your group one would say and there was another group. Who would have been in your group?

MS DUDU HLATSHWAYO: I can indicate that it's an open secret Commissioner and I

think it's a group of people that really wanted to do things the right way without favouring anybody but to act in the best interest of the PIC. That grouping of people was made up firstly of myself, it was made up of Dr Claudia Manning, Ms Tantaswa Fubu, it was Ms Lindiwe Toyi, and Ms Sandra Beswick and Mr Pitsi Moloto he was not very vocal on a lot of things but when the crunch came and we needed to put our mask on the wall he would raise his hand and I found him upstanding.

MR EMMANUEL LEDIGA: And Dr Mkhwanazi I think where would you ...
(intervention)

MS DUDU HLATSHWAYO: Is it a fair question?

10 **MR EMMANUEL LEDIGA:** Where would you place him? It's a fair question I think.

MS DUDU HLATSHWAYO: Okay I should have brought my lawyer Commissioner.

MR EMMANUEL LEDIGA: If you don't want to answer you're allowed.

MS DUDU HLATSHWAYO: No I will answer it. Commissioner my view is that given my observation on a lot of things that have taken place and where people tendered to lean towards and I think I've touched on some of the things where a matter would be on the table and somebody moves this way and the other one moves the other way I would say Dr Mkhwanazi was in that group of people that was closer to the Chairman of the Board Mr Gungubele including I would say Ms Mokoka is one of those people. I would also vouch and say ... who else is there?

20 **MR EMMANUEL LEDIGA:** Goba, Dr Goba?

MS DUDU HLATSHWAYO: Goba ...

MR EMMANUEL LEDIGA: That's the last name remaining I think.

MS DUDU HLATSHWAYO: Yes. Goba similarly to Mr Moloto he was also not very vocal on a lot of things but I've had instances where Mr Goba would be on the side of the people that's saying this Board need to be upstanding and do the right things and I

have to say Ms Zulu was on the other side.

MR EMMANUEL LEDIGA: The other side. So it looks like it was really five/five and maybe one or two people in between?

MS DUDU HLATSHWAYO: Yes.

MR EMMANUEL LEDIGA: Ja is that correct, okay. Yesterday the Chairperson said there was a group that you know whenever there were arguments they would back the former CE you know Dr Matjila and he said that you know he couldn't understand why they were doing that. Is there, I mean do you think there was a grouping which was sort of in the pocket of the CE or you know to find a better word who were zealous,
10 overzealous supporters of the CE the ex CE and why would they do that, why would they be taken as oh this one's they will support the doctor until the cows come, you know?

MS DUDU HLATSHWAYO: Ja I think a similar question was asked to Dr Manning when she was here and for me truly the answer is there is not one member of the Board who would do things simply because they want to cover or favour a certain individual. The principle that always pertained in the Board was one of saying policy it said governance, what are our responsibilities and in my view that was what the Board conducted themselves on. The perception might be there that certain people were favouring the CEO, I don't believe that we were favouring the CEO in any way. But I
20 think we were favouring the principle of doing the right thing for the PIC as an organisation but for ourselves because I always take it that as a Board member I have my fiduciary duties and I'm liable severally and collectively with other Board members. So when I take decisions I'm looking at myself first and saying what is the right thing, what is the right decision to make with this matter, I never take a decision because it's going to protect somebody else and I want to believe that the majority of the Board

members that tendered to be in the same camp with myself were people who were wanting to do the right thing.

MR EMMANUEL LEDIGA: In UDM matter the Chairperson filed a separate affidavit you know to oppose the, sorry not to oppose was it to back, back up ... (intervention)

MS DUDU HLATSHWAYO: He decided not to oppose.

MR EMMANUEL LEDIGA: Not to oppose yes.

ADV JANNIE LUBBE SC: To abide yes.

MR EMMANUEL LEDIGA: If you take a resolution as a Board and another Board member takes a contrary decision I mean just explain to us how does that work, I mean
10 was that proper for the Chairperson to do that or did he have the power or the leeway to do that, just explain to us some intricacies there for us to understand more?

MS DUDU HLATSHWAYO: Commissioner my understanding of corporate governance is one that says in the board we are all directors and we are all accountable, finally accountable and therefore if a matter arises that then questions the Board, we need to be together we are a collective. It was indeed a surprise for me that one the Chairman was cited separately as a respondent for me that was a question because I would have thought that he would have been cited as part of the Board but he was indeed a separate respondent on the matter in the affidavit itself. But then I would have thought that especially for a Chairman that was not there at the time having been guided and
20 provided with the supporting documentation and the arguments and the rationale why certain things were done the Chairman would have then took sides with the Board but that didn't happen. And I have to say that it only happened at the end by the way, we had a meeting that lasted almost the whole day when we were discussing the affidavit of the Board in response to the UDM application. In that affidavit we had been given an indication, in fact Commissioner we had been given sight of the affidavit by Mr

Gungubele where he was also opposing, that affidavit was circulated to the Board from some attorney. It was only towards the end when we thought that we were just about to sign the affidavit that the Chairman came back and said no I'm not going to be part of this affidavit the Board is on its own I'm going to not oppose, in other words I'm going to abide with the application.

CHAIRPERSON: Did he say in my capacity as the fourth respondent or capacity as Chairman of the Board?

MS DUDU HLATSHWAYO: So that I would have to verify Chair that nuance I may have to verify it but I think I recall the fact that he said it's the Board, the Board that was
10 there at the time without me, I will respond to my own affidavit where I'm not opposing.

MR EMMANUEL LEDIGA: The next one I wanted to check is with regards to the powers of the Chairman within the PIC Board because it appears that there are times you had to ask for documents, you had to request things which in many boards suggest normal process. When you were feeling aggrieved was there a time when you sort of looked at the powers of the Chairman and say this can be done, this cannot be done, you know, ja I hope I'm clear on the question?

MS DUDU HLATSHWAYO: Yes. I think it might have come out in my affidavit in the section that talks about the Board under the leadership of Mr Gungubele. For the first time for me Commissioner, and I'm being honest to this Commission where I felt that
20 the Chairman was not considering himself as one of us or as a director where he would take decisions and in a lot of times in the meetings he would say in my capacity as the Chairman of this Board, he would take certain decisions that are not aligned with the Board or have not been tested with the Board and endorsed by the Board. So it just gave me that feeling of discomfort to say but we're supposed to be here together with the Chairman, he must be our spokesperson as a Chairman obviously, he must sign

documents on our behalf because we can't all sign documents. And I will give a classic example on a matter that happened which relates to the approval of the incentives for the executives, those are the ones that come to the Board for approval and then obviously they have to be recommended to National Treasury for final approval, where the Board ran its process, I'm a member of the HR Committee, we ran the process there's contracting, there's the corporate balance guide which had been approved by the Board, it has come back, it has been rated it says 4.2 out of 5 that's the rating and the Committee says we're now recommending this to the Board for final approval because then the Board must also work out the bonus pool, it must do the rest of the things and once that is done the recommendation goes to National Treasury. We did that.

In this last instance we had a situation where employees had to toyi-toyi with placards in the building, noises and drums and stuff because it took a long time before the employees were paid their bonuses. It was a very sad period for all of us. So but I want to point out that the recommendation into the Board, the Board approved the recommendation. Once that is done the Chairman must then sign a letter of recommendation to the Minister of Finance. I have to tell this Commission that at some point we were not sure whether that letter had been signed by the Chairman. We were getting information from employees who were indicating that the letter has not even reached National Treasury. They didn't know whether it had been signed, we didn't know that the Chairman had signed the letter and at a certain point in time, I think three months or four months later when we now wanted to really verify where the stuck up was or where the delays were we then called National Treasury to verify. I'm a member of the HR Committee so we were concerned with the goings-on in the company and we were told by some officials in the National Treasury that in actual fact the letter had not

reached National Treasury. We could not understand why they letter would not reach National Treasury when the Board had actually approved.

It took a long time and eventually there was a meeting that was convened by the Chairman with employees and I have to be honest to this Commission that I didn't understand the purpose behind that meeting which was convened by the Chair because the issue that the employees were raising was where are our bonuses, we have performed, we have delivered where are the bonuses. But that meeting took place and the employees were, I'm told I was not in the meeting, but the employees were kind of disrespectful to the Chairman asking questions as to where the bonuses were and it was only at that, after that meeting that an instruction was then given to say National Treasury must make sure that the letter is received and signed and blah, blah, blah, 10 blah. It still took another two or so months after that before the issue of bonuses was resolved.

But in answering the question directly Commissioner in saying do I feel that the Chairman and us we are two institutions I felt that in a lot of times especially during this dispensation.

MR EMMANUEL LEDIGA: But it was done within his powers, I mean all these issues he did them within his powers?

MS DUDU HLATSHWAYO: Please clarify?

20 **MR EMMANUEL LEDIGA:** Sorry?

MS DUDU HLATSHWAYO: Can you clarify the question?

MR EMMANUEL LEDIGA: I said that you know the Chairperson has got various powers, within a board there are things that the Chairperson can do, there are things that maybe they cannot do so all the things he did he did them within his powers in general?

MS DUDU HLATSHWAYO: Well I don't believe that Commission because I think when a matter is presented to Board for final approval and the Board says we approve he's part of that. If anybody in the Board is not in concert is not in agreement it needs to be dealt with at that point in time. So I don't agree with the matter of then the issues get opened after the approval of the Board, there's a resolution of the Board in place. So I don't support a view that says the Chairman has got powers because I don't believe those powers are outside of the Board I think the powers of the Chairman are inside the Board and if he has got questions, he must ask the questions inside the Board meeting.

MR EMMANUEL LEDIGA: First round done. I think I will give Gill a chance. I have
10 got two or three more, but those are separate questions.

MS GILL MARCUS: Thank you very much and thank you for your presentation. It has been very clear. I would like to just go to a couple of points. When you were raising the question of not seeing any breach of policies in the MST deal, did you know about the ministerial intervention at the airport and all of those kinds of pressures put on the CEO?

MS DUDU HLATSHWAYO: We did not know. That only came out in the report of Advocate Budlender.

MS GILL MARCUS: Thank you. In terms of the... I want to just refer to... You say in terms of 19.1.1 in your statement, you indicate that... Sorry, I am just getting to the
20 page myself. The question that you indicate there that Ms Zulu had... was no longer in the Committee. Why was she then out in the task team?

MS DUDU HLATSHWAYO: In the... So that is a later task team that was formed [Intervenues].

MS GILL MARCUS: Because initially, if I understood you correctly, it was Dr Mkhwanazi, yourself and Ms Zulu and then she was no longer in the team. Was there

any particular reason for that or was that different set of matters.

MS DUDU HLATSHWAYO: Mr Commissioner, she was implicated in the allegations, so the task team that was formed [Intervenues].

MS GILL MARCUS: Excluded her.

MS DUDU HLATSHWAYO: She was implicated there, hence she was not part of the task team.

MS GILL MARCUS: On 215, the question of again the role of Ms Zulu that you single out as writing resolutions of the Board, the media statement. Is that a normal procedure that a member of the Board in the meeting starts preparing all those things and who in a sense, I mean if somebody is going to do it, you say, would you mind
10 doing it. It just seems a very strange behaviour for a Director in a meeting to start doing that. Was this customary for her to do?

MS DUDU HLATSHWAYO: Mr Commissioner it was not and if I recall... I am trying to remember the time when it actually started that a member of the Board would almost act as an advisor to the Board and would object to some of that because when it comes to legal matters, Ms Zulu is in the legal fraternity and obviously she has got more knowledge on legal issues and I think the Board accepted that and we appreciated that from her. The fact that she will able to guide the Board in certain instances. Where it escalated into an abnormality, was when it game to this James Nogu allegations *et*
20 *cetera et cetera* all the way until the suspension of the two executives, because the pose that Ms Zulu would adopt, is one that says, I am a judge. I am an acting judge and a lawyer. Even when we then say we want a legal opinion from an independent party, that would not be taken kindly and I think it would be dismissed a lot of times. One of those legal opinions that we requested, me and Mr Pitsi requested was, in guiding us whether they see or they had resigned, but it was said no, Ms Zulu is a

judge. Is an acting judge and a lawyer and therefore what she has presented then, carries and the Board needs to abide by that and that then talks to also the writing of the memos, the media statements, the letters of suspension were written by Ms Zulu to a point where she would go to the next room and write those letters. She would sit at the back of the Board room and write those media statements and letters and *blah, blah, blah*. So it was not a normal situation and in fact it had never happened before until this era that we [Intervenues].

MS GILL MARCUS: What was the role of the Chair in that circumstance, because obviously that was then allowed by the Chair and did you also have... I mean, I would
 10 have thought in these kinds of circumstances, the legal counsel for the PIC would be present to guide. Not a Director of... A Board member. Did you ever have a legal counsel there present to say, look this is how we interpret this and what was the role of the Chair?

MS DUDU HLATSHWAYO: The one word to describe maybe the view of the Chair was supportive of what was going on. There were no objections to say, let us get our employees in the legal space in wherever else to then put these things together and I will give an example. We used to have Mr Deon Botha as the acting Company Secretary. The one value that Mr Botha would bring to the Board, when matters are being discussed, he would raise his hand. He would say, Chair wait. This is how it is
 20 supposed to... This is what the MOI said and *et cetera, et cetera*. And I would appreciate that, but in the tape recordings of our meetings, if anybody has got time to listen to those, there will be instances where the Chair would not take kindly to being opposed or being guided by the Company Secretary on some of the matters of the Board and I have to say, I do not know that Mr Deon Botha had been removed from the Acting Company Secretary position. I just got to discover along the way. He is no

longer the Acting Company Secretary. How that came about I do not know. I do not know how that came about.

MS GILL MARCUS: This is under the Chairmanship of Deputy Minister Mr Gungubela.

Okay. Then I would just like to refer to 22.9.

MS DUDU HLATSHWAYO: 22.9.

MS GILL MARCUS: 22.9. The internal audit draft report, because you indicate there that there were serious discrepancies and concerns that were pointed out in the report by members of the Board and perhaps Advocate Lubbe you can help us. When the internal auditor presented his final report yesterday, he said there were only very small
10 technical changes. He did not indicate any changes that related to discrepancies. Are you able to give us any indication from your recollection any discrepancies that were asked to be addressed and so on, because that is not what he had said yesterday as I understood it.

MS DUDU HLATSHWAYO: Yes. There were quite a number of discrepancies in the first draft report to an extent that when those were pointed out, Mr Lufuno would take notes and commit to going back and verifying. I can pin-point one Mr Commissioner. The one was when he was referring to the PMC listed Committee having either ratified or approved or approved when it supposed to have ratified. That was the key... One of the key issues that were pin-pointed and there were quite a number of others. The
20 difficulty with now pin-pointing the differences between the first draft and the draft that you have been provided with is that, remember our draft was taken away. We... It was expropriated without compensation. We do not have it, so we cannot... Because we were all making notes in those draft reports and...

MS GILL MARCUS: In essence you were clear that there were differences and discrepancies and therefore that should have been addressed in the final report.

MS DUDU HLATSHWAYO: Correct.

MS GILL MARCUS: In accordance with that. Okay. Thank you. Those are my questions.

MR EMMANUEL LEDIGA: My second bite at the cherry. Since you have served there for a long time at the PIC Board, so I thought, let us just deal with some of the issues and the terms of reference. The first one is the IT issue within the PIC. You know if you got to give some views and you are on their Committee of notice. You know the IT Committee which is a Board Committee according to King IV. Alright. What is the state of the tack within the PIC, I mean in terms of modernisation, security, digital
10 technologies, just broadly you know, within the PIC.

MS DUDU HLATSHWAYO: PIC, Mr Commissioner is an asset management compn, so they are IT systems that are a basic minimum and they are not negotiable. They need to be in place. Those are in place. We have got software that we buy from external parties, international parties. They drive the systems that are used to run an asset management firm. However the Committee, because we wanting to continuously improve the IT environment, we are also aware of the industrial revolution, but also the importance of securing the environment from your cyber-attacks, so that is an on-going process, but if I were to raise my hand Mr Commissioner, I would say the systems, they are fairly solid and it is not saying there is no room for improvement and I am not an IT
20 person by any means, but I would say they are fit for purpose. They are able to do what they are supposed to do.

MR EMMANUEL LEDIGA: Thank you. Next one. In terms of the Board... You know the... you know like we heard that here are factions. There are factions which it looks like, it cannot be denied, but besides that, do you think that the Board is working pretty well in general? Although, I mean factions are the biggest thing really, but do you think

the Board is effective or it has been effective and has been working pretty well?

MS DUDU HLATSHWAYO: So, you know adults Mr Commissioner, they have got a way of dealing with situations and I think it comes with experience. It comes with just being old. We had to find a way of working with one another. I did indicate earlier on that the environment has been tense. It has been tense all along. Ever since the arrival of James Nogu, however I have to say when there is a transaction on the table. When there is a Board meeting, when there is a Committee meeting, members are able to read the pack, they apply their minds, they come and execute the work of that Committee. In my view, in the manner that they supposed to, but it does not take away
10 the... Just the atmosphere of not being... I do not know the English word to choose. Normal. The atmosphere of normality where things were normal and you were not looking around and checking... Looking over your shoulder. That kind of thing, but to answer the question directly, I would say if there is a matter on the table, the Committee or the Board is able to execute.

MR EMMANUEL LEDIGA: And given the troubles and the tense environment, would you say you people are quite relieved to leave the Board or you would still want to serve on the PIC Board?

MS DUDU HLATSHWAYO: I [laughs]...

MR EMMANUEL LEDIGA: It is a difficult one.

20 **MS DUDU HLATSHWAYO**: It is a curve ball Mr Commissioner, but honestly, I was looking forward to serving my term to the end. In fact Mr Commissioner, I had done everything in my being to make sure that I am individual with integrity. That I carry out my fiduciary duties to a point where when I woke up one morning, there was a James Nogu email, to me it was such a painful incident to wake up and find out that there is Dudu Hlatshwayo that loose like brass as the James Nogu had actually painted Dudu

Hlatshwayo. So, I would say even at this point with all the negativity and everything else, I am prepared to serve PIC. I am prepared to continue to serve the organisation to the best of my ability.

MR EMMANUEL LEDIGA: Second last one. The CIO and COO positions were collapsed and I just wanted to understand from the Board point of view, how was that process undertaken. Was that approved by the Board? How did it go down as they say?

MS DUDU HLATSHWAYO: Mr Commissioner, the matter arose in 2014. It was my first year in the Board at that time. It was at the time when Mr Masilela had resigned and Dr
10 Dan Matjila was then appointed as the CEO of the company. The Board deliberated at length as to an optimum structure that would serve the PIC at the time and I think cognisance was given to the fact that Dr Matjila had been with the organisation in the position of the CIO for... At that time I think it must have been 10 years, because he served another four years now as the CEO. So the issue was, we need to create an environment where there is leadership that is able to move forward with this organisation without any problems. Without any issues. I have to point out though Mr Commissioner that a concern was raised at the Board with regards to the structure, which at the time would then entail just two individuals. The CEO and the CFO. If I recall, my concern at the time was the span of control and the concentration of power
20 within the two individuals, however the Board agreed at the time that this was going to be a test case that was going to be reviewed on an annual basis and if it does not work, then the structure without the two positions did not work, the Board would then be able to review and factor something else.

MR EMMANUEL LEDIGA: Ja, linked to that question is the question of the structures or the model. The operating model. The structure is pretty centralised within the PIC.

You know, with no Chinese walls in many ways. Do you still think that the model works? You know, within the PIC. The operating model. Do you have any views on that?

MS DUDU HLATSHWAYO: We as a Board now, I think as a collective, we now understand the difficulties of having a centralised structure. One of those is the Competition Commission issues. In the past we would say there are Chinese walls between the listed and the unlisted. The teams do not work together. However, it has been pointed out to us that indeed it is a problem, but also in the past, PIC has evolved. We are now at R2 trillion, but in the past, we probably were at a certain level. In other
10 words we are a small organisation, so we were able to work around those things. I now believe that the structure is not optimum and obviously a much more decent reliant structure needs to be looked into and indeed I think the Board has looked at a variety of versions of that decentralised model. Some of them were sort of palatable to the Board, but the process is not concluded.

MR EMMANUEL LEDIGA: Finally, you were on the IC Board. You know the Committee. The Investment Committee. There had been a lot media reports about these transactions that you know your Committee passed through and all that. Were you worried about that when you got all these questions and did the Committee do anything about it or even think about re-thinking issues and processes and all that.

20 **MS DUDU HLATSHWAYO**: Mr Commissioner [Intervenes].

MR EMMANUEL LEDIGA: And the link to that is that it appears that the PIC Board does not approve any transactions. I think like R10 billion or so, it is what the management can do.

MS DUDU HLATSHWAYO: Mr Commissioner, if you can just give me two minutes. I anticipated the question last night.

MR EMMANUEL LEDIGA: Oh okay.

MS DUDU HLATSHWAYO: And I prepared.

MS GILL MARCUS: If I can just add while you thinking about it, your sense of your opinion today given all the things that have gone on about the levels of delegation of authority.

ADV JANNIE LUBBE SC: Chair, can I just be excused for a minute. I will be back.

MS DUDU HLATSHWAYO: So Mr Commissioner, if I may continue. The question is, did the Board or the Investment Committee address itself to the concerns that were raised in relation to the Ayo transaction. A direct answer is yes. The Investment
10 Committee, firstly it had to recognise that the Ayo Technology investment was executed within a mandate of management which was the PMC listed mandates. Park that Mr Commissioner. However when in March... We then... In the media, we started to see the media articles coming out on probably the alleged valuation then ballooned. Parties that were not supposed to be in that transaction being named. We then were alerted to the transaction as well and the reason I prepared this write up here is because I wanted to address the narrative that is out here that says... And I think it has been mentioned here in this Committee that the Board did not do anything or rather the Investment Committee never did anything to address these allegations.

I want to say that as early as March 2018, the Board met... Sorry the
20 Investment Committee met to really ask questions from management to say, this transaction... (1) we were questioning why it had not... The Board had not been alerted on that transaction. We are not taking away the delegation of authority from management, but we felt that you know transactions under Sekunjalo, Independent Media, *et cetera et cetera*, those transactions had been mentioned a lot in the media, so we did not want to ignore the fact that they were being questions. Rightfully or

wrongfully, so we thought that when management exactly executed a transaction under that umbrella, the list they would do would notify the Board, given the fact that we did not have delegation of course.

We then asked the Chairman of the Investment Committee Dr Mkhwanazi to write a letter... A seriously harshly worded letter to Dr Dan to really demand answers as to how the transaction was executed, but also to respond to the media allegations that we are now aware of. I have got dates Mr Commissioner, in wanting to prove or demonstrate to the Commission that indeed the Investment Committee addressed itself to these issues. On 24 April the Investment Committee requested management to
10 provide the Committee with a summary of the rationale [Intervenues].

MR EMMANUEL LEDIGA: 2018? Is that 24 April 2018.

MS DUDU HLATSHWAYO: Yes.

MR EMMANUEL LEDIGA: Okay.

MS DUDU HLATSHWAYO: That is not 24 April 2018. We wanted to know the timing of the investment confirming whether the investment was done in line with the delegation of authority of management. On 8 May 2018 there was a further meeting of the Investment Committee to discuss the Ayo transaction. Management in that meeting confirmed the sequence of events which... That sequence has already been mentioned a lot of times here in this Commission. The signing of the subscription agreement, the
20 release of the funds. The meeting of the PMC, *et cetera, et cetera*, but we wanted to know and understand the sequence of those events.

Management confirmed that they utilised their delegation of authority. The Committee raised concerns regarding the BET financials. That were not in place at the time when the transaction was concluded. We also questioned why disbursements were made without conditions precedent being fulfilled. We also questioned why the

put option had not been signed and the implications thereof. That was the meeting, I think I have indicated the date Mr Commissioner. The meeting of [Intervenues].

ADV JANNIE LUBBE SC: 8 May.

MS DUDU HLATSHWAYO: 8 May now, 2018 and there was a further meeting on 23 May 2018. This was a meeting of the Portfolio Management Committee which met and dealt with the questions that had been raised by the Committee and then we had on 30 May, the Investment Committee then deliberated on two submissions. One of those was the report of the internal audit. Remember Mr Commissioner, I made mention earlier on of the finding that had been made by internal audit on the process. So this is
10 when they were presenting that here as well as the report of the listed investment team where they were giving us the sequence of events. How they took place and how the meeting then... The meeting of 20 December 20 [Intervenues].

ADV JANNIE LUBBE SC: 17.

MS DUDU HLATSHWAYO: Is it 17?

ADV JANNIE LUBBE SC: 17.

MS DUDU HLATSHWAYO: *Ja.* The actually approved and ratified the due diligent step that had not been covered. Internally audit had made a finding... Okay, so I have mentioned that Mr Commissioner. The Committee noted this finding and requested that it be recognised and I think I mentioned it earlier in my submission. The Committee
20 further probed the reasons why the BE transaction had been concluded at R1.50 per share shortly before the listing, whilst the PIC transaction was concluded at R43 per share.

Committee wanted disclosure on who the BE parties were and reasons for the steep premium from R1.50 to R43. These are matters that are documented Mr Commissioner as minutes that I was looking into here. The Committee then also... The

transaction team presented the valuation of Ayo, because there was a big question on the valuation itself [Intervenes].

MR EMMANUEL LEDIGA: Can I just stop you there. Let me just ask a question which could truncate this a bit. Which transactions go to the IC in terms of rand amount and which ones remain within the management?

MS DUDU HLATSHWAYO: So, I could verify that, but I think the delegation of authority allows management to execute. It depends whether it is listed or unlisted. For unlisted, anything below R500 million, management will be able to execute, but it is a different scenario completely for listed companies, so but I can verify the thresholds that apply.

10 **MS GILL MARCUS**: I want to take you to a different point and that is 24.2. You there stipulate or you outline what occurred in relation to the resignation and what was said. Do you know if there were minutes of that. I mean recordings of that particular point in your meeting?

MS DUDU HLATSHWAYO: This is a meeting held on 1 February.

MS GILL MARCUS: 24.2. This is the meeting of... Yes it would have been 1 February.

MS DUDU HLATSHWAYO: Yes. We do have meetings [Intervenes]

MS GILL MARCUS: Is there a recording of that?

MS DUDU HLATSHWAYO: I mean minutes and typed recordings of this meeting.

20 **MS GILL MARCUS**: I think Judge, it would be useful to look at the typed recordings of that given the different statements.

ADV JANNIE LUBBE SC: Chairperson, I can confirm that we have already obtained that. It is on a flash drive, but we requested it to be transcribed in a hard copy/.

MS GILL MARCUS: Okay sir. Okay. Thank you.

MS DUDU HLATSHWAYO: Should I continue with your question sir?

MR EMMANUEL LEDIGA: *Ja*, in summary, just to tell us here that what I want to find

out is, did the IC really do its work in summary. Given the Ayo transaction and the others which had been in the media. You know how you were thinking about them.

MS DUDU HLATSHWAYO: I think if I were to take you through this write up that I have got here, it is quite a long write up and it indicates close to 15 minutes of meetings of the IC or more that actually took place to address just the Ayo transaction. So the short answer is yes. They Investment Committee applied its mind on this process, but it acknowledged that the delegation of authority was not the IC delegation of authority. It was the delegation of PMC list.

MR EMMANUEL LEDIGA: Yes

10 **MS GILL MARCUS**: Can I ask that your note be submitted to the evidence leader?

MS DUDU HLATSHWAYO: On this one as well.

MS GILL MARCUS: *Ja*. Yes.

MS DUDU HLATSHWAYO: Yes and therefore Ms Marcus, you were asking a question on the delegation of authority that was applied. It was actually Section 6(a) 6.2 of the delegation of authority because we had to ask that question to say management, which part of the delegation of authority did you apply on this particular transaction and that was the indication.

MS GILL MARCUS: But as a member, if I can just follow up on that. As a Member of the Board and the Investment Committee, are you satisfied with the delegation of
20 authority as it stands and the very limited referral to the Board as a whole that is a consequence of that delegation. Do you think it needs review or given all of the things that have occurred?

MS DUDU HLATSHWAYO: Well this Ayo transaction has opened our eyes and I think the answer is yes. We now know that there may be areas for improvement in the delegation of authority and because we had pin-pointed a big gap in the listed space,

when it comes to what is called the book bills *vis a vis* the portfolio balancing *et cetera*, we now know that there are transactions that by their very nature, it is a [Indistinct] space. You cannot disclose a lot of information and you need to, if you want to participate in that transaction, that has to be entrusted to the team and the team must be able to react within a reasonable amount of time, however we have now become aware also of areas where... Those areas are not so urgent to then just require management to act, let us say willy-nilly and make those decisions, because they can still be taken through a normal process. Given the amount involved in those transactions, so we have actually affected that control if you like. Where then the

10 Investment Committee would have to be informed on a pre-[Indistinct] transaction in book bills because that's just the nature of the business in the listed space and the DOA is work in progress at the moment.

MR EMMANUEL LEDIGA: So are you saying that for the sort of fast track transactions like IPO's, book bills and the rebalancing you are asking them to get the permission from the IC also?

MS DUDU HLATSHWAYO: We now asking them. But also there is another curve ball that's been thrown to us or at us by the GEPF where in the past in the unlisted space the put a cap of to be lent to be executed by the PIC. Now they've actually brought in the listed space also in the to be lent capped to say now that cap applies across the

20 board.

So automatically and by default it means now transactions have to come via. Which then warrants the review of the delegation of authority with immediate effect in fact. I think it's an urgent matter.

MR EMMANUEL LEDIGA: Thank you very much.

CHAIRPERSON: I'm just going to take you back to the arrival of the James Nogu year.

You are talking there about the PIC environment becoming very fearful and stressful and suspicious. Further down you say toxicity and suspicions grew firstly among the board members.

What was that about? I mean suspicions amongst board members what was that all about?

MS DUDU HLATSHWAYO: Commissioner in an environment where there is a lack of trust that's what you get. You get people really looking at each other and wondering is Advocate Lubbe the James Nogu. The environment is toxic. The environment is full of suspicions.

10 I was speaking for myself in making that point say I felt that it was just too much and we had never been in that place before. But you can't pinpoint one particular event that takes place and then you say this one is toxic. Just the general ambience, that's the general atmosphere everywhere.

You meet employees and employees are fearful. They say Dudu who is coming next and you've got no answer to a question like that really because there is a lot being said in corridors. There is gossip mongering etcetera, etcetera so it's just an atmosphere of a lack of trust that I was trying to demonstrate to the Commission.

CHAIRPERSON: Yes no I wondered because I can understand that position amongst employees but I just wondered why should that be a board level as well. But anyway
20 you've answered that question. You mention ...(intervention).

MS DUDU HLATSHWAYO: Maybe to also add Commissioner. You know the information was getting leaked within the board.

CHAIRPERSON: I understand that and then just for clarity. You highlighted the omission in the IO process when it was processed being due diligence not having been done.

Was that the only omission? Was there another omission further up where the subscription certificate was signed before approval by the PMC?

MS DUDU HLATSHWAYO: So when we check the issue of the signing of the subscription the answer that we got from management was that it's in the nature of the listed space that in order to close the deal you would sign the subscription and then go back and gratify.

I've got then minutes because I checked the minutes in this regards. That's the answer that we were provided with by management when the question was asked to say why was the subscription agreement signed before the actual approval etcetera,
10 etcetera, etcetera.

But we were provided with answers to a variety of questions that we had at that time. So but in hindsight Commissioner and now wanting to really make sure that the processes are up to scratch and they are very sound tight.

We wanting to make sure that the team needs to be able to follow certain processes especially in pre IPO situations which are not ...(indistinct). Which IO technology was one of those. But of course the delegation of authority allowed that situation hence my comment earlier to say we now need to go back and reengineer the whole environment and the fact that now we looking at a ...(indistinct) model it does touch on the DOA as well because you now need to ...(indistinct) the DOA to support a
20 decentralised model.

So there is a lot of work that needs to be done on DOA itself. But I'm sure whether that was the only omission. There could have been others Commissioner – other omissions in the process but the key one was the fact that obviously that step was not covered.

Not covered by the minutes and the rectification process that ensued and it's

recorded.

CHAIRPERSON: Did you know about the rectification pro – whether there was a rectification process or is it something that came up here in the IO matter?

MS DUDU HLATSHWAYO: Did we know about it?

CHAIRPERSON: Yes did you know that there was such a process that you know the CEO for instance could sign off the subscription certificate before approval by the PIC?

MS DUDU HLATSHWAYO: So the IO transaction is the one that surfaced all these things. Prior to that I think it was almost hidden to us. It was in the delegation obviously but I think it was not so visible to the committees and maybe to the board as

10 well.

When it was surfaced it was when the internal audit team then said there was a misstep. There was a step that was not fulfilled and when the second step was carried it never reflected on the fact that the first step was not regularised.

We then said given the delegation of authority the team – the executive team needs to go back to that meeting and regularise these matters.

CHAIRPERSON: Yes lastly areas of employment. Did the board have any authority to suspend a junior official like Mr Siyale?

MS DUDU HLATSHWAYO: Ordinarily no Commissioner and that question was asked as to the board's intervention to those levels which are management levels. The
20 answer to the question was these are employees that have brought us to where we are now where we have dispersed 4.3-billion and therefore we need to act.

But also remember Dr Matjila is now gone. He is out. The person that's in the position in a way – I can't remember whether she was implicated – Matshepo?

ADV JANNIE LUBBE SC: Yes she was.

MS DUDU HLATSHWAYO: Matshepo who was the acting CEO was implicated in the

process. So the board could not request her to then act and execute. Be that as it may Commissioner I still believe that at least the head of HR should have been the one to execute and not the board to then execute on the part of Siyane.

With regards to Mr Madavo I think the board was well placed. If the board felt that's what it needed to do to then execute on the suspension given that the CEO was implicated in the matter.

MR EMMANUEL LEDIGA: I got a question about the board. Sort of it's part of terms of reference. The skill set of the board – the skills that you know the board has. This will be done for the current board and possibly help future boards about what kind of skills does the PIC have.

Do you have any views about the skills of the current board or differently you could say you could look at I would think these are the skills that the future board you know could look at or so.

You can choose whichever way you want to answer that. But I just want to glean out the skills you now that PIC needs. The board you know – the board of the PIC needs.

MS DUDU HLATSHWAYO: The skills?

MR EMMANUEL LEDIGA: Skills, qualifications. You know the PIC is a very investment driven organisation focussed on returns you know and other things.

MS DUDU HLATSHWAYO: Ja. I think given the fact that we now have lost a few board members when the Minister then reappoints his got an opportunity to bring those skills.

But in all intents and purposes I never felt that there was a gap in skills either in financial matters or in asset management areas, legal or governance. I felt that the board – at the time when the board was still intact that we had a solid board. People

would view very strongly and let me tell you Commissioner for the very first time we had a board that would tear every transaction into pieces.

Understand these were people who would read and prepare and ask questions. So I never felt a skills gap. I never felt that there was a gap in the first place but I felt that now that the board has been eroded with certain individuals resigning obviously the board has now diminished.

MR EMMANUEL LEDIGA: Thank you very much.

CHAIRPERSON: At last the questions have come to an end. Thank you very much Ms Hlatshwayo for availing yourself and coming here to testify before us. I know that it
10 wasn't an easy decision that you took but you took it nonetheless and thank you so much for it.

MS DUDU HLATSHWAYO: Pleasure Commissioner.

CHAIRPERSON: We know more now that you have testified then we did before. Thank you very much.

ADV JANNIE LUBBE SC: Chair can I ask that the adjournment be taken till 14:30. I have a bit of a logistical problem with a witness. It would make my life easier if we can start at 14:30.

CHAIRPERSON: It's already there. It's already passed 13:30 so we will come back at 14:30. We'll adjourn until 14:30 then thank you.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

ADV JANNIE LUBBE SC: Thank you Chair. The next witness is Ms Petru Decker. Can she take the prescribed oath?

CHAIRPERSON: Your full names are Petru?

WITNESS: Petronella Andrina Dekker.

CHAIRPERSON: Petronella?

WITNESS: Yes Sir.

CHAIRPERSON: Decker, is it D E K K or D E C K?

WITNESS: D E K K E R.

CHAIRPERSON: Say that?

WITNESS: K K E R sir.

CHAIRPERSON: K K. Do you have any objection to taking the prescribed oath?

WITNESS: (inaudible)

CHAIRPERSON: You do not mind swearing ...(intervention)

10 **WITNESS**: No.

CHAIRPERSON: That you are going to tell us the truth?

WITNESS: Yes I will tell the truth.

CHAIRPERSON: So do you swear that the evidence you are about to give will be the truth, the whole truth and nothing but the truth. Raise your right hand and say: So help me God.

WITNESS: So help me God.

CHAIRPERSON: Thank you. You may be seated.

ADV JANNIE LUBBE SC: Thank you Chair. Ms Dekker can you please before we start with your evidence tell the Commissioner who you are? Where you were born?

20 Studied? Briefly.

MS PETRONELLA DEKKER: Chairperson as mentioned before, I am Petronella Adrina Dekker. I matriculated at the Hoërskool Hercules in Pretoria West. After that I studied my BComm Accounting at the University of Pretoria. Later on I did a BComm in Honours Business Management at UNISA.

And then the last degree I did was my Masters in Business Leadership which

I did at The School of Business Leadership UNISA. I started my career originally as a bursary student at Coopers and Lybrand at the time. And from there on moved to the Auditor General.

ADV JANNIE LUBBE SC: Are they now PWC? Price, Waterhouse, Cooper?

MS PETRONELLA DEKKER: Yes Sir.

ADV JANNIE LUBBE SC: And from there you went to the Auditor General?

MS PETRONELLA DEKKER: I went to the Auditor General. I spent approximately three years at the Auditor General and I then went to at that stage it was Iscor Pension Fund. It is now called Cores(?) Capital and I think they merged with Sanlam. From
10 there I went to Rand Merchant Bank Asset Management. And then to the Public Investment Corporation. I started my career at the Public Investment Corporation on the 1st of June as the Manager Investment Administration.

ADV JANNIE LUBBE SC: Thank you. You can now – you have prepared – we have prepared a written statement. You can now start, but go a bit slower and you can start on paragraph 1 of that statement.

MS PETRONELLA DEKKER: Chair before I start with the statement, I just want to mention that when I started at the Public Investment Corporation, the top structure consisted of the Chief Executive Officer, the Chief Investment Officer and the Chief Operating Officer. And the position of Chief Financial Officer as well as the position in
20 which I started, both reported to the Chief Operating Officer. So I started my career at the Public Investment Corporation on the 1st of June, as Manager Investment Administration. In that position I was mainly responsible for investment administration, as well as system implementation.

On the 1st of October 2009 I was promoted to General Manager Corporate Services. In this role I was responsible for Investment Administration, but also Human

Resources, Legal Services, a department which we called Monitoring and Workout and Information Technology Management. Later on the Monitoring and Workout function was moved away from the Operations side of the business and reported directly into the Investment side of the business.

ADV JANNIE LUBBE SC: Can I just interrupt you there? In 2009 who was the CEO then at the PIC?

MS PETRONELLA DEKKER: In 2009, it was I think it was still Brian Molefe.

ADV JANNIE LUBBE SC: Right. Later he was followed by Mr Masilela?

MS PETRONELLA DEKKER: He was followed by Elias Masilela.

10 **ADV JANNIE LUBBE SC:** And can you recall the Chief or the head of IT at the time?

MS PETRONELLA DEKKER: The head of – the Chief Investment Officer at the time was Dr Daniel Matjila. The head of IT at the time I think was - shu.

ADV JANNIE LUBBE SC: It is not that important, we can come back to that.

MS PETRONELLA DEKKER: Mr Baloi.

ADV JANNIE LUBBE SC: Right. On 01 April I was – you say I was appointed as Chief Operating Officer?

MS PETRONELLA DEKKER: That is correct.

ADV JANNIE LUBBE SC: Can you just explain what exactly was the role of the Chief Operating Officer?

20 **MS PETRONELLA DEKKER:** The Chief Operating Officer was responsible for all the functions that I did as part of Corporate Services. But it also included the role of Stakeholder Relations, Facilities Management, Property Operations and Company Secretariat.

ADV JANNIE LUBBE SC: Alright.

MS PETRONELLA DEKKER: Can I proceed?

ADV JANNIE LUBBE SC: Yes.

MS PETRONELLA DEKKER: Later on the PIC went through a restructuring process and on 01 April 2015 I was allocated to the role of Executive Head, Corporate Services. In this role I was only responsible for Corporate Services, Facilities Management, Stakeholder Relations Management and Record Management.

ADV JANNIE LUBBE SC: You were not now the position of CEO? Was it still there or is it gone?

MS PETRONELLA DEKKER: The position of CE – well the position of COO was gone.

ADV JANNIE LUBBE SC: Yes.

10 **MS PETRONELLA DEKKER:** It did not exist anymore.

ADV JANNIE LUBBE SC: Yes. What happened to that position? Was it just collapsed or what happened to it?

MS PETRONELLA DEKKER: Sir, I am not sure. It was just never filled again.

ADV JANNIE LUBBE SC: Alright.

MS PETRONELLA DEKKER: When I was appointed as Chief Operating Officer it was explained to me that the role would not be part of Executive Directors positions which it was before in terms of the MOI. And the reason provided for that was that based on King 3(?) recommendations and National Treasury recommendations, they preferred that the Chief Financial Officer also form part of the Executive Directors. And it was not
20 ideal to increase the number of Executive Directors and in the process decrease the number of Non-Executive Directors and not make sense to me and I accepted it as is.

During my tenure as Chief Operating Officer a decision was taken that the Human Resources and Information Technology Management roles, as well as Company Secretariat functions should report directly to the Chief Executive Officer. At that stage it was explained that the span of control for the Chief Operating Officer role was too

wide and we tried to divide the responsibilities. Investment Administration was also subsequently moved into the Chief Financial Officer position and then all this moved did not happen simultaneously but over a period of time. During ...(intervention)

ADV JANNIE LUBBE SC: Sorry, can I interrupt? It would appear to me and please correct me if I am wrong, that there was an increase of power up to the CEO and CFO in this organisation.

MS PETRONELLA DEKKER: Sir that is correct, but it was more evident in 2014 when the final restructuring took place. And they decided not – Dr Matjila was appointed as Chief Executive Officer and they decided not to fill the Chief Investment Officer.

10 **ADV JANNIE LUBBE SC:** Please continue.

MS PETRONELLA DEKKER: Good. During the restructuring process, restructuring process in 2014/15 I was first informed by Ms More that the new role I would occupy Executive Head Corporate Services would not longer form part of Exco and the grade of the position will be adjusted to a lower grade on a E level. But by the time the restructuring was finalised and formally communicated, the Executive Head Corporate Services still formed part of Exco and the grading remained on an F level.

During the same restructuring process it was also decided not to fill the Chief Investment Officer position and that top management structure will consist of the Chief Executive Officer and the Chief Financial Officer roles only. Exco was expanded from
20 six positions to eleven positions and now also including the Heads of Department.

And the Heads of the Department is on the investment side. And this was implemented on the 1st of April 2015. As far as I know the MOI still provided for a Chief Executive Officer, Chief Investment Officer, Chief Financial Officer and a Chief Operating Officer. I don't think that has been changed.

ADV JANNIE LUBBE SC: Well you can accept it as not being changed. It was – the

evidence is before the Commissioner, it is still the same. So the bottom line is the restructuring was not in line with the MOI, is that correct?

MS PETRONELLA DEKKER: Yes Sir.

ADV JANNIE LUBBE SC: Please continue.

MS PETRONELLA DEKKER: Since 2014 I found the working environment at the PIC to be hostile and inefficient. Meeting agendas were amended at the start of the meeting and documents for approval could easily stand over for three Exco meetings before it was attended to. Agenda items which did not form part of the original pack and which we could not prepare for in advance were added to some of the agendas. If

10 I can just mention a few examples. Based on the recommendation from the State Law Advisor, the PIC had to implement a file plan and a Records Management Policy.

ADV JANNIE LUBBE SC: Can you just briefly stop there and explain to the Commission what is meant by that?

MS PETRONELLA DEKKER: A File Plan is a specific structure in which documents should be filed so that it can be easily traced. What this determined as well is that there is a certain period of time in which you need to finalise the documents and send it to a Record Management area where it can be safeguarded and stored. But before that was fully implemented, I already left the PIC.

ADV JANNIE LUBBE SC: You mentioned that you had to submit the same approval
20 documents numerous times to Exco? Before I could proceed with the project, implementation, etcetera. What happened there?

MS PETRONELLA DEKKER: Sir I think that the Records Management Policy was not a priority for, for all the Managers at that stage. It was they saw it as an admin burden and they was not willing, they were not willing to implement the policy and adhere to the policy at that stage and that is why it made it difficult to implement.

ADV JANNIE LUBBE SC: But this was a recommendation from the State Law Advisor?

MS PETRONELLA DEKKER: Yes Sir.

ADV JANNIE LUBBE SC: That had to be implemented?

MS PETRONELLA DEKKER: Yes. At the end it was approved. And it was implemented, but it was a tedious process to get there.

ADV JANNIE LUBBE SC: Then ...(intervention)

MR FRANS LEKUBO: Just ...(intervention)

ADV JANNIE LUBBE SC: Sorry.

10 **MR FRANS LEKUBO:** Just a question. In the fourth paragraph, or ja. The fifth paragraph, the one from the top. The fifth paragraph. You say that meeting agendas were amended and all that. Which committees were you serving at?

MS PETRONELLA DEKKER: I was serving on the Exco.

MR FRANS LEKUBO: The Exco. Ja, Executive.

MS PETRONELLA DEKKER: Ja and that is specifically the Exco that I am referring to there Sir.

MR FRANS LEKUBO: Oh okay, alright. Thanks.

ADV JANNIE LUBBE SC: Thank you.

20 **MS PETRONELLA DEKKER:** Okay. Another incident that we had is Exco approved the appointment of PWC to assist with the Restructuring Organisational Redevelopment Process.

ADV JANNIE LUBBE SC: Sorry can you just stop there? You referred to REM Channel, can you just explain to the Commission what is that?

MS PETRONELLA DEKKER: Okay, Commissioner the PIC adopted what we call the Patterson Classic Grading System. And REM Channel was a system, it is a

scientifically designed system that determines the grade of the position. So when you grade a certain position, you not supposed to do it by taking a certain income, income into mind. You just think of the role and what is the output that you need from this role. So this system will guide you in terms of the questions and then it gives you a grading at the end of the process.

So if you use the system correctly, it is not easily – easy to manipulate the grades. And this makes it possible that Company A can grade a position and Company B can grade a similar position and you will get a similar grade, so that you can properly benchmark it.

10 **ADV JANNIE LUBBE SC:** Is it, is it a well-recognised scientific and internationally accepted program?

MS PETRONELLA DEKKER: It is Sir and it is currently managed by – it is called REM Channel but it is managed by PWC. So when we appointed the PWC consultants, their role was to assist the Line Managers with job descriptions, the whole job grading process. The reason for that is you need to undergo training before you can use the system. They said you must be certified before you can use the system and at that stage I only had a few people in the HR Department who was certified to use the system.

20 So we brought in more consultants to do the process. But the process was halfway through and then the Chief Investment Officer at the time and the Chief Financial Officer at the time was not comfortable with the grades that we determined through this process. And through the system they called it a black box and they felt that Exco is in a better position and we know better what we want, instead of this consultants and the system. And the project was stopped.

ADV JANNIE LUBBE SC: Can I just interrupt again? You say the Chief Investment

Officer and the Chief Financial Officer was not happy with this process. Who – can you just put names to them?

MS PETRONELLA DEKKER: The Chief Investment Officer at the time was Dr Daniel Matjila and the Chief Financial Officer at the time was Matshepo More.

ADV JANNIE LUBBE SC: Okay, thank you.

MS PETRONELLA DEKKER: So they decided that the grading of the positions will then be done by Exco themselves. But we did it through discussions in different Exco meetings, instead of through the REM Channel systems.

ADV JANNIE LUBBE SC: What happened to PWC?

10 **MS PETRONELLA DEKKER**: They were asked to leave the premises, they were no – well the impression was that they didn't do a proper job and they were removed from the premises.

MR FRANS LEKUBO: Question. Do you know by any chance currently where does Corporate Services report to? I mean do we still have Corporate Services at the PIC?

MS PETRONELLA DEKKER: Chair, I am sure that we should still have Corporate Services at the PIC, but it has been three years since I left, so I have got no idea where it reports into.

MR FRANS LEKUBO: And you would not even know the level, whether it is E, level E or something else?

20 **MS PETRONELLA DEKKER**: I have got no idea Sir.

MR FRANS LEKUBO: Okay. Alright, we will find. I am sure we will find out.

MS PETRONELLA DEKKER: Okay. And then another incident and I apologise that it is not on my statement. When, when we filter the position of Operations Manager, Property Operations Managers, even before we had the interviews Dr Dan called me and asked me to appoint Nozipho Mazibuko at the time. I then asked him that I still –

because both the candidates that we interviewed were internal candidates, so I feel that I still need to go through the interview process and then we will look at the results thereafter.

I went back to him afterwards and I said that I felt that Mr Kwabena Boateng's qualifications, his experience and the way he prepared for the interview was a lot better and that he's actually the successful candidate. I then proceeded to appoint him, but not long after that they demoted the grade of position to a grade lower than the original position he occupied. So instead of a promotion, he got a demotion. So that made it difficult to work with the people.

10 **ADV JANNIE LUBBE SC**: Just go a bit slower.

MR FRANS LEKUBO: Sorry, just speak slowly. Which position?

ADV JANNIE LUBBE SC: Just (inaudible).

MS PETRONELLA DEKKER: Okay.

MR FRANS LEKUBO: Just speak slowly and repeat that part.

MS PETRONELLA DEKKER: Sir another example that I wanted to mention why I am saying it was an inefficient process at the PIC at that stage, was for example the appointment of the Property Operations Manager.

MR FRANS LEKUBO: Okay.

20 **MS PETRONELLA DEKKER**: Before the interview process started Dr Dan approached me and he gave me a certain candidate, but he said he will appreciate it if I can appoint that person. We then continued with the proper process of interviewing etcetera and I went back to him and I said, because both of these people that applied for the position were internal candidates, I went back and I said that I felt that the other candidate Mr Boateng was actually a better candidate. His qualifications were better. His experience were better and he was better prepared for the interview and that I'd prefer to appoint

him, rather than the lady recommended by Dr Dan.

ADV JANNIE LUBBE SC: What was his reaction to your proposal?

MS PETRONELLA DEKKER: He did not accept it immediately, but after I said that I will bring the documents to him to sign off, he then said, no it is fine it is my role, I can proceed and I appoint whoever I think is the best candidate. And I did appoint Mr Boateng. But then not long after that as part of this grading process, the position that I appointed him into they changed the grade of that position. And it was actually lower as the original position that he occupied within the PIC before he applied for the position. So in the process he was demoted instead of promoted.

10 What also happened is you need to be – well at that stage you had to be on a D level to participate in the Long-term Incentive Scheme. What happened there is that he was demoted lower than that so he even lost Long-term Incentive Scheme. There were also numerous whistle-blower cases against me where I needed to defend myself. With each of these cases I gave my full cooperation and was able to prove that the allegations were not true.

ADV JANNIE LUBBE SC: What I want to find out from you, these numerous whistle-blower cases, what was your experience? Was it – was it framed, was it in retaliation of something you said or did? Or how did you experience this?

20 **MS PETRONELLA DEKKER:** Chairperson I experienced it as very hostile. It was difficult because you still needed to try and meet your objectives, but in the back you still needed to try and defend yourselves. For me it was a bit of a waste of time and it was hostile like I said.

ADV JANNIE LUBBE SC: Can you mention the two examples?

MS PETRONELLA DEKKER: I never saw the whistle-blower documents, but based on the interviews and discussions that we had with the consultants that lead the process at

that stage, the one was they felt I appointed the Facilities Manager and it was favouritism because I worked before with his wife. I could prove that I actually excused myself from the interviews and at that stage I did declare that I worked with his wife before. And I did not attend the interview that Mr Jacobs was in. And I also did not sign off the recruitment documents. Based on that declaration and Dr Dan signed it off on my behalf.

ADV JANNIE LUBBE SC: And did that go away then?

MS PETRONELLA DEKKER: Yes it went away. The other case was actually a broader case where both me and Mr Masilela was implicated. I am not sure if there
10 were more people implicated in the process. But based on the questions they asked me, it was clear that they thought I did Mr Masilela a favour by giving a high salary to his personal assistant at that stage in return for some other favour. But that also, nothing came from that case as well.

ADV JANNIE LUBBE SC: And the last one, you can mention is there is a lady still at the PIC called Mardé Van Wyk? What was the situation there?

MS PETRONELLA DEKKER: That case never became a formal whistle-blower case. But at some stage there was a concern raised that her appointment as well as her salary increases and everything was done because we were family. I can declare that I am not family of Ms Van Wyk.

20 **ADV JANNIE LUBBE SC:** What was your general feel of the situation at that stage in the PIC of employees not towing the line?

MS PETRONELLA DEKKER: Just explain the question again please sir?

ADV JANNIE LUBBE SC: If you or what was the position if you don't agree with the top structure of the PIC? If you go against their wishes, what will happen to you?

MS PETRONELLA DEKKER: Well if you went against them, your work environment

will definitely be a very difficult environment and in cases functions might be removed from your role.

ADV JANNIE LUBBE SC: Is that what happened to you?

MS PETRONELLA DEKKER: Yes Sir.

ADV JANNIE LUBBE SC: Do you know was there a same procedure with Mr Masilela, the former CEO?

MS PETRONELLA DEKKER: I know, I know he also went through a very rough time and had to defend himself constantly. I did not see the documents or the outcome of the whistle-blower case, so I am not, I am not in a position to answer that.

10 **ADV JANNIE LUBBE SC**: We will call Mr Masilela in due course, but can you deal then with the last, the second last paragraph in your statement where you reached the point.

MS PETRONELLA DEKKER: I reached a point where my values and priorities differed from those of my Direct Line Manager, it was the Chief Financial Officer at the time and it was Matshepo More. I raised these with the Chief Executive Officer, but nothing came from that. Exco members would raise concerns regarding Exco decisions after a Exco meeting.

20 And when I asked them why didn't they raise that in the meeting, they then said that it would career limiting and they cant go against Dr Dan and Matsepo at that stage. I realised that my reputation is part of a dysfunctional Exco is at risk. And the reason I am saying that Sir is because the minutes will say that Exco approved a certain decision. It will not say that Petru objected, or like that. So if something happened later on, my reputation would be at stake.

And I then decided to resign on the 18th of April 2016. My last working day was on the 18th of May 2016. Due to my resignation I forfeited a long-term incentive

allocation that was payable on the 31st of December 2016. And I also could not claim UIF. So I was unemployed for a period of seven months before I found another job. And I did not claim any remuneration or a settlement package from the PIC.

MS GILL MARCUS: Thank you very much. Just a question of being unemployed while you looked for a job for seven months. Was that something that you felt there might have been some – a question that as you applied some people with reference would not support you or was it just the general way in which unemployment – your efforts to get employment at the time was in an environment in which it was difficult? Did you feel there were obstacles being placed in the way?

10 **MS PETRONELLA DEKKER**: Chairperson I – I wondered about that as well. I cannot tell you what sort of recommendations they received, but I was concerned about that. Other reasons that I received is that I was already on a very high, higher role before and I was over-qualified.

MR FRANS LEKUBO: Question. I just wanted to check. Who were the people you would say were very difficult for you or they give you, you know a hard time during your time there? Names?

MS PETRONELLA DEKKER: Chairperson, honestly only Matshepo More. I could still deal with Dr Matjila and have discussions with him. It was difficult with Ms More.

MR FRANS LEKUBO: In which way? Or how difficult was it?

20 **MS PETRONELLA DEKKER**: Well one of the examples because I reported directly to her, she wasn't, she was not satisfied with the service I delivered. For me to improve I had to understand exactly what my Manager expected of me, but it was really difficult to get a one on one meeting with her to discuss this. When we – when I left the PIC she did say that she couldn't trust me and there is no relationship between us.

MR FRANS LEKUBO: Okay. And finally in terms of you saying you couldn't get your

package, was it by choice or you couldn't access the package somehow?

MS PETRONELLA DEKKER: Chair are you referring to the Long-term Incentive Package?

MR FRANS LEKUBO: Yes. I think it is I did not claim my settlement package and you know from the PIC. Was it by choice? Or?

MS PETRONELLA DEKKER: It was by choice sir, but there is no policy or anything that allows you to get a settlement package. I know of other members at the same time that actually fought the PIC for a settlement package. I decided not to.

ADV JANNIE LUBBE SC: Just another matter. Before the changes in the structure and before you were appointed as the CEO, was it as I understand it correctly that previously the CFO reported to the CEO of the PIC?

MS PETRONELLA DEKKER: Chair before I was appointed the CFO position reported into the COO position, the Chief Operating Officer position. And the Chief Operating Officer at that stage was Albertinah Kekana. Before I was appointed as Chief Operating Officer the structure was already amended to bring the CFO to report directly to the Chief Executive Officer.

ADV JANNIE LUBBE SC: And lastly, before you left, the Head of IT was a certain Mr Loyanda Ntuali(?)?

MS PETRONELLA DEKKER: That is correct.

20 **ADV JANNIE LUBBE SC**: What happened to him?

MS PETRONELLA DEKKER: Chair again I did not see the documents, but I understood that there was a investigation against him. One was for procurement fraud, something else was sexual harassment case, but as I see I did not see any of the documents and we were not allowed to talk about it.

ADV JANNIE LUBBE SC: What happened to him? Did he resign? Was he fired?

Can you recall?

MS PETRONELLA DEKKER: I left before his case was finalised, so I am not sure if he, if he resigned but he definitely was worked out there.

ADV JANNIE LUBBE SC: Thank you. Mr Commissioner that is the evidence of the this witness.

CHAIRPERSON: Yes. Thank you Ms Dekker. Thank you very much. Thank you for coming or taking the decision to come and testify before us. Thank you.

MS PETRONELLA DEKKER: Thank you Chair.

ADV JANNIE LUBBE SC: Thank you, can the witness be excused?

10 **CHAIRPERSON**: You are excused.

ADV JANNIE LUBBE SC: Mr Commissioner I have one more witness, I am recalling Ms Louw, the Acting Company Secretary. She is present. Thank you Wilma you know what to do.

CHAIRPERSON: You know what the position is with taking the oath?

MS WILMA LOUW: That's right.

CHAIRPERSON: Just raise your right hand and say so help me God.

MS WILMA LOUW: So help me God.

CHAIRPERSON: Thank you very much.

20 **ADV JANNIE LUBBE SC**: Thank you Chair. Ms Louw is it correct that you were informed last week by the CIPC of certain actions they planning to take?

MS WILMA LOUW: Yes it's correct.

ADV JANNIE LUBBE SC: Can you explain to the Commission what exactly this entails?

MS WILMA LOUW: Yes on the 21st February the CIPC issued the PIC with a compliance notice in terms of Section 187(2)b of the Company's Act 71 as amended.

In terms of the compliance notice the PIC is required to recover the capital investment of R4.3 billion made to IO technology investments within 15 days from the date of the compliance notice to provide the Commissioner of the CIPC with written confirmation that the PIC has recovered these funds.

PIC has to recover the interest that maybe accrued on the capital amount within six months from the date of the compliance notice and provide the Commissioner of the CIPC with written confirmation within 30 business days from the date of the notice that we have recovered the accrued interest.

The compliance notice deals with its – in terms of the IO transaction where
10 the CIPC believes that the PIC board of directors did not act in good faith and within their fiduciary duties by making this investment within IO. Basically because IO if they looked at the annual return which IO filed with them and compared it with their annual financial statements IO there is discrepancies.

If I can mention for instance in 2003 till 2005 IO they were then called Sekhunjalo Healthcare. Did not pay any – they did not have any turnover. They filed a turnover of zero and then in 2006 they filed a turnover of R12-million.

Then from 2007 to 2010 it was again a turnover of zero. In 2011 they filed a turnover of R2.4-million and in 2012 again zero turnover. In 2013 and 2014 they filed turnovers of R436 000 and R5.7-million respectively and then they changed their name
20 to Sekhunjalo Technology Solutions.

Then they filed in 2015 a turnover of R7.8-million. 2016 a turnover of R6.6-million and again 2017 the exact same amount of R6.6-million. That was when they changed their name to IO in 2017.

In 2018 IO filed a turnover of R82.7-million but what they've also said that the 2017 financial statements of IO shows that the R6.6-million is incorrect because

their annual turnover in fact was R50-million and not R66-million.

Now what they said PIC board failed in their fiduciary duties is because their did not obtain these information from CIPC which is publicly available to State owned entities and thereby they put the PIC as a State owned entity in jeopardy as well as the reputation of the GEPEF.

This notice came at a time when PIC has already instructed its lawyers to attend to the IO matter and the notice was immediately forwarded to our lawyers to attend to it and to assist PIC in drafting a response to CIPC.

The lawyers are working on the response and the latest correspondence was
10 exchanged between them and the IO attorneys. The attorneys asked me not to mention anything more in relation to the IO transaction as it may jeopardize PIC strategy and the attorneys of record is Gwina Attorneys who are based in Sandton.

CHAIRPERSON: How do you spell that?

MS WILMA LOUW: G-w-i-n-a. Thank you sir.

ADV JANNIE LUBBE SC: That is the evidence Mr Commissioner, if there is any questions?

MR EMMANUEL LEDIGA: Can you name the section – you know you said it's Section 187(2) – point 2b ...(indistinct). What is the name of the section in the Company's Act?

MS WILMA LOUW: Sir I don't have the Company's Act with me.

20 **MR EMMANUEL LEDIGA:** What is it called? You know it could be – what is it called?

MS WILMA LOUW: That I will have to confirm with you sir but it is – let me just see in this one. It's Section 171 and 172. All of that deals with the takeover panel and the – I can't see exactly what it is.

MR EMMANUEL LEDIGA: Okay no I'm sure we'll find but you say the main section is 187, is that ...(intervention).

MS WILMA LOUW: Yes 187(2)b.

MR EMMANUEL LEDIGA: (2)b?

MS WILMA LOUW: Yes sir.

MR EMMANUEL LEDIGA: Okay alright, thanks. Thanks I'm done.

CHAIRPERSON: Would you be in a position to keep us updated with regard to what happens hereafter?

MS WILMA LOUW: Yes we can sir.

CHAIRPERSON: Alright.

MS WILMA LOUW: And what I can perhaps mention the notice was issued in terms of
10 Section 187. The Commission states that the board has contravened Section 76(3)a, b
and c of the Company's Act. Section 76(3)a, b and c.

CHAIRPERSON: Yes thank you, you're excused.

ADV JANNIE LUBBE SC: Thank you. Commissioner that is the business for today
unfortunately.

CHAIRPERSON: An indication tomorrow?

ADV JANNIE LUBBE SC: We should start at 10:00 and we will hopefully finish before
12:00.

CHAIRPERSON: Before 12:00?

ADV JANNIE LUBBE SC: Yes.

20 **CHAIRPERSON:** How many witnesses ...(intervention).

ADV JANNIE LUBBE SC: Just one witness.

CHAIRPERSON: Just one witness ...(indistinct) tomorrow. Yes thank you we'll adjourn
then until 10 o'clock tomorrow morning.

INQUIRY ADJOURNS TO 27 FEBRUARY 2019