

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

TSHWANE, PRETORIA

10

5 MARCH 2019

DAY 11

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PROCEEDINGS HELD ON 5 MARCH 2019

CHAIRPERSON: Good morning, morning everybody.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner.

CHAIRPERSON: Could we just make sure that cell phones and two-way radios are switched off please. Yes?

ADV JANNIE LUBBE SC: Mr Commissioner we are ready to proceed. My next witness is Mr Luyanda Ntuane, he can take the oath.

CHAIRPERSON: Good morning Sir.

MR LUYANDA NTUANE: Good morning Mr Commissioner.

10 **CHAIRPERSON:** Can you just give us your full names please?

MR LUYANDA NTUANE: Luyanda Lethlaba Pudi Ntuane.

CHAIRPERSON: I didn't get the second one, Luyanda?

MR LUYANDA NTUANE: Lethlaba Pudi.

CHAIRPERSON: No, no I can't hear. P-U?

MR LUYANDA NTUANE: P-U-D-I.

CHAIRPERSON: P-U-D-I?

MR LUYANDA NTUANE: Yes.

CHAIRPERSON: How are you?

MR LUYANDA NTUANE: I'm okay thank you.

20 **CHAIRPERSON:** You well?

MR LUYANDA NTUANE: I'm okay thank you Sir.

CHAIRPERSON: Good. I hope you don't have any objections to taking the prescribed oath?

MR LUYANDA NTUANE: No objections.

CHAIRPERSON: Yes do you swear that the evidence you're about to give will be the

truth, the whole truth, nothing but the truth, raise your right hand and say so help me God.

MR LUYANDA NTUANE: So help me God.

CHAIRPERSON: Thank you, you may be seated.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Mr Ntuane you have prepared a written statement for the benefit of the Commission, can I please ask you to start your evidence on page 1 paragraph 1.

MR LUYANDA NTUANE: Thank you Mr Commissioner. By way of introduction I'm an adult male I was employed by the PIC from December 2012 and left the employ of the
10 PIC in May 2016. My initial appointment was in the role of Chief Technology Officer which was a new role within the PIC and after the restructuring during the 2015 calendar year my title was changed to Executive Head Information Technology. I have to a limited extent being following the statements that have been made in the Commission largely through the media coverage and it is part of the reason why I've agreed to come and give my version of events and experiences at the PIC.

By way of introduction I'd like to submit information of my educational background and professional background and take you through a summary of my experiences during my tenure at the PIC and put on record the circumstances under which I left the PIC and I've submitted as well documents to support the circumstances.
20 From an educational perspective I completed ... (intervention)

MS GILL MARCUS: Sorry can I just interrupt you and I'm sorry to do that, I just wanted some clarity and obviously it is something perhaps evidence leader you can look at, among our documents is your mutual separation agreement and one of the clauses in it is confidentiality. How does that impact on you presenting it and dealing with it at this hearing, I mean I don't want there to be jeopardy that we have for you in any form, it's

annexure E?

ADV JANNIE LUBBE SC: Mr Commissioner perhaps I can deal with that, I considered it, clause 9 reads that:

10 “It is a material term of this agreement that the parties maintain the confidentiality of the contents of this agreement as well as the circumstances leading up to this agreement. The parties undertaken not to disclose the terms of this agreement to any third party in the absence of the written permission of the other party save where such disclosure is required to enforce the provisions of this agreement or to any person who is required in law to know the contents of such agreement or in any dispute concerning this agreement or its conclusion.”

Now in terms of the terms of reference of this Commission this Commission is in law entitled to enquire into these separation agreements. So the confidentiality clause is not applicable to this Commission in my respectful submission.

CHAIRPERSON: It might be so for the Commission but, and when I say the Commission I mean the three of us and you as the legal team but what about the public?

20 **ADV JANNIE LUBBE SC:** Mr Commissioner in terms of the proclamation the hearing's supposed to be in public and it's public knowledge that the other witness who's coming to testify later also had this confidentiality agreement, it's all over the press and it's been reported in this Commission about the amount involved in the separation agreement so in my respectful submission the confidentiality clause is out of the window.

MR EMMANUEL LEDIGA: Yes in terms of contracts generally they say that if a court

of law would want some contents you know they can get them so a commission is like a court of law so this documents should be public.

ADV JANNIE LUBBE SC: I have no objection Mr Commissioner if you want to initially make a ruling pending further argument that this must be treated as a document confidential to the Commission and not to be put out in the public or to the media.

CHAIRPERSON: Well has the statement not been disseminated by now?

ADV JANNIE LUBBE SC: Not yet to the media.

CHAIRPERSON: Mr Ntuane may I ask you whether you are comfortable with its disclosure?

10 **MR LUYANDA NTUANE:** Mr Commissioner I'm not in a position to comment on the legalities and the ramifications thereof. I think mine was to come and dispel certain rumours or misstatements that may be associated with my name and in doing so the only method that can, these rumours can be dealt with is to actually engage with the documents and the evidence I submitted.

MS GILL MARCUS: Can I make a suggestion because I think that the confidentiality – the separation agreement which is a document in and of itself would not impact, I mean it obviously adds information to ourselves, but it would not impact on your testimony in terms of your statement and I would suggest that until we get further clarity and allow us to discuss it ourselves in distributing the documentation for the moment we do not
20 distribute that section E because that would allow you to not have disclosed that content to the public but to us in keeping with this us and it would allow us to look at that a little further and perhaps afford you some protection in that regard. I don't think that it effects, so from my reading of your statements I don't think it effects the content of anything else.

ADV JANNIE LUBBE SC: Through you Mr Commissioner that's absolutely correct.

CHAIRPERSON: Ja can I for that purpose make a ruling that when the statement is made available to the public that that annexure must be removed for now.

ADV JANNIE LUBBE SC: We will see to that, thank you Mr Commissioner.

CHAIRPERSON: Thank you.

ADV JANNIE LUBBE SC: It's becoming a bit more complicated now, the witness has just pointed to me that in 9.3.9 he deals with the content of the separation agreement.

MS GILL MARCUS: No but I think the question there doesn't reveal any figures, it reveals the terms and I think you're making a different point in that as to how it led up to that so I think that personally I would agree with the Judge's ruling that we leave out the
10 annexure but it does not affect 9.3.9.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner then we can proceed.

MR LUYANDA NTUANE: Thank you Mr Commissioner. By way of my educational background I completed my Bachelor of Commerce Degree at the University of Natal now referred to as UKZN in 1997 with Majors in Business Information Systems and Economics. Over the years I've obtained a Certificate in Applied Project Management in an IT Environment from the University of South Africa. I've obtained an Advance Diploma in Project Management from Cranefield College of Project Management. I've completed a Post Graduate Diploma in Management specialising in Distributed Commercial Information Systems from the University of Cape Town. I've completed a
20 Professional Certificate in Chief Information Officer Practice from Wits University. I've also completed Fundamentals of Cyber Security Certificate with the University of Cape Town through their Get Smarter Program. In addition to the above I also hold a number of IT industry specific certification notably being certified in risk and information systems control through ISACA. Certified in governance of enterprise IT through ISACA as well and certified information security management through ISACA. I also

hold a Cobit 5 IT and Prince Certificate at Foundation level.

My professional career started in 1997 after I completed my studies with, and I stated with ... (intervention)

MR EMMANUEL LEDIGA: Ja can you explain who's ISACA and who's APMG?

MR LUYANDA NTUANE: Thanks Commissioner. ISACA is an internationally accredited organisation that develops standards around IT, auditing, risk management, security management and governance. They are based in or headquartered in the USA. APMG is also a certification body in the IT industry, they are based in the UK I believe.

10 I started my career as a systems developer or programmer with Unilever in 1997. After a number of years there I moved onto the financial services sector or joined the financial services sector largely in the roles of IT project and program management. So in essence driving IT transformation and change initiatives on behalf of major institutions or big institutions such as Standard Bank, Old Mutual, the South African Reserve Bank and also the Department of Rural Development and Land Reform. My first engagement as an executive or as an IT executive was with Ithala Development Finance Corporation in 2009 after which I moved onto to running or being a GM of IT operations at MWEB ISP which is an internet service provider. At the time it was a MultiChoice company and my major task there was to look after close onto 12 000
20 businesses that were hosted in that environment and 300 000 subscriber base.

In December 2012 I was appointed to a newly created position of Chief Technology Officer at the PIC. At the time I joined an Exco team that initially had five members but I was the sixth member and those members included a CEO ... (intervention)

ADV JANNIE LUBBE SC: Can I, sorry to interrupt, can you just put a name to

everybody there please?

MR LUYANDA NTUANE: Thanks Commissioner. The CEO, Chief Executive Officer at the time was Elias, Mr Elias Maselela; the Chief Investment Officer was Dr Daniel Matjila; the Chief Risk Officer was Dr Zulu Xaba; the Chief Financial Officer was Ms Matshepo More; the Chief Operations Officer was Mrs Petro Decker. In my first 18 months at the PIC I was focused on driving the perception of IT as a struggling business unit and I was regarded as a high performer and this culminated in both the CEO and members of the Board stating this fact openly. I managed to systematically clear audit findings that had characterised the IT organisation in prior years and delivered a number of IT solutions to deal with the identified problems within the business.

ADV JANNIE LUBBE SC: Just to put it in perspective, you told me that you entered in a quite a low level, entry-level with regard to salary and after you have clearly demonstrated to PIC your abilities what happened with your salary?

MR LUYANDA NTUANE: Thanks Mr Commissioner. At the time I entered there was already a process under way for re-grading and restructuring the organisation, I think that was one of the many processes that would happen over the years. Because I had joined the organisation in December 2012 I did not qualify for any increase during the calendar year of 2013 the unintended consequence of that by the time we hit the 2014 financial year end there was a huge disparity between my salary and the rest of the Executives. But in recognition of the work I had produced and other I think considerations the leadership I'd shown to my team I was then afforded a salary increase which I will approximate at about 40% which put me on par with the rest of the Executive team and also included my performance related increase.

ADV JANNIE LUBBE SC: Thank you, you can proceed.

MR LUYANDA NTUANE: At the time the Exco team was fairly balanced and focused although quite notably there was a notable frictions, notable tensions between the CEO and the CIO at the time and ultimately the CEO took a decision to leave the organisation on the back of these unresolved tensions.

ADV JANNIE LUBBE SC: If you can describe the tensions between the CEO and the CIO at the time what would you say in one word?

MR LUYANDA NTUANE: I would say they were around power, if there's one word that can be used though that will cover the description of the tensions it was power. Mr Maselela left the PIC in 2014. Later on in the year around July 2014, July or August
10 2014 I stand to be corrected on the dates, the Chief Risk Officer Dr Zulu Xaba also left the organisation. I am not privy to say exactly what drove Dr Zulu to leave the organisation however I do know that he was unhappy with the result of a rating that the risk unit was given after consultation with the Audit and Risk Committee meeting – sorry Audit and Risk Committee and the CFO and the CIO at the time.

ADV JANNIE LUBBE SC: Can you just for the benefit of this Commission describe Dr Xaba was he well qualified, under qualified, what type of person was he?

MR LUYANDA NTUANE: I think Dr Xaba was, Dr Xaba is excuse me, highly qualified he's got a PhD also in mathematics, he's well learned, he's a patient man and he places, he believes in doing the right things, he places ethics above all else.

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

MR LUYANDA NTUANE: In December 2014 Dr Matjila was appointed as the new CEO. Excuse me if I could just go back one slightly. After Mr Maselela's departure Ms Matshepo More was then appointed as the acting CEO. In December 2014 Dr Matjila was appointed as the new CEO and thereafter there was a swift process of reorganising the organisation and during this restructuring my title was changed to

Executive Head of IT with no changes in responsibilities but quite notably a change in reporting line. So my reporting line changed from the CEO to report into the CFO.

ADV JANNIE LUBBE SC: Can I just again interrupt you and I apologise for doing so. In terms of the new structure there were a lot of new people appointed as Executive Heads, my understanding is at the time all of them with exception only you, were acting appointments but you were the only one who was then appointed as the Executive Head IT?

MR LUYANDA NTUANE: Thanks Mr Commissioner. I think for clarity there were two members of Exco who were not Executive Directors at that time and that was Mrs Petro
10 Decker and myself. So the permanent appointment that took place immediately was Mrs Petro Decker in the role of Executive Head of Corporate Services and myself as Executive Head of Information Technology.

ADV JANNIE LUBBE SC: The position Mrs Decker previously occupied that of Chief Operating Officer was now not, that position had been removed from the organogram?

MR LUYANDA NTUANE: That's correct. I think it's also worth noting that when Dr Matjila convened a staff meeting to announce these new appointments or confirmations of our roles it was received quite warmly by the staff to an extent that they actually applauded the announcements which was quite heart-warming and I viewed that as an
20 indication of the type of service that I had delivered to the general staff in the organisation.

ADV JANNIE LUBBE SC: I believe your life changed at the PIC when your reporting line changed?

MR LUYANDA NTUANE: Yes I think in after the reporting line changes generally the delivery from IT took strain whether from a speed perspective, and I'm talking about turnaround of responses that we required from the CFO as our line manager either for

developing new projects, spending of any sort that was within or outside of my delegation of authority they would lie such submissions or requests to spend would lie with the CFO for extended period of time, in fact at that time there was a GM of Finance that had been appointed and they would largely lie on that GM of finances desk until I'll collect when things really started to fall apart that's when there was actual movement around that.

So it became difficult as well to keep the team motivated because at that point they were now used to the speed at which we were moving and the continuous work that we were delivering to the organisation. We found ourselves in a bit of a lull,
10 more than anything else I think the process of restructuring we found that the IT structure or the proposed IT structure that I had developed and engaged Exco on was not approved. The approval thereof kept on being moved out for one reason or another.

MR EMMANUEL LEDIGA: Question, you know what caused this frosty relationships between you and the CFO, what could have been the cause?

MR LUYANDA NTUANE: Mr Commissioner with respect I still ask myself that question today, I can only talk about my experience or my views in that regard. I don't think there's an incident or a single incident that contributed to it but from a behavioural perspective I think one, listening to the testimony of Mr Jack yesterday and it brought
20 back a quick memory of the Deloitte culture climate survey that was run within the organisation that basically asked questions at staff members relating to either their management or their experience within the organisation at large and the IT department was notably and quite notably one of the most positive feedbacks or gave the most positive feedback from a leadership perspective to that survey that was the one thing that I felt did not ... So that was the one incident I can put my finger on.

I think during the restructuring process the CFO was quite adamant and the words that she would use was there are too many chiefs in this organisation and that's part of the reason why we need to restructure. Even at the point of my, the increase that I got, the 40% increase that I got I could see that there was a bit of unhappiness or lack of support or any congratulatory remarks coming from her. So I'm not really certain on what caused the relationship but I can tell you that I generally do what I believe is right. At times when statements are made openly around IT I very quickly try to demystify those statements and those statements usually, more often than not, were of a negative nature. I'll give an example, when I joined the PIC there was a senior
10 manager that had originally been leading the IT function, my joining the CFO indicated that that person had not been suitable to lead the PIC's IT aspirations to the next level and I opted to keep that person within the organisation and just readjust the role and found that she actually blossomed in the new role that she was put in. So there's a number of engagements that just pointed to this frostiness.

So in essence the characteristics of why I felt there was a conflict between the CFO and myself she made it very difficult to meet for any one on one meetings. One on one meetings ordinarily you'd want to make sure there's alignment between yourself and your principal, your boss, we need to make sure that you can escalate certain matters of urgency and to make sure that there's a continued focus as well on
20 the role of IT within the organisation and that just can't be relegated to a support function but actually an enabler of business change and in the PIC context it was quite critical.

These, moving onto 8.5 Mr Commissioner, there were persistent negative comments as I've indicated about IT both in meetings and outside of those meetings. These sentiments extended into the inconsistent balance caucus process and bonus

allocations which were largely led by the CFO and I say largely led by the CFO because it was open knowledge the bonus payouts were calculated on a spreadsheet and manipulated for weeks on end until a desired outcome by the CFO was reached. The rating of my staff was subject to committee discussions even staff that is at the most junior level and hardly ever interact with any other people within the organisation they would be scrutinised in context of what their value is to the organisation. So during my tenure at the PIC I witnessed a number of incidents where salaries were adjusted for a select group of individuals based on what the CFO had to say. Of course this was done in such a way that adherence to process was a box that was easy to tick
10 and largely facilitated through I'd call it collusive behaviour with some of the Executive Heads. So in other words there would be a degree of lobbying that happens and you can actually tell in deliberations that people have had prior meetings to hone in on certain matters.

ADV JANNIE LUBBE SC: Would it be correct to summarise it to say that it was not an objective and fair process?

MR LUYANDA NTUANE: Yes Mr Commissioner it was definitely not fair, it was not consistent and neither was it objective. In 8.6 I outline again after the change in reporting line all the business cases and system improvement aspirations that the IT team had developed in conjunction with business by the way were not supported but
20 rather they were always met with deflection as far as possible. And by deflection I would make this type of example, if the IT team showed a need to upgrade systems due to lack of support or supportability of that system because some of these systems are packages that I bought and the bulk of them I bought in the US or the UK, when you fall a number of versions behind the vendor then discontinues the support of those systems. Support comes in the form of bugs that may be logged or uncovered, system

problems, even enhancements that you may require to processes that need to be orchestrated through the systems. So it gave us a very, it put us in a catch 22 position from a change enablement perspective. It was also interesting to note that an asset manager the size of the Public Investment Corporation could still in this day and age be calculating bonuses from spreadsheets and sending those spreadsheets around on email where you – people's salary information or employee salary information is contained. So it's by no shock that I knew exactly who was getting what type of increase and on what bases within the organisation at any given time.

10 It is not because I went to look for that information it's because that information was sent to me. So quite significantly the systems that were not upgraded and I believe now there seems to be some movement in that area was the high portfolio system which was the investment administration system which was at least eight versions behind.

There was a Charles River Investment Management Solution which eventually got upgraded on the strength of me wanting to demonstrate a certain report that Dr Dan wanted to have access to and it hadn't been available in the previous version. There was a need for a new private equity system or system to manage the easy buyer unlisted investment business. In prior years there have been attempt to implement a system called e-front.

20 That attempt did not go down too well mainly due to the customisations that were put into the system that rendered it unsupportable. Nonetheless I did lead a team of people that were drawn from the business - not IT people – on a fact finding mission around the suitability of this e-front system. They largely felt it was what they needed but none of them were willing to put their heads on the block to say they in support of that.

The upgrade of the financial management system is a Microsoft Dynamix application. It came at a point where there were no more what I'll call security patches available for that which were critical to keep that system alive and support really was ending on that system as well.

So it was one of those within a week approval is then granted after a year of engagement. No change – real material change in the submissions. Approval is then granted as they proceed with upgrading the system.

MR EMMANUEL LEDIGA: Can you please explain this Microsoft Dynamix much more?

- 10 **MR LUYANDA NTUANE:** So the finance team largely would be the user of a – it's an enterprise resource planning package usually referred to as an ERP. So it's in the same – and at its core is where the organisation's general ledger would sit. I'm trying very hard not to compare it to other systems in the market.

But that's the essence. The finance team ...(intervention).

MR EMMANUEL LEDIGA: It will be like a SAP financial management ...(indistinct) – SAP?

MR LUYANDA NTUANE: Absolutely.

MR EMMANUEL LEDIGA: Alright.

- 20 **MR LUYANDA NTUANE:** In round about January 2016 and again on this date probably it could have been November 2015 I was asked to join a team of business – senior business representatives to evaluate bidders for the management of Global Equities.

My mandate in joining that team was to assess those bidders suitability from a technology perspective. I note this because it speaks to the earlier question Mr Commissioner of where does this forced relationship come from and the behaviours

that were associated with my tenure there.

When we spent hours on end with this team looking at not only the business functionality that they were responding to but also the technology solutions that they were putting forward for really managing the Global Equities space. Part of the process was also conducting site visits.

You'll appreciate that because it was Global Equities, the bulk of the bidders were international bidders in the UK and the USA in particular. However when it was time to do the site visits which were international site visits the CFO went ahead with the GM of finance. They were not participating in the bid process but they nonetheless
10 said they will be the ones who are going to assess the IT capabilities because they more suited to doing so.

So that's another example of there was no sense really in some of the actions from the CFO. It's equally important to note that at the point in time the GM of finance was essentially making the decisions that the CFO would have needed to make and largely he was playing a gate keeping function. Because I could not now have one on one meetings with the CFO when I did manage to get a word it's either she directed me to go talk to the CEO.

When I did talk to the CEO he said go talk to your line manager. So I was caught in a very difficult situation there. At a point the CFO took issue with my study
20 bursary ...(intervention).

MR EMMANUEL LEDIGA: Just a question. Before you leave the point on the IT. You mentioned stuff about the upgrades you know and the time it took to make them. So I just wanted to check and its part of our terms of reference. When you left the PIC how was the IT you know standards there? Sort of how were the standards there? Were they good? Were they fit for purpose or there were many gaps in the tech you know

within the PIC?

MR LUYANDA NTUANE: Thanks Mr Commissioner. I'd say there were many gaps. However it is not gaps that we were not aware of and those business cases were actually manned to deal with those gaps. A simple example is aspirationally the PIC wanted to have a straight through processing capability.

I won't call it a single system but capability. Now that would have enabled all the critical functions particularly in the listed space to be automated largely. Bid interactions with the JSE, clients reporting, investment administration. So we had the best in class systems but the problem was that there were dated.

10 We just couldn't get past this hurdle of the need to just make them more relevant and integrate the systems. So in that sense it's a bit of both – there were gaps but we had the right systems already in place.

MR EMMANUEL LEDIGA: Some more gaps? Any other bigger gaps – big gaps?

MR LUYANDA NTUANE: I think – sorry?

MR EMMANUEL LEDIGA: That's the biggest one. I think straight is the biggest one.

MR LUYANDA NTUANE: Straight through processing was one gap. On the investment – on the easy buyer side was even a larger gap and that larger gap was the fact that there was not asset management system there. The entire organisation and again with huge exposure was largely managed from spreadsheets which not only
20 poses technology risks it poses data leakage security risks.

It would be difficult to say who changed what number where at any given time. So the biggest gap is audit ability across the board and the integrity of the data that sits within those functions.

MR EMMANUEL LEDIGA: Security – what about security or with normal security and then cyber security?

MR LUYANDA NTUANE: Thanks Mr Commissioner. Yes definitely security was a gap. There was a move at some point to start a data classification exercise. There was resistance from the top or rather lack of support from the CFO and the CEO in starting the data classification exercise. Securing spreadsheets is a difficult endeavour mainly because you can either walk out with them on a memory stick.

You can send them over email. You can't really audit other than the last modified person who has actually changed what data elements there. So security was a big gap in that regard and also noted in the business cases.

Mr Commissioner I'm moving to 8.8.

- 10 "Another source of this friction or what I'd ...(indistinct) the friction to. At some point there was an issue taken about my study bursary which was a very bizarre situation to engage my line manager on. The questions being asked were not asked generally in normal course of events from other employees. Number one is I cannot award myself a study bursary neither will I pay for the study bursary or pay whatever institution that I'm enrolled in for those studies if I've got a study bursary with the PIC. The study bursary was administered by the human resource department which of course reported to the CFO as well. On final signature – seeking final signature to make payment to the university I was asked who approved the bursary in the first place. What relevance is it to my work and then there was a process to start investigating my leave balances
- 20 linked to this study bursary request.

Again I felt that was quite bizarre and when we went past that conversation I found myself being invited to meetings during scheduled exam periods. Meetings that were critical – balance score card related meetings. So I would find myself having an exam in the morning but sitting in an Ex Co meeting the whole day the day before. I believe that it was deliberate. The CFO knew very well what my calendar looked like

because I had expressed – I had shared the exam calendar a month at least beforehand. In August 2015 is another incident which up to now I have not questioned and I've had to emotionally navigate my way through.

I went on leave after agreeing a certain score with regards to my performance. I'd like Mr Commissioner to note that the performance score is not something that you just award to yourself. You actually reach agreement with your line manager and you sign off on that score.

ADV JANNIE LUBBE SC: Just to get it enough emphasis. It was an agreed performance score?

- 10 **MR LUYANDA NTUANE:** That's correct Mr Commissioner. The bonus payout was done during the period while I was on leave. When I returned I queried why the number was less than what I had originally expected and I was told that the performance score had been revised downwards and there was no further information forthcoming in the regard.

I also did not get my short term incentive letter. So from a procedure perspective when you allocated a bonus before it's paid out you get a letter that will indicate your performance score and the bonus payout that you are receiving and there would be a second letter as well that indicates your long-term incentive if it's not covered in that short term incentive letter.

- 20 I did not receive any of those letters. I did query about it and up to today I do not have any evidence that I actually received a bonus except for the appearance of it on the annual report.

ADV JANNIE LUBBE SC: The point you're making is this was all done, first of all when you were on leave and without any communication or justification furnished to you?

MR LUYANDA NTUANE: That's correct Mr Commissioner. And again this was now 2015 and even after the revision of that score downwards my performance was still above just satisfactory, it moved from the excellent mark to a bit of above good so I made the numbers required to qualify for a short term incentive and to get a long term incentive allocation which is generally a 3.5 in the scale that was being used within the PIC 3.5 out of 5.

With all these challenges during the period of November/December 2015 there was a lot of change even at Board level. I developed the first terms of reference for a new Board sub-committee that will be looking at IT which was called the IT Governance Committee. In January, excuse me in February 2016 the first sitting of that Board sub-committee I presented to them the IT strategy, IT governance framework and the IT security strategy and bringing them up to speed with the types of systems and challenges that we are currently experiencing or were currently being experienced within the PIC. I bring this up because it was a very lonely venture quite notably the CFO was my line manager let alone Executive Director was not present in that meeting neither was the CEO. I do not know why but the sequence of events thereafter actually clarified my speculation in that regard.

In section 9 Mr Commissioner I deal with the suspension it's going to be difficult for me to navigate it a bit without breaching this.

20 **ADV JANNIE LUBBE SC:** You can proceed we'll assist you.

MR LUYANDA NTUANE: Okay in round about February 2016 one of my employees approached me and indicated that the Executive Head of Risk had been asking what she termed questions about me and this employee approached me at about six in the evening, so far after working hours and she wanted to warn me that since they, and she referred to they want you out of the organisation without again, I will not be at liberty to,

unless I'm compelled to actually state the name of the employee, but that was the first indication that something was amiss in the organisation. During that same month I saw that there were problems with a date function on the investment admin system and the Chief Risk Officer who was fairly new even in the use of that system including the staff members that, there's been a lot of attrition in those departments so some of the people who knew, call it the operational processes, related to the use of systems were no longer there and there had been no handover so to speak. We battled with this date function which basically rendered incorrect calculations. The notion at the time that it is the responsibility of IT to fix it and my response to that well it is the responsibility of IT

10 to assist in everything there is, there are functions that business need to fulfil we don't use the systems we make sure that they are available, they are secure, they are well maintained and where it needs us to, where we are required to assist business in the use of those systems then we will do so.

Nonetheless on Friday the 26th February 2016 at about five Dr Matjila convened a meeting with the Executive Head of Risk, his Executive Assistant and one or two members from the investment administration system if I recall, Investment Administration Unit if I recall correctly wherein again the discussion basically went out of context from this date issue but there were sweeping remarks about competence in IT which I really didn't want to deal with that one it was a Friday evening, it was not the

20 place or the right forum to be making those types of remarks. Nonetheless I left the organisation and went home and I called a number of other asset managers particularly looking for assistance in people who knew how to configure these systems and these are business people who knew how to configure the systems. I wound up having agreements to reconvene a conversation with them on the Monday morning. However on Monday the 29th February between seven and half past seven in the morning the

CEO requested his driver to come and call me from my office, I was already at the office at that time and he indicated to me that he had received a whistleblower complaint against me to the effect that there is favouritism in my department and I am suspended as of that moment.

I then had to meet up with a team from outside the organisation, I assumed this was from Bowman Gilfillan ... (intervention)

MR EMMANUEL LEDIGA: Can I just check one thing about the date issue, the system was it something developed internally or was it something external and you said like it made wrong calculations, how serious was that in terms of the calculations?

10 **MR LUYANDA NTUANE:** Thanks Mr Commissioner. The system was not internally developed it is an off the shelf package so it was aimed at investment administration however it's one of those systems in fact it was particularly the system that was eight versions behind. Ja so it was at a, I think a version four or five at the time and the latest version out in the market was a version 13 or something of that sort and support for that system had basically lapsed, had been discontinued by the vendor at least four years prior to that. We did however Mr Commissioner have an agreement with an external resource who assisted from time to time on the use of that particular version of that system and that's how actually the date function was found to be the source of the problem.

20 In terms of the calculations they were not significant from a number perspective because they were being picked up via reports so it is unlike that you know these reports were sent away before the problem was actually uncovered. So to say that the calculations were incorrect it was based on a check that was done between the expected numbers.

MR EMMANUEL LEDIGA: And that problem could be solved quickly or it would have

taken days and weeks?

MR LUYANDA NTUANE: Mr Commissioner that problem was solved simply by updating the calendar function so I would assume, and I'm speculating that it was actually solved the day after my suspension because that's when the external help came in was on a Monday so it would have been resolved in that time period.

So this whistleblower complaint I was not given any documentation or indication of what this favouritism allegation was about. Nonetheless this team from the external law firm took my computer, iPad and iPhone and also requested that I give them my external hard drives which were personal hard drives on the strength that I would have connected them to my work computer at some point. I then left the premises and drove back home. After a month of not hearing anything from the PIC I wrote an e-mail to Dr Matjila citing several issues that I have with the suspensions and some of them were procedural in nature ... (intervention)

ADV JANNIE LUBBE SC: Can I, sorry to interrupt again, can I just ask you were you given any opportunity to provide reasons to Dr Matjila why you should not be suspended?

MR LUYANDA NTUANE: Mr Commissioner I was not provided with such an opportunity. In fact the suspension letter was not even handed to me at that time it was instead delivered to my house later on if not the day after by the driver of the PIC.

ADV JANNIE LUBBE SC: Why I'm asking you this in this letter which is annexure C to your statement in paragraph 3 it is stated:

"We confirm that you were given the opportunity to consider our proposal to suspend you and that you were given the opportunity to make representations in this regard. You elected not to make representations."

Is that correct or incorrect?

MR LUYANDA NTUANE: Mr Commissioner it's correct that that is what the e-mail, the response from Dr Matjila was but it is incorrect that I was given that opportunity or whether I elected not to make representations as to why I shouldn't be suspended, I surely would have had I been afforded that opportunity.

ADV JANNIE LUBBE SC: You have dealt in detail with what happened thereafter but you were then requested to meet an investigating team on the 1st April at Bowman Gilfillan offices in Sandton which you attended is that correct?

MR LUYANDA NTUANE: That's correct Mr Commissioner and in that team, and I must
10 apologise Mr Commissioner, I actually found some of my notes only this morning because this is from some years back, in the team were three attorneys I had no legal representation because I did not even know the context of the meeting. I was asked a number of questions, I also posed the question as to what exactly am I being investigated for. I was told there were three anonymous whistleblower complaints and the issues raised were related to procurement and they mentioned three suppliers, I responded to them that in fact those suppliers I found at the PIC had already been appointed by somebody else and the only thing I have done with them is improve their service. I believe those suppliers are still with the PIC up to now.

On the favouritism inquiry it was not even couched as sexual harassment it
20 was favouritism. I was asked whether I had any intimate relationships with my staff members. At some point there was a direct question that or they put it to me that I had been seen kissing an employee in the middle of the passageway. My answer to that was to query whether it was in broad daylight or not. Then there was a question around my qualifications whether I indeed have these qualifications and lastly there was a question around companies that I was a director on. Now for Mr Commissioner I think

for that one I indicated no and the basis of my indicating no is that there were companies that I was registered as a director from but they never actually functioned it was companies that one Kwesha Investment Holdings was a company that my family and I had set up in 2004 thereabout with particular interest in exploring taxi, the taxi business and opportunities around transportation. I indicated that all those companies had never actually traded nor even hold any banking accounts. So it was neither nor there. Ja, I think that is the summary of the notes that I had made in that interview process.

CHAIRPERSON: If I understand you correctly, you say you were asked whether there
10 were companies in which you were a Director and you said, no whilst there were companies that had you registered you as their Director. Do I understand you correctly?

MR LUYANDA NTUANE: That is correct Mr Commissioner.

ADV JANNIE LUBBE SC: Mr Commissioner I noticed the normal tea time. I am in your hands, can we perhaps finish this witness. I hope to finish within the next 20 minutes, otherwise we can have the tea. I am in your hands.

CHAIRPERSON: Alright I am outvoted, let us continue.

ADV JANNIE LUBBE SC: As it pleases Mr Commissioner. Alright you were then – it was about a two hour interrogation session as stated in 9.3.6 and after this in a date in
20 May you were requested to attend a meeting with Dr Matjila. That is 9.3.8 of your statement, can you just deal with that please?

MS GILL MARCUS: Sorry, sorry Chair. Can I just ask a question of the witness? You indicated that you had not got – you did not have legal representation. Was that by choice or because you did not know the nature of the meeting you were going to?

MR LUYANDA NTUANE: Thanks Mr Commissioner. I was not aware of the nature of

the meeting. Neither was I aware, in fact I was told that because it is an internal investigation I cannot bring external legal representation and that is how the policy at the time was actually constructed around disciplinary processes.

MS GILL MARCUS: But the investigation was conducted by an external party, Bowman and Gilfillan.

MR LUYANDA NTUANE: That is correct Mr Commissioner.

ADV JANNIE LUBBE SC: Did any of those attorneys advise you that you are entitled to legal representation?

MR LUYANDA NTUANE: There was at the meeting, I was told legal representation is
10 allowed. This was when the meeting was already convened and there was a recording that was being made, but would not be made available to any party.

CHAIRPERSON: Thank you, please continue.

MR LUYANDA NTUANE: So after this was now April 2016, I then again went home to wait for the outcome of this interview which I thought was a very small interview based on the time I spent and the number of questions I answered. I was then contacted by one of the employees of the PIC, particularly from the HR Department, under the guise of extending some type of emotional support. I was suspicious of that phone call but went ahead and said it is clear what the CFO and the CEO want to achieve. But there are certain terms they would need to fulfil if they really want me to leave the PIC that
20 badly. And I mentioned this because when I met with Dr Matjila in May, he first indicated that the report has been finalised and it is damning, in its findings. I asked him for a copy of the report or to see it, he said no, he would rather not – if he gives me this report it means that we are going to now start a formal process which is going to be longwinded and potentially damaging to my career. Of course I sat across and I said, my response was, look you make the determination of how you want to proceed with

this thing and let me know. I then left that meeting. On the 20th of May I was invited back to meet with Dr Matjila and he had the settlement agreement drawn up with exactly that terms that I had set out to the HR staff member who had called me previously.

ADV JANNIE LUBBE SC: Thank you. We are not going to deal then with the terms as embodied in the settlement agreement. Can you proceed on 9.4?

MR LUYANDA NTUANE: 9.4.

MR FRANS LEKUBO: Just a question, Advocate Lubbe. That report do you know, do you know whether, whether that report was done? Is it available? Is that something we
10 can have a look at?

ADV JANNIE LUBBE SC: It has not been provided to my legal or the forensic team Mr Commissioner but we will again in view of this evidence request that report from the PIC. I will report to you during the day or tomorrow morning whether that is available.

CHAIRPERSON: Okay, alright. Thanks. I might be mistaken, but did you not write either an email or a letter to Dr Matjila and put to him the terms upon which you could leave the organisation?

MR LUYANDA NTUANE: Mr Commissioner, no. I did not write putting the terms under which we could leave. Instead the terms were presented at the meeting. What I did have is a conversation prior through that meeting with one of – a junior member of staff
20 in HR and I took it as – I made those comments knowingly that it was a very odd phone call of an expression of support from that particular person and I did it very well that it be carrying a message through. So as part of 9.4 Mr Commissioner I submit that at no point was there an indication, neither was I ever found guilty of sexual harassment or procurement irregularities. I'd like to deal with particularly the procurement regularities in particular. I created a method that would not put me in a conversation related to

procurement or particularly regularities related to procurement, and that method was multi-fold. Number 1, is I refused to meet with any service providers or potential service providers outside of the PIC premises as a rule of thumb. Number 2, I was never part of any Bid Committees. Where I did attend a bit session it was in the Equity, Global Equities Tender as indicated. Other than that I just provided advisory services on technology and types of technology. So a comparison between one type of laptop versus another type of laptop, that is the only type of information I think simply as an example I would make. Obviously there are more complex tools and IT infrastructure that you know that I would have to make comparisons between. Secondly, our

10 procurement process was developed in such a way that it involved a number of departments, let alone a number of people. So driving and predetermining an outcome was highly unlikely. We had a legal department involved in that. I also had requested as a collaboration mechanism and to upskill the internal audit members that they also participate in the oversight, providing oversight of the process long before it actually ends and they will understand context of the various technologies and how they are put together. So that when they have to put on their auditing hat, the independent hat, they have full context of the processes and how technology selected and the likes. So they were I would call it a number of assurance functions that were involved in the big process. And I questioned this procurement irregularity sentiment. I heard it when Ms

20 Dekker was giving towards the end that she expressed, that's what she had heard. I don't think she was making an allegation against me, but I also have it on good information that one of the emails that had been sent to staff also spoke to this and I wanted to really correct that narrative. So neither procurement irregularities on my part, nor was there any sexual harassment charges put forward to me. Not even a complainant from such a perspective.

CHAIRPERSON: Thank you, can you then proceed in paragraph 10 please?

MR LUYANDA NTUANE: Thanks Mr Commissioner. I think ja, the rest in paragraph 9 deals with the some of the contents of the separation agreement. In paragraph 10 I am merely providing Mr Commissioner, my opinions on the factors leading to my suspension and separation from the PIC. One, there were serious institutionalised problems within the PIC, especially in relation to leadership from the Executives. The CFO's and the Executive Director would openly make comments at times that she is the only Executive Director or Director that does not have a term limit. So while even Dr Matjila was on her contract, she was not on a contract and she will remain a Director for

10 ...[indistinct] Memorial. And as such she viewed herself as indispensable to the Organisation. She led a culture that was highly divisive. There was a meeting which happened in 2015, with the newly appointed Executive Heads or they may have been acting at the time. I am not certain on the date but the year was 2015, after Dr Matjila's appointment and after the appointment of these Acting Heads or confirmation of those Acting Heads. This meeting was attended by Senior Managers as well within the organisation and it was couched as a strategic planning meeting. So it was a getaway session and in that meeting the whole theme was the Executive Heads really presenting the strategy from their different business units. When it was time for myself to present, the biggest oddity and possibly one of the most significant risk areas is

20 technology in an Asset Management organisation. I was not given an opportunity to even go through that strategy presentation. Instead I was asked about why we are using Dell laptops instead of Apple laptops and that became the discussion for the next hour and a half. And it was led by the CFO and one or two other Executive Heads. So there were very bizarre behaviours that were actually coming through. I did not record that in the statement, it is something that is actually coming back to me now. The

rampant unfairness in salary reviews, adjustments and bonus allocations were all orchestrated by the CFO. We know and everybody knew that she was the last one to click save on that spreadsheet. Where numbers did not meet for certain people, the objectives or what she termed principles she had set out, she would manually adjust those numbers. The role of HR in that was a bit blurry. In particular there was a gentleman who looked after the spreadsheets, who sat within the HR function and was subsequently moved to finance, but with no additional responsibilities. And it is again lastly I do submit that there was a personal vendetta against me. I don't think it was just merely to me as you would have heard from Ms Dekker. I think there were a select

10 group of people that experienced problems with the CFO, some of the Senior Managers who subsequently left the organisation under different circumstances. I believe that there is a lot to be answered for and the Commission should actually request records of these spreadsheets, but not just dating back over a period of two years. You will pick up a pattern if you look at how salaries were adjusted over a period of five to six years. I know for a fact that there are people who have increased their salaries in the past four years by over a million rands or thereabout without any significant change to their job functions. Merely because they are viewed as people who tow the line and do as they are told. So that will be the last part of my submission.

ADV JANNIE LUBBE SC: Just for the record Mr Commissioner, the legal and forensic

20 teams of the Commission have already requested these spreadsheets. It will be dealt with in evidence before the Commission. But before I conclude his evidence there are two matters I would like to ask still. You mentioned in your evidence and it is not in your statement that you now in consultation and preparing for your testimony remember the Deloitte Survey. Can you recall and we are going to – it is before the Commission where did the IT team come out in the Deloitte Survey? Were you at the bottom? Top,

middle? Where were you?

MR LUYANDA NTUANE: Thanks Mr Commissioner. My recollection is that we were actually at the very, very top. So not in the top 10, we were the top. And by way of contacts that survey was assessing how the Department itself is being led. So it was a climate survey, it was about how engaged employees are. It was about how they receive leadership from the top. It was not skewed to one particular person but basically I think we had over 90% hit rate from the people who answered, responded to the survey. So it was a broad survey and we, IT actually had the most significant results.

- 10 **ADV JANNIE LUBBE SC:** A last issue from my side, I imagine there will be a couple of questions from – can I abuse your attendance here by asking you about this ghost we have in this Commission called Nogu or Noko? How difficult is it in the IT cyber world to trace this type of person spreading information to the PIC and the media and public in general? If that, let me narrow my question, if that email is not sent from a PIC computer linked to the PIC server, how difficult is it to identify this ghost?

- MR LUYANDA NTUANE:** Thanks Mr Commissioner. It would be, it would be extremely difficult if you don't have certain parameters that you work with. So if you cannot identify one, the location of where the email was sent from physical location related to an IP address of some sort, it does make it difficult. But if you can narrow it down to an
20 address, a physical address, so a street address and there is surveillance as an example around that address. You can actually locate a person and do your deductions based on that. But the nature of email is that it operates on the strength of the World Wide Web. And that is exactly where the challenge lies in that you can route messages through various servers across the world, across the globe. But when you have a source from a physical perspective and you have been able to isolate that it then

becomes other supporting evidence that will assist you in concluding who sent that email. But it will be – ja, it will be very difficult to pin down exactly who.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner, that concludes the evidence.

If you have any further questions?

CHAIRPERSON: Yes, thank you. I am not sure. I don't think you dealt with all of paragraph 9. But if I am correct do you confirm that what is contained there is correct?

MR LUYANDA NTUANE: Mr Commissioner I will confirm that what is contained there is correct. It is difficult to navigate the conversation without going into the contents of the agreement as well.

10 **CHAIRPERSON:** I understand that. Okay.

MS GILL MARCUS: I would just like to come to that last point that you made about the payroll and the salaries. If I understand you correctly and obviously we will be getting the report from the records, but what you are indicating there was that if people simply turned a blind eye to what was happening, they would get salary increases beyond normal? In essence for just minding their own business and letting things happen? Is that what the implication is?

MR LUYANDA NTUANE: Thanks Mr Commissioner. I think that is the implication. I do however want to highlight that the PIC does have a lot, and largely a lot of highly qualified people with good intentions who find themselves in a difficult situation. So
20 yes, on any given day you would find that there is a declaration that says we are now adjusting salaries for one or other reason and go and apply this to your different business units. Of course you would take those parameters and say on if the rationale that is given is restructuring, you know there will be a narrative associated with the – there will be a justification always. And it was quite weird in the three and a half years I spent there we might have gone through salary adjustments and restructuring at least

about five or six times in a space of, what is that? 36 Months. So yes, people did turn a blind eye. They did question why, but they could easily see what the desired outcome was to some of their colleagues as well. We had situations when staff members that were junior and literally coming out of university joining the organisation, and by way of example earning R350 000,00 cost to company which is decent for any junior coming out of university, winding up within a six month period earning R750 000,00 you know without even having gone through one cycle of performance review. We had situations like that. We had situations where unintentionally or intentionally staff members that wound up earning more than their managers in certain areas. And it is really around
10 those instances that the focus must be put. It was quite prominent especially for employees that worked in the Easy Buyer space. Some of those employees actually left the organisation to start other, call it Asset Management or Financial Services companies and the so client became the PIC. So they basically went and started bringing deals to the PIC and getting paid commission based on the deal origination fees.

MS GILL MARCUS: If I could just follow with that second part, is that if I understand you correctly, that an employer in Easy Buyer would look at the opportunities, would say okay, I now know how this works. Go out, set up their own company and become the middle man bringing a deal to the PIC and getting paid for bringing that deal? Is
20 that correct?

MR LUYANDA NTUANE: That is correct Mr Commissioner. It is more lucrative approach than earning a salary. And if I am incorrect in this regard, I – which I doubt I am, but if you or if there is an investigation in that regard that is where you need to follow the money.

MS GILL MARCUS: And then finally you have indicated very strongly in your testimony

and in your elaboration of points, that you are – you regard yourself as having been victimised for various reasons. Are you aware of victimisation of others in the similar manner to yourself and people you worked with?

MR LUYANDA NTUANE: Yes, absolutely Mr Commissioner. There are many, many others. More than a handful that I am aware of. The names I think can be furnished if actually required by the Commission. But ja, we have had exits from Internal Auditor at senior level, we have had the legal team also been subjected to a significant degree of victimisation. The former CEO is the most notable victim of circumstances at the PIC. Petro Dekker, the former CRO as well. So this victimisation came in various shapes and forms and actually attacked a number of people. There are some colleagues that weathered the storm and have emerged, I don't know whether better but you know have managed to stay at the PIC and recognised that it is cyclical in some instances. I dare say even colleagues within the Corporate Secretariat function as well had very big issues and my apologies to them for putting them under that spotlight but that is my opinion and my observation.

MR FRANS LEKUBO: Okay, one question you know from side. Your tiffs with Ms Matshepo More, if you could maybe give us some texture or you know some context in the sense that take us into the room sort of you know, because here it is words and all that. What was happening there? I mean what were there shouting matches? Personality clashes? High octane corporate politics? Just give us some colour you know around that to understand it further. Please if you can.

MR LUYANDA NTUANE: Thanks Mr Commissioner. I think I have tried to outline what I would term very, very silly engagements. Things like and engagements that she had the ability to hide behind process. Things like making it very know that I am now investigating, how you got a bursary in the first place, I am now investigating your leave

balances. Not anybody else's, your leave balances. I am now not going to sign an agreement with Microsoft because I don't trust you. When we start building your team and I must say one of the investigation points, excuse me Mr Commissioner, one of the investigation points asked me about a trip to Washington DC that I took with some of my staff members. I want Mr Commissioner just to note circumstances around that. I took a team of four staff members and two from GPAA, two staff members from GPAA, on a paid for engagement. Paid for by the World Bank to go and discuss issues around IT strategy, security, straight through processing. All the – call it strategic objectives that we had at that point in time. Part of that trip was showing where we are and juxtaposing it with how the World Bank is dealing with some of those challenges. It was a five-day trip. Over and above the four staff members – excuse me. I had five staff members that actually joined us. The fifth one had actually just returned from maternity leave, but because of her seniority I felt that she must not lose that opportunity because you know Washington DC is not around the corner. If we don't have that engagement then it might not happen. And we went through this process. Instead of the support I would have expected from the CFO I was being questioned around why these people and I would ask, why these people versus which people? This was my IT Management team you know, this is not a popularity contest or even where I had problems with some of them from a performance perspective to turn around their performance, I needed to go and show them how things are done out there. So applying this multi-factor training and education and upskilling from a people perspective, and that I say I make this example because that was the essence of some of these tiffs. So I don't know whether you would call it a personality clash or corporate politics or just meanness. But I located them at any given time, it occupied at least one of those three. It is quite telling as well that during my entire suspension and eventual separation from the organisation,

there was no engagement with my Line Manager being Ms Matshepo More. And that on its own is odd, but it did point me to the fact that this was a hack-job for lack of a better description that was being conducted on me. And the tiffs in meetings would show themselves by cutting off a person in mid-speech. So you ask a question, if a sensible answer is being advanced, you realise that actually this answer is not going to advance the agenda that you actually had. So you would cut off mid-sentence. And yes, there were shouting matches, even within – not between me and her directly, but within the Exco meeting. She would raise her voice – you know, ja in very – you did not know what you were going to deal with at any given time when you walked into an Exco meeting. That is essentially the sum of the parts there.

MR FRANS LEKUBO: Okay thanks. And I am quite sure Ms More will come and give her own version in time, I am sure. I am sure it will. Thank you very much.

MR LUYANDA NTUANE: I hope so. Thanks Mr Commissioner.

CHAIRPERSON: Can I just ask – you mentioned I think it is in 10.3 of your statement, the salary unfairness in salary reviews, adjustments and bonus allocations. Whose responsibility was that? One person? A committee? The function of reviewing salaries and allocating bonuses?

MR LUYANDA NTUANE: Mr Commissioner on paper it's the responsibility of Executives and human resources, in reality there's never been a situation where any Executive or human resources have in my tenure there have submitted salary adjustments or performance reviews and have gone off unchanged in totality by the CFO.

CHAIRPERSON: Yes thank you.

MR LUYANDA NTUANE: Thanks Mr Commissioner.

ADV JANNIE LUBBE SC: Mr Commissioner I'm sorry my colleague just drew my

attention to this, just in a minute or two can you just explain to the Commission your understanding of giving somebody in the IT department super admin access, what is meant by that?

MR LUYANDA NTUANE: Mr Commissioner the context of admin access is at a, call it a vertical service level, so it's admin access for e-mail or it's admin access for your network or it's admin access for your firewall. So super admin access is always linked to either a service or infrastructure itself, there would be no super admin access that basically allows you to do everything within the PIC. There'd be super admin access at a server level; there'd be super admin access at a switch level from a network
10 perspective or super admin access from a e-mail perspective. I'd like to believe that this is in context of e-mail and in the PIC's infrastructure one of the key services was what's called the Mimecast service which is a mail archiving and security product which basically is usually administered by a senior enough resource within IT, that resource's name or credentials are provided to Mimecast through an official signoff from an Executive or the CEO of the organisation. So generally the Mimecast model works in that manner. So when you do have that super admin access it means that you have got the ability to look at everybody's e-mails to perform various functions either blocking or deletion of those e-mails although the value proposition from Mimecast is that they don't ever allow for the deletion of e-mails but to remove it from, call it the user
20 workstation you'd have those types of rights.

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

MR EMMANUEL LEDIGA: And if I may ask where are you now, what's happening with your life?

MR LUYANDA NTUANE: I'm gainfully employed Mr Commissioner in the private sector. I rejoined the job market in February 2017.

CHAIRPERSON: I'm afraid I've got to ask you this question, it's to do with our terms of reference, 9.3.9.2 is that untrue or true that you were found with confidential information on your laptop?

MR LUYANDA NTUANE: Mr Commissioner it is true in every sense however, as an executive it would be difficult to say what confidential information I was not supposed to have on my laptop given the following; Board matters are circulated via e-mail and find themselves onto the laptop. Salary adjustments including spreadsheets are circulated via e-mail and find themselves on laptops. General engagement with my line manager for a large part of about a year was via e-mail. So there was context as to why that was put in the recorder which I also deal with and why I felt I'm not going to fight it because I viewed it as a statement that is neither here nor there. The most senior IT executive as to whether I had confidential information around deals or in the investment space maybe but the confidentiality is not for me to prove, I have never sought information that was not sent to me Mr Commissioner.

ADV JANNIE LUBBE SC: And that information, the alleged confidential information was never specified or disclosed to you is that correct?

MR LUYANDA NTUANE: That's correct Mr Commissioner.

CHAIRPERSON: Yes thank you, that's what I wanted to hear and I was a bit surprised and wondered whether as Head of IT things wouldn't come via your way whatever it was.

MR LUYANDA NTUANE: Thanks Mr Commissioner, ja that's the essence of the trouble I had with that statement and that's why I viewed it as similar to being charged with breaching at work.

CHAIRPERSON: Yes Mr Ntuane thank you so much for availing yourself to come and testify before us, it has helped us a lot. Thank you.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner. Can we have the adjournment till 12?

CHAIRPERSON: Yes we'll adjourn until 12 that's correct and Mr Ntuane you are excused but you might be called again later, I don't know alright, thank you.

MR LUYANDA NTUANE: Thank you Mr Commissioner.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Monahan?

ADV ISAAC MONNAHELA: Thank you Mr Commissioner. Good day Mr
10 Commissioner and members of the Commission, our next witness is Mr Simphiwe Mayisela he is here and I would like to apologise to the Commission for starting late, the reason for starting late is that Mr Mayisela arrived late. Mr Commissioner I would like to put it on record that my senior advised me that he gave you a copy of the, what I will refer to as the Cassim Ruling.

CHAIRPERSON: Yes, we do have a copy of that yes.

ADV ISAAC MONNAHELA: Hello Mr Commissioner?

CHAIRPERSON: I'm saying we do have a copy of that.

ADV ISAAC MONNAHELA: Yes and the other thing that I want to bring to the attention
20 of the Commission is that Mr Mayisela informed me that there is reference to two annexure Q's in his statement, he only became aware of that when he arrived here. One of the annexures is not, does not form part of the annexures to the statement he informed me that he will look for it and make sure that he provides it to the Commission and if I may just place it on record again Commissioner we're still waiting for the annexures they are still being printed. Mr Mayisela is ready to take the oath.

CHAIRPERSON: Yes Mr Mayisela can you please rise. Your full names are Simphiwe

Hector Mayisela?

MR SIMPHIWE MAYISELA: Yes Simphiwe Hector Mayisela.

CHAIRPERSON: Yes do you have any objection to taking the prescribed oath?

MR SIMPHIWE MAYISELA: Not at all.

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

MR SIMPHIWE MAYISELA: So help me God.

CHAIRPERSON: Thank you very much you can sit.

10 **ADV ISAAC MONNAHELA:** Commissioner can I just formally request to be seated while leading the witness?

CHAIRPERSON: Yes certainly.

ADV ISAAC MONNAHELA: Thank you Commissioner. Mr Mayisela you've made a statement to the Commission and as part of your evidence, as part of the evidence that you're going to adduce before the Commission. Can I just ask you to start by reading your statement from paragraph 1?

20 **MR SIMPHIWE MAYISELA:** Okay thank you. My statement reads as follows; I provide this statement voluntarily with the purpose of assisting the PIC Commission of Inquiry Chaired by former president of the Supreme Court of Appeal Justice Lex Mpati. I was appointed by the PIC as a Senior Manager Information Security Risk and Governance on the 1st September 2017 and I was put on suspension on the 20th November 2017. During my two months tenure at the PIC I reported directly to the Executive Head of Information Technology Ms Vuyokazi Menye. I was dismissed following a disciplinary hearing chaired by Adv Nazeer Cassim Senior Counsel on the 1st June 2018. I have 17 years of experience in the area of information security risk and governance seven years

of which I've been in senior managerial position spending a myriad of industry verticals ranging from Government, gaming and hospitality, multinational outsourcing, banking, telecommunication, IT service provider and fund manager.

I have a National Diploma in Information Technology from the University of South Africa. A Certificate in Information Technology Banking Learnership Program from Tshwane University of Technology and a Masters Degree in Computer Science specialising in Information Security from Rhodes University. I have written a number of articles published locally and internationally and have been honoured to represent South Africa at the Fifth SABSA World Congress at Ireland in October 2013. I've also
10 represented South Africa at the 2018 Africa Cyber Defence Summit in Nairobi, Kenya. I am currently concluding my Doctor of Business Leadership Degree with Unisa Graduate School of Business Leadership. I am a certified information Systems Security Professional. I'm a certified Information Security Manager. I'm a certified ISO 270001 Lead Implementer. I'm a certified Sherwood Applied Business Security Architect. I'm a certified Payment Card Industry Professional and I'm also certified in Risk and Information Systems Control.

My role as Senior Manager Information Security Risk and Governance involves amongst other things the development and implementation of PIC's information security and risk strategy. I've attached my job description. As you will
20 notice one of my key performance areas was to continuously monitor and report on IT security risks, cyber attacks, IT controls and effectiveness of those controls. During my 17 years in IT I've been awarded the following accolades; I've received an award for service excellence and going an extra mile that was awarded in 2006 by Standard Bank, I was awarded – I received an award for service excellence in 2006 by Standard Bank, I received a top performers award in 2007 by Standard Bank, I received an

exceptional contribution award which is awarded by a company called UC Solutions in 2014.

MR EMMANUEL LEDIGA: Just a quick question Mr Mayisela, your doctorate what are you studying it in, what are you studying there in your doctorate?

MR SIMPHIWE MAYISELA: So I'm doing a research on information security investments and how behavioural artefacts effect information security investment decision-making.

Okay as a genesis, on the 5th September 2017 the Executive Committee, Exco invitees and senior managers of PIC had a strategic planning session at the Diep
10 in die Berg in Pretoria East. At around 1 p.m. after we had lunch, our lunch break and we were about to go back to the boardroom where the session was held the Chief Financial Officer Ms Matshepo More and Executive Head of Human Resources Mr Chris Pholwane approached Ms Vuyokazi Menye who was sitting with me. Ms Vuyokazi Menye asked me to stand up so we can formally introduce me to the CFO as it was still my third day at PIC. As Ms Vuyokazi Menye was about to introduce me the CFO and Executive Had of HR advised Ms Vuyokazi Menye that they have an agent and highly confidential request for. They instructed her in my presence to immediately block and not release all the e-mails with subject PIC CEO finds girlfriend.

MS GILL MARCUS: Can I ask you what, I mean you'd obviously just started and in
20 your short period there was it usual for somebody to ask about a matter like that in front of another person that they didn't know, was there a standard practice or not a standard practice to discuss what I would have thought would have been specific to Ms Menye but in front of a person that they had not yet been introduced to, was that something that happened frequently?

MR SIMPHIWE MAYISELA: As someone new, okay I'll base it on my previous

experience it is unusual for such a confidential request to be given in front of someone who is unknown.

Okay the subject of the e-mail read PIC CEO finds girlfriend. That e-mail was being received by some employees at PIC. Ms Vuyokazi agreed to the instruction and advised Mr Chris Pholwane and Ms Matshepo More that she will speak to her IT security team and that she will inform them via e-mail after the IT security team has blocked all the e-mails that had the aforementioned subject. Ms Vuyokazi Menye then introduced me to Mr Chris Pholwane and Ms Matshepo More by saying that I will be heading that IT security team. At this juncture I did not pay much attention to the request nor to the contents of the e-mail, I simply regarded this request as normal request just to block spam.

At around 13:50 on the 5th September 2017 I received an e-mail from Ms Vuyokazi Menye, I've attached it as annexure B. It was sent to the IT security team group or distribution list. It requested us to block, blacklist and not to release any e-mails with subject PIC CEO finds girlfriend. Both Mr Chris Pholwane and Ms Matshepo More were copied on that e-mail request. At around 14:52 on the same day which is the 5th September 2017 I received another e-mail from Ms Vuyokazi Menye attached as annexure C confirming to Ms Matshepo More that her instructions have been executed accordingly and that the e-mails have been forwarded to the CEO together with the list of all the people who were the intended recipients of that e-mail.

Later on on the 13th September 2017 another e-mail was received from James Nogu with the subject PIC CEO finds girlfriend. I've attached that e-mail as annexure D. It contained damaging allegations of criminal conduct on the part of the CEO of PIC. However, on this occasion it appeared that the e-mail was sent to a wider list of recipients by that I mean it was sent to all the distribution lists within PIC so

almost everyone within PIC was the intended recipient. So the e-mail contained an attachment with the file name ... (intervention)

CHAIRPERSON: Sorry just a moment.

MS GILL MARCUS: Just one second. Just can you explain having looked, I mean as being responsible for the IT system and security even if for a brief time, how would an e-mail, how would it be possible to send an e-mail from external to all recipients in the PIC and to get that entire mailing list?

MR SIMPHIWE MAYISELA: For that to happen possibly someone must have knowledge of all the distribution lists within PIC so it's someone who had internal
10 knowledge of all those distribution lists within PIC. However, there is a security mechanism to block someone from outside to send e-mails to a distribution list. At that particular point in time that security mechanism was not in place. I did however subsequently implement that security control and I do have evidence suggesting such.

MS GILL MARCUS: Sorry so on that basis it could have come from outside with knowledge of the PIC lists because you didn't have a blocking mechanism?

MR SIMPHIWE MAYISELA: Yes it would have come outside with someone who had knowledge of all the distribution lists within the PIC mailing group.

MR EMMANUEL LEDIGA: Follow up question, could it have come you know from the inside of the PIC?

20 **MR SIMPHIWE MAYISELA:** It could have come from the inside of the PIC. However, as I'm going to mention further subsequently we did determine that it was sent from outside.

MR EMMANUEL LEDIGA: Okay.

MR SIMPHIWE MAYISELA: Okay the e-mail contained an attachment with the file name paid.pdf I've attached that attachment as annexure E. It was a memorandum

written on a PIC letterhead dated 16 September 2016 seeking approval for the PIC to lease an education and healthcare mobile units from a company called Mobile Specialised Technology which I'll later on refer to as MST, as part of PIC Corporate Social Responsibility and Corporate Social Investment Strategy. On the same day I received instructions from Ms Vuyokazi Menye to conduct an investigation to determine if the James Nogu e-mailed originated from the PIC's internal network. At two minutes to midnight on the same day I responded with an e-mail containing a summary of my findings. I've attached that summary of my findings as annexure F.

10 So during my investigation I established that an e-mail was composed using a client called Roundcube which is a Webmail interface and the e-mail was last relayed by a mail server which I've given the name there, that is hosted in France, we knew that it was hosted in France based on the IP address that we found there. This IP address was found to belong to a French internet service provider called Online S.A.S. I then requested that we block the IP address of the sending mail server which I've given the IP address. We blocked that on our mail security gateway which we call Mimecast. So on my e-mail I further recommended that we obtain a section 205 subpoena that should be served to both the internet service provider as well as Webmail using the same SAPS case number.

20 I also explained the section 205 subpoena can only be served by a member of SAPS once a case has been registered. I then attached an example of a section 205 subpoena that is used for the purpose of obtaining such information from internet service providers as I had previously worked at an internet service provider before and similar such requests were served to me in my capacity as a group information security officer of that internet service provider that I previously worked for.

Okay the next section is around the mandate for opening this criminal case

with the police. So on Friday the 28th September 2017 the Executive Head of IT Ms Vuyokazi Menye, myself and one of the senior security engineers Mr Timothy Marobana who used to report to me, we met at the CEO's office to discuss the e-mails that were purportedly sent by James Nogu. Also present during this meeting was the Executive Head of HR Mr Chris Pholwane. During the meeting my security engineer Mr Timothy Marobana opened one of the e-mails received from James Nogu on the 13th September with the subject PIC CEO finds girlfriend and demonstrated to everyone who was present during that meeting how to investigate the source of the e-mail using e-mail headers. During this demonstration Mr Timothy Marobana advised the CEO that the e-mail header only shows the translated IP address as such the original IP address cannot be found. So what I mean by a translated IP address is that in IT there's a mechanism called network address translation which is used to hide the source internal IP address with an IP address that is routable on the internet.

However, using the information provided by that e-mail header Mr Timothy Marobana showed the CEO the location where the e-mail was sent. The location could be identified ... (intervention)

ADV ISAAC MONNAHELA: Mr Commissioner if I may intervene, it looks like the sentence is complete, can I just ask the witness whether he meant that Mr Timothy Marobana showed the CEO the location where the e-mail was sent from instead of where the e-mail was sent?

MR SIMPHIWE MAYISELA: Thank you, thank you for the correction. So the location could be identified as Interface Holdings located at number 25 West Street Houghton Johannesburg. So Interface Holdings also known as iFace is an integrated online media company that houses digital brands including Webmail. In essence Webmail and Interface Holdings are the same company and this is consistent with the

information that I provided to Ms Vuyokazi Menye in the e-mail containing a summary of my findings which I've attached as annexure F where I mention that Webmail is one of the institutions that should be served with section 205 subpoena the other institution being Online S.A.S. which is located in France.

I then advised everyone who was present in that meeting that to get the source IP address as well as the sender details a section 205 subpoena is required however, this will require a case to be opened with the SAPS. The CEO then gave me a mandate to open the case in order to pursue the section 205 route. This mandate was given in front of everyone who was present during that meeting. After receiving the
10 mandate ... (intervention)

CHAIRPERSON: Sorry can I just ask for my interest, section 205 of what Act, of which Act is section 205?

MR SIMPHIWE MAYISELA: I'm not sure of which Act Mr Commissioner.

CHAIRPERSON: Is it Criminal Procedure Act or is it some other IT Act or something?

MR SIMPHIWE MAYISELA: No it's not an IT Act.

ADV ISAAC MONNAHELA: Commissioner it's the Criminal Procedure Act it deals with subpoenas.

MR SIMPHIWE MAYISELA: Thank you.

CHAIRPERSON: Yes thank you.

20 **MR SIMPHIWE MAYISELA:** Okay after receiving the mandate I contacted Brigadier Piet Pieterse who referred me to Colonel Yolanda Gay. So I put a footnote to say that Brigadier Piet Pieterse was contacted directly when an inquiry was opened so I already had contacts of Brigadier Piet Pieterse because it is a best practice requirement as specified in ISO 27001 for the IT security function to maintain a list of contact with authorities to address issues of cyber crime and other IT security related matters.

Colonel Yolanda Gay assisted me with opening of an inquiry and he gave it an inquiry number CCI6/09/2017 on the 29th September 2017. Colonel Yolanda Gay then sent an SMS at 4:22 p.m. on the same day confirming that inquiry has indeed been opened and that the inquiry has been assigned to Lieutenant-Colonel Steenberg. The statement had the following details:

“Hi Simphiwe, I will send you a mail with all the details. Colonel Steenberg will attend to your matter on Monday, your inquiry is 6/09/2017 it is also very crucial that you open a case at the police station so that your case can be investigated by the right unit. Our office will attend to the cyber element in the meantime.

Regards Colonel Gay”

ADV ISAAC MONNAHELA: If I may intervene Commissioner, did you understand Colonel Gay what case, the case that she said you should open what case was she referring to?

MR SIMPHIWE MAYISELA: Yes she was referring to a case that will tie in with the inquiry that had already been opened to pursue the section 205 route. So on the 29th September 2017 immediately after opening the inquiry I sent a text message to Ms Vuyokazi Menye with the following details; update from SAPS an inquiry has been logged with SAPS Cyber Crime Unit and the inquiry, and I provided with the inquiry number and I also mentioned that a docket will need to be opened on Monday and I also mentioned that this was from Colonel Steenberg.

And then on Monday the 1st October 2017 I went to Garsfontein Police Station but I failed to open the case because the PIC offices fell outside of Garsfontein Police Station’s jurisdiction. So the police officers at Garsfontein advised me to go to the Brooklyn Police Station instead. So on the next day on the 2nd October 2017 I

opened a case at the Brooklyn Police Station and recorded that I've attached as annexure H. As mentioned on this first statement this case was opened for the purpose of obtaining a section 205 subpoena. It should be placed on record that the case was registered as a corruption case by the SAPS and not by me. They recorded the case based on the allegations made on the content of the e-mail so when the police officer who was registering the case he did not know which charge to assign to the case you know and then I asked him to speak to Lieutenant Steenberg who had previously opened an inquiry over the phone. So Lieutenant Steenberg advised the police officer who was registering the case over the phone to assign it a charge of corruption
10 because of the content of the e-mail was about corruption.

At the time the charge of corruption was assigned to the case to achieve the objective of getting a section 205 subpoena in the quest to investigate the sender. At this moment I was solely acting on the instructions of the CEO and I did not occur to me that investigating a sender may be unlawful within the provisions of the Protected Disclosure Act. Furthermore, at this moment I had not enlisted my cooperation with the members of the SAPS into a substantive corruption investigation into the contents of the James e-mails, my sole objectives was to obtain a section 205 subpoena in the quest to identify the sender.

While I became aware of the corruption charge on the 2nd October 2017 my
20 understanding at that point in time was that this will be a corruption case to investigate the sender as per the mandate that was given to by the CEO and not a corruption case targeting the CEO. This understanding was informed by the fact that whistleblowing James Nogu he had been a potential whistleblower and corruption they often go hand in hand as such I did not feel the need to communicate to the CEO nor to Ms Vuyokazi Menye that there was a charge of corruption because the CEO was not the target at the

time. So at 11:13 a.m. on the same day that the case was opened, that is on the 2nd October 2017, I received the following text message from the SAPS confirming the case number and the SAPS says the case registered on 2017-10-02 at Brooklyn with reference 19/10/2017 and the gave me the station contact details.

It should be noted that the above text did not specify the charge of corruption also. I then forwarded the text message to Ms Vuyokazi Menye who in turn forwarded the same text message to the CEO at 11:37 a.m. informing him about the case that has been opened and then the CEO then acknowledged receipt of the text message by replying thanks Sisi.

10 **MR EMMANUEL LEDIGA**: Question, I just wanted to check I mean the corruption case was opened and I think the Cassim judgment has traversed the area, didn't you feel that you should speak to the CEO so that he could get a lawyer or start preparing himself for you know for these issues?

MR SIMPHIWE MAYISELA: Not at all.

MR EMMANUEL LEDIGA: Didn't you really feel obligated to talk to him?

MR SIMPHIWE MAYISELA: Not at all because at that point in time the CEO was not the target so we opened the case to pursue the section 205 subpoena to investigate the sender so I had no reason to inform the CEO because he was not the target.

20 **MS GILL MARCUS**: In a follow up question, during the period from say 13th September to the 2nd October roughly you know the rest of that month did you have any meetings or discussions with either Ms Menye or the CEO about the case?

MR SIMPHIWE MAYISELA: Not at all.

MS GILL MARCUS: So there was no formal interaction face-to-face interaction to say what is happening or you to give a report to them, to either of them?

MR SIMPHIWE MAYISELA: So between the 2nd and the ... (intervention)

MS GILL MARCUS: The 13th September when it was asked and the 2nd October when you dealt with this matter, when you became aware of the corruption charge.

MR SIMPHIWE MAYISELA: Okay remember the case was opened on the 2nd and then there was time between the 2nd and the 13th when I enlisted my cooperation with the police. So there were certain events that occurred during that time which I'm going to touch ... (intervention)

MS GILL MARCUS: No I'm going back before that because I'm saying on the 13th September when you started, when you were asked to look into the matter which was the 13th September.

10 **MR SIMPHIWE MAYISELA:** Yes?

MS GILL MARCUS: I'm really just asking whether, because at that time it was still trying to get this 205 subpoena.

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: Whether between that time and opening the case on the 2nd October there'd been any interaction face-to-face with either Ms Menye or with the CEO to ask what is happening or where does the case stand?

20 **MR SIMPHIWE MAYISELA:** Not at all. Okay so going to another section talking about circumstances leading to my cooperation with the police. So on Friday the 6th October as we were attending the Board strategy planning session at Magaliesburg I received a call from a gentleman called Colonel Nama who requested a meeting with me at the offices of the Provincial Commissioner regarding the case that I opened at Brooklyn Police Station on the 2nd October 2017. Colonel Nama requested the meeting to be held on the 13th October at the office of the Provincial Commissioner located at number 16 Empire Road Parktown Johannesburg.

After receiving the call from Colonel Nama I informed Ms Vuyokazi Menye

about the call and I also indicated to her that I was concerned about this call from the SAPS Provincial Offices because the case to investigate the sender of James Nogu e-mails was registered at Brooklyn Police Station as such I did not understand why this came from the – this call came from the SAPS Provincial Offices in Parktown. Ms Vuyokazi Menye then asked me to inform the CEO verbally about the details of the call from Colonel Nama and to also put my concerns in writing. I approached the CEO during a coffee break to inform him about the call and I also put my concerns in writing in an e-mail with subject Update on the James Nogu e-mail, I've attached that e-mail as annexure I.

10 On the same day I received a call from Colonel Nama I also received a call from Lieutenant Steenberg who wanted to give me an update on their investigation. Lieutenant Steenberg advised me that since the internet service provider which I referred to as Online S.A.S. that is hosting the mail server that relayed the e-mail from James Nogu is situated in France she advised that a mutual legal assistance treaty will be required between France and our National Prosecution Authority and she mentioned that though this is a cumbersome process Online S.A.S. can be subpoenaed to release all the information relating to the sender of the e-mail. However, she mentioned that this process can only be executed if there is a possible suspicion of transgression and then she further mentioned that unfortunately in our case there is no possible suspicion
20 that James Nogu committed any offence.

So the contents of my dialogue with Lieutenant Steenberg were captured on the same e-mail that I sent to Vuyokazi with the subject Update on James Nogu e-mails which I've attached as annexure I.

MS GILL MARCUS: Sorry can I just ask you in all of this activity did you or Ms Menye at any time consult with the legal team from the PIC about procedures, process and

what could or should be done?

MR SIMPHIWE MAYISELA: Not at this point. So in his forensic ... (intervention)

MR EMMANUEL LEDIGA: Just a further question, you know why did the police say that James Nogu didn't commit an offence is there some reason they gave?

MR SIMPHIWE MAYISELA: Their rational was that they don't see any offence with anyone blowing a whistle. In his forensic report and during the PIC Commission of Inquiry Mr Frans Lekubo testified that I misled the PIC by mentioning that the internet service provider is located in France and that a mutual legal assist treaty is required. I cannot understand how I misled PIC when all I did was to relay verbatimly the feedback
10 I received from Lieutenant Steenberg about the police investigation. The meeting with Colonel Nama Provincial Head of Commissioner at Brigadier Modise as well as Ms Vuyokazi Menye and myself was held at the police of the Provincial Commissioner on Friday the 13th October 2017 as scheduled. Brigadier Modise and Colonel Nama mentioned that they were under the impression that the person who opened the case on the 2nd October was also the same person who made allegations of corruption on the e-mail. So in essence the police thought I was James Nogu so they wanted to make sure that I am protected as a whistleblower under the Protected Disclosure Act.

I then explained to them that no I am not James Nogu and that I was instructed by the CEO to register a case in an effort to investigate the sender. I also
20 advised the police that the mandate from the CEO was clear and it was that of registering a case to investigate the sender of James Nogu e-mails. At this juncture Ms Vuyokazi Menye excused herself from the meeting to get something to eat. Brigadier Modise also mentioned that the meeting was between the person who opened the case and the members of the SAPS. Acting on the advice given by Brigadier Modise I wrote a further statement which I've attached as annexure J to clarify this misunderstanding

that Colonel Nama and Brigadier Modise had at the time.

The clarity provided by the further statement is that the case was originally opened to assist in finding the sender as per the instructions given to me by the CEO on the 28th September 2017. The further statement cleared the misunderstanding that the case was originally opened to lay a corruption charge against the CEO a fact that Adv Nazeer Cassim seemed to not accept in his disciplinary hearing judgment. To further clear my understanding Colonel Nama compiled a letter on a SAPS letterhead, I've also attached that letter as annexure K, this letter sets out precisely how the cases ended up being registered as a corruption case. The contents of this letter were
10 unfortunately completely ignored by Adv Nazeer Cassim when he was making a ruling during my disciplinary hearing.

In this letter which is dated 16 September 2017 Colonel Nama clearly stated that the case could not be closed immediately as well as doing so would be contrary to the provisions of the Prevention and Combating of Corrupt Activities Act which is PCCA. During the meeting Colonel Nama and Brigadier Modise mentioned that the SAPS would investigate allegations that constituted the contents of the e-mail instead of investigating the identity of the sender. They made an example to me with an anonymous phone call tipoff made to the police about a house that manufactures drugs. They explained that upon receiving such an anonymous tipoff the police would
20 immediately rush to the house that is alleged to manufacture drugs and they will not instead investigate who made that anonymous tipoff call.

So they further explained that the identity of the person who sent this whistleblowing e-mails, in this case James Nogu, will not be disclosed neither to myself nor to the PIC because doing so would only encourage ordinary citizens from interacting anonymously with law enforcement agencies in the fight against crime. I'm

going to read that again. They further explained that the identity of the person who sent whistleblowing e-mails to the PIC, that is James Nogu, will not be disclosed neither to myself nor to the PIC because doing so would only discourage ordinary citizens from interacting anonymously with law enforcement agencies in the fight against crime.

At this point I pledged my commitment to assist SAPS in providing them with information to investigate the allegations made by James Nogu who is in this case the whistleblower. Brigadier Modise mentioned that it would benefit the investigation if they have some internally within PIC who can assist with supporting evidence.

MR EMMANUEL LEDIGA: Question.

10 **MR SIMPHIWE MAYISELA:** Go ahead.

MR EMMANUEL LEDIGA: Question, I just want to check you were a messenger sent by the PIC and as you said you were not James Nogu so I don't understand why the police would want you to cooperate as a messenger why couldn't they go to the PIC and say they would like to get people to cooperate, can you explain that please?

MR SIMPHIWE MAYISELA: Okay I will touch on that further there is a statement that talks to that okay. So I made this decision partially because I could not envisage effectively attracting an investigation into serious allegations that SAPS apparently took seriously. It was also partially because the contents of the James Nogu e-mail had themselves started to weigh upon me. While I was not in a position to pass judgment
20 on their complete truthfulness the allegations were so detailed and categorical by that I mean they could be rebutted if untrue. I believe that they could not be dismissed as mere scandalising. I was struck by the fact that the PIC's approach up until this time was primarily to identify and sanction the sender and not transparently justify the processes by which impregnated investment decisions were made.

To put it colloquially I myself began to smell a rat and questioned whether

the instructions given to me to identify James Nogu were proper or designed as part of a cover-up. As a person newly appointed to the PIC this is was a rather bewildering and daunting situation. After reflecting and trying to balance my competing obligations one to my employer which is PIC and the other to an organ of State charged with investigating crime which is SAPS I enlisted my cooperation with the SAPS corruption investigation. This was on the basis that I may, during the course of my employment and given the nature of my role, have access to confidential information that may assist with police with their investigation in the fight against corruption. So Mr Lediga so the request from police was based on my position that I may during the course of my employment come into contact, given the role, the nature of my role come into contact with confidential information that may assist them during the investigation.

MR EMMANUEL LEDIGA: And during that time no one at the PIC knew about this, the legal department at the PIC knew about these things?

MR SIMPHIWE MAYISELA: At that time the meeting was between myself and the police and no one knew about this meeting yes. So from this day onwards I accessed confidential documents which I believed could assist the police with their investigation. None of the confidential documents that were retrieved from PIC were used for my own personal gain. It should be noted that from the 13th October 2017 going forward I also refrained from disclosing information about the case to my manager Vuyokazi Menye however, I did share further statement with Ms Vuyokazi Menye when she requested it on Monday the 16th October 2017. The reason for this is that she was present at the office of the Provincial Commissioner when the further statement was written. Ms Menye returned to the meeting after buying food while we were finalising the further statement mentioned above.

MS GILL MARCUS: Sorry can I take you to your clause 20 paragraph 20.

MR SIMPHIWE MAYISELA: Yes?

MS GILL MARCUS: And ask you if you referred back to your clause on paragraph 4.

MR SIMPHIWE MAYISELA: Yes?

MS GILL MARCUS: Which says I have 17 years of experience in the area of information security, risk and governance, would you not regard this as contradictory to your actions if you are dealing with governance and you are an experienced person in dealing with risk and governance would you have not seen this as a conflictual response that you actually are providing secretly confidential documentation to the police to help with their investigations, I mean there's a contradiction to governance and ethics and things with that position, could you just elaborate how you justified that apart from the question of saying you assist the police with their enquiry but you're dealing with confidential documents that you have in the employ of the PIC undertaken and you're supposed to be the one protecting the access to information?

MR SIMPHIWE MAYISELA: Okay so in my knowledge based on my 17 years of experience contractual obligation did not supersede this kind of engagement with the organ of State that is charged with investigating crime. So ... (intervention)

MS GILL MARCUS: Does it not, with investigating crime yes but there's a difference between that, you're looking, to me the question I'm asking you is you have different recourse, you can go to the chair he's the Deputy Minister, you can go to the Minister as the shareholder representative, there are range of choices you've got about a concern, a confidential whistleblowing, why would you choose to clandestinely use your position of trust to support an investigation that you think, it may well have been a valid investigation I'm not questioning that, I'm asking whether that was the only route open to you and why you chose that?

MR SIMPHIWE MAYISELA: Okay the answer is this was the only route open to me

and I do provide justification thereof further within my statements.

MS GILL MARCUS: But I want to hear your justification now.

MR SIMPHIWE MAYISELA: Okay I had no route to report this to the CEO because that would mean that I would impede the hands of justice because I would literally informing the CEO that he's being investigated that's more like impending the hands of justice. And secondly I had every reason to believe that the CEO was also conflicted in this so I did not inform the Board about these matters. I've stated a number of reasons why I did not inform the Board so I'm happy to read those reasons further down.

MS GILL MARCUS: But the Board and the Chair are two different things but when you
10 elaborate please just elaborate why you saw the role of the Chair as distinct from the Board as not a source.

MR SIMPHIWE MAYISELA: So the role of the Chair I did not distinct it from the role of the Board so regard them collectively as the Board. Where was I 22? So all the confidential documents that I accessed during my course of work, some of which were found by Naledi Advisory Services during their forensic investigation were shared with the relevant members of the SAPS within what I understand to be the provisions of Protected Disclosure Act and/or my obligation to assist the police in a criminal investigation.

The decision to enlist my cooperation with the members of the SAPS was
20 made in line with clause 19.5 of the PIC Fraud Corruption and Nepotism Prevention Policy where it states under clause 19.5.1 that an employee can be protected under the Whistleblowers Act if they make wider disclosures to the police.

ADV ISAAC MONNAHELA: Mr Commissioner it is past one I was wondering whether it is a convenient time to take the lunch break?

CHAIRPERSON: Until when Mr Monnahela?

ADV ISAAC MONNAHELA: Until quarter to two Commissioner.

CHAIRPERSON: That's fine we'll adjourn then until quarter to two.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Just to remind you Mr Mayisela that you still under oath okay.

MR SIMPHIWE MAYISELA: Okay.

CHAIRPERSON: Yes Mr Monnahela?

ADV ISAAC MONNAHELA: Commissioner the witness was on page 12 of paragraph 23 of the statement.

10 **MR MAYISELA:** Okay I'll resume.

“The decision to unleash my corporation with the members of the SAPS was made in line with clause 19.5 of the PIC fraud corruption and nepotism prevention policy where it states under clause 19.5.1 that an employee can be protected under the whistleblowers act if they make a ...(indistinct) disclosure to the police.”

I'm going to move over to the next section where I specify reasons for not disclosing to the CEO as well as to the board about the policy investigation.

20 “The activities pertaining to the progress of the criminal investigation against the CEO were not disclosed to the CEO because doing so I believed would have obstructed the ends of justice as the CEO was and still is the subject of the investigation. We need to be mindful that the case is still pending – is still going. There is an investigation against the CEO by the police as we speak. Given the nature if the corruption ...(intervention).”

CHAIRPERSON: Sorry are you suggesting that ...(intervention).

MR MAYISELA: I'm saying that - it's a statement.

CHAIRPERSON: You suggesting that you couldn't even tell him that look a case has been opened against you? Couldn't you even tell him that?

MR MAYISELA: Yes no I couldn't.

CHAIRPERSON: that a case has been opened against you and this is what is alleged, you couldn't even tell him that?

MR MAYISELA: I couldn't even tell him that.

CHAIRPERSON: Why not?

MR MAYISELA: Because I believed that would be obstructing the ends of justice. It's like I'm informing the culprit that he's being investigated by the police. That's how I felt
10 and believed at that point in time.

CHAIRPERSON: Alright I'll leave it at that.

MR MAYISELA: "So given the nature of the corruption allegations in the James Nogu
emails which alleged a level of board connivance in possible corruption I also
reasonably believed that going to the board might have the same negative
effect on the effectiveness of the criminal investigation. The activities
pertaining to the progress of the criminal investigation against the CEO were
also not disclosed to the board because I have every reason to believe that
the board was conflicted if not supine towards the CEO. As stated above
members of the previous board were potentially implicated by the James
20 Nogu allegations to. If not in corruption then in very serious failures to
exercise their fiduciary duties. The fact that the board would not be of refuge
for me also seemed apparent from their generally incurious attitude to the
substance of the James Nogu emails even after part of these emails were
confirmed.

For example when the board was made aware by the executive

head of internal audit that some of the allegations made by James Nogu were indeed true no sanction was issued against the CEO. By this I refer to the payment to Ms Pretty Louw that the CEO arranged. The minutes which I've attached in Annexure L of the PIC board meeting held on Friday September – on the 29th September 2017 outline in section 7 that the Executive Head of Internal Audit confirmed that allegation that the PIC CEO effectively instructed a Director of a PIC investee company Mr Molautsi to settle the debt of an associate of the CEO. Only a wilfully blind board I believe would fail to see that quite pro quo to Mr Molautsi making this payment was in all likelihood further PIC favour.

10

The board also failed to execute its fiduciary duties by not reporting the internal audit findings to the shareholders or to the authorities immediately after being made aware of the corrupt activities or credible suspicions thereof by the PIC CEO. According to the provisions of the PCA Act any person who holds position of authority and who knows or ought reasonably to have known or suspected that any other person has committed an offence in terms of Section 3 to 16 or 20 to 21 of the act or theft, fraud, extortion, forgery or uttering of a forged document involving an amount of R100 000,00 or more must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

20

So the board had knowledge of this transaction which was in access of R100 000,00 but they did not exercise their fiduciary duties to report the matter to the police officials. So it should be noted that these minutes were later doctored or sanitised to remove any information that may at a later stage have implicated the CEO. The PIC incidentally submitted

...(intervention).

CHAIRPERSON: Sorry, sorry there is a question.

MR EMMANUEL LEDIGA: Yes I just wanted to check something. During testimonies here there were many board – you know people from the board saying that the minutes were not doctored. You know to that effect.

MR SIMPHIWE MAYISELA: So I had all three versions of the minutes. So I had all the evidence in front of me that the minutes were doctored and those minutes were indeed provided to the police. All three versions of them. The original version, the doctored version as well as the tracked version where all the information that was removed was tracked.

10

MR EMMANUEL LEDIGA: Ja so are you saying they were doctored to protect the Chief Executive?

MR SIMPHIWE MAYISELA: That's correct.

MR EMMANUEL LEDIGA: Okay.

CHAIRPERSON: Can you point to any part of the minutes ...(intervention).

MR SIMPHIWE MAYISELA: Yes I do ...(intervention).

CHAIRPERSON: ... or to elaborate on your submission that they were doctored and as my colleague told you there was evidence here that the minutes were not doctored. What had happened was what normally happens. That a draft set of minutes goes out to whoever was in a meeting and they will correct or amend accordingly if they feel that there is a incorrect recording of what was said.

20

MR SIMPHIWE MAYISELA: Okay Mr Commissioner I am happy to provide a document specifying – outlining which statements were removed or were doctored from the original version and my justification why I believe those statements were removed to protect the CEO.

CHAIRPERSON: Were you present at that meeting on the 29th September?

MR SIMPHIWE MAYISELA: I was not present Mr Commissioner.

CHAIRPERSON: Yes thank you.

MR SIMPHIWE MAYISELA: Thank you.

“Okay the PIC incidentally submitted the doctored ...(intervention).

MS GILL MARCUS: Just one moment.

CHAIRPERSON: Ja Gill.

MS GILL MARCUS: I would then ask not that you present to us your view of it. I think you say you’ve got three sets of minutes and they are tracked and I think that it needs

10 to be provided to the ...(intervention).

MR SIMPHIWE MAYISELA: I have already provided them.

MS GILL MARCUS: Okay.

MR SIMPHIWE MAYISELA: What’s missing is a document rationalising why I believe that they were doctored.

MS GILL MARCUS: Okay.

CHAIRPERSON: Ja please send us that justification.

MR SIMPHIWE MAYISELA: Thank you.

CHAIRPERSON: Alright thank you.

MR SIMPHIWE MAYISELA: “The PIC incidentally submitted the doctored version of

20 the minutes during my disciplinary hearing. When my legal representative Advocate Ngcukaitobi brought into the attention of the Chair of the hearing Advocate Nazeer Cassiem that the PIC doctored minutes of the special board meeting held on the 29th September 2017. The PIC board responded by suspending the company secretary Ms Bongani Mathebula suspecting that she was the one who leaked the minutes to me.”

MR EMMANUEL LEDIGA: If I may intervene Commissioner? It is clear from your statement that you came into possession of the minutes. Could you explain how you came into possession of the minutes?

MR SIMPHIWE MAYISELA: So the minutes were leaked to me by a source internal to PIC. I'm not privy to disclose the source in order to protect the source as you know that it has become common knowledge for PIC to victimise it's employees when such incidents occurs. So I will not disclose the source on that basis and on the basis that there is a pending litigation with me against PIC as my matter is currently being referred to the labour court.

10 **ADV ISAAC MONNAHELA:** Just to check but you are saying it was not Ms Mathebula.

MR SIMPHIWE MAYISELA: I state under oath that it was not Ms Mathebula who leaked the documents to me.

ADV ISAAC MONNAHELA: Okay.

MS GILL MARCUS: And can we just be clear that it also wasn't you using your access as you had previously to get documentation that you actually accessed the minutes yourself?

MR SIMPHIWE MAYISELA: That is correct ...(indistinct) that I did not use my super admin access to obtain the doctored the minutes.

20 **ADV ISAAC MONNAHELA:** If I may ask Commissioner. At which stage did you come into possession of the minutes? Was it before you suspension, after you suspension or after you dismissal?

MR SIMPHIWE MAYISELA: I received the minutes during my suspension – on the period when I was on suspension. It should be noted also that I continue to receive documents or some documents were leaked to me even after my dismissal.

“All three versions of the minutes were part of confidential documents shared

with the SAPS after I have enlisted my cooperation with the police.”

MR EMMANUEL LEDIGA: Question, question. When you say other documents were leaked to you what kind of documents besides the minutes?

MR SIMPHIWE MAYISELA: I’m not privy to mention what documents but they were confidential in nature.

MR EMMANUEL LEDIGA: And it could be about transactions maybe?

MR SIMPHIWE MAYISELA: Partly, partly yes.

CHAIRPERSON: Okay.

MR EMMANUEL LEDIGA: And did you keep them or you pass them on maybe?

10 **MR SIMPHIWE MAYISELA**: I never kept them I passed them on.

MR EMMANUEL LEDIGA: You passed them on?

MR SIMPHIWE MAYISELA: Yes.

MR EMMANUEL LEDIGA: Alright.

MS GILL MARCUS: Who did you pass them onto?

MR SIMPHIWE MAYISELA: To the police.

MS GILL MARCUS: So the police would have confidential documents about pending deals?

MR SIMPHIWE MAYISELA: Yes they would because they were investigating the matter yes.

20 **MS GILL MARCUS**: Ja but they weren’t investigating deals. I mean that’s – okay.

MR EMMANUEL LEDIGA: Just to check. You passed them onto the police only or to other parties?

MR SIMPHIWE MAYISELA: I passed them only to the police. I did report the matter to the Public Protector as well however those documents were not shared with them at that particular point yes.

MR EMMANUEL LEDIGA: Okay so they only went to the police?

MR SIMPHIWE MAYISELA: Yes.

MR EMMANUEL LEDIGA: Okay alright thanks.

MR SIMPHIWE MAYISELA: Okay.

10 “The list of reasons why the board at the time could not be trusted goes on. The board of PIC could not be trusted because they were in violation of their own policy. Clause 7.15 of the PIC Fraud, Corruption and Nepotism Prevention Policy echoes the PCCA Act and places duty to report any corrupt transaction or suspicions thereof involving an amount of R100 000,00 or more to the police. However the board of PIC failed to comply with policy in respect of the amount of R300 000,00 payment made by Mr Molautsi at the direction of the PIC CEO to an associate of the CEO under the strongly implied and understood inducement of further PIC favour. Subsequent to the special board meeting held on the 29th September 2017 ...(intervention).”

CHAIRPERSON: Sorry, sorry. Who paid this R300 000,00? Was it the PIC?

MR SIMPHIWE MAYISELA: It was paid by Mr Molautsi on the direction of PIC – of CEO.

CHAIRPERSON: Why should the board be involved then? The board of the PIC why should they be involved?

20 **MR SIMPHIWE MAYISELA:** The board were aware when they were presented with the report of the Head of Internal Audit that protocols – PIC protocols were not followed when this transaction was made and as such the board should have followed the fiduciary duties as per the PIC Fraud, Corruption and Nepotism Prevention Policy and as per the PCCA Act that they should report such irregularity to the authorities.

CHAIRPERSON: No we are not – you see we are not talking about something done

by the PIC. This is – I hope you are not referring to the MST deal but rather to the R300, 000 to assist a certain lady which was done by Mr Molautsi of another company, am I correct?

MR SIMPHIWE MAYISELA: Yes and Mr Molautsi owned an investee company which PIC also now provided investments to.

CHAIRPERSON: Yes but the amount of R300, 000 did not come from the PIC but rather from this other company. My question is what's that got to do with the board of the PIC?

MR SIMPHIWE MAYISELA: At that point in time my understanding that PIC funds
10 were used for this transaction.

CHAIRPERSON: You mean the R300 000, 00 was that PIC funds?

MR SIMPHIWE MAYISELA: My understanding at the time that those funds were paid in favour of Dr Matjila you know executing his irregularity dealings with someone who was purportedly reported to a girlfriend. So as I've mentioned I smelled a rat there.

MS GILL MARCUS: In retrospect are you still holding that view? That's the girlfriend – that this allegation is correct that she was the girlfriend and that it was his money because it clearly was not PIC money that was used.

MR SIMPHIWE MAYISELA: So after the Budlender report I no longer hold that view.

MS GILL MARCUS: How does that square with the question of having done all of this?
20 Taken documents to the police on the basis of allegations that have turned out to be incorrect? Does that not raise a question with you about your response and how you dealt with it?

MR SIMPHIWE MAYISELA: Remember this was not one of the reasons why I suspected that the board had foul play. So there were a number of reasons that still stand even after the Budlender report. So my standing remains the same.

“Subsequently the special board meeting held on the 29th September 2017 another special board meeting was called for the 6th October 2017. During this meeting the board was made a decision that any further investigation into the whistle blowing report be stopped. By then the police investigation has started to touch on the substance of the James Nogu allegations and not only on the identity of the sender. This decision is captured in clause 6.3 of the minutes titled minutes of the special board meeting held on 6 October 2017 which I have attached it as Annexure A.

10 A board that passes a decision to stop such an investigation with proper scope to me cannot be trusted. So instead of the board requesting a full investigation on the allegations made by James Nogu the board through the resolution made at the Audit and Risk Committee on the 28th November 2017 opted to investigate the sender thereby somehow violating the whistleblowers act and to lay ...(indistinct) charges against both myself and Ms Vuyokazi Menye. This can be construed as an attempt to deflect attention away from the allegations made by the whistleblower.”

So there was some suspicions of witch hunt here which I am going to touch on in my next section.

20 “So on the 18th September 2017 the CEO of PIC met with an IT service provider called Business Connection to investigate the source of James Nogu email. BCX subcontracted the services Sense Post and Naledi Advisory Services. So Sense Post was responsible for conducting penetration test and Naledi advisory services was responsible for conducting the forensic investigation.”

MS GILL MARCUS: We missing something but I just wanted to go back to clause 9.

MR SIMPHIWE MAYISELA: Okay.

MS GILL MARCUS: And if you look in there that the decision is captured in clause 6.3 of the minutes entitled minutes of the special board meeting held on the 6th October which you've put as Annexure L. The 6th October – I might have the wrong one here. Where is the 6th October ...(indistinct). I think continue I'll just find it here.

MR SIMPHIWE MAYISELA: Okay.

10 “So ironically there is no evidence then suggesting that a formal procurement process was followed in sourcing the services of BCX, Naledi Advisory Services as well Sense Post. As such engagements with these service providers could be in violation of the Public Finance Management Act also knows and PFMA.”

CHAIRPERSON: Sorry can we just go back to the question that my colleague asked you. What appears to me to be Annexure L is a copy of the minutes ...(intervention).

MS GILL MARCUS: Of the 29th September ...(intervention).

CHAIRPERSON: ... of the 29th September.

MS GILL MARCUS: (Indistinct) so 6.3 ...(intervention).

MR SIMPHIWE MAYISELA: This must have been an oversight on my side then. I will rectify it.

MS GILL MARCUS: No let's just – let's just look at this.

20 **CHAIRPERSON:** It might be amongst them but we just checking.

MS GILL MARCUS: No it is, it's actually Annexure M.

CHAIRPERSON: M?

MS GILL MARCUS: Ja.

MR SIMPHIWE MAYISELA: Okay it's an oversight on my side I'll correct that.

MS GILL MARCUS: That's no problem.

CHAIRPERSON: So it's M for the record. M for Martin.

MR SIMPHIWE MAYISELA: Okay thank you for the correction.

CHAIRPERSON: Yes?

MS GILL MARCUS: It's fine thanks.

MR SIMPHIWE MAYISELA: Okay ironically there is no evidence suggesting that
...(intervention).

MR EMMANUEL LEDIGA: To come back – just to come – so Sense Post did what and
then Naledi did what?

MR SIMPHIWE MAYISELA: Okay Sense Post did penetration testing.

10 **MR EMMANUEL LEDIGA:** What's that sorry?

MR SIMPHIWE MAYISELA: Penetration testing.

MR EMMANUEL LEDIGA: Penetration testing okay.

MR SIMPHIWE MAYISELA: So penetration testing is whereby you hire people that
pretend to be hackers and they try to infiltrate your IT network almost simulating what a
real life hacker would do.

MR EMMANUEL LEDIGA: Ja okay.

MR SIMPHIWE MAYISELA: And Naledi Advisory Services obviously were contracted
for forensic investigations.

20 "So ironically there is no evidence suggesting that formal procurement
processes were followed in sourcing the services of BCX, Naledi Advisory
Services and Sense Post. As such engagement with these service providers
could be in violation of the PFMA. It should also be noted that under the
provisions of that whistleblowers act whistleblowers are provided with an
exclusion of liability from amongst other things disciplinary action in respect
of acts prohibited by other law, oath, contract, practice of agreement

requiring him or her to maintain confidentiality or otherwise restricting the disclosure of the information with respect to a matter. It would be better for the legal team of PIC Commission of Inquiry to address this matter in a more detailed detail that I am capable of.

However I do believe that the investigation and subsequent disciplinary action after it was known that I was cooperating in a police investigation against the CEO was nothing short of an effort to pierce the protections that the PDA act provided me.”

ADV ISAAC MONNAHELA: Could you say that action was taken against you and then they ...(indistinct) the other people or was it against you only?

MR SIMPHIWE MAYISELA: So here I'm only going to restrict this to me only.

ADV ISAAC MONNAHELA: To you only?

MR SIMPHIWE MAYISELA: Yes.

ADV ISAAC MONNAHELA: Alright. But there could be other people?

MR SIMPHIWE MAYISELA: Yes potentially.

“Notably even after finding me guilty for breaching my duty of good faith towards the PIC by not informing the CEO that he was under a criminal investigation in which I was a source Advocate Nazeer Cassiem admonished the CEO for directing the forensic investigation into me when he was obviously conflicted. Advocate Nazeer Cassiem writes as follows, I will read:

In so far as this matter is concerned the CEO should have extricated himself completely from any investigation or any connection with those involved in any facets of this matter. Fundamentally the CEO erred when he engaged the employee and his immediate superior to investigate the identity and or source of the Nogu email. That should have been a task

outside the domain, interference and control of the CEO.

10 I should also note that during this forensic investigation into identity of James Nogu which was later extended to also identify persons within the PIC that are talking to the police an email account with super admin privileges what was created for Mr Frans Lekubo from Naledi Advisory Services on Mimecast on the 20th October 2017. Super administrative privileges allow for the viewing of the content of the emails and it's attachments for all PIC users. Even for the users that are outside the scope of the investigation. It should be placed on record that the forensic investigation was irregular for other reasons to. Super admin privileges are like the keys to every lock in the PIC's email system.

20 During my disciplinary hearing I refer to this level of access as keys to the kingdom. The level of access afforded to – this level of access afforded to an outsider was over broad, irresponsible, unnecessary for the investigation and constituted a grave risk to the integrity of the PIC and its systems who's effects down the line may never be known. This request to Mimecast was made by the CEO on the 20th October 2017. I have attached that request as Annexure A and it was specified within that letter that the investigation was for the period from the 1st July 2017 to the 20th October 2017. The following PIC employees were listed as individuals to be spied on.

First on the list was Ms Vuyokazi Menye, Mr Paul Magula, Ms Bongani Mathebula, Ms Pamela Pala, Ms Lufuno Nemaghovani and Mr Ernest Nesani. I detected a suspicious email account belonging to Frans Lekubo using my own super admin privileges that were authorised by Ms

Vuyokazi Menye via a letter written to Mimecast on the 2nd November 2017. I've attached that letter that is authorising my access as Annexure X. This email account did not conform to the PIC standard naming convention hence it was easy for me to detect it. Ms Vuyokazi Menye authorised my super admin privileges on the 2nd November 2017 so that I can retrieve all digital evidence of James Nogu emails. I retrieved all digital evidence of James Nogu emails and copied them to a compact disk. The compact disk was then collected by a member of the SAPS. At that particular point in time it was Lieutenant Colonel Machiva. It a collected from the PIC premises in Pretoria East.

10

The police advised that this digital evidence of James Nogu emails was to be handed over to the forensic science laboratory at the cyber crime unit in Pretoria East under the auspices of Captain Khan. To confirm receipt of digital evidence the police issued me with a letter titled exhibit of examination dated 2nd November 2017 which I've attached as Annexure Y.”

MS GILL MARCUS: Can I ask you evidence leader if we could – given that this is now from the 2nd November 2017 to March 2019 what actually has become of that investigation – if we don't know at this point in time? That is a very long period for an investigation given all the documentation placed before them so that the Commission can find out exactly where this stands thank you.

20

MR SIMPHIWE MAYISELA: “So after I discovered a suspicious account belonging to the Mr Frans Lekubo the Executive Head of IT wrote another letter to Mimecast on the 7th November 2017 requesting for this account to be patched. However this request was rejected out rightly by the CEO. The CEO wrote a letter to Mimecast on the 17th November 2017 requesting

Mimecast to withdraw all requests that were authorised by the Executive Head of IT. So it was a clear case of intervention there. So in addition to spying on the Executive the CEO instructed Sense Post to plant rogue wireless access point what you normally refer to as the evil twin. That evil twin was planted to intercept traffic and to capture log in credentials belonging to PIC employees.

10 This was done without the knowledge of IT department and therefore the instruction was inappropriate. Sense Post claim that they captured my domain credentials – they claim that they captured my username and password and then I later contested that claim with the engineer from Sense Post who conducted the penetration test. I sent him an email on the 2nd November and queried this and they admitted to their untruthfulness and they later sent us a revised report which was then issued on the 6th November 2017. So in view of this I have every reason to believe that I may have been the target of that evil twin. According to the initial statement of work from BCX which I have attached as Annexure O this statement of work is signed by the CEO of PIC on the 22nd September 2017.

20 There is an engagement with BCX and its affiliates that it would cost a total amount of R966 300,00. Subsequent to this PIC further engaged Naledi Advisory Services through a letter of engagement dated 8 October 2017 which I've attached as Annexure P to conduct a forensic investigation into circumstances relating to the opening of a corruption case against CEO of PIC. The cost of this engagement was set at R256 000,00. So PIC continued to engage Naledi Advisory Services at the combined hourly rate of R3 200,00 per hour to find additional allegations that they can use against

me while the hearing was still pending. So in view of this PIC spent way in access of R1,5-million to charge myself and Vuyokazi Menye instead of investigating the accuracy of the allegations by James Nogu made against the CEO.”

So I'm going to talk now about the disciplinary hearing to which I was unfortunately exposed to.

10 “So the crux of the defence during my hearing was that I took an undertaking to cooperate as a whistleblower and source to the police. This undertaking was made during the meeting with the police on Friday the 13th October 2017 at the office of the Provincial Commissioner located at number 16 Empire Road, Parktown, Johannesburg. In his ruling Advocate Nazeer Cassiem completely ignored this defence. Instead Advocate Nazeer Cassiem reflected my defence as being that I was instructed by SAPS not to reveal to PIC that a case of corruption has been opened.”

I find this very bizarre in that it would be unreasonable for the ECAPS to instruct me to inform the CEO of PIC that is currently under investigation. Even though I testified during the hearing that an undertaking to cooperate with the police was made on Friday the 13th October 2017, Advocate Nazeer Cassim kept on referring to the date of 2nd of October 2017, which is the date when the case was opened, and not on the date when
20 the undertaking was made, or when I took a decision to assist the police as described above. So there was no way that I could have deliberately withheld any information from my employer on the 2nd of October 2017 as what Advocate Nazeer Cassim eluded to in his ruling. This is because on the 2nd of October 2017, I had no knowledge that the police will opt to investigate the allegations made against a CEO instead of investigating the sender. So that knowledge was only gained on the 13th of October

2017. That is on the 2nd of October there was no corruption case against a CEO per se. As such there was nothing that I deliberately withheld on the 2nd of October 2017. I only started to deliberately withhold information after my meeting with the SAPS which took place on Friday the 13th October 2017. This is a pertinent fact that is absent in Advocate Nazeer Cassim's ruling with ultimately lead to my dismissal. I submit that the decision to withhold information at that later date was justified as my contractual duties were dwarfed by other superseding duties in the context I have tried to describe above.

ADV ISAAC MONNAHELA: You know Mr Mayisela(?), I have got some difficulty with your evidence in this regard. You are instructed by the CEO to go and investigate this

10 James Nogu saga, am I correct?

MR SIMPHIWE MAYISELA: Yes.

ADV ISAAC MONNAHELA: And when you went to the police you were advised by some policemen that you should open a charge. Am I correct?

MR SIMPHIWE MAYISELA: Yes.

ADV ISAAC MONNAHELA: Did the policemen – it is on. Did the policemen tell you against whom must the charge be laid?

MR SIMPHIWE MAYISELA: On the 2nd of October the charge was not placed against anyone.

ADV ISAAC MONNAHELA: Yes.

20 **MR SIMPHIWE MAYISELA:** On the 13th of October the police did not specify that the charge of corruption will be laid against anyone.

ADV ISAAC MONNAHELA: Yes.

MR SIMPHIWE MAYISELA: They said they would look at the matter broadly, they will not focus on the sender, however they will also look at the allegations made by the James Nogu or the whistle-blower at the time.

ADV ISAAC MONNAHELA: When did you ...

MR SIMPHIWE MAYISELA: And those allegations implicated the CEO. I came to that knowledge on the 13th of October 2017.

ADV ISAAC MONNAHELA: On the 13th of October you came to know of the fact that a charge has been opened against the CEO?

MR SIMPHIWE MAYISELA: That is correct. So I came to the knowledge that the case would be looked into broadly. And that the CEO might be the subject of investigation based on the allegations made on the email.

ADV ISAAC MONNAHELA: And it is at this stage that you say you thought that if you
10 were to tell the CEO what had happened that now a charge has been opened against him, you would be committing a crime yourself?

MR SIMPHIWE MAYISELA: It is not, it is not really a crime. My initial reason was that I would impede or hinder the investigation and secondly I was bounded by contractual duties and the context within I enlisted my cooperation with the police. So the latter superseded my contractual obligations with the employer. But I chose to take a bigger perspective and look at the law of the land which is PCCA as well as the PIC Fraud and Corruption Policy which relies on PCCA as well as PDA, Protected Disclosure Act.

ADV ISAAC MONNAHELA: I am not trying to criticise you at all, I just want to find the facts and the sequence of events.

20 **MR SIMPHIWE MAYISELA:** I understand.

ADV ISAAC MONNAHELA: You came to hear on the 13th of October 2017 that the charge is now against the CEO.

MR SIMPHIWE MAYISELA: That is correct.

ADV ISAAC MONNAHELA: And you decided that you are not going to tell the CEO because you would then be hindering the investigation?

MR SIMPHIWE MAYISELA: That is correct. That is what I believed at the time, yes.

ADV ISAAC MONNAHELA: Yes.

MR SIMPHIWE MAYISELA: Yes.

ADV ISAAC MONNAHELA: That is all I want to know.

MR SIMPHIWE MAYISELA: Thank you.

MR FRANS LEKUBO: Just a question. You are saying the police are still looking into the James Nogu matter.

MR SIMPHIWE MAYISELA: That is correct.

MR FRANS LEKUBO: But ...

10 **MR SIMPHIWE MAYISELA**: There is a new investigating officer who is already assigned to the case.

MR FRANS LEKUBO: Ja. Dr Matjila as far as I know was – the matter was closed. I mean it was like investigated by the Board and the Board closed the matter and backed him up.

MR SIMPHIWE MAYISELA: Yes, but the police did not close the matter. The police are still investigating. They have even assigned a new investigating officer to look at this matter. Yes, so the case is indeed pending.

MR FRANS LEKUBO: Is it?

MR SIMPHIWE MAYISELA: That is correct.

20 **MS GILL MARCUS**: Sorry, can I? Sorry to interrupt you there. I just want to fill out that point there. You say they assigned a new officer and the case – are you still in touch with the police about this matter?

MR SIMPHIWE MAYISELA: I am still in touch with the police on this matter. I do receive feedback as well now and then, written and as well as verbal feedback from the police.

MS GILL MARCUS: And in what capacity would that be as an informer to the police or as a PIC dismissed person? Or in what capacity do the police continue?

MR SIMPHIWE MAYISELA: As a complainant. As a complainant because I am the one who opened the case.

MR FRANS LEKUBO: Commissioner if I may ask a follow-up question. You said that when you made the statement on the 2nd of October 2017, your intention was not to open a corruption case against Dr Matjila. Now you are saying that you opened the case, that you are the complainant?

MR SIMPHIWE MAYISELA: Yes. Remember on the records, you will still remain the
10 complainant, whether the target was to issue the Section 205 route or whether the target is now to lay – investigate the CEO. On the police systems I still remain the person who opened the case. Irrespective of whether we are targeting the Section 205 route or whether we are targeting the CEO. Thank you. Now I am going to attach on the confidential documents that were found in my possession. During the course of my employment I gained access to sensitive documents that confirmed some of the allegations made by James Nogu. These documents were shared with the SAPS investigating officer under the provisions of the Protected Disclosure Act as well as my obligation to assist the police in the detection of serious crime. This explains why I was later charged with possession of sensitive documents. I was actually charged for
20 cooperating and for acting within the obligations of the SAPS. I was still acting within my obligations superseding mere contract law with SAPS. The information ...

ADV ISAAC MONNAHELA: Can I just ask you, do you mention the nature of these documents later in your statement?

MR SIMPHIWE MAYISELA: Yes. Yes, I do.

ADV ISAAC MONNAHELA: Do you mention them?

MR SIMPHIWE MAYISELA: I do and I also provide reasons why I accessed them.

ADV ISAAC MONNAHELA: Okay. Fine. Fine. So it is not necessary for me to ask you now what the nature of ...

MR SIMPHIWE MAYISELA: You can ask me later, yes.

ADV ISAAC MONNAHELA: What was the nature of these documents that contained confidential matter.

MR SIMPHIWE MAYISELA: Yes, you can put that question on hold up until I have went through those statements.

ADV ISAAC MONNAHELA: Alright.

- 10 **MR SIMPHIWE MAYISELA**: Okay. The information that I shared with the police led to the police issuing a subpoena to PIC and to the Chairperson of the Board requesting them to furnish the police with particular information that was relevant to the investigation. I would like to place on record that the full extent of all documents, confidential documents, will not be disclosed during this commission as doing so may jeopardise the pending police investigations against Dr Dan Matjila, as well as the pending litigation against PIC as medicinary hearing outcome has been referred to the Labour Court. My matter was referred to the Labour Court on the basis that Labour Court has exclusive jurisdiction on matters related to Protected Disclosure Act. The CCMA does not have this jurisdiction. My dismissal is deemed as automatically unfair
- 20 dismissal as contemplated in Section 187 of the Labour Relations Act. It is deemed as so because it is in violation of Section 3 of Protected Disclosure Act, which states that: No employee may be subjected to any occupational detriment by his or her employer on account or partly on account of having made a protected disclosure. My testimony will therefore will forecast primarily on the confidential documents that were found by Naledi Advisory Service during their witch-hunt exercise.

MR FRANS LEKUBO: Question. When did you become a whistle-blower because I thought that James Nogu was the whistle-blower?

MR SIMPHIWE MAYISELA: So I think it is the case of terminology here. So when I enlisted my cooperation with the police on Friday the 13th of October 2017, technically I became a whistle-blower to the police because I started sending them confidential documents and whistle-blowing about you know things that were happening at PIC. So yes, it is a case of terminology here.

MR FRANS LEKUBO: Okay, from that day on you were ...

MR SIMPHIWE MAYISELA: From that day, from the 13th onwards.

10 **MR FRANS LEKUBO**: Okay, okay. Alright.

MR SIMPHIWE MAYISELA: It should be placed on record that – okay I think I have touched on that. Oh, okay. It should be placed on record that all confidential documents found in my possession by Naledi Advisory Services in an electronic format were accessed pursuant to Ms Vuyokazi Menye having authorised me to have super admin privileges on our email, archiving and security gateway which is known as Mimecast. Ms Vuyokazi Menye authorised my super admin access privileges in a letter written to Mimecast on the 16th of November 2017. I have attached that letter as ANNEXURE Q. In this letter Ms Vuyokazi Menye requested Mimecast to grant me super admin access privileges on a permanent basis. The reason for permanent
20 access was to simply and expedite the process of elevating to super admin access on an ad hoc basis. I think there is a typo there. It should have been ad hoc instead of permanent. As stated above, similar access was authorised for me on the 2nd November 2017. So it was a case whereby Ms Vuyokazi would now and then write a letter to Mimecast authorising Mimecast to give me super admin access. So the letter that Ms Vuyokazi wrote on the 16th, she wanted to you know avoid all these ad hoc

requests and you know rather ask Mimecast to give me a permanent super admin access. Okay. A confidential document entitled, ...[indistinct] Risk Participation I have attached that as – I will attach it as ANNEXURE R, that concerns a transaction between Deutsche Bank and PIC on behalf of Government Employee Pension Fund was also found on my laptop. This document was shared with SAPS as it was never intended for my own personal gain. I believe that I had reasonable justification for accessing and sharing this document with the police as it could assist the police with investigations into PIC transactions, particularly those approved exclusively by the CEO. My version that I accessed this files ...[indistinct] went to Ms Menye having authorised me to
10 access information still stands. As such I believe that Advocate Cassim's finding that I did not have reasonable justification for accessing and retaining this document is wrong and ...[indistinct] and considerations that are too narrow. I also accessed and shared with the SAPS a Letter of Appointment of Naledi Advisory Services. This document relates to the opening of the corruption case against the CEO. This document was accessed per Ms Menye having authorised me to access information, that is I accessed this document during the period when I accessed all the other confidential documents. Since this document related to the opening of a corruption case against a CEO, it seemed relevant to the type of information that would assist the SAPS with their investigation.

20 **MS GILL MARCUS**: Sorry, can I just ask a question in relation to this? Because it is not quite clear.

MR SIMPHIWE MAYISELA: Okay.

MS GILL MARCUS: When you say this document and previously you talk about Ms Menye giving you access and therefore in essence authorising you, did she know what documents you were taking?

MR SIMPHIWE MAYISELA: No, she didn't know, till ...

MS GILL MARCUS: So her authorisation was for you to do your job and you used that authorisation to take certain documents ...[indistinct].

MR SIMPHIWE MAYISELA: That is correct.

MS GILL MARCUS: Ja.

MR SIMPHIWE MAYISELA: Yes, that is correct.

MS GILL MARCUS: Is that correct?

MR SIMPHIWE MAYISELA: Yes. So it was authorised access.

MS GILL MARCUS: No it was authorised access ...

10 **MR SIMPHIWE MAYISELA**: Yes.

MS GILL MARCUS: To do your job.

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: Not authorised access to take documents out. Those are two different questions.

MR SIMPHIWE MAYISELA: That is 100% correct.

MS GILL MARCUS: Ja, so you have interpreted the authorisation – you have used the question of access, granting authorisation ...

MR SIMPHIWE MAYISELA: Yes.

20 **MS GILL MARCUS**: To utilise that granting of authorisation without Ms Menye's knowledge, because the way this comes across it would or could be interpreted that she knew what you were doing. And what I want to clear from you or understand from you, did she know what you were doing or was she authorising you in the context of doing your job that she understood you to be doing?

MR SIMPHIWE MAYISELA: She was authorising me in the context of doing my job as she would understand me to be doing. However I was not confined to those contractual

laws, I had superseding responsibilities over ...

MS GILL MARCUS: By your own decision. But I mean what I am just trying to claim here is not what you think you were or had the right to do ...

MR SIMPHIWE MAYISELA: Yes, you are 100% correct.

MS GILL MARCUS: I just want to be very clear from this that Ms Menye did not know what you were doing in that authorisation.

MR SIMPHIWE MAYISELA: Yes, that is 100% correct.

ADV ISAAC MONNAHELA: Can I ask you sir, you have mentioned in paragraph 8 the documents or the type of documents that you got and passed onto the police. Were
10 those the only ones that you passed on or were there other documents that you retrieved?

MR SIMPHIWE MAYISELA: There were other documents that I retrieved. There was other documents that Naledi Advisory Services could not find in my laptop. Yes, there were other sensitive documents that I shared with the police that I did not disclose in this statement.

ADV ISAAC MONNAHELA: What was the nature of those documents?

MR SIMPHIWE MAYISELA: They are also confidential documents which I had reason to believe they were speaking to the allegation that were at that table at that point in time.

20 **ADV ISAAC MONNAHELA**: And then you say in that paragraph, that I believe that I had reasonable justification for accessing and sharing this document with the police that it could assist the police with investigations into PIC transactions. Did you think that you needed to give documents relating to other transactions, other than the one that James Nogu spoke about?

MR SIMPHIWE MAYISELA: So the fact that the police wanted to look at the matter

broadly, yes I believe so.

ADV ISAAC MONNAHELA: And so you handed over to them documents that did not relate to what you were supposed to be investigating and that is the James Nogu, the origin of the James Nogo email. But you also passed on other documents that related to other transactions that were confidential?

MR SIMPHIWE MAYISELA: Yes, which were exclusively approved by the CEO, which I believed at that time that there was no segregation of duties in terms of approval of those transactions thereof. So I had reasonable suspicions at that particular point in time to say, hey something is smelling here.

10 **ADV ISAAC MONNAHELA**: Did you hand over all documents relating to transactions that the CEO passed?

MR SIMPHIWE MAYISELA: That I had possession or that were within my means of reach.

MS GILL MARCUS: Can you give us an indication of how many transactions you handed over?

MR SIMPHIWE MAYISELA: As I have disclosed there is a pending investigation with the police and I have been advised not to ...[indistinct].

MS GILL MARCUS: No, but you are telling us that you handed over documents.

MR SIMPHIWE MAYISELA: Yes.

20 **MS GILL MARCUS**: We are not asking you the content of the documents, you have indicated that there were documents with other transactions and I would like to know if it is one or 500.

MR SIMPHIWE MAYISELA: Okay I will only mention those that will become public knowledge. One of them is a transaction involving IO Technologies.

MS GILL MARCUS: No, we are not asking for the content of that. I am asking for the

number of documents ...[indistinct] that you say the CEO approved himself, how many did you hand over? I am not asking for the content of that. I am asking how many because that is unrelated to the transactions or the email allegations. How many did you feel were within your reach you handed over? You will and you do know the number.

MR SIMPHIWE MAYISELA: Ja.

MS GILL MARCUS: Please advise us whether how many documents were there?

MR SIMPHIWE MAYISELA: About two or three.

MS GILL MARCUS: Two or three?

10 **MR SIMPHIWE MAYISELA**: Yes.

MS GILL MARCUS: Three or two? Which one?

MR SIMPHIWE MAYISELA: Two.

MS GILL MARCUS: So you handed over two documents.

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: One of them which is then the IO transaction?

MR SIMPHIWE MAYISELA: One of them is the IO transaction and the other one was this one.

MS GILL MARCUS: Sorry and the other one is?

20 **MR SIMPHIWE MAYISELA**: This one, that I was talking about here, the Ella Meyer Risk.

MS GILL MARCUS: The Ella May Risk?

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: So those were the two documents that you sourced within your reach. Were those the only two documents?

MR SIMPHIWE MAYISELA: Yes, pertaining to transactions.

MS GILL MARCUS: Pertaining to transactions.

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: Ja.

MR FRANS LEKUBO: Question.

MR SIMPHIWE MAYISELA: Yes.

MR FRANS LEKUBO: Do you know whether the PIC or you know is looking at the matter has the doctor been called by the police? I mean do you know any developments there on the side of the PIC and Dr Matjila?

MR SIMPHIWE MAYISELA: So the CEO has not been called by the police yet. That is
10 all I can say at this point.

MR FRANS LEKUBO: And the PIC Legal Department, is it looking at the matter? Do you know?

MR SIMPHIWE MAYISELA: I do not have that knowledge.

MR FRANS LEKUBO: Okay, alright.

ADV ISAAC MONNAHELA: Mr Mayisela I hope you understand that we are trying to establish the facts.

MR SIMPHIWE MAYISELA: Yes.

ADV ISAAC MONNAHELA: It appears to me that you might become uptight about the questions that we are asking and we understand that too. But we need to get the
20 information. For instance I want to ask you now, now that you are outside you might have testified to this, now that you are outside of the PIC did you say you are still receiving information from within the PIC?

MR SIMPHIWE MAYISELA: Sir I can confirm that I did at some point, had some documents that were leaked to me after I have been dismissed from PIC.

ADV ISAAC MONNAHELA: The question is do you still now?

MR SIMPHIWE MAYISELA: That is correct.

ADV ISAAC MONNAHELA: You are still receiving documents from within the PIC at this stage?

MR SIMPHIWE MAYISELA: Yes.

ADV ISAAC MONNAHELA: Yes, thank you.

MR FRANS LEKUBO: Follow-up question. In what form? Is it printed documents? Is it flash drives? In what form are you know are you getting the documents?

MR SIMPHIWE MAYISELA: Mostly printed form. Yes.

MR FRANS LEKUBO: Mostly in printed form?

10 **MR SIMPHIWE MAYISELA**: Yes.

MR FRANS LEKUBO: Alright.

ADV ISAAC MONNAHELA: These are confidential documents ...

MR SIMPHIWE MAYISELA: That is correct.

ADV ISAAC MONNAHELA: Or documents that are of a confidential nature.

MR SIMPHIWE MAYISELA: Of the confidential nature, yes.

MS GILL MARCUS: Sorry, can I just ask in relation to them again if you can help us. The documents that are currently being leaked, do they relate to the type of investigation that the police are conducting or do they relate to deal making? Or investments?

20 **MR SIMPHIWE MAYISELA**: So they relate to transactions now, they are no longer focussing on the transaction ...[indistinct].

MS GILL MARCUS: So you are getting transaction related documents leaked from the PIC ...

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: That you handing on continuously now to the police?

MR SIMPHIWE MAYISELA: Yes, that is correct.

MS GILL MARCUS: So you still as you receive them you handing them on?

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: Okay.

MR FRANS LEKUBO: Just another question also there. Do you know perhaps if such documents have found themselves to the media too? Whether such documents have landed to the media?

MR SIMPHIWE MAYISELA: None of them have landed to the media. However, they were some news around those documents, but they never specified the full content of
10 the documents.

ADV ISAAC MONNAHELA: And the police are accepting these documents from you?

MR SIMPHIWE MAYISELA: Happily.

MS GILL MARCUS: Just on that point, can you just tell us now who is in charge of the investigation from the police and which police station it is coming from?

MR SIMPHIWE MAYISELA: I have not met the new investigating officers, I have been sent an email or an SMS.

MS GILL MARCUS: Just the name?

MR SIMPHIWE MAYISELA: Warrant Officer Minnaar. CG Minnaar.

MS GILL MARCUS: And which station? Because you went from Brooklyn to Joburg?

20 **MR SIMPHIWE MAYISELA**: It is now sitting with the Office of the Provincial Commissioner.

MS GILL MARCUS: Office of the Provincial Commissioner.

MR SIMPHIWE MAYISELA: Yes.

MS GILL MARCUS: Thank you.

MR SIMPHIWE MAYISELA: Okay. Okay, now where am I?

CHAIRPERSON: Paragraph 10 I think.

MR SIMPHIWE MAYISELA: Okay. So I also accessed and shared with the SAPS a spreadsheet document containing recent salary adjustment figures for all PIC employees. I have attached that spreadsheet as ANNEXURE R. The motive for accessing this spreadsheet was informed by other allegations that were raised by James Nogu. Allegations of on victimisation of PIC employees and unfair selection process for granting bonuses and salary adjustments to PIC employees. This spreadsheet confirmed the unfair criteria used to award salary increases. For instance Mr Brian Mavuka, a General Manager in Finance, whose relationship with the Chief
10 Financial Officer Ms Matshepo More dates back since their days at Deloitte, was awarded a gross salary increase of almost one million, to be exact Mr Brian Mavuka received a salary adjustment of R957 975,00. This was done without any sound justification for such an obscene amount of adjustment. It should be noted that the anonymous whistle-blower James Nogu dealt with a number of allegations. Some of the allegations were not interrogated further by the Board of PIC, including the abovementioned allegation that dealt with employee victimisation and unfair process of granting bonuses and salary adjustments. For instance the allegations outlined on the James Nogu email dated 20th September 2017, were never interrogated. I have attached that email as ANNEXURE R. I am going to talk about my precautionary
20 suspension.

MS GILL MARCUS: Sorry, just before you do, perhaps to the evidence team, I think we just need to correlate what the witness is raising as Annexures and their numbers and what we have got. I think there is a little bit of a missing out – maybe some of the Annexures are not yet been included. Okay, if we can just clarify that for afterwards.

MR SIMPHIWE MAYISELA: Okay, I am going to talk about circumstances leading to

my precautionary suspension. So the Executive Head of IT and I were put on precautionary suspension on 20th November 2017. We were called separately into the CEO Board room. Present in the Board room was the CEO and Executive Head of HR. Both the letters of suspension we already signed by the Executive Head of HR when they were handed over to us. And they were handed over to us by hand. The Executive Head of IT and I were not given an opportunity to read the contents of the letter, even when we requested one day to go through the contents of the letter and respond accordingly, we were denied that opportunity. At the time the contents of the letter were very vague in that there were no clear allegations, and no charges specified.

10 As such the contents of the letter of suspension were not consistent with the contents of the Notice of Hearing letter.

ADV ISAAC MONNAHELA: If I may ask, were you given an opportunity to give reasons why you should not be suspended?

MR SIMPHIWE MAYISELA: Not at all. We were not given an opportunity. We were just asked to sign those papers. I remember I even had a verbal altercation with the CEO, you know to say what am I signing here because there are no allegations here? You know there are no charges levelled against me. And his response was that this is my company, you know.

ADV ISAAC MONNAHELA: Did you willingly sign the letter of suspension?

20 **MR SIMPHIWE MAYISELA**: Yes I did. Okay I am now going to talk about circumstances related to my hearing proceeding. The hearing commenced on the 14th of December 2017, at the Maisels Chambers, located number 4 Protea Place, Sandton. The Chairman of the hearing was Advocate Nazeer Cassim SC. During the first day of hearing, on the 14th December 2017, the legal representative of PIC, Joe Matibe advised that the additional charges levelled against me as their investigation was still

ongoing. So on the next day which is on the 15th of December 2017, I was called into the PIC offices to attend an interview with the forensic investigators appointed by PIC, which is Naledi Advisory Services. I attended with my legal representative, Mr Eric Mabuza. Following the interview which had all the hallmarks of a witch-hunt I was charged with unauthorised access to sensitive documents intended for the CEO, which were found on my computers. I was also charged with accessing pornographic website on the 3rd of September 2017, just one day after my commencement ...[indistinct] with PIC. Possession of sensitive documents was in line with the undertaking that I took with the SAPS on the 13th, on Friday the 13th October 2017 and that I would provide
10 any evidence implicating the CEO as I was a whistle-blower now in that case. And then accessing of pornographic website was in line with my job description of Senior Manager IT Security as per the job description that I have attached. And the job description specifies that one of my key performance areas was to continuously monitor and report on IT Security Risk, Cyber attacks, IT controls and Effectiveness of these controls. So what happened after having received my new laptop, I checked if the laptop was properly configured and that all the IT controls such as anti-virus, web content filtering, were indeed effective. So by accessing pornographic websites, I was checking if the same controls that blocked access to inappropriate websites were effective when you work from outside the office. So when I discovered those controls
20 were in effect ineffective, I immediately brought it to the attention of my Security Engineer Mr Clifford Motiyane. We then implemented the necessary controls to address the risk and this assessment was done as part of the preparation of the Information Security Strategy document which was due on the 15th September 2017. This charge was later withdrawn. However, I know that this piece of scurrilous information nevertheless found itself into the testimony of the forensic investigator Mr

Frans Lekubo before this very same Commission.

ADV ISAAC MONNAHELA: If I may intervene, was Mr Lekubo aware of this information before he came to testify before the Commission?

MR SIMPHIWE MAYISELA: Mr Lekubo was one of the witnesses who were called in my disciplinary hearing, so he was aware of the charges that later made themselves into the disciplinary hearing. So this charge was withdrawn. So he knew before he came to this Commission that this charge was withdrawn.

CHAIRPERSON: But was it not fact that at some stage you had pornographic material on your computer?

10 **MR SIMPHIWE MAYISELA:** I did not have pornographic material in my computer, that's not a fact.

MS GILL MARCUS: What is the fact then?

MR SIMPHIWE MAYISELA: The fact is that I accessed a website with pornographic content that was what I was checking. So when you say you have pornographic content in your computer it means you went as far as download those pornographic content and store them in your machine which is not the case. I was later alleged to have forged my academic qualifications when applying for a job at PIC. This charge of falsifying academic qualifications was also withdrawn so this was a clear case of witch-hunt.

20 **ADV ISAAC MONNAHELA:** Can you just specify what did they mean when they said you falsified, which qualification did they allege that you falsified?

MR SIMPHIWE MAYISELA: They alleged that my Masters Degree in Computer Science which obtained at Rhodes University was a false qualification.

ADV ISAAC MONNAHELA: Did you provide them with the evidence that you had not falsified your qualification?

MR SIMPHIWE MAYISELA: No I didn't, I just referred them to the institution to validate that with Rhodes University themselves. So this charge was later, this charge of falsifying academic qualifications was also withdrawn. So on the second day of the hearing which was held on the 18th January 2018 the Executive Head of HR mentioned under oath that the internal audit investigation cleared the CEO from the allegations made by James Nogu and that the Board took a decision to absolve the CEO from all allegations. The next hearing was supposed to be held on the 25th, Thursday 25th January 2018 however PIC decided to postpone the hearing citing unavailability of the chairperson as the reason for the postponement. Another reason why PIC decided to
10 postpone the hearing is because they were very reluctant in sharing the internal audit report as evidence of the hearing.

Subsequent dates for the hearing were scheduled for the 11th, 16th and 17th April 2018. The last hearing was held on Friday 25 May 2018 and I was officially dismissed on the 1st June 2018. Following my dismissal I have not been able to find employment as this matter has severely ruined my reputation in the industry despite my credentials and accolades. While it may be ironic to others it's painful to me to note that the people who directed my suspension investigation and prosecution in a disciplinary hearing have all left the PIC in some disgrace after the allegations of James Nogu. Insofar as what James Nogu alleged in his e-mail have largely panned out to be
20 true, this is evident from the fact that the CEO is no longer at the helm of the PIC and the majority of the conflicted executives are gone and the remainder of the Board members so lost the confidence of the Minister that they too were asked to resign. All who are left is the acting CEO which is Matshepo More, the Executive Head of HR Christopher Pholwane and the law firm that has been appointed by PIC which is ENS Africa instructed who knows whom in the PIC to continue my legal persecution in the

labour courts.

My next section touches on the inconsistencies relating to the settlement that was given to the my superior Ms Vuyokazi Menye. So the PIC paid the Executive Head of IT a settlement of approximately R7.25 million which is equivalent to her 29 months' salary despite her being with PIC for a period of 18 months. This amount I believe is irregular and is tantamount to bribery. This settlement triggers the following inconsistencies with the PIC disciplinary process, the first inconsistency is that the main allegations on the charge sheet of both myself and Ms Vuyokazi were the same however PIC decides to settle only with Ms Vuyokazi and to dismiss me on the same
 10 allegations. The second inconsistency is that the letter of reference that was issued to Ms Menye by PIC subsequent to her acceptance of the settlement states that no misconduct was found on Ms Vuyokazi Menye's part yet myself who was the subordinate of Ms Vuyokazi who was charged with the same main allegation as Vuyokazi was found guilty of misconduct which doesn't make sense.

ADV ISAAC MONNAHELA: If I may intervene, Mr Pholwane the Executive Head of Human Resources testified before this Commission that the settlement relating to Ms Menye was a negotiated settlement. Was any offer provided to you, any settlement offer?

MR SIMPHIWE MAYISELA: Not at all, in actual fact I will use Adv Joe Mathibe's words
 20 on the first date of the hearing when they offered us the settlements. So I was offered a settlement of two months they say that they base that on the fact that I had only been with PIC for two months and I was still on probation when I was suspended. However he mentioned in his own words he said Mr Mayisela the attitude of PIC is different when it comes to you, those were his words. However, when it came to Ms Vuyokazi they did, there was a number of negotiations which ended up on a settlement of R7.25

million and me a mere dismissal.

ADV ISAAC MONNAHELA: Did Mr Mothibe explain to you why it was said that when it came to you the attitude was different?

MR SIMPHIWE MAYISELA: So the attitude was so hostile in such a way that they were not even open for negotiations for reasons that are unknown until today. I would like to read my conclusion. So I have prepared this statement in accordance with the request of the legal team of the PIC Commission of Inquiry. It may not reflect the full extent of employee victimisation that exists at the PIC but it does certainly highlight the ill-treatment and unfair dismissal that I had to endure during my short leave tenure at

10 the PIC. (Witness starts crying)

CHAIRPERSON: Okay can we just ... (intervention)

ADV ISAAC MONNAHELA: Mr Commissioner can I just ask for an adjournment.

CHAIRPERSON: We'll adjourn for a few minutes until ... (inaudible).

MS GILL MARCUS: Switch his mic off there.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV ISAAC MONNAHELA: Thank you Commissioner.

CHAIRPERSON: Are you fine now Mr Mayisela?

MR SIMPHIWE MAYISELA: Yes I'm okay.

20 **CHAIRPERSON:** Thank you. I just want to assure that us asking you questions is not to attack you in any way but rather as I said earlier to establish the facts that we need to establish as a Commission right.

MR SIMPHIWE MAYISELA: I fully understand.

CHAIRPERSON: Yes. You can proceed.

MR SIMPHIWE MAYISELA: Okay I'd like to read my conclusion. So I have prepared

this statement in accordance with the request of the legal team of the PIC Commission of Inquiry. It may not reflect the full extent of employee victimisation that exists at the PIC but it does certainly highlight the ill-treatment and unfair dismissal that I had to endure during my short leave tenure at the PIC. The entire tormenting process that spans from my precautionary suspension within a mere two months leading to my dismissal encompassed the hallmarks of a witch-hunt exercise with a clear concerted effort to deflect attention away from the main allegations levelled against the CEO to finding people that can be used as scapegoats. Unfortunately I was that scapegoat.

10 I cannot stress enough how unique the circumstances were in which I found myself. Within weeks of joining the PIC I stumbled into a cover-up directed by my CEO overseen by weak and perhaps complicit Board to discredit serious allegations of wrongdoing against him. In my dealings with the police at his instruction I came to understand what was happening and was forced to choose between the easy course and the hard one. The easy road was to play my role in the hunt for James Nogu, ignore my misgivings and conscience and thus become part of the fabric of State capture and corruption rife in my country South Africa at the time. The hard route was to risk dismissal and worse to further an official police investigation into credible allegations of wrongdoing at my new employer.

20 I made a choice trusting that invoking the Protected Disclosure Act would assist me if need be. The choice had terrible consequences for me personally, my family and for my career. This is primarily because the chairperson of my hearing Adv Nazeer Cassim found that he had no jurisdiction to consider a whistleblower defence and confined himself to narrow contract law considerations. I am nevertheless content with the choice I made of being a good citizen and I do not regret it any way. I state categorically that I have not committed any misconduct at the PIC.

My initial engagement with the police were as per the mandate of the CEO. My further engagements with the police were in line with the PIC Fraud Nepotism and Corruption Policy, they were in line with the Protected Disclosure Act and they were also in line with the PCCA Act. In my view I would like the PIC Commission of Inquiry to recommend the reinstatement into my previous position that of Senior Manager Information Security Risk and Governance. I reserve the rights to supplement this statement at a later stage. I do thank you.

ADV ISAAC MONNAHELA: Mr Mayisela evidence was placed before this Commission that a letter was written to the Board of the PIC on behalf of concerned employees of the PIC after your dismissal, were you the author of the letter?
10

MR SIMPHIWE MAYISELA: No, I state under oath that I was never the author of that letter.

ADV ISAAC MONNAHELA: Do you perhaps know who could have been the author of that letter?

MR SIMPHIWE MAYISELA: I have no idea who wrote that letter.

ADV ISAAC MONNAHELA: Okay Mr Lekubo testified before this Commission that it was easy to identify who James Nogu is or was, do you have any comment on that?

MR SIMPHIWE MAYISELA: My comment is if it was easy to identify who James Nogu was or who James Nogu is why don't they have that knowledge?

ADV ISAAC MONNAHELA: He testified before this Commission that you intercepted Dr Matjila's e-mails do you have any comment?
20

MR SIMPHIWE MAYISELA: I think that is a spurious allegations that is worth to be proved so he must give us evidence of that interception.

ADV ISAAC MONNAHELA: He also testified that you accessed a document, I think that was sent to Dr Matjila on the 13th October yet your evidence before this

Commission is that you only had super admin access on the 2nd November and on the 16th when it was made permanent, do you have any comment on his allegation that you accessed the document on the 13th October before you had super admin access?

MR SIMPHIWE MAYISELA: So yes that was also used during my disciplinary hearing so upon further investigation we determined the document was accessed after or pursuant to Ms Vuyokazi Menye granting me authorising me access. So that document is the LMA risk document that I did mention here in my statement so I will not give forensic evidence that justifies how or when the document was accessed but I can state under oath now that it was during the period when I had authorised access.

10 **ADV ISAAC MONNAHELA:** You also testified that Mr Lekubo had super admin access was it usual for someone who's not an employee of the PIC to be granted super admin access?

MR SIMPHIWE MAYISELA: It is so unusual it's unheard of. I did mention this in my statement you know that you known it opens or it jeopardises the integrity of that forensic investigation itself you know because 'cause the risks thereof will not be known in three years down the line.

CHAIRPERSON: No but if he was, if he had been authorised or instructed to try and trace James Nogu would you say he in any event should not have been given super admin access?

20 **MR SIMPHIWE MAYISELA:** Yes it was overboard it was unnecessary to give them that level of access. That level of access I refer to as keys to the kingdom it was more than what he required to do his job.

ADV ISAAC MONNAHELA: Those will be my questions Mr Commissioner.

MS GILL MARCUS: Thank you very much you've just, I want to just understand a little bit about your thinking if you can explain it because you've just indicated that giving

Lekubo the keys to the kingdom was a risk but you demonstrated the extent of the risk by what you've done.

MR SIMPHIWE MAYISELA: That is correct my role as a Chief Information Security Officer warrants me to have that level of access.

MS GILL MARCUS: It warranted the level of access but it did not necessarily, the question I would ask you is having had the keys to the kingdom in that how did you use those keys because you used them in a different manner from what the authorisation was given to you by Mrs Menye?

MR SIMPHIWE MAYISELA: I fully agree with you, I used it in a different manner that
10 was authorised by Ms Menye but I did not use that to benefit me in my own personal capacity and I also did not use that access for what I would refer to is clandestine or wrong operations I did that during my contractual obligations with the police so I did that to as a good citizen legitimately to share information to assist the police in a fight against corruption.

MS GILL MARCUS: On paragraph 26 of the disciplinary hearing it states, and I really just want your sense of how you feel about this paragraph, obviously there's lots of paragraphs but I'm just singling out this one:

20 "The finding is that the employee deliberately tried to conceal from his employer the fact that the police were investigating from his first visit to the police a charge of corruption against the CEO. His agenda in so doing is not something that I need to speculate upon because in cross-examination the employee is quite emphatic on his state of mind when he intimated in response to him having taken possession of PIC documents his justification therefore that he was targeting the CEO."

And he says earlier that he wants to demonstrate the basic proposition that:

“Mr Mayisela had a duty forthwith to report back to his employer that the police were of the view that a corruption charge featuring the CEO be opened and that this would be the subject matter of further investigation. This he owed in the least to the Board of the PIC and, in my view, common courtesy would have necessitated him revealing this fact to the CEO.”

You were obviously in that disciplinary hearing and clearly it has impacted on you with your dismissal very severely. Just using those two examples of the finding how do you
10 feel about that?

MR SIMPHIWE MAYISELA: First I'd like to comment on the fact that I said targeting the CEO which may come across as if I've got a personal vendetta against the CEO and hence I'm targeting the CEO, no that was not the case. The case was focussing on the CEO was the right word that I was meant to use and also I did mention in my statement that yes even though I had a duty of faith to disclose to my employer about those allegations I decided not to because I did not want to confine myself to mere contractual laws instead I chose the laws of the land to supersede the mere contractual laws and then I cooperated with the police to assist them. As such I did not have any obligation to report back to my employer that the employer is being investigated by the
20 police and I still stand on those reasoning.

MR EMMANUEL LEDIGA: One or two questions from my side. Ja just to make sure that you know to add to the Judge here that you know we are trying to be fair here we are just asking you questions just to find out the truth ja, alright. So I'm going to ask you to assist the Commission on one or two things you know if you can since you are here. The first question I would like to ask you is in terms of the leaks and the IT the

tech story at the PIC is that I mean why do you think there are so many leaks and what can be done you know to stop them and this is within our terms of reference?

MR SIMPHIWE MAYISELA: I think there's reasonable suspicions within or amongst PIC employees that there might be transactions which are not above board and hence employees feel that you know duty to report those should I say suspicious transactions and you know they need to come out, however my belief is that the platform within or the environment within PIC is not conducive enough for those people to whistleblow such transactions. So they find any available avenue to leak that kind of information and there's some suspicions that I am James Nogu as well so that suspension has led
10 to the fact that or has drive some certain members within PIC to leak those information to me also you know, yes that is my comment.

MR EMMANUEL LEDIGA: And is there some way in which the systems can be strengthened or stopped, you know the leaks stopped?

MR SIMPHIWE MAYISELA: So in the realm of IT, IT is composed of people processes and technology. When you strengthen the systems you are only addressing the technology component you cannot address the people, there's nothing stopping people from walking away with confidential documents no matter how robust your technology may be and there's nothing stopping people from stealing with their eyes, that is my response.

20 **MR EMMANUEL LEDIGA:** Alright okay. Next question, would you, I mean as a person who's well clued up in security and all that can you venture some ideas about who is James Nogu, who on earth is James Nogu, is it multiple people, internal people, external people?

MR SIMPHIWE MAYISELA: I would like to reserve my comment there.

MR EMMANUEL LEDIGA: Okay alright. My final question is I think you tried to

address it a bit, you were at the PIC for two months and this has morphed into weeks and months and months of pain for you, pain for other people, you know you can't get a job and all that, what caused that I mean you were there for two months and this thing has just snowballed into a very, very difficult situation for you and others and all that, what has caused that? This has been troubling me for months you know, you have been there for two months and what has caused these issues?

MR SIMPHIWE MAYISELA: I wouldn't know but the best answer I can give you is that I'm a firm believer in God, when God appointed me at PIC he knew that I would walk into such a storm you know and if it wasn't for the people, the likes of myself and
10 Vuyokazi all these things that are happening at PIC wouldn't be at the level where they are now where we even sit on this Commission to discuss such things. So I believe as a good citizen I have contribute positively to the fight against corruption in this country and I'm glad that despite the consequences that I endured that have effectively negatively impacted my career as my life personally as well as that of my family. That's all I can say.

ADV JANNIE LUBBE SC: Mr Commissioner may I with your leave ask a question to this witness which I hope will assist the Commission in coming to a conclusion?

CHAIRPERSON: Ja even in the SCA senior counsel when he wants to ask more questions is allowed to do that.

20 **ADV JANNIE LUBBE SC:** Thank you Mr Commissioner. Mr Mayisela what bothers me is the following, there's this Nogu e-mail accusing the CEO having a girlfriend Pretty Louw. Two, giving her a loan of R21 million for MST. Three, assisting her with R300 000,00. The Board of the PIC considered that and found with regard to the girlfriend there's no substance. With regard to the R21 million there's no substance. Dr Matjila agreed and conceded that he was instrumental of the R300 000,00 payment to

Pretty Louw. All that went to a forensic investigation by eminent senior counsel Budlender SC a) there is no girlfriend; b) there was no loan of R21 million granted by Dr Matjila and found that the Dr Matjila was instrumental in assisting Pretty Louw with R300 000,00 which is not a criminal offence. So what is left of the fundamental complaint of this so-called whistleblower Nogu?

MR SIMPHIWE MAYISELA: Okay so I start first by correcting you so those allegations that were made by James Nogu were not only confined on the e-mail that was received on the 13th as well the well the e-mail that was received on the 5th September 2017 so there were other allegations that were made by James Nogu especially on the one e-
10 mail that was sent on the 20th September which also brought about new allegations around victimisation of employees and all other sorts of allegations. So secondly I cannot rely my confidence on any investigation that involved the Board of PIC because the Board in itself was complicated, they turned a blind eye on certain allegations which were worth further investigation. They were quick to absolve the CEO of all those allegations irrespective of a sound scope of investigation within the police. I will only place my reliance on any investigation that is done by people who were equipped and employed and whom the investigations of criminal conduct such as these ones is their vocation and those are the people like SAPS with whom I'm no interacting or cooperating with, that is my response.

20 **CHAIRPERSON:** Okay can I just follow up on what my colleague Lediga asked you earlier about who James Nogu is and then your response was that you would want to reserve your comment.

MR SIMPHIWE MAYISELA: Okay I'm not James Nogu.

CHAIRPERSON: We suspect that you're not but ... (intervention)

MR SIMPHIWE MAYISELA: Yes the fact of the matter or the truth the matter is that I

am not James Nogu.

CHAIRPERSON: Yes but the question was who is he or she do you have any idea?

MR SIMPHIWE MAYISELA: No I don't.

CHAIRPERSON: So that's the comment that you didn't want, that you reserved?

MR SIMPHIWE MAYISELA: Yes.

MR EMMANUEL LEDIGA: And is there no way you want to sort of help the Commission on speculating on who James Nogu is, any other way given your qualifications and skills because we need assistance on this thing if there is a way you can assist please do?

10 **MR SIMPHIWE MAYISELA:** Remember you know I'll be reluctant to assist even though I do have the capabilities of doing that the reason being that James Nogu he is a potential whistleblower here and whistleblowers should be protected so I will give you the example that was given to the police when I met with them. They gave an example of a house that manufactures drugs whereby they receive a call from an anonymous caller telling them about a house that manufactures drugs so ideally the police will just rush to the house that manufactures drugs they will not investigate the caller so what you're doing now you're asking me to investigate the caller which is when you find a caller what are you going to do with the caller? You should be investigating the allegations that are made by the caller not the caller himself.

20 **CHAIRPERSON:** No but certainly if the caller is able to help and confirm that this is correct then that would help a lot. In any event what I want to suggest to you is that think about it and if in the end you feel that you should reveal something or disclose the evidence leaders are here you can do that to them, not necessarily in public where we are at the moment. Alright think about it.

MR SIMPHIWE MAYISELA: Okay alright thank you.

MR EMMANUEL LEDIGA: Just to add is that we have asked James Nogu to come forward to the Commission if they have some info which will be treated confidentially so you said what about the whistleblowing but James Nogu can come and give the evidence leader the information and it can be protected within the Commission.

MR SIMPHIWE MAYISELA: Okay thank you.

MR EMMANUEL LEDIGA: Yes.

CHAIRPERSON: What is left now Mr Mayisela is to thank you for availing yourself and coming to testify before us.

MR SIMPHIWE MAYISELA: Thank you.

10 **CHAIRPERSON:** We are very, very thankful for that and I just hope that it will interest other people who would then take a decision to come and testify before us as well, so thank you.

MR SIMPHIWE MAYISELA: It's a pleasure, thank you.

CHAIRPERSON: Thank you.

ADV ISAAC MONNAHELA: Mr Commissioner that concludes the business of the day.

CHAIRPERSON: Oh I thought we were just going for tea and come back.

ADV JANNIE LUBBE SC: Mr Commissioner I think I need to explain. This whole day was planned to go till half past four but what happened in the meantime caused me to lose another half an hour which I think I made up which I lost yesterday but tomorrow
20 will be running smoothly from 10 o'clock. So from my side, my apology.

MS GILL MARCUS: Just to then be clear for tomorrow it's from 10 till 12. Tomorrow is 10 to 12?

CHAIRPERSON: Yes thank you, that means we'll adjourn then until 10 o'clock tomorrow morning.

INQUIRY ADJOURNS UNTIL 6 MARCH 2019